

**NORTH EAST TEXAS ECONOMIC DEVELOPMENT DISTRICT  
REVOLVING LOAN FUND PLAN**

**Created: July 1989**

**Revised: May 2018  
April 2020  
September 2020  
March 2021  
December 2021  
September 2022**

**Revised Postfor Defederalization**

## **INTRODUCTION**

Under Title IX of the Public Works and Economic Development Act of 1967, as amended, the Economic Development Administration, herein after called EDA, may assist distressed areas experiencing long-term economic deterioration or areas threatened or impacted by severe economic dislocation. *In March 2022 EDA released their federal interest in the RLF plan to allow the funds to be used for broader economic development purposes.*

## **HISTORY**

The NETEDD Revolving Loan Fund Plan was developed in accordance with EDA Directive No. 17.07. Award 08-57-02889 (effective March 30, 2020) originated by merging three (3) Central Texas Economic Development District (CTEDD) awards (08-39-02685 originally established in the amount of \$667,667.00 on 12/27/1989, 08-39-02685.01 added in the amount of \$1,333,334.00 on 08/24/1996, and 08-39-02685.02 added in the amount of \$2,000,001.00 on 07/02/1997) and three (3) North East Texas Economic Development District (NETEDD) awards (08-39-02502 originally established in the amount of \$466,667.00 on 08/13/1986, 08-39-02502.01 added in the amount of \$833,926.00 on 05/13/1993, and 08-39-02502.02 added in the amount of \$1,500,926.00 on 09/30/1996) for a total Value of \$4,245,289.12 after all adjustments and transfers. On March 17, 2022 EDA released Federal Interest in each of the Revolving Fund Awards (Defederalized).

As adopted, the RLF Plan has become the Standard Operating Procedure for the North East Texas Economic Development District, Inc., herein after called NETEDD in administering a revolving loan fund program in areas experiencing long-term economic deterioration, and/or severe economic dislocation. Both exemplified in part by high or excessive unemployment rates relative to surrounding areas and the state. The Revolving Loan Plan is divided into two parts. The first covers the strategy of the RLF Plan and the second covers the operational procedures.

## PART I. THE REVOLVING LOAN FUND STRATEGY

### (i) Comprehensive Economic Development Strategy Overview

The North East Texas Economic Development District (NETEDD) consists of nine counties in the “Right Corner of Texas” or the far northeastern part of the state. This nine-county region including Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River and Titus counties, covers a geographical area of almost 5,732 square miles and is home to approximately 283,978 people. A merging of CTEDD and NETEDD RLF’s from EDA and an evaluation of distressed counties in the adjacent areas resulted in an additional twenty-one (21 counties added to our service areas. These additional 21 counties for EDA RLF funding include Bell, Bosque, Camp, Coryell, Eastland, Erath, Falls, Freestone, Gregg, Harrison, Hill, Johnson, Limestone, McLennan, Marion, Milam, Navarro, Panola, Somervell, Upshur in Texas, and Miller County in Arkansas. The aforementioned counties are served by five (5) different CEDS. In an effort to maintain the purpose of the funding, NETEDD staff will review the CEDS and annual updates for each of the areas covered.

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~~In consideration of the size of the district, the Board and staff relied on a variety of resources and partners to obtain input into the 2018 Comprehensive Economic Development Strategy (CEDS) Report. Meetings with partners were used as a springboard to evoke discussion of economic development issues affecting the region. These partners provide the information that is an integral part of this report. In consideration of counties adjacent to the NETEDD RLF service area that have financial and/or business transactions within NETEDD, businesses that meet loan criteria are eligible for review and consideration for funding.~~

#### STRENGTHS

~~The strengths that were reported for the NETEDD region in the 2013 CEDS Report continue in 2018 as strong attributes for the region:~~

- ~~• Affordable housing;~~
- ~~• Good water resources;~~
- ~~• Available land for development;~~
- ~~• Available workforce;~~
- ~~• Existing educational institutions such as universities, community colleges, and technical schools;~~
- ~~• Good natural resources;~~
- ~~• Location along transportation corridors/crossroads for major highways;~~
- ~~• Adequate hospitals and other medical facilities;~~
- ~~• Fairly good industrial diversity;~~
- ~~• Growth potential in agribusiness, logistics and ecotourism.~~

#### WEAKNESSES

~~Many of the weaknesses that were reported in 2013 continue to plague the NETEDD region as well in 2018:~~

- ~~Relatively low wage levels,~~
- ~~Higher than state average mortality rates, illiteracy rates and poverty rates,~~
- ~~Aging population [According to Texas Dept. of Aging estimates, approximately 14% of those over the age of 60 live in poverty];~~
- ~~Unemployment rates are higher than state average,~~
- ~~Disability rates are higher than state average,~~
- ~~Per capita income is lower than state and nation,~~
- ~~Average value of owned homes is low,~~
- ~~Educational attainment rates are low,~~
- ~~Shortage of highly skilled labor,~~
- ~~Job growth is slow,~~
- ~~New business growth is low,~~
- ~~Infrastructure is aging and inadequate,~~
- ~~Public transportation and air transportation are inadequate,~~
- ~~There are environmental concerns in some areas.~~

*While these strengths and weaknesses have primarily withstood COVID-19, NETEDD recognizes the significant and permanent impacts on our economic climate. This will be further addressed in our 5-year CEDS update.*

### **NETEDD REGIONAL BACKGROUND ECONOMICS**

The overall economy in the NETEDD Region continues to grow slowly, but naturally at a higher momentum, ~~in the more populated communities with interstate highway or corridor highway access. Communities with attributes such as Texarkana (Bowie County), Paris (Lamar County), Sulphur Springs (Hopkins County) and Mt. Pleasant (Titus County) have all seen the benefits of multiple industrial and retail expansions and relocations over the past five years. Unfortunately, many of the rural communities and rural portions of the NETEDD counties, which continue to be dependent upon agriculture and commuting to employment, are still plagued with high unemployment and stagnant population growth or population decline.~~

North East Texas has made changes and improvements but our vision remains to have a workforce that is competitive nationally, earn wages at the national average, and relieve the burden of poverty from as many residents as possible.

<b>Goals</b>	<b>Measurable Outcomes</b>	<b>Objective</b>
Increased involvement with local governments and businesses to promote economic development of the region.	Number of jobs created in measurable period and/or number of projects resulting in job retention; number of technical assistance visits made on job creation/retention projects; decreased unemployment in the region.	Assist local government in planning to support economic development and leadership development that results in lower unemployment and poverty rates in the local community and the region.

Development of higher educated, skilled and technological workforce ready to fill the employment needs of new and existing businesses.	Increase in per capita income, decrease in unemployment, and increase in skilled and semi-skilled jobs.	Raise standard of living for residents of the region by emphasizing higher education & technical skills as a route to higher wages.
Adequate infrastructure for residential, commercial, and industrial growth.	Increased accessibility & capacity of basic utilities, growth in industrial parks and other public works need.	Decrease in the number of residents living at or below the national poverty rate in substandard housing; increase per capita income through additional job creation and retention.
Assist governmental entities in region to promote economic development.	Number of EDA proposals submitted during fiscal year; number of technical assistance visits to communities during fiscal year; completed CEDS for region.	Provide planning and technical assistance to communities in the region that result in new businesses or expansion & job creation.
Make affordable financing available to businesses in the region for expansion.	Number of loans outstanding in NETEDD RLF, SBA 504, ETRAP RLF, Chapman RLF & Microloan portfolios.	Source of economic development finance programs for small businesses and local Economic Development Corporations.

**(ii) The Business Development Strategy**

Northeast Texas Economic Development District (NETEDD) will follow the guidelines of the Public Works and Economic Development Act program to assist communities to revitalize and expand their physical and economic infrastructure and also support the creation and retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of their local economies. NETEDD will assist businesses in communities experiencing actual or threatened severe unemployment or adverse economic changes that may occur suddenly or over time, including but not limited to those caused by military base closures or realignments, depletion of natural resources, presidentially declared disasters or emergencies, etc.

Types following is a list of allowed activities:

The following are among those activities for which a loan may be made from the RLF:

- The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;
- The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;
- Business or job retention;
- Small business development;

- Private sector job creation; and
- Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base

Prohibited and Unauthorized uses of NETEDD RLF capital:

- Acquire an equity position in a private business;
- Acquire an equity position in a private business (13 CFR section 307.17 (c)(1));
- Subside interest payments on an existing RLF loan (13 CFR section 307.17 (c)(2));
- Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another federal agency's loan programs (13 CFR section 307.17 (c)(3));
- Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF (13 CFR section 307.17 (c)(4));
- Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF (13 CFR section 307.17 (c)(5));
- Refinance existing debt, unless:
  - (1) The RLF Recipient sufficiently demonstrates in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities; for this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification);  
or
  - (2) RLF cash available for lending will finance the purchase of the rights of a prior lien holder during a foreclosure action, which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose, only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable period of time, following the date of refinancing RLF (13 CFR section 307.17 (c)(6));
- Serve as collateral to obtain credit or any other type of financing without EDAs prior written approval (13 CFR section 307.17(c)(7));
- Support operations or administration of the RLF recipient (13 CFR section 307.17(c)(8));
- Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under federal law,
- Finance Rolling Stock unless incorporated as part of larger project including fixed assets and/or real estate (exceptions considered on an individual basis) (Special consideration due to hazard risk and asset depreciation).

~~The business development strategy is already well documented in the NETEDD CEDS Report and the Ark Tex Regional Development Company (ATRDC) Annual Report (SBA Certified Development Company). The NETEDD staff has a close working relationship with the business sector in designing and implementing the business development strategy that initially enabled~~

NETEDD to determine the need for an RLF and define the types of RLF investments that would be most effective in complementing other types of business assistance in supporting the objectives of the CEDS program.

A priority objective is to provide technical assistance and financing to help small & medium sized manufacturing plants start up, expand, or increase productivity. Increased use of technology and expansion of markets through exporting are strategic objectives to help keep local firms competitive.

Types of assistance identified and targeted in Northeast Texas include: 1) Management & business assistance from Small Business Development Centers (including ATRDC/NETEDD); 2) Production and Engineering assistance from Texas Manufacturing Assistance Center network stationed in Longview; 3) Seminars in International Trade co-sponsored by NETEDD and the North-east Texas Economic Developers Roundtable; and 4) Financial assistance provided by NETEDD/ATRDC.

The following are among those activities for which a loan may be made from the RLF:

- The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;
- The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;
- Business or job retention;
- Small business development;
- Private sector job creation; and
- Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base

Prohibited uses of RLF capital are listed below. *See 13 CFR 307.17(b).*

Acquire an equity position in a private business;

- Subsidization of interest payments on an existing RLF loan;
- Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;
- Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF; or
- Refinance existing debt, unless:
  - The RLF Recipient sufficiently demonstrates in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the

~~risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or~~  
➤ ~~RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable period of time, as determined by EDA, following the date of refinancing.~~

### (iii) The Financing Strategy

Banking institutions throughout the NETEDD generally have conservative lending policies. Financial institutions almost uniformly showed gains in deposits and these statistics contrasted to other area economic indicators; viz., excessive unemployment rates and losses in personal income, and loan to deposit ratios generally in the fifty percent (50%) range indicate conservative lending policies.

In general, area lenders are reluctant to participate in high risk ventures or provide needed long-term financing. Normally, local lending institutions require a 20 percent to 30 percent equity investment for applicants in a relatively strong financial position and with sufficient managerial experience in the industry or business. For new ventures and closely held companies, the equity requirement may be as much as 50 percent, if the loan is considered at all. Specialized equipment and technology-based loans for manufacturers needing to upgrade to remain globally competitive are hard to finance conventionally. The NETEDD RLF in conjunction with the area banks has been successful in filling this need.

Most of the area lending institutions are innovative and utilize applicable loan supplement programs as needed; SBA-7 (a), SBA-504, and loan guarantee programs from the SBA and the USDA. The NETEDD RLF has proven to be another valuable financial tool that helps marginal projects become more attractive to private lenders by reducing the amount of exposure.

The utilization of the NETEDD RLF has strengthened the economic base of the areas within the District which suffer from severe economic distress. The NETEDD RLF Plan has worked with local economic development organizations with emphasis on Bowie County to help diversify away from defense facilities and recover from associated job losses.

Some areas have more on-going economic development activities than others, but the problems causing economic distress are present in all areas. This economic distress is reflected by out-migration, unemployment and underemployment, loss of personal income, lack of industrial diversification and lack of facilities and capital to stimulate and sustain economic development. It must be noted that the levels of distress are chronic and fluctuate directly with the rise and fall of economic activity within NETEDD's major industries; hospitality, defense and related industries.

The following financial policies are presented to serve a standard by which individual loans are tested and evaluated in order to achieve the goals and objectives of this plan:

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1. Working capital loans will not exceed 50% of the total amount of loans in the RLF

Portfolio;

2. Loan size - Minimum \$10,000 up to a Maximum of \$500,000;

3. Loan terms – For real estate, terms may be set up to twenty-five (25) years. For equipment, terms will be set in accordance with useful life as determined by accountant or IRS guidance.

3-4. In general, principal and interest will be amortized over the life of the loan. However, in order to encourage participation in a direct fixed asset loan by other lenders and investors, the RLF loan principal may be payable after other loans made in connection with the project have been repaid in full. It must be noted that each loan will be negotiated on an individual basis in order to generate maximum impact;

4-5. The interest rate on RLF loans will follow the rates allowed by the RLF grant. The minimum interest rate will be limited to four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law, whichever is lower, but will not be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate may be limited to ten (10) percent if this would compromise the ability of the RLF to implement the overall financing strategy. The target rate will be the amount current money center prime rate fixed over the life of the loan;

5-6. Moratoriums on RLF principal may be established for the short run as needed in order to meet the credit needs of the borrower and further the goals and objectives of the RLF Program;

6-7. Wherever possible, the NETEDD will always strive to take a superior lien position. However, the Board may take a lien position for the RLF which may be subordinate and made inferior to lien or liens securing other loans made in connection with the project, in order to achieve the RLF goals. In determining the collateral requirements, NETEDD, in conjunction with participating lending institutions, will consider the merits and potential economic benefits of each individual loan request. RLF loans will be secured by liens and/or assignments of rights and benefits of the mortgagor. In projects involving fixed asset loans, the RLF will normally require collateral such as liens on the fixed assets, evidenced by loan documents to include but not be limited to notes, mortgages and deeds of trust, and security in interest;

7-8. A loan origination fee of 1.5% targeted for each loan (may be paid via one (1) time payment or added to amount being financed).

The following items are needed for standard loan application and processing:

- Financial Information and Credit Report Authorization and Release Form
- Company Formation Documents and Company Agreement~~CAIVRS Disclosure Form~~
- SAMS Clearance
- Personal History Form
- Personal Financial Statement Form
- Standard Loan Application
- Business Financials and/or projections (as needed)
- Other documents as required

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### ***Civil Rights Requirements***



The NETEDD RLF will comply with all Department of Commerce and Economic Development Administration regulations under Title VI of C.R. Act of 1964, Section 112 of Public Law 92-65, Section 504 of the Rehabilitation Act of 1973, and Age Discrimination Act of 1975 all as amended. Any other applicable non-discrimination law(s). NETEDD RLF will require the same Assurances of Compliance from all loan recipients.

All applicants will be required to submit a policy statement that such applicant shall not discriminate against employees or applicants for employment on the basis of race, creed, religion, national origin, gender identity, sex, handicap, or political belief or affiliation. Applicants will be required to post a non-discrimination notice in areas where such notice will be seen by employees and applicants. Such notice will provide information for persons to report such discrimination who feel they have been discriminated against by the applicant. Loan recipient compliance will be monitored semi-annually and will require corrective action as necessary. Corrective action may require applicants to submit a work force analysis showing hiring patterns of affected groups and projected employment figures aimed at remedying underutilized minorities.

The NETEDD RLF shall not discriminate against loan applicants on the basis of race, color, national origin, religion, or sex. All applicable statutes, executive orders, requirements, and regulations pertaining to non-discrimination will be adhered to by NETEDD RLF.

The NETEDD RLF will require assurance in writing from loan recipients that affirmative action in the area of contracting will be taken to involve minority and/or female owned businesses.

The NETEDD RLF will work to further the cause of minority business development by encouraging applicants for funding by NETEDD RLF. The NETEDD RLF will work with minority business organizations, such as the Texarkana Black Chamber of Commerce, the local Service Corps of Retired Executives (SCORE) and the local Small Business Development Center, and other organizations working for minority business development, and encourage their referrals of potential loan applicants.

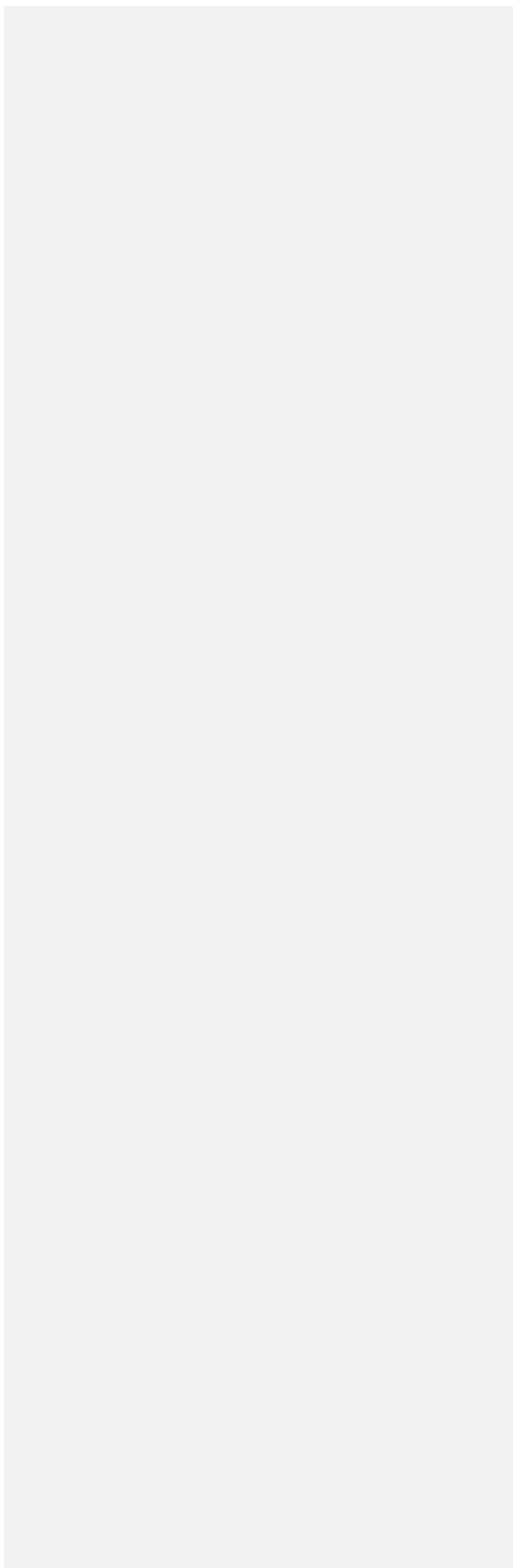
Monitoring of loan recipients on a regular basis will be used to ensure compliance. If patterns of discrimination are found with a loan recipient, and efforts to force corrective action are unsuccessful, the loan will be classified as a problem loan and if corrective action is not taken the loan may be declared in default of loan covenants.

The standards outlined below reflect the expected achievement of the RLF portfolio. Individual loans will generally conform to these standards but may vary depending on the economic benefits, both direct and indirect, to be achieved by each loan as long as cumulative results of the portfolio generally meet specified standards.

- The overall cost per job is targeted at the SBA rate of one job created for every \$765,000 loaned though in some instances cost per job will be less than the indicated amount. This amount will be adjusted periodically to coincide with the SBA job creation requirement. The cost per job requirements tended to focus on the quantity of jobs rather than the quality of jobs. Increased costs of upgrading plant and equipment to keep pace with advances in technology to remain competitive makes the job retention a worthy public policy objective. the maximum loan to any single borrower is set at \$5300,000, ~~with EDA approval.~~

- Due to the high level of long-term unemployed and underemployed workers in the NETEDD area, 50% of the new jobs created will be targeted at the long-term unemployed and/or underemployed workers.
- The RLF will continue to focus on economic base jobs or basic value-added jobs. These type of jobs tend to have a more positive impact on the area than do service jobs. A manufacturing job usually generates additional cash flow which creates market demand and generates additional supplier and service jobs. Most of the dislocated workers in NETEDD filled basic job slots and were classified as semi-skilled and skilled industrial workers. RLF loan activity will be targeted but not limited to replenishing these types of jobs which will have the most economic impact on the area. The target ratios for semi-skilled and skilled workers are: Industrial - 60%, Commercial - 40%, Entry level -25%, Semiskilled -25%, Skilled - 50%.
- There is a gap in the lending practices of the local lending institutions for commercial loans less than \$~~1025~~,000. The local lending environment generally views the smaller loans as unprofitable ventures due to the cost of servicing the loans. The revolving loan fund will be used to address this weakness in the local lending environment while keeping the same priorities as larger loans. However, since the local lending institutions have an aversion to making the smaller loans, there will probably not be any private leveraging of the RLF funds. This will probably result in the RLF financing 100% of the project. This leveraging shortfall will be made up by leveraging the larger loans in an amount that should make the overall portfolio average in the 3 - 5:1 range.
- The rates of private sector dollars to be leveraged by the RLF Portfolio will be set at an overall average of two to one (2:1). It is expected a majority of the loans will leverage private sector funds in the 3-5:1 range.
- All loan applications will be analyzed with maximum positive impact on the economy considered the primary factor. As such, the ratio of public/private borrowers and locally owned or outside concerns are irrelevant. RLF loans must be used for purposes which result in private sector job creation or retention and contribute to the economic development of the area. Loans will normally finance industrial or commercial activities including light manufacturing and service industries where opportunities for private sector jobs are the greatest, and will emphasize direct job creation or retention, location or expansion of established business, new start-up or the retention of business. In some instances, indirect job creation may be considered on a low priority basis, but only with significant impact on the economy.
- Proclamation of the RLF will insure that the program is known to all potential loan applicants including minorities and women. Through the judicious use of the RLF, financing can be provided to those businesses and industries that indeed offer the most long-term gains for the area. The NETEDD can insure maximum gains for various areas by tailoring to meet the different needs of each locale.

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- In small rural areas, revolving loan financing would most likely be to labor intensive industries offering the quickest relief to severe unemployment problems. In the larger, more urbanized areas, financing would be targeted at developments which would leverage major business expansions and start-ups providing a continuing source of new jobs. Every effort will be made to insure that the loan portfolio will increase the tax revenues in all eligible areas involved with the RLF program.
- The NETEDD Loan Committee and the loan candidate will be appraised of the state and federal statutes concerning civil rights and environmental regulations. Loan reviews and applications will require statutory compliance as a part of the terms and conditions of the loan.

The required selection criteria that financing is not otherwise available will be applied to all loans. The economic impact criteria are that the business be classified as a basic industry or other value-added business or support to a value-added business.

The staff will make an annual report to the NETEDD RLF Committee to assess the performance of the RLF in accomplishing its stated economic adjustment objectives and to modify the RLF Plan as needed and recertify the plan.

## **PART II. OPERATIONAL PROCEDURES**

### **(i) Administrative Procedures**

Staff of NETEDD, including contract labor, will be responsible for the identification and development of appropriate financing opportunities, providing business and financial counseling, performing environmental review compliance, and loan management. NETEDD staff will also render loan servicing functions which will include, but not be limited to, performing credit analysis, loan write-ups and recommendations to the Committee, loan processing, collections and servicing, handling defaulted loans and foreclosures, and compliance with grant requirements. Loan closings and foreclosures will be handled by outside legal counsel. Loan procedures and documents are in compliance with the RLF Administrative Manual.

The NETEDD RLF loan committee is composed of the NETEDD President and some of the ATRDC Executive Board (which also reviews SBA 504 program loans). This structure allows for administrative efficiency and competency in loan reviews. This loan committee is composed of five members who are representative of the public and private sector as well as minority representation. Members with business experience that might have a conflict of interest on a particular project must abstain from voting on that project. The board has members with bank lending experience and at least one of those members must be present for each loan decision. Quorum is set at three members and there must be a quorum to vote on a project.

The staff of the NETEDD will serve as the initial contact person for all NETEDD RLF applicants. If a prospective applicant appears to meet the criteria for a loan, the staff shall provide the prospect with a loan application packet, and assist them as necessary to comply with the requirements of the application. When completed the application and all supporting documentation will be returned

to the NETEDD office where the staff will examine it for completeness as well as further eligibility screening.

### ***Credit Reports***

The credit analysis of the loan application is a process designed to determine whether the loan applicant has adequate financial resources to repay the loan as outlined in the application. NETEDD utilizes the generic loan application used by the Ark-Tex Regional Development Co., Inc., (an SBA chartered Certified Development Company), to obtain all of the information needed for a thorough credit analysis of the proposed project. The credit analysis of this information will answer the following questions:

- Is cash flow sufficient to repay the loan?
- Is working capital adequate, or have adequate sources of working capital been identified?
- Is the balance sheet satisfactory?
- Do trends and projections support the loan request?
- Is the loan being recommended?

All information submitted to commercial financial institutions will be made available to NETEDD to ensure completeness, and when necessary NETEDD may use outside credit analysts to supplement analysis done by the staff. It is anticipated that the assistance of the RLF Committee members with loan experience will greatly enhance the analysis of each loan, and these individuals will be asked to take an active role in this phase of the loan process.

### ***Appraisal Reports***

Appraisal reports commissioned by the participating financial institutions shall generally be used by the RLF. If the financial institution does not need a formal appraisal and the RLF feels one is needed for its protection, a licensed appraiser shall be utilized.

#### **(ii) Environmental Review**

NETEDD will require written certification and conformance with all applicable state and federal guidelines concerning environmental review. NETEDD will develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91-190), as implemented by the "Regulations" of the President's Council on Environmental Quality (40 DFR Parts 1500-1508). An Environmental Review Record (ERR) will be established for each loan, and the applicant or borrower must comply with all RLF environmental requirements.

In administering the RLF, NETEDD will maintain procedures to comply with applicable environmental laws and statutes including, but not limited to, the following:

- The Clean Air Act, as amended (42 U.S.C. 7401 et seq.).
- The Federal Water Pollution Control Act, as amended (U.S.C. 1251, et seq.).
- The Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, et seq.).

- Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration.
- Executive Order 11990, Protection of Wetlands (May 24, 1977).
- The Endangered Species Act of 1973, P.L. 93-205, as amended (16 U.S.C. 300f et seq.).
- The Safe Drinking Water Act, P.L. 93-523, as amended (42 U.S.C. 300f-300j-9).
- The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, et seq.).
- The Resource Conservation and Recovery Act of 1976
- The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96-510, as amended by Superfund Amendments and Reauthorization Act of 1986 (SARA) 942 U.S.C. 6091, et seq.)
- The National Historic Preservation Act P.L. 89-665 (16 U.S.C. 470, et seq.), (36 CFR Part 800).
- All state and local environmental requirements will be applicable along with Federal standards.

Reasonable assurances must be provided by the applicant that the loan proceeds will not be used to substitute for private capital. These assurances will include execution of the Bank Commitment Letter and Bank Certification of Surplus Asset Unavailability. In addition, personal financial statements will be reviewed in order to determine the availability and accessibility of private capital.

In determining collateral requirements for each loan the Board will give consideration to each project's individual merits and the economic benefits derived from the project. The Board shall generally follow the guidelines listed below in making this determination.

- Fixed asset loans shall be limited in duration to the useful life of the fixed asset or the collateral securing the loan
- The equity requirement for each project will generally be 20% of the total project cost.
- In order to encourage the participation of other lenders in a fixed asset loan the NETEDD may take a subordinate position to others loans made in connection with the project.
- Loans for working capital will normally be secured by liens on inventories, receivables, or other assets available. Such liens may be subordinate only to existing liens of record and other loans involved in the project.
- In addition to the above types of security NETEDD may also require security in the form of assignment of patents and licenses, the acquisition of hazard insurance, and any other form of security deemed appropriate by the NETEDD RLF Board.
- If determined appropriate the NETEDD RLF Board may require life insurance on key persons be assigned to NETEDD RLF loan. Personal guarantees will also be required from principal owners.

The equity requirement for each project involving a new company will generally be 10% to 20% of the total project cost either for working capital or fixed asset loans. Equity requirements for existing companies may be lower if the company has a substantial equity position.

When determination is made concerning eligibility the staff will prepare a written and oral report for the NETEDD RLF Loan Committee covering:

- Eligibility
- Credit worthiness
- Collateral recommended
- How prospective loan will help NETEDD RLF meet program objectives
- How prospective loan will fit with loan portfolio guidelines
- Any special Loan conditions that are recommended
- Any other information deemed pertinent to the review process
- Recommendation on approval or disapproval of the application

If the loan is recommended for disapproval, the report should also indicate how the loan might be modified to make it an acceptable package for the NETEDD RLF Loan Committee to approve. The report should also indicate other potential sources of funding if the loan is denied, and what steps the staff will take to assist the applicant in these alternative processes.

The loan write-up is presented to the NETEDD RLF Loan Committee along with an oral staff presentation and recommendation. Following the presentation, the Committee will consider each application and vote on the recommended action. Minutes are kept of all Committee meetings. Loan applicants are notified of the decision immediately following the meeting and a written confirmation will follow.

A copy of a bank deposit slip will be required to document any equity requirement of the applicant. A loan commitment letter from the participating financial institution will be required for closing. Where applicable, the following documents must be provided at or prior to closing any loan:

**Borrower Provides to NETEDD:**

- Articles of incorporation and bylaws for borrower
- Formation documents and Company agreement
- Proof of SAM registration
- Corporate resolution authorizing borrower's President to execute loan documents
- Certificate of Good Standing from the Comptroller of Public Accounts
- Certificate of Existence from Secretary of State
- Lease agreement with property owner
- Landlord's lien waiver
- Legal description of property occupied by owner
- Life insurance on borrower in the amount of the loan (to be assigned to NETEDD-RLF as additional collateral for the loan)
- List of current employees by name and job title for job certification
- Evidence of equity injection
- Disclosure agreement letter
- Appropriate fire, extended coverage or liability insurance (policy or binder) on equipment, materials to be purchased with loan proceeds listing NETEDD-RLF as Loss Payee.
- Funds sufficient to cover processing fee, closing costs including, but not limited to, legal/attorney fees, filing fees, lien searches, other fees included in closing costs such as appraisal fees or environmental assessment fees

## Loan Disbursement

After addressing loan requirements and securing collateral (as necessary for each individual loan), loan disbursement is paid out in the form of a single lump sum payment via check and delivered to the borrower or sent via FedEx with signature required.

The NETEDD-RLF is responsible for the administration, monitoring, compliance, and the servicing of the total loan project from loan inception through full payment. The NETEDD-RLF has general collection, investing, disbursing, individual loan accounting and reporting responsibilities. The NETEDD-RLF also has responsibility for monitoring, administration, and overall reporting requirements. The NETEDD-RLF is responsible for taking whatever steps are necessary to bring delinquent loans current, and to take any other steps necessary to protect NETEDD-RLF capital.

The NETEDD-RLF is responsible for all aspects of administration, monitoring and servicing. This will include the following tasks:

- Periodic visits to the borrower to review the condition and maintenance of the collateral as well as compliance with any special provisions.
- Obtain and analyze the borrower's annual financial statements and review the results with the  
borrower.
- Monitor the loan agreement for defaults in covenants.
- Negotiate with the borrower if changes in terms, conditions, or covenants of the loan become necessary.
- Notification of default and initiating foreclosure proceedings and taking whatever steps are necessary to safeguard collateral.

It is the intent of the NETEDD-RLF to work with each borrower to ensure fulfillment of the loan obligations and to protect the interests of the NETEDD-RLF.

Borrowers are required to submit reports as requested to prove job creation in line with the RLF commitment. The borrower is required to submit Financial Statements in accordance with each borrower's loan terms and conditions. The NETEDD-RLF staff makes periodic on-site visits to check the status of collateral. The NETEDD-RLF staff also contacts the borrower periodically to identify any potential problems the business might be having.

The NETEDD-RLF staff shall make periodic monthly reports to the Loan Committee concerning each outstanding loan. The reports shall show the current payment status of each loan. The following procedures will be followed when accounts become past due:

- Accounts become past due when a scheduled payment is ~~twentyten (2010)~~ **twentyten (2010)** days past due. A late charge of five percent (5%) ~~may will be charged, on accounts more than fifteen (15) days delinquent.~~



- When a loan becomes ~~twenty-five ten~~ (25/10) days past due, a late notice will be sent with invoice by the staff.
- When a loan becomes ~~thirty twenty~~ (30/20) days past due, the staff will make a personal contact and attempt to determine the reason for the delinquency.
- Loans will be classified as problem loans when a payment is not made, when a default on a loan covenant has occurred, or when the borrower's financial statements reveal an adverse change which at some point could cause either non-payment or default.

In working with a borrower to keep the loan in good standing, the NETEDD-RLF staff will maintain frequent contact with each borrower. Any problems and concerns in the above listed areas will be discussed in depth to determine feasible solutions. The ~~Executive Director Loan Administration Board~~ will be kept fully informed at all times of the status of problem loans and the actions taken by NETEDD-RLF personnel to rectify the problem. If a change in the loan terms can save the loan, the ~~Executive Director Committee~~ is authorized to make any changes necessary that are in accordance with the NETEDD Plan. EDA guidelines.

When a loan becomes ninety (90) days past due and all efforts to find an alternative solution have failed, a loan will be considered in default. Because of the intricacies involved in foreclosures and liquidation proceedings and because of the legal consequences involved, the NETEDD RLF ~~Executive Director Loan Committee~~ may choose to retain an attorney who specializes in this field to handle this process.

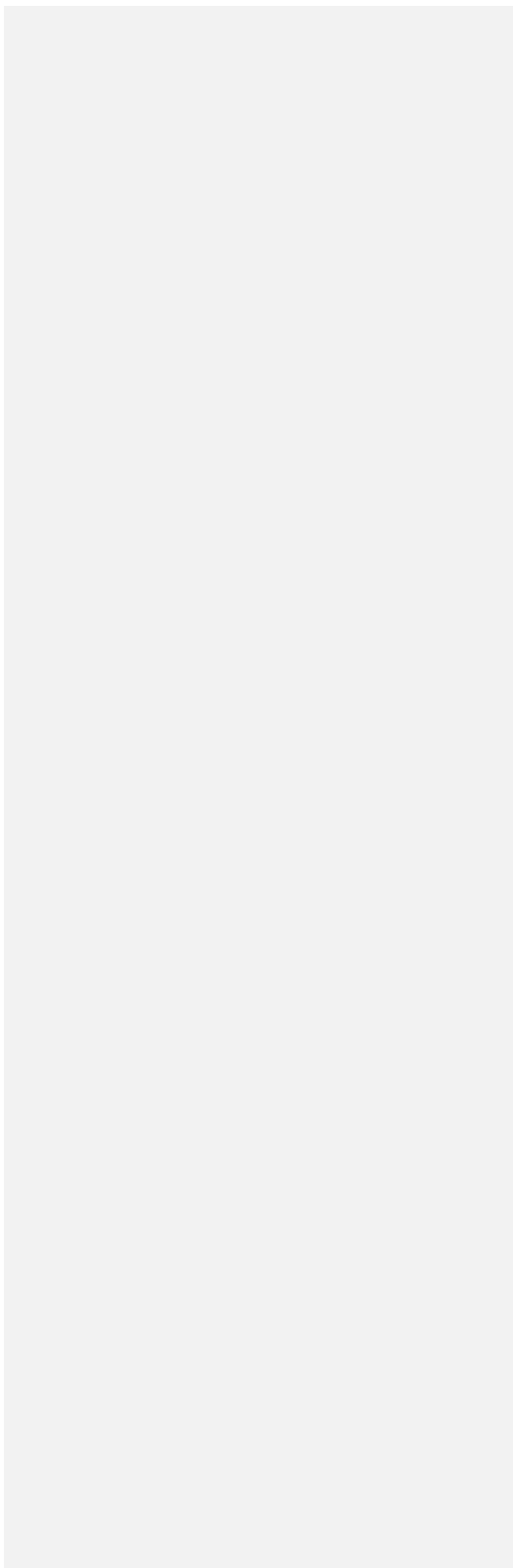
The following procedures will also be followed:

- A meeting will be held with the borrower to explain the liquidation procedures.
- Following the meeting, a letter of intent will be sent to the customer and all creditors that there is a delinquency, balance of the loan, interest accrued, etc.
- During the twenty-day waiting period the NETEDD-RLF will make arrangement to either move the collateral or arrange for a public foreclosure on premises. Lien searches will also be initiated to confirm NETEDD-RLF's lien position. If necessary, an appraisal would be requested at this time. Taxing authorities would be contacted to determine the amount of taxes due, if any.
- It should be noted that the NETEDD-RLF will try to reach a solution short of liquidation if at all possible. While the NETEDD-RLF must protect the capital in the Fund, it also does not wish to initiate proceedings which may result in the loss of jobs to the community. To the extent that a loan may be restructured or an acceptable alternative arrangement may be reached between the borrower and the NETEDD-RLF, liquidation will be considered a last alternative.

Where applicable, the following documents will be included with each loan file:

1. All loan documents
2. Evidence of equity injection
3. Articles of incorporation
4. Bylaws
- ~~5.~~ Charter
- ~~5-6.~~ Company agreement
- ~~6-7.~~ Corporate resolution authorizing execution of loan documents

- ~~7~~.8. Certificate of good standing
- ~~8~~.9. Lease agreement
- ~~9~~.10. Landlord's lien waiver
- ~~10~~.11. Legal description of property



- ~~11-12.~~ Application Package:
  - a. Loan application
  - b. Business Plan
  - c. Personal Financial Statement
  - d. Proof of SAM registration
  - ~~d-e.~~ Previous three years' business financial statements
  - e-f. Environmental assessment
  - f-g. Lender commitment letter
- ~~12-13.~~ UCC lien searches
- ~~13-14.~~ UCC filings
- ~~14-15.~~ Disclosure agreements
- ~~15-16.~~ Lender subordination agreement
- ~~16-17.~~ Minutes of NETEDD-RLF board action
- ~~17-18.~~ Life insurance policy
- ~~18-19.~~ Liability insurance policy
- ~~19-20.~~ Fire insurance policy
- ~~20-21.~~ Employment base certification
- ~~21-22.~~ Copy of letter to applicant summarizing terms and conditions
- ~~22-23.~~ Staff Report
- ~~23-24.~~ Invoices for equipment purchased with loan proceeds

### Administrative Procedures

Accounts (maintained in a separate bank account for the EDA RLF portfolio) are established within the accounting system in order to clearly identify and audit repayments and interest income from the RLF funds. Monthly general ledgers are prepared for account status. The accounting system allows easy preparation of the reports as required by the EDA. Standard accounting procedures are used to maintain the accounts. The NETEDD-RLF is audited annually to ensure compliance with generally accepted accounting principles (GAAP) and EDA requirements per 13 CFR 301.15(a).

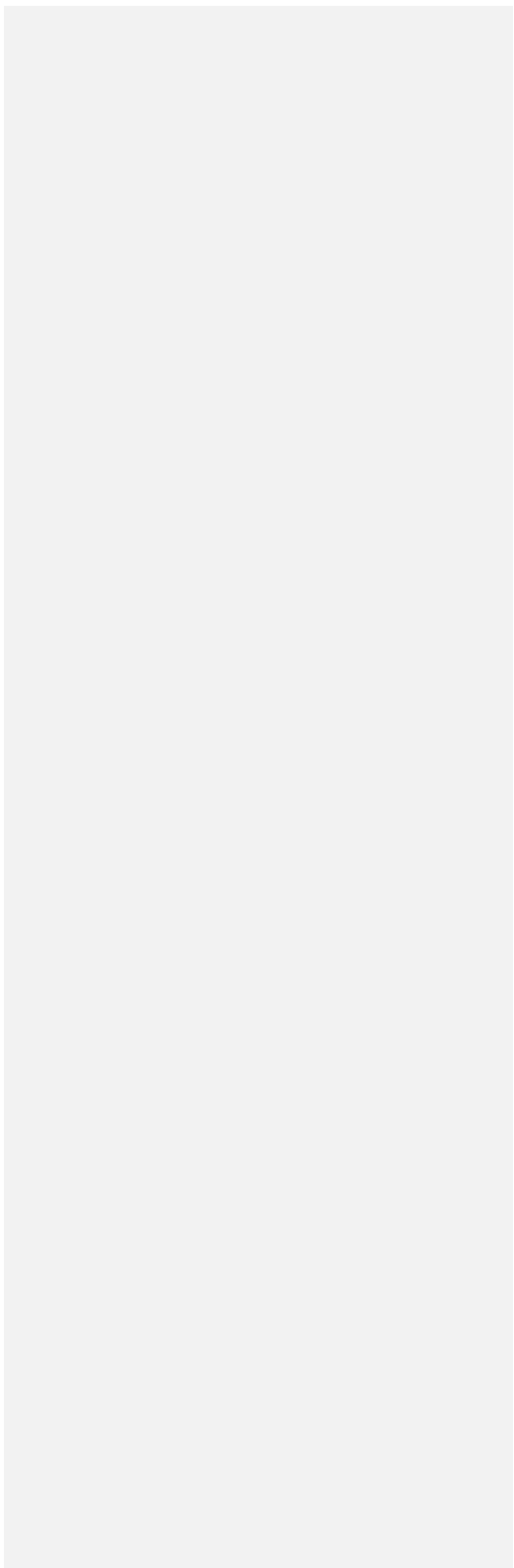
Administrative Costs within acceptable EDA percentages are incurred by staff working to initiate, review and service RLF loans as well as to provide required reporting to the EDA per 13 CFR 307.12. In addition, legal fees may be reimbursed for RLF related services performed. Charges associated with RLF admin costs are reflected on time tracking forms. Actions in compliance with 13 CFR 307.13(b).

#### Allowable Cash Percentage

NETEDD RLF utilizes finance staff to review the portfolio to ensure compliance with allowable cash percentage standards per 13 CFR 301.17(b).

#### EDA Reporting

The RLF Plan acknowledges that Defederalization of the NETEDD RLF in 2022 ~~EDA~~ requires periodic reporting only as requested by EDA, regular reporting based on the scoring of recipient data either annually or semi-annually. Recipient certifies as a part of the report that the RLF is operating in accordance with the RLF Plan and that the information provided is complete and accurate in compliance with 13 CFR 307.14.



## Deferment

Deferments are employed as a solution to a temporary problem impacting a borrower's ability to make loan payments, generally during a “verified disaster”. Deferment is only available if loans are current, a Borrower is experiencing a temporary cash flow problem, and a deferment will not harm the Borrower or NETEDD. The goal of deferment is to save jobs and keep the business moving forward.

### A. General Requirements

Prior to granting a deferment, NETEDD must obtain, review, and analyze the following documents in order to determine whether the Borrower’s cash flow problem is temporary or a “verified disaster” has occurred that has created the temporary cash flow.

1. A written statement from Borrower outlining the reason(s) for its cash flow problem as well as the reason(s) why the Borrower believes that it is a short-term, rather than a long-term problem.
2. The Borrower's financial statements for the past 3 months to prove financial stability prior to cash flow deficit or “verifiable disaster”
3. Management’s review of Borrower's current payment status.
4. Documentation from management that Borrower qualifies for deferment.

### B. Deferment

When a deferment is approved by management, the following options are available:

1. Interest only payments for a period of 3 months, re-evaluated for additional time at the end of 3 months. Principle added to the end of the loan.
2. Re-amortization of loan with reduced interest to lowest interest rate (4%) carried out for maximum of additional seven (7) years.
3. Re-amortization of loan with reduced interest to lowest interest rate (4%) carried out for maximum of additional seven (7) years and interest only payments for a period of 3 months. Principle added to the end of the loan.
4. Businesses with a complete shut down for a period of time due to “verified disaster” may qualify for a short term deferment to be determined by management and a pay-back schedule of interest calculated into loan payments when they resume.
  - a. Monthly payments will be increased to pay back the deferred interest
  - b. Additional interest payments may be paid during the pay-back period
  - c. The deferred interest may be paid in a lump sum at the end of the deferment period
  - d. Deferred principal will be paid at the end of the loan
5. Coordinate with Bank for any Borrower that has a 504 loan in conjunction with a RLF loan to align the deferment processes.

*See RLF deferment process*

## Audits

The RLF Plan acknowledges that ~~EDA RLF~~ funds are subject to ~~an annual~~ audit requirements as per defederalization guidelines, -and the full value of the RLF must be shown every year on the Recipient's Schedule of Federal Expenditures. If the dollar amount of the RLF qualifies the RLF as a major Federal program, the Recipient must ensure that the auditor performs the required Federal audit procedures. *See 13 CFR 307.12(b)(3) and RLF Standard Terms and Conditions Part I.F.*

### (iii) Conflict of Interest

1. NETEDD shall not make loan or grant funds available to a business entity if the owner of such entity is related by blood, marriage, law or business arrangement to any officer or employee of NETEDD or any member of the NETEDD Board of Director's, or a member of any other committee which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds (hereinafter referred to as "Other Committee").
2. No officer, employee, or member of the NETEDD Board of Directors or Other Committee, or person related to the officer, employee, or member of the Board by blood, marriage, law or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to NETEDD on the public record the proposed or potential benefit and receives NETEDD's written determination that the benefit involved is not so substantial as to affect the integrity of NETEDD's decision process and of the services of the officer, employee or board member.
3. An officer, employee, committee member or board member of NETEDD shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for themselves or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds,

Former board members, committee members and/or officers are ineligible to apply for or receive loan or grant funds for a period of two years from the date of termination of his/her services.

This certification agreement is to be executed by all board members upon their joining the board and prior to their first meeting.

## SPECIAL CONSIDERATIONS

### COVID-19 and/or Other Pandemic Events or Natural Disasters

#### ~~COVID-19~~ Loan Program Addendum

Due to Special Considerations, COVID-19, NETEDD is requesting the following additions remain in be made to our NETEDD RLF Plan. The Board approved revisions to the Plan on *09/24/2020*. *The changes are as follows:*

#### **Justifications for the EDA RLF Management Plan changes:**

With the outbreak of COVID-19 across the nation, many businesses are currently and potentially facing revenue shortfalls that compromise their ability to cover operating expenses like payroll, inventory, rent, loan payments, utilities, etc.

Along with the mandated Federal and State closures businesses are currently working in a fear/unknown environment. Efforts are being made to ensure that measures are in place to protect their communities against COVID-19. This has created a need for restructuring existing businesses to meet protective measures.

NETEDD has been contacted by several businesses from our loan portfolios and within the approved lending area with questions, concerns, and request for assistance in the area of refinancing to continue operations, save or increase jobs, and maximize community protection.

This program is to provide financial assistance to the eligible businesses to aid in economic recovery.

#### **COVID-19 Loan Program Borrower Description:**

NETEDD would like to offer low-interest COVID-19 loans for working capital to small businesses located in the following counties: *Bell, Bosque, Bowie, Camp, Cass, Coryell, Delta, Eastland, Erath, Falls, Franklin, Freestone, Gregg, Harrison, Hill, Hopkins, Johnson, Lamar, Limestone, Marion, McLennan, Milam, Morris, Navarro, Panola, Red River, Somervell, Titus, and Upshur Counties in Texas, and Miller County in Arkansas*, (1) suffering substantial economic injury as a result of the COVID-19 pandemic; (2) opening a business that is designed to “Prevent, Prepare For, and Respond to Coronavirus” pandemic; or (3) Refinancing an Existing Businesses that has suffered as a result of COVID-19 and restructuring will save jobs and support the economy.

Small businesses that have been financially impacted as a direct result of the COVID-19 pandemic may qualify for a “*Short-Term, Personal Guarantee COVID-19 Loan*” to help meet financial obligations and operating expenses which could have been met had the disaster not occurred.

“New” small businesses that are designed to Prevent, Prepare For, and Respond to COVID-19 pandemic may qualify for a *low-interest RLF* to help promote the economic needs of their community as it relates to the pandemic.

“Existing Businesses” that have been impacted as a direct result of the COVID-19 pandemic may qualify for a Refinancing loan to restructure, saving jobs and mitigating damage to the local economy. **FUNDING SUBJECT TO AVAILABILITY.**

**(1) Short-Term, Personal Guarantee COVID-19 Loan:**

**Loan:**

- Lower Loan Minimum to \$5,000 (Current minimum is \$10,000.)
- \$25,000 Maximum Loan (Current maximum loan is \$300,000.)
- No Loan Fee (Current is 1.5% Loan Fee.)
- Use Personal Guarantees as Collateral (Current is liens on project collateral.)
- Allow for Executive Management Staff Approval on Loans \$25,000 and below. (No Loan Committee Approval.)

**Criteria:**

- Operating Company (business) in business for at least two years.
- Provide 2019 Tax Return (CPA prepared financials) showing positive earnings (Profit) (or 2018 and additional supporting financials)
- Potential to save existing jobs.
- Verified thru SAM.gov

**Terms:**

- Payments deferred for three (3) months as requested.
- Interest Rate 2.5% (Current established is a 4%)
- *Five (5) to Seven (7) Year Repayment Period* Preferred but up to Ten (10) based on circumstances.
- No prepayment penalty

**(2) “New” Small Business COVID-19 Loan (follows RLF procedures for approval):**

**Loan:**

- Current minimum is \$10,000 - Current maximum is \$300,000.
- Lien(s) for project collateral
- NETEDD loan Committee Approval

**Criteria:**

- Business emphasis relating to deficits identified in the area during COVID-19 and/or identified in the area CEDS that prevents, prepares for, and or responds to the coronavirus epidemic.
- Potential to create jobs.
- Meets requirements of RLF
- Verified thru SAM.gov

**Terms:**

- Payments deferred for three (3) months as requested.
- Interest Rate 2.5% (Current established is a 4%)
- *Up to Twenty (20) Year Repayment Period for maximum loan*
- No prepayment penalty





(3) ***“Existing” Small Business Refinancing COVID-19 Loan (follows RLF procedures for approval):***

***Loan:***

- Current minimum is \$10,000 - Current maximum is \$300,000.
- Lien(s) for project collateral
- NETEDD loan Committee Approval

***Criteria:***

- Business emphasis relating to deficits identified in the area during COVID-19 and/or economic impact related to COVID-19 and the community.
- Potential to save and/or create jobs.
- Meets requirements of RLF
- Verified thru SAM.gov

***Terms:***

- Payments deferred for three (3) months as requested.
- Interest Rate 2.5% (Current established is a 4%)
- Up to Twenty (20) Year Repayment Period for maximum loan
- No prepayment penalty

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**ARK-TEX COUNCIL OF GOVERNMENTS  
HOMELAND SECURITY ADVISORY  
COMMITTEE MEETING**

**August 18, 2022**

**MINUTES**

The meeting of the Ark-Tex Council of Governments Homeland Security Advisory Committee was called to order by **Andy Endsley** at 10:07 a.m., August 18, 2022, at Titus Regional Medical Center-Wellness Center.

**Andy Endsley** provided the minutes from May 26, 2022 meeting, **Randy Tuttle** made the motion to approve the minutes, seconded by **Lance Hall** and approved by majority.

First non-voting item is a brief Homeland Security Update.

**Whitney Fezell** provided the committee with a homeland security update. The committee was informed that the majority of the grants that are open have spent the funds needed with the exception of Lamar County. Whitney Fezell informed the committee that award letters for FY 23 projects should be released in late September-mid October. Whitney Fezell informed the committee that all grants were funded regionally with the exception of Red River County and Mt. Vernon. Whitney Fezell informed the committee that the city of Texarkana received roughly 250,000 for their cybersecurity project and was awarded from national priority funds.

Next non-voting item is Special Event Data Call Update

Whitney Fezell informed the committee that the special event data call opened August 10 – September 10, 2022. Whitney Fezell informed the committee that they will need to submit special events that occur in each county as well as supporting information for the data call. The committee was advised that participation in the data call will provide 5 additional points to their homeland security application.

Next non-voting item is SERI grant updates.

Whitney Fezell informed the committee that 4 out of 6 applications for our regional were conditionally approved for SERI funding. The committee was provided a list of the approved projects and amounts. Whitney Fezell informed the committee that there was a cap on projects of 250,000. The committee was advised to get projects ready for the next round of funding. The committee was informed that unapproved projects will receive a summary of why they were not approved by the PSO.

Next non-voting item is Communication Exercise update

Whitney Fezell informed the committee that very few counties participated in the annual communication exercise. (Franklin, Hopkins, Titus) Whitney Fezell advised the committee that participation will need to increase or we will need to find alternative

annual exercises. The committee was also advised that participants who completed the communication exercise will receive 5 additional points on their homeland security applications.

The first voting item on the agenda is to discuss and approve a regional allocation/scoring process. Whitney Fezell provided the committee with our current approved scoring process. The committee discussed keeping the same process with the exception of updated the LETPA requirement from 25% to 30%. Lance Hall made the motion to approve the allocation/scoring process, motion seconded by Randy Tuttle and approved by majority.

The Next voting items is formation of a subcommittee to advise and review the ATCOG regional THIRA/SPR/IP. Whitney Fezell advised the committee that four or five people was needed and would receive 5 additional points on their Homeland Security application. Jason Ricketson made the motion to nominate Lance Hall- Randy Tuttle- Andy Endsley- Tim Dial for the subcommittee, motion seconded by Tanner Crump and approved by majority.

**Andy Endsley** opened the floor for questions and discussion.

Whitney Fezell informed the committee of the ALERRT grant as well as the Ballistic body armor grant. RFA's was provided to the group.

Whitney Fezell informed the committee of participation with NETRAC and HPP as well as trainings that HPP is offering.

Andy Endsley and Nathan Carrol discussed with the committee updates on the County Liaison Officers.

**Andy Endsley** opened the floor for Announcements

**Whitney Fezell** announced that the next scheduled meeting is November 17 TRMC Wellness center

Whitney Fezell announced the next repeater test on September 7th at 9am

**ATTENDING:**

Whitney Fezell – ATCOG Homeland Security Coordinator  
Tanner Crump- Sheriff's Captain- Hopkins County  
Lance Hall- EMC- Bowie County  
Andy Endsley- Hopkins County EMC  
Nathan Carroll-TDEM DC  
Randy Tuttle-EMC-City of Paris

Jason Ricketson-Sulphur Springs EMC  
David Wood- DSHS  
Tim Dial-Guest  
Robert Moore-Guest  
Calvin Nicholson-Guest

\_\_\_\_\_  
Signature

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Title

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Date

**MINUTES**  
**ATCOG Solid Waste Advisory Committee Meeting**  
**August 19, 2022**  
**10:00 a.m.**  
**Hopkins County Ag. Extension Office**  
**1200B Houston Street, Sulphur Springs, TX 75482 and**  
**Via Webinar/Teleconference**

1. The Solid Waste Advisory Committee (SWAC) met on August 19, 2022 at 10:00a.m. at the Hopkins County Ag. Extension Office and via webinar. ATCOG SWAC Chairman, Mario Villarino, called the meeting to order at 10:00 a.m.
2. Mario Villarino turned the meeting over to ATCOG staff member Paul Prange, who asked for approval of the minutes from the October 14, 2021 SWAC meeting. A motion was made by Robert Murray to approve the minutes as written and Jon Dalzell seconded the motion. The motion carried unanimously.
3. Mario Villarino opened the meeting up for discussion of the Draft FY2022/2042 Regional Solid Waste Management Plan. Paul Prange announced that TCEQ has issued preliminary approval of the draft plan and has determined that all draft plans need to be adopted by the commission via an amendment to the rules. This rule-making process will include TCEQ commissioners approving the plans at their agenda meeting when adopting the rule amendment, which may take up to 12 months. TCEQ is posting all draft plans to their website and the public comment period will begin on August 19, 2022, and end on September 20, 2022. Each COG is required to post the notice of this public comment period on their websites, including a link to the TCEQ website. TCEQ stated that the current Regional Solid Waste Management Plans are considered active until the new plans are adopted by the commission. Discussion took place among the SWAC and Vice-Chairman Jon Dalzell asked if any additional fees will be charged by Texas State University if amendments are required to be made. Paul Prange stated that the contract between ATCOG and Texas State University allows for amendments to be performed at any time during the approval process, so no additional funding will be required. for this review process during the FY20 grant period, ATCOG utilized \$10,000.00 in funding to pay Texas State University to begin updating the 20-Year Regional Solid Waste Management Plan.
4. Mario Villarino turned the floor over to Paul Prange to discuss funding priorities and recommendations for the FY2023 TCEQ Solid Waste Pass-Through Grant Program. Mr. Prange announced that the SWAC and the ATCOG Board of Directors have recommended and approved the use of FY2023 Solid Waste Pass-Through Grant Funds for sponsoring Community Collection Events and Illegal Dumping Cleanup Events in each of the 9 counties located within the ATCOG region. Approximately \$30,000 will be allocated throughout the region to implement the projects between September 1, 2022, and August 31, 2023. Mr. Prange announced that Memorandums of Understanding between ATCOG and each county will be developed in September and the funds will be divided equally between the counties for the benefit of the entire region. Discussion took place among the SWAC and Gene Keenon stated that he agrees with the equal distribution of funds to supplement existing activities.

5. Mario Villarino opened the floor up for other business and Paul Prange announced that a new tire processing facility is now in operation in Cass County, Texas called Ark-La-Tex Tire Processing. This facility has the capacity to process and land-apply millions of scrap tires at a mining facility located adjacent to the processing facility. This land reclamation process will help ensure that the scrap tires processed at this facility will be permanently and properly disposed of. Discussion took place among the SWAC, and Mario Villarino inquired about the tire disposal process. Mr. Prange stated that the shredded tire pieces are spread out about 6 to 9 inches deep and layered between 1 to 2 feet of soil prior to being compacted. Robert Murray commented on the potential of shredded tires oxidizing and producing heat, which could potentially be hazardous, depending upon the application. Mayor, Ann Rushing announced that the City of Clarksville and Red River County will be holding a community collection event and a tire collection event later this month. No other business was discussed.
  
6. Paul Prange thanked the SWAC members for attending the meeting and announced that the next meeting will likely be scheduled before the end of the year. Mario Villarino adjourned the meeting at 10:30 am.

**COMMITTEE MEMBERS PRESENT**

Mario Villarino, Chairman  
 Jon Dalzell, Vice-Chairman  
 Robert Murray  
 Daci Rawson  
 Gene Keenon  
 Ann Rushing

**REPRESENTING**

Hopkins County  
 Hopkins County  
 MTG Engineers  
 Northeast Texas Disposal  
 Republic Services  
 Mayor, City of Clarksville

**ATCOG STAFF PRESENT**

Paul Prange, Environmental Resources Coordinator

ATCOG

**INTERLOCAL COOPERATION AGREEMENT**  
**BETWEEN**  
**THE PUBLIC SAFETY OFFICE WITHIN THE OFFICE OF THE GOVERNOR**  
**AND**  
**THE ARK-TEX COUNCIL OF GOVERNMENTS**

**INDUCEMENTS**

**WHEREAS**, the Public Safety Office within the Office of the Governor (“OOG”) and the Ark-Tex Council of Governments (“COG”) agreed to and executed an Interlocal Cooperation Agreement, effective September 1, 2020 through August 31, 2021 (“FY 2021 Agreement”), pursuant to Texas Government Code, Section 791.011, and Texas Local Government Code, Section 391.011(c); and

**WHEREAS**, Section XIX of the FY 2021 Agreement provided for up to two one-year renewals of that agreement’s substantive terms upon mutual agreement of the parties; and

**WHEREAS**, on September 1, 2022, the OOG and the COG agreed to exercise the first one-year renewal of the FY 2021 Agreement’s substantive terms by entering a new agreement that superseded the FY 2021 Agreement (“FY 2022 Agreement”); and

**WHEREAS**, the FY 2022 Agreement outlined the OOG’s and the COG’s responsibilities related to the distribution of homeland security and criminal justice grant funds by the OOG; and

**WHEREAS**, Section 4 of the FY 2022 Agreement established the amounts to be paid to the COG for its services; and

**WHEREAS**, the OOG and the COG mutually desire to renew the substantive terms of the FY 2022 Agreement for a final one-year period as reflected in this new superseding agreement, to include minor clarifying changes and new section numbers to the language contained in the FY 2022 Agreement;

**NOW, THEREFORE**, in consideration of the mutual inducements, covenants, and conditions herein, the OOG and the COG agree to the following:

**SECTION 1. CONTRACTING PARTIES.** The contracting parties are the OOG and the COG. The OOG and the COG may be referred to in this Interlocal Cooperation Agreement Renewal (“Agreement”) individually as a “party” or collectively as the “parties.”

**SECTION 2. COG RESPONSIBILITIES.**

- A. The COG’s primary responsibilities under this Agreement are outlined in the Statements of Work set forth in Attachment A and Attachment B (“SOWs”), which are hereby incorporated into this Agreement. The COG shall comply with all terms of this Agreement and shall perform its responsibilities and provide the services outlined in this Agreement to the OOG, or its



designee, and to current and potential Public Safety Office applicants and grantees in Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus counties (“the COG’s Region”). The COG shall comply with any applicable federal, state, county, local, and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations in connection with its obligations under this Agreement.

- B. The SOWs establish deadlines by which the COG must perform specific responsibilities under the Agreement, including the submission of information to the OOG. The COG shall comply with all deadlines outlined in the SOWs.
- C. The COG shall establish and maintain a minimum of one “External Peer Review User” account in eGrants (<https://egrants.gov.texas.gov/>) and shall use such account to upload all information required to be submitted to the OOG under this Agreement. The COG must label the files with the relevant Task Number referenced in the SOWs and a short description of the information in each file.

### **SECTION 3. OOG RESPONSIBILITIES.**

- A. The OOG shall reimburse the COG in accordance with the terms of this Agreement.
- B. The OOG or its designee shall provide training and technical assistance to the COG, as may be necessary, regarding the services required to be performed under this Agreement.
- C. The OOG shall review and act upon submissions by the COG requiring OOG actions.
- D. The OOG shall verify the eligibility, reasonableness, and cost-effectiveness of proposed projects, and the availability of funding, and will render final funding decisions.
- E. The OOG shall provide award documentation to each grantee that is awarded a grant by the OOG under one of the funding opportunities described in Subsection F of this Section.
- F. The OOG shall notify the COG when grant funds are awarded by the OOG to a grantee in the COG’s Region under any of the funding opportunities listed in HS4.1 of Attachment A or CJ5.1 of Attachment B.
- G. The OOG shall notify the COG when grant funds of a grant recipient in the COG’s Region are placed on hold.
- H. Upon determining the eligibility status of each grant application for the funding opportunities listed in HS4.1 of Attachment A and CJ5.1 of Attachment B from an applicant in the COG’s Region, the OOG shall make the grant application available for the COG to review through eGrants.

### **SECTION 4. AGREEMENT AMOUNT.**

- A. In consideration of the services provided by the COG pursuant to Attachment A, the OOG agrees to compensate the COG for the services rendered at a rate of \$1,958.33 per month for

the months of September 2022 through July 2023, and the balance remaining of the total amount due in connection with Attachment A for August 2023, unless the provisions of Section 17 of this Agreement are invoked or deductions are made based on the COG's non-compliance as outlined in Section 6 of this Agreement. The total payment for services provided under Attachment A shall not exceed \$23,500.00.

- B. In consideration of the services provided by the COG pursuant to Attachment B, the OOG agrees to compensate the COG for the services rendered at a rate of \$4,877.95 per month for the months of September 2022 through July 2023, and the balance remaining of the total amount due in connection with Attachment B for August 2023, unless the provisions of Section 17 of this Agreement are invoked or deductions are made based on the COG's non-compliance as outlined in Section 6 of this Agreement. The total payment for services provided under Attachment B shall not exceed \$58,535.42.
- C. The total payment by the OOG for the services provided by the COG under this Agreement shall not exceed \$82,035.42.

**SECTION 5. EFFECTIVE DATE AND TERM.** This Agreement shall take effect on the date of last signature below and shall expire on August 31, 2023, unless it is amended, renewed, extended, or terminated earlier pursuant to the provisions hereof; however, the parties acknowledge that their respective obligations concerning the submission of the final invoice and the processing of final payment necessarily extend beyond that date. The OOG may, in its sole discretion, with notice, extend this Agreement for up to three months if the OOG determines such an extension is necessary.

**SECTION 6. PAYMENTS.**

- A. The COG shall submit a separate invoice for each SOW on a monthly basis as specified in HS6.1 of Attachment A and CJ7.1 of Attachment B, detailing the services provided, the provisions of this Agreement to which the COG staff hours and services relate, and the amount billed. These materials shall be submitted to:

**By Mail:**

Office of the Governor  
Financial Services  
P.O. Box 12878  
Austin, Texas 78711-2878

**By Hand Delivery:**

Office of the Governor  
Financial Services  
1100 San Jacinto, 3rd Floor  
Austin, Texas 78701

**By Electronic Mail:**     [ap@gov.texas.gov](mailto:ap@gov.texas.gov)

- B. Payments under the Agreement will be made in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251, and only from current revenues available to the OOG in accordance with Texas Government Code, Section 791.011(d)(3).

In accordance with Texas Government Code, Section 2251.021(a)(2), and subject to any exceptions set forth in law or regulations, including Texas Government Code, Section 2251.002 and Section 6, Subsection C of this agreement, the OOG will pay contracted services thirty days after receipt of the invoice for the previous month's services.

- C. The OOG will pay contracted services earlier than thirty days if the earlier payment will result in a vendor offering a discount that is greater than the interest that would be earned by following scheduling requirements.
- D. If the Executive Director of the Public Safety Office ("Executive Director") determines that the COG has failed to perform or comply with any of the terms, conditions, provisions, or requirements of this Agreement, the OOG may withhold a portion of one or more monthly payments specified in Section 4 of this Agreement in an amount to be determined by the Executive Director, or the OOG may terminate this Agreement. The COG may recoup withheld payments if the Executive Director, in his/her sole discretion, subsequently determines that appropriate corrective measures have been taken by the COG. Upon satisfactory completion of the work performed under this Agreement and prior to final payment under this Agreement for such work, or prior to settlement upon termination of this Agreement and as a condition thereto, the COG shall execute and deliver to the OOG a release of all claims against the OOG arising under or by virtue of this Agreement.
- E. The payments specified in Section 4.A of this Agreement shall not be paid by the OOG until the required information is submitted by the COG to the OOG, as provided in Attachment A. The payments specified in Section 4.B of this Agreement shall not be paid by the OOG until the required information is submitted by the COG to the OOG, as provided in Attachment B.
- F. For good cause, the OOG may authorize an increase or decrease in the amount of any monthly payment under this Agreement. Any variation in a monthly payment amount will not affect the total payment amount specified in Section 4.A with respect to the payment for services provided under Attachment A, or Section 4.B with respect to the payment for services provided under Attachment B.
- G. If the COG fails to submit information required under either Attachment A or Attachment B of this Agreement to the OOG by the applicable deadline established in the relevant Attachment, the COG shall forfeit, for each failure, one-three hundred sixty fifth (1/365<sup>th</sup>) of the total payment amount for services provided under such Attachment for each day the COG fails to submit the information required by such Attachment.

In addition, if the COG fails to submit required information to the OOG within ten calendar days after the deadline established in either Attachment A or Attachment B of this Agreement, the OOG may terminate this Agreement without penalty, either in whole or in part. The provisions of this subsection in no way limit the discretion to withhold payment under Section 6 of this Agreement.

- H. Final payment shall be made upon the satisfactory completion of the deliverables and services provided by the COG under this Agreement.

- I. Final payment under this Agreement or settlement upon termination shall not constitute a waiver of the OOG's claims against the COG.
- J. The COG must submit the final invoice for payment under this Agreement no later than sixty calendar days after the expiration of this Agreement.

**SECTION 7. AUTHORIZED REPRESENTATIVES.** For purposes of administering and implementing this Agreement, the Executive Director is the person authorized to represent the OOG, and the Executive Director of the COG is the person authorized to represent the COG.

**SECTION 8. INDEPENDENT CONTRACTOR.** In performing any services hereunder, the COG is, and undertakes performance as, an independent contractor and the COG and its personnel are not employees of the OOG by virtue of the Agreement. The COG acknowledges it is responsible to all third parties for its acts or omissions, and the OOG shall in no way be responsible for the acts or omissions of the COG. The COG shall be, and shall remain, liable in accordance with applicable law for any and all bodily injury, disease, or death of third persons or loss of or damage to property of third persons arising out of or incident to the COG's work performance, and the COG agrees to comply with all international, state, local, and federal laws, ordinances, or regulations applicable to any such persons.

**SECTION 9. ACTIONS OR CITATIONS.** The COG shall provide immediate written notice to the OOG regarding any actions or citations, whether civil or criminal, by federal, state, or local governmental agencies that relate to any services provided under this Agreement.

**SECTION 10. SUBCONTRACTS.** Any subcontractors or outside associates or consultants required by the COG in connection with the services required by this Agreement shall be subject to the prior written approval of the OOG. The COG, in subcontracting for any goods and services related to the Agreement, expressly understands and agrees that the OOG shall not be liable in any manner to the COG's subcontractors, and the COG shall be solely responsible for any payments or other claims to such subcontractors, outside associates, and consultants for goods or services provided under this Agreement. In no event shall the OOG's approval of the COG's use of subcontractors, nor the conduct or statement of any person, nor any other provision of the Agreement, be construed as relieving the COG of the responsibility for ensuring that all goods and services provided under the Agreement, and any subcontracts thereto, are rendered in compliance with all of the terms of the Agreement.

**SECTION 11. ORDER OF PREFERENCE.** Unless otherwise stated, a listing of factors, criteria, or subjects in this Agreement does not constitute an order of preference.

**SECTION 12. SEVERABILITY.** If any part or provision of this Agreement is held invalid, such invalidity shall not affect any other part or provision that can be given effect without the invalid part or provision, and to this end all parts and provisions of this Agreement are declared to be severable.

**SECTION 13. FORCE MAJEURE.** Neither the COG nor the OOG shall be liable to the other for any delay in, or failure of performance of, any requirement included in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of

performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. "Force majeure" is defined as "acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that, by exercise of due foresight, such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome." Each party must inform the other in writing, with proof of receipt, within a reasonable time of the existence of such force majeure.

**SECTION 14. ASSIGNABILITY.** This Agreement is not transferable or otherwise assignable by the COG.

**SECTION 15. AMENDMENTS.** This Agreement may be amended only by an agreement in writing that is signed by both parties.

**SECTION 16. WAIVER.** The failure of a party to this Agreement to enforce, at any time, a provision of this Agreement or to exercise any option under this Agreement is not a waiver of the provision or option, nor does it affect the validity of any part of this Agreement or the right of either party to subsequently enforce a provision or exercise an option. A waiver of a breach of this Agreement is not a waiver of a subsequent breach. Remedies available under this Agreement are in addition to every other remedy available at law or in equity.

**SECTION 17. TERMINATION.**

- A. This Agreement shall terminate as set forth in Section 5 of the Agreement, unless terminated earlier upon thirty calendar days' prior written notice by either party, or as otherwise provided in this Agreement. Written notice shall be given by certified mail, return receipt requested, or by delivering in person to the authorized representative of the other party. Notice is considered delivered when postmarked if such notice is sent by certified mail, return receipt requested, or on the date of delivery if delivered in person to the authorized representative of the other party.
- B. The COG agrees that nothing in this Agreement will be interpreted to create an obligation or liability of the OOG in excess of the funds delineated in this Agreement. The COG agrees that funding for this Agreement is subject to the actual receipt by the OOG of funds appropriated to the OOG. The COG agrees that the funds, if any, received from the OOG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of the OOG for the purpose of this Agreement. The COG agrees that notwithstanding any other provision of this Agreement, if the OOG is not appropriated the funds, or if the OOG does not receive the appropriated funds, for this program, or if the funds appropriated to the OOG for this program are required to be reallocated to fund other state programs or purposes, the OOG may terminate this Agreement without cost or penalty.
- C. In the event of early termination of this Agreement, no further payment will be required following the date of termination.

**SECTION 18. APPLICABLE LAW AND VENUE.** The laws of the State of Texas govern this Agreement and all disputes arising out of or relating to this Agreement, without regard to any otherwise applicable conflict of law rules or requirements.

Venue for any COG-initiated action, suit, litigation, or other proceeding arising out of or in any way relating to this Agreement shall be commenced exclusively in the Travis County District Court or the United States District Court, Western District of Texas - Austin Division. Venue for any OOG-initiated action, suit, litigation, or other proceeding arising out of or in any way relating to this Agreement may be commenced in a Texas state district court or a United States District Court selected by the OOG in its sole discretion.

The COG hereby irrevocably and unconditionally consents to the jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending such litigation. The COG hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action, or proceeding, any claim that the COG is not subject to the jurisdiction of the above-named courts; the suit, action, or proceeding is brought in an inconvenient forum; and/or the venue is otherwise improper.

**SECTION 19. FRAUD, WASTE, OR ABUSE.** The COG understands that the OOG does not tolerate any type of fraud, waste, or misuse of funds received from the OOG. The OOG's policy is to promote consistent, legal, and ethical organizational behavior. Any violations of law, OOG policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event of a formal allegation or a finding of fraud, waste, or misuse of funds received from the OOG, the COG is required to immediately notify the OOG of said finding. The COG is also obliged to inform the OOG of the status of any ongoing investigation. All notices pursuant to this Section should be reported to the OOG's Fraud Coordinator or Ethics Advisor at (512) 463-2000 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

**SECTION 20. INDEMNIFICATION OR DAMAGE CLAIMS.**

**TO THE EXTENT ALLOWED BY LAW, THE COG SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND THE OOG, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, DESIGNEES, AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE COG OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE COG IN THE EXECUTION OF PERFORMANCE OF THIS AGREEMENT. THE COG SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY THE OOG. THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE THE COG TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR THE OOG FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE OOG OR ITS EMPLOYEES.**

**SECTION 21. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE.**

**THE COG IS FULLY RESPONSIBLE FOR ITS OWN FEDERAL, STATE, AND LOCAL TAXES. THE COG AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, THE COG SHALL BE ENTIRELY**

**RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE COG'S AND ITS EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS AGREEMENT. THE COG AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE OOG AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE COG, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF THE OOG.**

**SECTION 22. BUY TEXAS.** The COG represents and warrants that it will buy Texas products, services, and materials for use in providing the services authorized herein when such products, services, and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products, services, and materials.

**SECTION 23. DEBT TO STATE.** The COG acknowledges and agrees that, to the extent the COG owes any debt or delinquent taxes to the State of Texas, any payments the COG is owed under this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes the COG owes the State of Texas until the debt or delinquent taxes are paid in full.

**SECTION 24. DISPUTE RESOLUTION.**

- A. **Informal Meetings.** The parties' representatives will meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes.
- B. **Chapter 2260 of the Texas Government Code.** If the dispute resolution process provided for in Chapter 2260 of the Texas Government Code is applicable, it shall be used as the sole and exclusive process to resolve any claim for breach of this Agreement made by the COG. Neither the execution of this Agreement nor any other conduct of or statements by any representative of the OOG relating to this Agreement shall be considered a waiver of sovereign immunity.
- C. **COG's Continued Performance.** The COG shall not be excused from performance during any pending dispute, unless approved in writing by the OOG.

**SECTION 25. TEXAS PUBLIC INFORMATION ACT.** The COG acknowledges that the State of Texas, the OOG, and this Agreement are subject to the Texas Public Information Act, Texas Government Code, Chapter 552 (the "PIA"). The COG acknowledges that the OOG will comply with the PIA.

The COG acknowledges that information created or exchanged in connection with this Agreement is subject to the PIA, and the COG agrees that information not otherwise excepted from disclosure under the PIA will be available in a format that is accessible by the public at no additional charge to the OOG or the State of Texas. The COG will cooperate with the OOG in the production of documents or information responsive to a request for information. The COG will notify the OOG

within twenty-four hours of receipt of any third party request for information that was provided to the COG by the OOG or the State of Texas.

The COG agrees to maintain the confidentiality of confidential information received from the OOG or the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, personally identifying information, personal financial information, and social security numbers.

**SECTION 26. DEBARMENT AND SUSPENSION.** The COG understands that the OOG will adhere to the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, and the COG certifies that it and its principals are eligible to participate in this Agreement and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; that it is in compliance with Texas statutes and rules; and that it is not listed on the federal government's terrorism watch list.

**SECTION 27. CLEAN AIR AND WATER POLLUTION CONTROL.** If the total amount of this Agreement, as listed in Section 4.C, is in excess of \$150,000, the COG certifies it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387).

**SECTION 28. RECOVERED MATERIALS.** The COG represents and warrants that it will comply with Section 6002 of the federal Solid Waste Disposal Act (42 USC § 6962), as amended by the Resource Conservation and Recovery Act, and Title 40, Part 247 of the Code of Federal Regulations.

**SECTION 29. LOBBYING.** If the total amount of this Agreement, as listed in Section 4.C, is in excess of \$100,000, the COG certifies that it will not use and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The COG also agrees to disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award or contract. Such disclosures should be forwarded to the OOG's Authorized Representative.

**SECTION 30. ISRAEL.** If the COG is required to make a certification pursuant to Texas Government Code, Section 2271.002, the COG certifies that the COG: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

**SECTION 31. ENERGY COMPANIES.** If the COG is required to make a certification pursuant to Texas Government Code, Section 2274.002 (as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2), the COG certifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement. If the COG does not make that certification, the COG must state why the certification is not required.

**SECTION 32. FIREARM ENTITIES OR FIREARM TRADE ASSOCIATIONS.** If the COG is required to make a certification pursuant to Texas Government Code, Section 2274.002 (as



added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1), the COG certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. If the COG does not make that certification, the COG must state why the certification is not required.

**SECTION 33. IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION.** The COG represents that neither the COG, nor any affiliate of the COG, (i) is an entity listed by the Texas Comptroller of Public Accounts under Texas Government Code, Sections 2252.153 or 2270.0201; (ii) constitutes a “scrutinized company” as defined by Texas Government Code, Section 2270.0001(9); or (iii) has contracts with, provides supplies or services to, or is otherwise engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code, Section 2252.152.

**SECTION 34. AUDIT.** The COG shall grant access to and make available all paper and electronic records, books, documents, accounting procedures, practices, and any other items relevant to the performance of this Agreement, compliance with applicable state or federal laws and regulations, and the operation and management of the COG to the OOG, its designees, or auditors of the State of Texas for the purposes of inspecting, auditing, or copying such items.

The State Auditor’s Office or successor agency may conduct an audit or investigation of the COG or any of its subcontractors under this Agreement. The acceptance of funds by the COG or any other entity or person directly or indirectly under this Agreement acts as acceptance of the authority of the State Auditor’s Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation of the COG or any of its subcontractors in connection with those funds. Under the direction of the Legislative Audit Committee, the COG or other subject entity shall provide the State Auditor’s Office with prompt access to any information the State Auditor’s Office considers relevant to the investigation or audit. The COG further agrees to cooperate fully with the State Auditor’s Office in the conduct of the audit or investigation, including providing all records requested.

The COG will remedy in a timely manner, any weaknesses, deficiencies, Agreement noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives or auditors of the State of Texas. Such remedy may include a refund or offset of payments made under this Agreement, or any other appropriate actions deemed necessary by the OOG. The COG will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the COG and the requirement to cooperate is included in any subcontract the COG awards.

**SECTION 35. U.S. DEPARTMENT OF HOMELAND SECURITY’S E-VERIFY SYSTEM.** The COG certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security’s E-Verify system, as required by Chapter 673 of the Texas Government Code, to determine the eligibility of:

- 1) All persons employed to perform duties within Texas, during the term of the Agreement; and

- 2) All persons employed, including subcontractors, by the COG assigned to perform work pursuant to the Agreement, within the United States of America.

If this certification is falsely made, the Agreement may be immediately terminated, at the discretion of the OOG and at no fault to the OOG, with no prior notification.

**SECTION 36. CERTIFICATION CONCERNING PRIOR DISASTER RELIEF CONTRACT VIOLATION.** The OOG is prohibited from entering a contract with an entity which, 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, as defined by Texas Government Code, Section 418.004, occurring after September 24, 2005. Under Texas Government Code, Sections 2155.006 and 2261.053, the COG certifies that it is not ineligible from entering into this Agreement and will remain compliant with this certification during the term of this Agreement. The COG acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate or false.

**SECTION 37. TECHNOLOGY ACCESS CLAUSE.** If applicable, the COG will comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Likewise, if applicable, the COG shall provide the Department of Information Resources with the URL to the COG's Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). A company not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

**SECTION 38. IMMIGRATION.** The COG represents and warrants that the COG shall comply with all applicable U.S. immigration laws with respect to the employment of any individual who will perform labor or services in the U.S. under this Agreement.

**SECTION 39. HISTORICALLY UNDERUTILIZED BUSINESSES.** The COG represents and warrants that it will comply with Texas Government Code, Chapter 2161, in making any purchases or providing any purchasing services under this Agreement.

**SECTION 40. CONFLICTS OF INTEREST.** Notwithstanding anything herein to the contrary, the COG shall ensure that all of its public officials, as defined in Texas Government Code, Section 573.001(3), comply with the nepotism provisions of such Chapter 573.

**SECTION 41. CYBERSECURITY TRAINING.** To the extent the COG has access to any state computer system or database, the COG must complete a cybersecurity training program certified under Texas Government Code, Section 2054.519, as selected by the OOG. The COG shall verify completion of the program to the OOG in writing upon completion of the program.

**SECTION 42. HUMAN TRAFFICKING.** Under Texas Government Code, Section 2155.0061, the COG certifies it is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**SECTION 43. INFORMATION SECURITY/PRIVACY.** The COG shall employ and maintain appropriate information security procedures to protect against the unauthorized acquisition, use, or disclosure of any personal information under applicable laws (including Personal Identifying Information or Sensitive Personal Information as those terms are defined in Texas Business and Commerce Code, Chapter 521) that it receives, compiles, or creates as a result of the Agreement to ensure compliance with any agency requirements of the OOG and/or any applicable international, federal, state, or local laws, regulations, and ordinances. Unless required by law to disclose, the COG agrees to maintain the confidentiality of information received from the OOG or the State of Texas during the performance of the Agreement, including, but not limited to, Sensitive Personal Information, Personally Identifying Information, personal financial information, financial account numbers, account access information, computer passwords, social security numbers or information that is confidential by law or otherwise subject to a lawful exception from disclosure. In the event of an unauthorized acquisition, use, or disclosure of the OOG's information by the COG, its employees, representatives, subcontractors or other agents in the performance of the COG's duties, the COG shall: (i) immediately notify the OOG in writing; (ii) assume and comply with any applicable remedial requirements required by law; (iii) bear all costs of such compliance and remediation; and (iv) provide the OOG with information regarding the breach and the progress of any remedial efforts if requested. The obligations of the COG under this section will survive the COG and must be included in all subcontracts in which the subcontractor may have access to personal information.

The COG shall endorse the OOG's requirements and adhere to the State of Texas' and the OOG's Information Technology Security Standards. From time-to-time and on the request of the OOG, the COG may be required to execute written information security or non-disclosure agreements as deemed necessary by the OOG to strictly comply with any applicable confidentiality or information security requirements or applicable laws, regulations, and protective orders. The COG is required to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific activities may include, but are not limited to identification of security, privacy, legal, and other organizational requirements for recovery of institutional resources such as data, software, hardware, configurations, and licenses at the termination of the Agreement. In addition, the OOG may periodically assess the COG's privacy and security services provisioned to providing the goods and services under the COG to ensure all Agreement obligations are being met and to manage and mitigate risk.

To the extent applicable, if the COG is authorized to access, transmit, use, or store data for the OOG, the COG must meet the security controls the OOG determines are proportionate with the OOG's risk under the COG based on the sensitivity of the OOG's data. The COG must periodically provide to the OOG evidence that the COG meets the security controls required under the Agreement.

**SECTION 44. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) prohibits

the purchase of certain telecommunications and video surveillance services or equipment from the People's Republic of China. For more information on this prohibition, please refer to Public Law No. 115-232 at <https://www.congress.gov/bill/115th-congress/house-bill/5515/text?format=txt>.

**SECTION 45. PROHIBITED BIDS AND AGREEMENTS.** Under Texas Government Code, Section 2155.004, the COG certifies that the COG is not ineligible to receive the specified agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**SECTION 46. GIFT TO PUBLIC SERVANT.** The COG warrants that it has not given, offered to give, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the RFP or the Agreement.

**SECTION 47. FORMER EXECUTIVE HEAD AND EMPLOYEES OF THE AGENCY.** The COG certifies that this Agreement is compliant, and will remain in compliance during the Agreement term, with the following sections of the Texas Government Code: Section 669.003 (Contracting with Executive Head of State Agency); Section 572.069 (Prohibiting employment of state officers and employees who participated in the procurement of services); and Section 2252.901 (Contracts with Former or Retired Agency Employees).

**SECTION 48. REQUIRED CERTIFICATIONS.** The OOG certifies that it has the authority to perform the above services by authority granted in Texas Government Code, Sections 421.072 and 772.006. The COG further certifies that it has authority to perform the services contracted for by the authority granted in Texas Local Government Code, Section 391.011(c) and that this Agreement is authorized by the COG's governing body.

**SECTION 49. NO WAIVER OF SOVEREIGN IMMUNITY.** The OOG is immune from suit and from liability. No part of this Agreement, nor the conduct or statement of any person, will be construed as a waiver of the doctrines of sovereign immunity and official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, and/or the State of Texas, and their officers, employees, or agents as provided by law.

**SECTION 50. SURVIVAL OF PROMISES.** Expiration or termination of this Agreement for any reason does not release the COG from any provision pertaining to return of funds, confidentiality, limitation of liability, indemnification, audit rights, records retention, dispute resolution, sovereign immunity, governing law, venue, appropriated funds, and the submission of a final invoice.

**SECTION 51. FALSE STATEMENTS.** By signature to this Agreement, the COG makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If the COG signs this Agreement with a false statement or it is subsequently determined that the COG has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, the COG shall be in default under this Agreement and the OOG may terminate or void this Agreement for cause and pursue other remedies available to the OOG under this Agreement and applicable law.

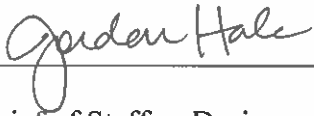
**SECTION 52. ENTIRE AGREEMENT.** This Agreement, upon taking effect, represents the entire agreement between the parties hereto. This Agreement supersedes any and all prior agreements between the parties, whether written or oral, including the prior FY 2021 Agreement and FY 2022 Agreement.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

The undersigned parties bind themselves to the faithful performance of this Agreement.

**OFFICE OF THE GOVERNOR**

**FOR THE COUNCIL OF GOVERNMENTS:**



\_\_\_\_\_  
Chief of Staff or Designee



\_\_\_\_\_  
Chris Brown  
Executive Director  
ARK-TEX COUNCIL OF  
GOVERNMENTS

Date: 8/30/22

Date: 8/29/2022

**Statement of Work (Attachment A)  
Public Safety Office (“PSO”)  
Homeland Security Services**

<b>Task #</b>	<b>Task Description/Deliverable</b>	<b>Due Date</b>
<b>HS1</b>	<b>Local Policies or Bylaws</b>	
HS1.1	<p>The COG shall ensure that written policies or bylaws concerning the COG’s duties under this Agreement are developed and adopted by the COG’s governing body in accordance with applicable laws and regulations. Governing policies must include guidance concerning the following:</p> <ul style="list-style-type: none"> <li>a. Attendance requirements for prioritization meetings;</li> <li>b. Prioritization of grant applications;</li> <li>c. COG governing body’s review and approval process;</li> <li>d. COG’s strategic vision related to homeland security issues;</li> <li>e. Conflicts of interest;</li> <li>f. Compliance with the requirements described in Texas Government Code, Chapter 551 (Texas Open Meetings Act);</li> <li>g. Local funding recommendation limitations, including but not limited to minimum or maximum application requested amounts, competition cycles, or decreasing fund ratios, if applicable; and</li> <li>h. If applicable, grant application workshop attendance requirements.</li> </ul> <p>The COG’s policies may not require payment of membership dues in order to be considered for funding.</p>	Ongoing
HS1.2	The COG shall inform applicants, current grantees, and other requestors of the availability of relevant COG policies and bylaws, and shall provide such policies and bylaws to interested parties upon request.	Ongoing
<b>HS2</b>	<b>Technical Assistance</b>	
HS2.1	<p>The COG shall make available to potential applicants in the COG’s region the following:</p> <ul style="list-style-type: none"> <li>a. Priorities identified by the COG related to homeland security issues;</li> <li>b. How the COG reviews and prioritizes projects, including but not limited to, the region’s methodology for risk-informed</li> </ul>	At least 30 calendar days prior to the PSO eGrants application

	<p>scoring/prioritization, scoring instruments, the criteria used in scoring/prioritizing applications, and other relevant materials that affect the COG's prioritization process;</p> <p>c. Information related to the availability of training materials, or other documents regarding the PSO grant application creation available on the eGrants website at: <a href="http://egrants.gov.texas.gov">egrants.gov.texas.gov</a>; and</p> <p>d. Information regarding grant application workshop attendance requirements, if applicable.</p> <p>The COG may choose, at the COG's discretion, to conduct grant application workshops, workgroups and/or subcommittees to provide technical assistance to potential applicants in the COG's Region for the PSO homeland security funding opportunities consistent with the COG's policies and procedures.</p>	submission deadline
HS2.2	<p>The COG shall inform applicants/grantees that PSO employees are assigned to each application/grant in eGrants and that the applicant/grantee may contact these personnel, or the eGrants Help Desk, for assistance with grant related questions and issues.</p> <p>The COG may inform applicants/grantees that technical assistance is available through the COG and, upon request, the COG shall coordinate with the PSO to provide technical assistance to applicants and grantees.</p>	Ongoing
<b>HS3</b>	<b>Oversight of the Homeland Security Advisory Committee</b>	
HS3.1	<p>Each COG shall establish and maintain a Homeland Security Advisory Committee (HSAC) that consists of participants who are knowledgeable about terrorism preparedness and the threats, vulnerabilities and consequences relevant to the COG Region. The HSAC shall advise the COG on matters related to terrorism preparedness.</p> <p>The COG shall ensure that the HSAC has varied participation including, but not limited to representation from various counties, municipalities, non-profit organizations, disciplines, and/or other stakeholders from within the region.</p> <p>Upon request from the PSO, the COG shall provide a complete list of HSAC members and any requested information related to HSAC scoring/prioritization meetings.</p>	Ongoing
HS3.2	<p><b>Conflict of Interest:</b> The COG shall ensure that members of the COG's governing body, the HSAC, and COG staff abstain from scoring and voting on any grant application, other than a grant application submitted by a COG, during the prioritization process if the member or an individual related to the member within the third degree by consanguinity or within the second degree by affinity:</p> <p>a. Is employed by the applicant agency and works for the unit or division that would administer the grant, if awarded;</p>	Ongoing



	<ul style="list-style-type: none"> <li>b. Serves on any governing board that oversees the unit or division that would administer the grant, if awarded;</li> <li>c. Owns or controls any interest in a business entity or other non-governmental organization that benefits, directly or indirectly, from activities with the applicant agency; or</li> <li>d. Receives any funds, or a substantial amount of tangible goods or services, from the applicant agency as a result of the grant, if awarded.</li> </ul> <p>If a HSAC member has a conflict of interest regarding a particular grant application, the COG will ensure that the committee member abstains from voting, commenting, or otherwise influencing the prioritization process for that application.</p> <p>If any applicant, HSAC member, COG personnel or other individual has reason to believe that favoritism or inappropriate actions occurred during the scoring or prioritization of PSO homeland security projects, the COG shall ensure that the concerns are shared with the PSO as soon as possible.</p>	
HS3.3	<p>The COG shall actively facilitate all HSAC meetings and ensure that all HSAC members are aware of local policies and bylaws and the requirements of the COG’s contract with the PSO.</p> <p>The COG shall document all HSAC proceedings related to PSO business by recording the HSAC proceedings or by preparing written minutes of the HSAC proceedings. If written minutes are prepared, the written minutes must be certified with the signature of a HSAC member who was in attendance at the meeting.</p>	Ongoing
HS3.4	<p>The COG shall ensure that all COG governing board meetings and HSAC meetings at which PSO homeland security-related matters are discussed comply with the requirements listed in Texas Government Code, Chapter 551 (Texas Open Meetings Act).</p>	Ongoing
<b>HS4</b>	<b>Application Prioritization Process</b>	
HS4.1	<p>The COG shall ensure that:</p> <ul style="list-style-type: none"> <li>a. The HSAC considers and prioritizes all grant applications received under the State Homeland Security Grant Program (SHSP);</li> <li>b. The HSAC members prioritize the applications utilizing a risk-informed methodology (process) informed by the region’s Threat and Hazard Identification and Risk Assessment (THIRA), Stakeholder Preparedness Report (SPR), and the Texas Homeland Security Strategic Plan – Implementation Plan (HSSP-IP);</li> </ul>	Ongoing

	<p>c. The COG tabulates scores or votes and/or compiles an accurate priority list for submission to the PSO using the format required by the PSO and, in the event of a tie, the COG will break all ties; and</p> <p>d. The COG’s governing body reviews and approves the HSAC priority listings prior to submitting them to the PSO in compliance with the applicable provisions of Texas Administrative Code, Title 1, Part 1, Chapter 3.</p>	
HS4.2	<p>The COG shall ensure that funding recommendations on grant applications are based upon:</p> <p>a. Any state strategies identified by the PSO within the RFA;</p> <p>b. Homeland security priorities identified through the COG’s risk informed project prioritization methodology as informed by the THIRA, capability gaps identified in the COG’s regional SPR, and priorities identified in the region’s HSSP-IP;</p> <p>c. The eligibility, reasonableness, and cost-effectiveness of the proposed project; and</p> <p>d. Current COG policies and bylaws.</p>	Ongoing
HS4.3	<p><b>Transparency:</b> The COG shall provide HSAC members with copies of the COG’s regional methodology for risk-informed scoring and/or prioritization of projects, scoring instruments, the criteria used in scoring grant applications, and other relevant materials prior to holding the COG’s prioritization meeting for any PSO homeland security funding opportunity. Additionally, the COG shall provide current grantees and other requestors with the same information upon request.</p> <p><b>Notification of Prioritization Results:</b> The COG shall notify all applicants in writing of the approved priorities in HS4.1a. The notice must state: “After the HSAC prioritizes the grant applications and the COG’s governing body approves the priority listing, the COG submits the priority listing to the PSO. Based upon the COG’s priority listing, the PSO will verify the eligibility, reasonableness, and cost-effectiveness strategy of the proposed project, and the availability of funding, and will render final funding decisions on these grant applications. The COG will notify applicants of any changes in the funding recommendations.”</p>	The COG shall notify applicants of the region’s prioritization results within 14 calendar days after the COG’s decision
HS4.4	<p>The COG shall submit, through eGrants, the approved priority listing, including recommended funding amounts, for the SHSP. The COG’s governing body <b>must</b> approve the priority listing prior to submission to the PSO.</p> <p>The priority listing is the sole means of communicating COG grant allocation recommendations from the COG to the PSO. The priority listing is one element upon which the PSO bases funding decisions. The</p>	The COG shall submit priority listings 14 calendar days from the date the OOG

	COG is responsible for ensuring the appropriateness and accuracy of the priority listing, and for correcting any inaccuracies or errors that occur on the priority listing <b>prior to submission</b> to the PSO.	batches applications to the COG
<b>HS5</b>	<b>Cooperation with the PSO</b>	
HS5.1	<p>The COG shall:</p> <ol style="list-style-type: none"> <li>a. Fully cooperate with the PSO, its authorized representatives, and PSO designated partners or contractors;</li> <li>b. Provide sufficient personnel, equipment, materials, supplies, and facilities to perform the duties and responsibilities listed in this Agreement, and to support the HSAC and their meetings related to PSO business;</li> <li>c. Ensure that all COG personnel who work on PSO homeland security-related business are qualified by their education, training, and experience to fulfill the responsibilities of the position for which they are employed;</li> <li>d. Prepare and submit all forms, reports, and records required by the PSO in accordance with PSO-established deadlines; and</li> <li>e. Provide general services and coordination activities for homeland security and related topics throughout the year. Such services may include providing feedback on, input to, or communicating the PSO's real or proposed priorities to constituents and others within the COG Region.</li> </ol>	Ongoing
HS5.2	<p>The COG shall notify the PSO of any Public Information Act or media request received by the COG relating to any application for PSO homeland security grant funding or PSO homeland security grant-funded program no later than one business day after receiving the request. The notification shall include the name of the requestor, the date the request was received by the COG, and a description of the information requested.</p> <p>The COG shall give the PSO the opportunity to review any OOG-originated materials and information prior to release, if requested by the PSO.</p> <p>The COG shall also notify the PSO as to its response to any Public Information Act or media request received by the COG relating to any application for PSO funding or PSO-funded grant program no later than one business day after providing its response to the requestor. The notification shall include a description of the response (or a copy of the response, if the request was made to the requestor in writing), the date the response was provided to the requestor, and the name of the COG employee who responded to the request.</p>	Ongoing

<b>HS6</b>	<b>Reporting</b>	
HS6.1	<p>The COG shall submit <b>monthly</b> invoices to the PSO that include:</p> <ol style="list-style-type: none"> <li>The requested payment amount for the services provided during the prior month;</li> <li>A brief description of the activities related to this Agreement the COG completed during the billing cycle;</li> <li>The total number of COG staff hours spent on activities related to this Agreement; and</li> <li>Any data necessary to understand the volume and impact of the services provided.</li> </ol> <p>The COG agrees to use the submission method and standard report format as may be established by the PSO.</p>	<p>By the 30th of each Month*</p> <p>*e.g. Report for September services due October 30th</p>
<b>HS7</b>	<b>Other</b>	
HS7.1	<p><b>Knowledge:</b> The COG shall ensure that COG employees who work on PSO homeland security business have a working knowledge of the OOG’s Guide to Grants; Texas Grant Management Standards; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); and the state and federal statutes, rules, regulations, documents, and forms applicable to the funding opportunities listed in HS4.1.</p>	Ongoing
HS7.2	<p><b>Training:</b> The COG shall ensure that one employee who works on PSO homeland security business attends and participates in mandatory training workshops, meetings, webinars, and conference calls sponsored by the PSO. The Executive Director of the PSO or an authorized representative may waive this requirement upon receipt of a written request from the Executive Director of the COG.</p>	Ongoing
HS7.3	<p><b>Vacancies:</b> The COG shall notify the PSO of a vacancy involving any staff position that provides services under this Agreement within fourteen calendar days after the vacancy. The COG shall also notify the PSO when a replacement is hired to fill a vacancy involving any staff position that provides services under this Agreement within fourteen calendar days after the replacement’s hire date.</p>	Ongoing
HS7.4	<p><b>Accounting Systems:</b> The COG shall have an accounting system that accounts for costs in accordance with generally accepted accounting standards or principles. The COG must propose and account for costs in a manner consistent with such standards or principles.</p>	Ongoing

HS7.5	<p><b>Access to Records, Records Retention:</b> The COG shall:</p> <ul style="list-style-type: none"> <li>a. Maintain adequate record keeping procedures;</li> <li>b. Retain all records, regardless of format, related to the services and requirements identified in this Agreement (“Records”);</li> <li>c. Follow all legal requirements for maintaining the confidentiality and security of all Records;</li> <li>d. Provide originals or copies of all Records to the PSO upon the request of the PSO, auditors from the State of Texas, or auditors from the Department of Homeland Security (DHS). The COG shall permit the PSO or its designee, auditors from the State, or DHS auditors to audit and inspect Records related to this Agreement at any time. The COG shall provide reasonable access to all Records required to accomplish a review of activities, services, expenditures, and the accuracy of reviews and reports. The COG shall also provide reasonable access to its employees by the PSO or other designated representatives of the Office of the Governor, auditors from the State, or DHS auditors. Access to Records is not limited to the required retention periods. The PSO and any of its authorized representatives, including but not limited to auditors from the State or DHS auditors, shall have access to any and all Records, for any reason, upon request for as long as the records are maintained; and</li> <li>e. Retain the Records for a period of seven years after the final payment by the PSO under the terms of this Agreement with the following qualification: if any audit, claim, or litigation is initiated before the expiration of the seven-year period, the Records shall be retained until the audit, claim, or litigation is resolved or until the end of the regular seven-year period, whichever is later. At the end of the seven-year period, the COG shall request disposition instructions for the Records from the PSO, and shall dispose of the Records in accordance with the PSO’s instructions.</li> </ul> <p>The COG shall ensure that the above requirements regarding the “Access to Records, Records Retention” are included in any subcontract it awards related to the services in this Agreement.</p>	Ongoing
HS7.6	<p><b>Audits:</b> Audits conducted pursuant to this Agreement shall be in accordance with generally accepted auditing standards and established procedures and guidelines for the review or audit of an agency.</p> <p>Where the audit concerns the COG, the auditing entity will afford the COG an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final</p>	Ongoing

	audit report will include the written comments, if any, of the audited parties.	
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**Statement of Work (Attachment B)  
Public Safety Office ("PSO")  
Criminal Justice Services**

<b>Task #</b>	<b>Task Description/Deliverable</b>	<b>Due Date</b>
<b>CJ1</b>	<b>Local Policies or Bylaws</b>	
CJ1.1	<p>The COG shall ensure that written policies or bylaws concerning the COG's duties under this Agreement are developed and adopted by the COG's governing body in accordance with applicable laws and regulations. Governing policies must include guidance concerning the following:</p> <ul style="list-style-type: none"> <li>a. Attendance requirements for prioritization meetings;</li> <li>b. Prioritization of grant applications;</li> <li>c. COG governing body's review and approval process;</li> <li>d. COG's strategic vision related to criminal justice issues;</li> <li>e. Conflicts of interest;</li> <li>f. Compliance with the requirements described in Texas Government Code, Chapter 551 (Texas Open Meetings Act);</li> <li>g. Local funding recommendation limitations, including but not limited to minimum or maximum application requested amounts, competition cycles, or decreasing fund ratios, if applicable; and</li> <li>h. If applicable, grant application workshop attendance requirements.</li> </ul> <p>The COG's policies may not require payment of membership dues in order to be considered for funding.</p>	Ongoing
CJ1.2	The COG shall inform applicants, current grantees and other requestors of the availability of relevant COG policies and bylaws, and shall provide such policies and bylaws to interested parties upon request.	Ongoing
<b>CJ2</b>	<b>Technical Assistance</b>	
CJ2.1	<p>The COG shall make available to potential applicants in the COG's region the following:</p> <ul style="list-style-type: none"> <li>a. Priorities identified by the COG related to criminal justice issues;</li> <li>b. How the COG reviews and prioritizes projects, including but not limited to, the region's methodology for risk-informed scoring/prioritization, scoring instruments, the criteria used in</li> </ul>	At least 30 calendar days prior to the PSO eGrants application submission deadline

	<p>scoring/prioritizing applications, and other relevant materials that affect the COG's prioritization process;</p> <p>c. Information related to the availability of training materials, or other documents regarding PSO grant application creation available on the eGrants website at: <a href="http://egrants.gov.texas.gov">egrants.gov.texas.gov</a>; and</p> <p>d. Information regarding grant application workshop attendance requirements, if applicable.</p> <p>The COG may choose, at the COG's discretion, to conduct grant application workshops, workgroups and/or subcommittees to provide technical assistance to potential applicants in the COG's Region for PSO criminal justice funding opportunities consistent with the COG's policies and procedures.</p>	
CJ2.2	<p>The COG shall inform applicants/grantees that PSO employees are assigned to each application/grant in eGrants and that the applicant/grantee may contact these personnel, or the eGrants Help Desk, for assistance with grant related questions and issues.</p> <p>The COG may inform applicants/grantees that technical assistance is available through the COG and, upon request, the COG shall coordinate with the PSO to provide technical assistance to applicants and grantees.</p>	Ongoing
<b>CJ3</b>	<b>Oversight of the Criminal Justice Advisory Committee</b>	
CJ3.1	<p>Each COG shall establish and maintain a Criminal Justice Advisory Committee (CJAC) that consists of participants who are knowledgeable about criminal justice related issues relevant to the COG region. The CJAC shall advise the COG on matters related to criminal justice.</p> <p>The COG shall ensure that the CJAC has a multidisciplinary representation of members from the COG's Region. The CJAC's membership must include individuals from the following groups or disciplines: non-profit organizations, municipalities, counties, citizens or parents, substance abuse prevention, education, juvenile justice, law enforcement, mental health, prosecution or courts, and victim services. No single group or discipline may constitute more than one-third (1/3) of the CJAC.</p> <p>Upon request from the PSO, the COG shall provide a complete list of CJAC members and any requested information related to CJAC scoring/prioritization meetings.</p>	Ongoing
CJ3.2	<p><b>Conflict of Interest:</b> The COG shall ensure that members of the COG's governing body, the CJAC, and COG staff abstain from scoring and voting on any grant application, other than a grant application submitted by a COG, during the prioritization process if</p>	Ongoing



	<p>the member or an individual related to the member within the third degree by consanguinity or within the second degree by affinity:</p> <ol style="list-style-type: none"> <li>a. Is employed by the applicant agency and works for the unit or division that would administer the grant, if awarded;</li> <li>b. Serves on any governing board that oversees the unit or division that would administer the grant, if awarded;</li> <li>c. Owns or controls any interest in a business entity or other non-governmental organization that benefits, directly or indirectly, from activities with the applicant agency; or</li> <li>d. Receives any funds, or a substantial amount of tangible goods or services, from the applicant agency as a result of the grant, if awarded.</li> </ol> <p>If a CJAC member has a conflict of interest regarding a particular grant application, the COG will ensure that the committee member abstains from voting, commenting, or otherwise influencing the prioritization process for that application.</p> <p>If any applicant, CJAC member, COG personnel or other individual has reason to believe that favoritism or inappropriate actions occurred during the scoring or prioritization of PSO criminal justice projects, the COG shall ensure that the concerns are shared with the PSO as soon as possible.</p>	
CJ3.3	<p>The COG shall actively facilitate all CJAC meetings and ensure that all CJAC members are aware of local policies and bylaws and the requirements of the COG's contract with the PSO.</p> <p>The COG shall document all CJAC proceedings related to PSO business by recording the CJAC proceedings or by preparing written minutes of the CJAC proceedings. If written minutes are prepared, the written minutes must be certified with the signature of a CJAC member who was in attendance at the meeting.</p>	Ongoing
CJ3.4	<p>The COG shall ensure that all COG governing board meetings and CJAC meetings at which PSO criminal justice-related matters are discussed comply with the requirements listed in Texas Government Code, Chapter 551 (Texas Open Meetings Act).</p>	Ongoing
<b>CJ4</b>	<b>Strategic Planning</b>	
CJ4.1	<p>The COG shall provide general planning and coordination activities for issues related to criminal justice, juvenile justice, delinquency prevention, victim services, and related topics throughout the year. Such services may include providing feedback on, input to, or communication of the PSO's real or proposed priorities.</p>	Ongoing

CJ4.2	<p>The COG shall regularly communicate with criminal justice stakeholders, including grantees, law enforcement, non-profit organizations and other units of government, and shall engage those stakeholders when developing the region’s strategic plan under CJ4.3. The COG must also inform the PSO and the CJAC of stakeholder interactions and provide additional insight into regional criminal justice needs.</p>	Ongoing
CJ4.3	<p>The COG shall create a strategic plan for prioritizing the criminal justice needs in the COG’s Region. The criminal justice needs relevant to this plan include, but are not limited to, criminal justice system improvements, juvenile justice system improvements, direct victim services, and mental health/substance abuse treatment.</p> <p>The strategic plan must describe the following:</p> <ol style="list-style-type: none"> <li>a. How local communities are engaged in the COG’s planning process;</li> <li>b. The data used to support the plan;</li> <li>c. The stakeholders participating in the COG’s planning process;</li> <li>d. The gaps in resources for criminal justice needs;</li> <li>e. The criminal justice priorities identified during the COG’s planning process; and</li> <li>f. How the COG’s plan will be used by the CJAC during the prioritization process.</li> </ol> <p>The plan must also include an executive summary, not to exceed two pages, written for a general public audience that describes the following:</p> <ol style="list-style-type: none"> <li>a. The strategic planning process; and</li> <li>b. The top five most critical needs for the region across all criminal justice areas.</li> </ol> <p>The plan should not exceed a five year cycle.</p> <p>Upon request from the PSO, the COG shall provide a copy of the most current strategic plan to the PSO.</p>	Ongoing
<b>CJ5</b>	<b>Application Prioritization Process</b>	
CJ5.1	<p>The COG shall ensure that:</p> <ol style="list-style-type: none"> <li>a. The CJAC considers and <b>prioritizes</b> all grant applications received under the following fund sources: <ul style="list-style-type: none"> <li>• General Victim Assistance – Direct Services Programs;</li> <li>• Violent Crimes Against Women Criminal Justice and Training Projects – Domestic Violence, Sexual Assault, Dating Violence, and Stalking;</li> </ul> </li> </ol>	Ongoing

	<ul style="list-style-type: none"> <li>• Justice Assistance Programs;</li> <li>• General Juvenile Justice and Delinquency Prevention Programs; and</li> <li>• Truancy Prevention</li> </ul> <p>b. The CJAC or a working group designated by the COG considers and <b>scores</b> all grant applications received under the following fund source:</p> <ul style="list-style-type: none"> <li>• Victims of Commercial Sexual Exploitation (CSE)</li> </ul> <p>c. The COG implements an application scoring instrument that evaluates specific elements of the application identified by the PSO;</p> <p>d. The COG shall distribute the region’s applications to the CJAC members at least two weeks prior to the members prioritization meeting;</p> <p>e. The CJAC members reviewing the applications prioritize the applications using a scoring instrument to record and tabulate application scoring;</p> <p>f. The COG tabulates scores and/or compiles an accurate priority list(s) for submission to the PSO using the format required by the PSO and, in the event of a tie, the COG will break all ties; and</p> <p>g. The COG’s governing body reviews and approves the CJAC priority listings listed in Section 5.1.a prior to submitting them to the PSO in compliance with the applicable provisions of Texas Administrative Code, Title 1, Part 1, Chapter 3.</p>	
CJ5.2	<p>The COG shall ensure that funding recommendations on grant applications are based upon:</p> <ul style="list-style-type: none"> <li>a. Any state strategies identified by the PSO within the RFA;</li> <li>b. Criminal justice priorities identified in the COG’s most recently completed strategic plan;</li> <li>c. The eligibility, reasonableness, and cost-effectiveness of the proposed project; and</li> <li>d. Current COG policies and bylaws.</li> </ul>	Ongoing
CJ5.3	<p><b>Transparency:</b> The COG shall provide current grantees and other requestors with copies of scoring instruments, the criteria used in scoring grant applications, and other relevant materials upon request.</p> <p><b>Notification of Prioritization Results:</b> The COG shall notify all applicants in writing of the approved priorities identified in Section 5.1.a. The notice must state: “After the CJAC prioritizes the grant applications and the COG’s governing body approves the priority</p>	The COG shall notify applicants of the region’s priorities within 14 calendar days

	listing, the COG submits the written priority listing to the PSO. Based upon the COG's priority listing, the PSO will verify the eligibility, reasonableness and cost-effectiveness strategy of the proposed project, and the availability of funding, and will render final funding decisions on these grant applications. The COG will notify applicants of any changes in the funding recommendations.”	of the COG's decision
CJ5.4	<p>The COG shall submit, through eGrants and/or a method determined by the PSO, the approved priority listings and CSE scores, including recommended funding amounts, for the funding opportunities listed in CJ5.1a and CJ5.1b. The COG's governing body <b>must</b> approve the priority listings prior to submission to the PSO.</p> <p>The priority listing is the sole means of communicating COG grant allocation recommendations from the COG to the PSO. The priority listing is one element upon which the PSO bases funding decisions. The COG is responsible for ensuring the appropriateness and accuracy of the priority listing, and for correcting any inaccuracies or errors that occur on the priority listing <b>prior to submission</b> to the PSO.</p>	Approved scoring and priority listings must be uploaded into eGrants no later than May 5, 2023
<b>CJ6</b>	<b>Cooperation with the PSO</b>	
CJ6.1	<p>The COG shall:</p> <ol style="list-style-type: none"> <li>a. Fully cooperate with the PSO, its authorized representatives, and PSO designated partners or contractors;</li> <li>b. Provide sufficient personnel, equipment, materials, supplies, and facilities to perform the duties and responsibilities listed in this Agreement, and to support the CJAC and their meetings related to PSO business;</li> <li>c. Ensure that all COG personnel who work on PSO business are qualified by their education, training, and experience to fulfill the responsibilities of the position for which they are employed;</li> <li>d. Prepare and submit all forms, reports, and records required by the PSO in accordance with PSO-established deadlines; and</li> <li>e. Provide general services and coordination activities for criminal justice and topics related to juvenile justice, substance abuse prevention, law enforcement, mental health, prosecution or courts and victim services. Such services may include providing feedback on, input to, or communicating the PSO's real or proposed priorities to constituents and others within the COG region.</li> </ol>	Ongoing

CJ6.2	<p>The COG shall notify the PSO of any Public Information Act or media request received by the COG relating to any application for PSO criminal justice funding or PSO grant-funded program no later than one business day after receiving the request. The notification shall include the name of the requestor, the date the request was received by the COG, and a description of the information requested.</p> <p>The COG shall give the PSO opportunity to review any OOG-originated materials and information prior to release, if requested by the PSO.</p> <p>The COG shall also notify the PSO as to its response to any Public Information Act or media request received by the COG relating to any application for PSO funding or PSO grant-funded program no later than one business day after providing its response to the requestor. The notification shall include a description of the response (or a copy of the response, if the request was made to the requestor in writing), the date the response was provided to the requestor, and the name of the COG employee who responded to the request.</p>	Ongoing
<b>CJ7</b>	<b>Reporting</b>	
CJ7.1	<p>The COG shall submit <b>monthly</b> invoices to the PSO that include:</p> <ol style="list-style-type: none"> <li>a. The requested payment amount for the services provided during the prior month;</li> <li>b. A brief description outlining the PSO criminal justice activities completed during the billing cycle;</li> <li>c. The total number of COG staff hours spent on activities related to this Agreement; and</li> <li>d. Any data necessary to understand the volume and impact of the services provided.</li> </ol> <p>The COG agrees to use the submission method and standard report format as may be established by the PSO.</p>	<p>By the 30<sup>th</sup> of each Month*</p> <p>*e.g. Report for September services due October 30<sup>th</sup></p>
<b>CJ8</b>	<b>Other</b>	
CJ8.1	<p><b>Knowledge:</b> The COG shall ensure that COG employees who work on PSO criminal justice business have a working knowledge of Texas Administrative Code, Title 1, Part 1, Chapter 3; the OOG's Guide to Grants; Texas Grant Management Standards; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); and any other state and federal statutes, rules, regulations, documents, and forms applicable to the funding opportunities listed in CJ5.1.</p>	Ongoing
CJ8.2	<p><b>Training:</b> The COG shall ensure that one employee who works on PSO criminal justice business attends and participates in mandatory training workshops, meetings, webinars and conference calls</p>	Ongoing

	sponsored by the PSO. The Executive Director of the PSO or an authorized representative may waive this requirement upon receipt of a written request from the Executive Director of the COG.	
CJ8.3	<b>Vacancies:</b> The COG shall notify the PSO of a vacancy involving any staff position that provides services under this Agreement within fourteen calendar days after the vacancy. The COG shall also notify the PSO when a replacement is hired to fill a vacancy involving any staff position that provides services under this Agreement within fourteen calendar days after the replacement's hire date.	Ongoing
CJ8.4	<b>Accounting Systems:</b> The COG shall have an accounting system that accounts for costs in accordance with generally accepted accounting standards or principles. The COG must propose and account for costs in a manner consistent with such standards or principles.	Ongoing
CJ8.5	<b>Access to Records, Records Retention:</b> The COG shall: <ul style="list-style-type: none"> <li>a. Maintain adequate record keeping procedures;</li> <li>b. Retain all records, regardless of format, related to the services and requirements identified in this Agreement ("Records");</li> <li>c. Follow all legal requirements for maintaining the confidentiality and security of all Records;</li> <li>d. Provide originals or copies of all Records to the PSO upon the request of the PSO, auditors from the State of Texas, or auditors from the U.S. Department of Justice (DOJ). The COG shall permit the PSO or its designee, auditors from the State, or DOJ auditors to audit and inspect Records related to this Agreement at any time. The COG shall provide reasonable access to all Records required to accomplish a review of activities, services, expenditures, and the accuracy of reviews and reports. The COG shall also provide reasonable access to its employees by the PSO or other designated representatives of the Office of the Governor, auditors from the State, or DOJ auditors. Access to Records is not limited to the required retention periods. The PSO and any of its authorized representatives, including but not limited to auditors from the State or DOJ auditors, shall have access to any and all Records, for any reason, upon request for as long as the records are maintained; and</li> <li>e. Retain the Records for a period of seven years after the final payment by the PSO under the terms of this Agreement with the following qualification: if any audit, claim, or litigation is initiated before the expiration of the seven-year period, the Records shall be retained until the audit, claim, or litigation is resolved or until the end of the regular seven-year period, whichever is later. At the end of the seven-year period, the COG shall request disposition instructions for the Records</li> </ul>	Ongoing

	<p>from the PSO, and shall dispose of the Records in accordance with the PSO's instructions.</p> <p>The COG shall ensure that the above requirements regarding the "Access to Records, Records Retention" are included in any subcontract it awards related to the services in this Agreement.</p>	
CJ8.6	<p><b>Audits:</b> Audits conducted pursuant to this Agreement shall be in accordance with generally accepted auditing standards and established procedures and guidelines for the review or audit of an agency.</p> <p>Where the audit concerns the COG, the auditing entity will afford the COG an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.</p>	Ongoing

**INTERLOCAL AGREEMENT TO PROVIDE  
TRANSPORTATION MANAGEMENT SERVICES**

This interlocal agreement (Agreement), is made by and among the Ark-Tex Council of Governments (ATCOG), having its principal place of business at 4808 Elizabeth Street, Texarkana, Texas 75503, and the Texarkana Urban Transit District (TUTD), having its principal place of business at 1402 Texas Boulevard, Texarkana, Texas 75501.

**A. Premises**

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments to contract with each other to provide governmental functions or services, ATCOG is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code, and TUTD is a political subdivision district under the laws of the State of Texas as defined by Chapter 458 of the Texas Transportation Code and Chapter 791 of the Texas Government Code, therefore, they are both "local governments" as defined in Texas Government Code § 791.003; and

WHEREAS, TUTD has determined that it will require the services of a professional management company for the public transit system to be established in its area of jurisdiction; and

WHEREAS, TUTD is authorized to enter into an agreement for the operation and management of said transportation system; and

WHEREAS, ATCOG is engaged in the business of providing advisory and management services for the operation of transit systems and has trained, experienced personnel available for that purpose, and is desirous of providing such advisory and management services for TUTD; and

WHEREAS, TUTD has made the determination that ATCOG is qualified to provide the services set forth and the employment of ATCOG would serve the best interests and welfare of the public utilizing the transit system operated by TUTD.

NOW, THEREFORE, in consideration of the foregoing recitals and agreements of each of the parties herein set forth, TUTD and ATCOG hereto do agree as follows:

**B. Background**

ATCOG and TUTD originally entered a interlocal agreement on October 1, 2012, and a second interlocal agreement on September 22, 2017. The term of the second agreement is to end on September 30, 2022. Both of those agreements were substantially similar to this agreement.



### C. Agreement

1. *Purpose.* The purpose of the agreement is to secure and provide all management and supervisory services reasonably required and necessary for the efficient operation of the system under TUTD's policies and in a way which will provide the quality and quantity of service as determined from time to time by TUTD.
2. *Scope of Service.* ATCOG will be responsible for the management and day-to-day operation of the transit system in an efficient and effective manner, and for providing consultation and recommendations to the Texarkana Urban Transit District Board, in all areas of public transportation. ATCOG shall be responsible to TUTD, or its designee. All services to be rendered by ATCOG shall be subject to the reasonable supervision and control of TUTD. ATCOG shall make recommendations, or TUTD may request information or recommendations, as to any areas of operation which are deemed appropriate and proper and the decision of TUTD shall be binding and final in regard thereto. The advisory, management, and supervisory services to be furnished by ATCOG will include, but are not limited to:

Overall management and operation of the public transportation system and policy recommendations;

Management continuity;

Management personnel development and training, and recruitment as necessary;

Operations;

Finance and budgeting, including preparation of an annual budget for the transit system;

Safety, loss prevention, and insurance;

Schedules, transportation, and routing;

Maintenance and purchasing of equipment;

Customer relations and promotion;

Preparation and administration of state and federal grants;

Administration of service agreements;

Employee relations;

Selection and training of all transit employees;

Preparation of agenda items and back-up information for all TUTD and City Council meetings; and

The cost of the above-stated services shall be charged to the appropriate cost categories of the grants.

3. *Term.* This agreement shall be effective as of the end of the term of the interlocal agreement which was entered on September 22, 2017, which is to end on September 30, 2022. The contract term shall continue for five (5) years until September 30, 2027.

TUTD may, however, terminate this agreement in whole or in part, when it is in its interest. If this agreement is terminated, TUTD shall be liable only for payment under the payment provisions of this agreement for services rendered before the effective date of termination.

4. *Personnel.* ATCOG agrees to provide a qualified, experienced manager who will be responsible for day-to-day operations of all departments of the system in an efficient and effective manner.

In the event of the disability of any person acting in the position of manager, ATCOG agrees to secure a qualified individual to fill said position for as long as such disability may continue or to replace such individual, if necessary, all subject to the advice and consent of TUTD.

To assist TUTD and the manager, ATCOG will further furnish executive consulting personnel and technical assistance personnel as may be reasonably required in the operation of the transit system and to perform the duties set forth in the Scope of Service above.

5. *Employer.* ATCOG agrees that it will purchase and maintain at its sole cost and expense a Texas corporation, Ark-Tex Urban Transit, Inc., hereinafter referred to as "ATUT," to employ the employees necessary to maintain and operate the transportation system, except those existing employees of ATCOG already in place who will work in this capacity. ATUT by assignment shall assume and perform all services, obligations, and accept all rights which have been incurred or extended to ATCOG under the terms and conditions of this agreement except those functions set forth above, provided that ATCOG shall remain responsible for the performance of all terms and conditions of this agreement.

Any contractual obligations or liability entered into or assumed by ATUT and approved by TUTD, in connection with the operation of the transit system, shall be binding upon ATCOG only for the term of this agreement, as same may be extended,

and in the event this agreement is terminated or expires, then TUTD shall thenceforth assume all future obligations and liabilities under said agreements either on behalf of itself or any successors to ATUT.

6. *Responsibilities of TUTD.* TUTD agrees to provide all necessary office space, office furniture, equipment, materials, fuels, supplies, rolling stock, bus maintenance and storage facilities, fueling station and fueling attendant, computer(s) hardware and software, radios, fare collection equipment, access to existing fleet maintenance equipment, and other necessary and appropriate equipment which may be required for operation of the transit system as approved by TUTD.

Title to, and ownership of, all said properties and facilities, including leasehold interests, shall be taken and held in the name of TUTD, and purchases or acquisitions made after the effective date of this agreement for the benefit or operation of the public transportation system shall be made by TUTD.

In carrying out its responsibilities, TUTD will rely on recommendations from ATCOG.

TUTD's responsibilities include, but are not limited to, the following:

Overall policy development;

Approval of routes, stops, expansion and reduction of service;

Establishment of fare policy and structure;

Determine level of subsidies to the net operating deficit;

Act as designated recipient for all grant funds;

Act as legal counsel in all legal affairs, suits, pleas, and litigation in which TUTD is interested;

Provide funds for preventive maintenance on all transit vehicles as specified by the manager;

Preventive maintenance shall include tires, fluid changes, and other services recognized by the vehicle manufacturer to be preventive; and

Provide transit signage and shelter installation.

7. *Purchase of Materials and Supplies.* ATCOG and ATUT will notify TUTD from time to time regarding the types and amounts of materials, supplies and equipment, including buses, needed for use in the operation of the system, and will make recommendations

as to type, quantity, and amount thereof to be purchased. Such purchases will be made pursuant to TUTD's purchasing policy.

8. *Budgets and Projections.* ATCOG agrees to prepare, submit, and recommend a proposed annual budget for the operation of the transit system for the same fiscal year under which TUTD operates, which shall include any recommendations concerning changes in service and/or fares. Such proposed budget shall be prepared and submitted in accordance with a schedule of presentation and submission approved by TUTD.

ATCOG further agrees that it will comply with all accounting procedures established by TUTD.

9. *Compensation.* TUTD will pay ATCOG as compensation for the services performed in accordance with this agreement a monthly payment of \$14,660.00, for the first fiscal year under this Agreement plus a 5% increase for every fiscal year thereafter.

Payment of the monthly compensation as specified herein shall be made by TUTD on the fifteenth day of the initial month of the agreement and thereafter on the fifteenth day of each succeeding month during the term hereof.

TUTD further agrees to provide such funds as may be necessary to meet payroll and all other expenses of the administration and operations of the transit system.

10. *Indemnification and Insurance.* ATCOG shall defend, indemnify and save harmless TUTD, the City of Texarkana, Texas, the City of Texarkana, Arkansas, the City of Wake Village, Texas, and the City of Nash, Texas, and all its officers, agents, and employees from all suits, actions, and/or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of ATCOG or any of its agents, employees, or subcontractors, in the execution of or performance under this agreement, and not caused by or arising out of the tortuous conduct of TUTD, the City of Texarkana, Texas, the City of Texarkana, Arkansas, the City of Wake Village, Texas, and the City of Nash, Texas, or other officers, agents, and employees.

ATUT shall maintain during the life of this agreement such public liability and property damage insurance as TUTD may specify from time to time to protect ATUT, ATCOG, and TUTD, as additional insureds, from claims for damages for personal injuries, including death, as well as from claims for property damage which may arise from operations or the performance of the work and services contemplated hereunder. All such insurance shall be placed with companies approved by the State of Texas and acceptable to TUTD, and shall be written on forms approved by the Texas State Board of Insurance.

To the extent allowed by the laws of the State of Texas and without waiving any of the immunities or other defenses available to the TUTD or its members, whatever liability, whether tort, contractual or otherwise, including, but not limited to, employment-related matters, personal injury or property damage, other than liability for intentional personal injury or for punitive damages, which may be incurred to third parties in connection with or arising out of the management of the transportation system by ATCOG and ATUT, the costs and expenses thereof, including any and all liability of ATCOG, its agents, servants, or employees, will be part of the costs and expenses incurred by TUTD in the operation of the transit system and will be reimbursed by TUTD to ATCOG or ATUT as may be appropriate.

ATCOG shall, however, be liable for any dishonesty or fraudulent misconduct or omission committed or directed by an officer, employee, or agent of ATCOG or ATUT or for any breach of this agreement on the part of ATCOG or ATUT.

- (a) General Liability insurance at minimum combined single limits of \$500,000 per occurrence for bodily injury and property damage. Contractual liability must be maintained with respect to the contractor's obligations contained in the agreement, and shall include coverage for: premise operations, independent contractors, products/completed operations, personal injury, contractual liability and medical payments.
- (b) Workers Compensation insurance as required by law.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$500,000 per occurrence for bodily injury and for property damage, including owned, non-owned, and hired vehicle coverage.

The costs of carrying such insurance or self-insurance of any primary risk or amount in excess of coverage shall be an operating expense payable by TUTD to ATUT.

In addition to the above, ATCOG, at its sole cost and expense, shall furnish to TUTD all necessary insurance to protect, save whole and harmless, and indemnify TUTD from and against dishonesty, fraud, or theft occasioned by any officer or employee of ATCOG. Coverage of each such employee shall be in an amount of no less than Three Hundred Thousand Dollars (\$300,000).

ATCOG, at its sole cost and expense, also shall keep in force during the term of this agreement professional liability (errors and omissions) insurance in the amount of Two Million Dollars (\$2,000,000).

11. *Revenue.* Revenue derived from the operation of the system, whether from passengers or from other sources, will be and remain from the initial receipt thereof the absolute

property of TUTD, and the treatment of such revenue, including the banking thereof and the accounting thereof, will be as directed by TUTD.

12. *Compliance with Grant Agreements, Laws, and Regulations.* ATCOG agrees to comply with, ensure the compliance of its successors and assigns with, and assist in TUTD's compliance with all terms and conditions of Federal Transit Administration grant agreements between the United States and TUTD and all other federal, state, and local laws, rules, and regulations which may apply in operating the transit system.
13. *Legal Counsel.* It shall be the responsibility of TUTD to handle all legal matters of the transit system not covered by insurance. TUTD may provide legal counsel directly, or ATCOG may retain counsel acceptable to TUTD and treat the cost thereof as an operating expense of the transit system.
14. *Force Majeure.* ATCOG and ATUT shall not be liable to TUTD for any failure, delay, or interruption of service or for any failure or delay in the performance of any obligation under this agreement due to strikes, walkouts, acts of God, governmental restrictions, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, or other similar acts beyond the control of ATCOG or ATUT.
15. *Equal Employment Opportunity.* ATCOG covenants and agrees that in connection with the performance of this agreement, it will not discriminate against any individual with respect to compensation terms or privileges of employment by reason of such individual's race, color, religion, disability, sex, or national origin.
16. *Defaults.* In case of any default for nonperformance hereunder claimed to exist by either party, such party will give the other party prompt written notice of such default, setting forth the facts in reasonable detail, and in the event that the alleged defaulting party has not remedied such default within thirty (30) days (or in case of defaults which require a longer period to remedy, has failed to commence upon such remedy within said period and thereafter to diligently proceed with the same to completion), then this agreement shall stand terminated. This agreement will also be terminable at once by TUTD at its option if ATCOG is adjudicated as bankrupt, or subject to insolvency or other bankruptcy proceedings or is subjected to the appointment of a receiver, or becomes insolvent; or for a period of sixty (60) days is unable to pay its debts as the same mature.
17. *Interest of Members of Congress and the Legislature of the States of Texas and Arkansas.* No member of or delegate to the Congress of the United States nor the Legislatures of the States of Texas or Arkansas will be admitted to any share or part of this agreement or to any benefit arising wherefrom.
18. *Interest of Public Officials.* No member, officer or employee of TUTD or any other local public body during his tenure will have any interest, direct or indirect, in this

agreement or the proceeds thereof.

19. *Audit and Inspection Records.* ATCOG will permit the authorized representatives of the U.S. Department of Transportation, the Comptroller General of the United States, the State of Texas, the State of Arkansas, and TUTD to inspect and audit all data and records relating to performance under this agreement.
20. *Notice.* Notice to ATCOG means notice in writing addressed to the Executive Director of ATCOG and delivered to the office of ATCOG at 4808 Elizabeth Street, Texarkana, Texas 75503.

Notice to TUTD means notice in writing addressed to TUTD Board Chairman and delivered to the office of TUTD in Texarkana, Texas.

21. *Severability and Intent.* Should any part of this agreement be declared to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision will not affect the validity of the remainder of this agreement, which will continue in full force and effect.

This agreement is not intended to be a third party beneficiary agreement and confers no rights on anyone other than TUTD and ATCOG with the sole exception of paragraph 10. Nothing herein will constitute any imposition or acceptance of any personal obligation or liability not otherwise imposed by law upon or by any individual associated with TUTD or ATCOG. This agreement is subject to a financial assistance agreement between the grantee (TUTD) and the Federal Transit Administration.

The terms hereof shall be construed for all purposes under the laws of the State of Texas.

22. *Whole Agreement.* This agreement and any attachments, as agreed upon by both parties, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.
23. *Immunity as a Defense.* Other than enforceability of this Agreement, neither Party has agreed to waive any defense, right, immunity, or other protection under law, including any statutory provision, by entering into this Agreement or otherwise participating in the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement this \_\_\_\_ day of September, 2022, through their duly authorized officers. This agreement will inure to and be binding on the successor or assigns of the respective parties.

**Texarkana Urban Transit District**

by: \_\_\_\_\_  
Robert Bruggeman, Chairman

**Ark-Tex Council of Governments**

by: \_\_\_\_\_  
Chris Brown Executive Director





**ARK-TEX COUNCIL OF GOVERNMENTS**

***ETHICS  
POLICY  
MANUAL***

**DECEMBER 16, 2010**

## FOREWORD

WELCOME TO THE ARK-TEX COUNCIL OF GOVERNMENTS (ATCOG). This Ethics Policy Manual has been created to prescribe the standards of ethical conduct for all employees of our agency. This Manual does not take the place of, but shall be used in conjunction with, the Ark-Tex Council of Governments Policies and Procedures Manual, to provide policies and guidelines of behavior expected of ATCOG employees at all times.

All ATCOG employees shall perform their official duties in a lawful, professional, and ethical manner; practice responsible stewardship of organizational resources; and report any conduct or activity that they believe to be in violation of this policy. Employees shall not knowingly make false or misleading statements, either oral or written, in the course of conducting the business of Ark-Tex Council of Governments. Employees shall not disclose confidential or sensitive agency business information without prior written authorization.

All ATCOG employees must familiarize themselves with this Policy. All employees must abide by applicable federal and state laws, administrative rules, and this Ethics Policy. An employee who violates any provision of this conduct policy is subject to disciplinary action, up to and including termination. An employee who violates any applicable federal or state law or rule may be subject to civil or criminal penalties, in addition to any disciplinary action.

Although this manual identifies specific policies, it cannot address every conceivable situation. Ethical conduct, good judgment, common sense, and sound business practices and principles must prevail in any situation not covered by this manual.

**THIS MANUAL IS NOT AN EMPLOYMENT CONTRACT OR PART OF SUCH A CONTRACT.** The Board of Directors of the ATCOG reserves, unto itself, the right to suspend, vary from, modify, or eliminate any matter to which this manual relates, and may do so temporarily or permanently, in whole or in part, generally or in particular cases, and with or without prior notice as deemed appropriate.

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**SECTION I**  
**RECORDS RETENTION**

## **I. RECORDS RETENTION**

### **A. GENERAL POLICY**

Ark-Tex Council of Governments (ATCOG) is committed to proper maintenance and retention of records. Records are defined broadly to include almost any type of business information, and the required retention period varies with the type of record. Falsifying records, deliberately concealing records, destroying records in bad faith, exploiting confidential information, or otherwise mishandling records is not acceptable.

### **B. LOCAL GOVERNMENT CODE**

As a local government, ATCOG must adhere to Local Government Code, Chapters 202 – 204, addressing records management. Records management includes the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping [Local Government Code § 201.003(8)].

### **C. WRONGFUL DESTRUCTION OF RECORDS**

When a lawsuit is filed or is reasonably anticipated to be filed against this agency, or when an internal or governmental investigation is initiated, ATCOG must ensure that all information potentially relevant to the suit or investigation is preserved. Employees may not alter, conceal, or in any way destroy information potentially relevant to a suit or investigation.

ATCOG will take every step possible to ensure potentially relevant information is not inadvertently destroyed pursuant to document retention schedules or by routine computer operations or common computer settings, such as the automated deletion of e-mails.

### **D. TERMINATION**

Any employee who violates this policy and destroys information, either through willful or unintentional act, will be subject to disciplinary action, up to and including termination. Engaging in unlawful destruction of records may also result in civil or criminal liability to any employee of ATCOG committing such acts.

### **E. ADMINISTRATION**

The Executive Director and the Deputy Director are responsible for the administration and application of this Policy. Any improper destruction of records will be considered fraud and will be investigated as such (See II. Fraud).

**SECTION II**  
**FRAUD**



## **II. FRAUD**

### **A. GENERAL POLICY**

Fraud is broadly defined and may include any type of intentional deception for the purpose of personal or business gain or damage to an individual or organization. Engaging in acts of fraud may result in civil or criminal liability to any employee of Ark-Tex Council of Governments (ATCOG) committing such acts.

This Fraud Policy is established to facilitate the development of controls that will aid in the detection and prevention of fraud against ATCOG. It is the intent of ATCOG to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations.

### **B. SCOPE OF WORK**

This Fraud Policy applies to any irregularity, or suspected irregularity, involving employees, consultants, vendors, providers, contractors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship with ATCOG.

Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title, or relationship to ATCOG.

### **C. POLICY RESPONSIBILITY**

Management is responsible for the detection and prevention of fraud, misappropriations, and other irregularities. Fraud includes the intentional, false representation or concealment of a material fact for the purpose of inducing another to act upon it to his or her benefit. Examples of fraud include lying on an employment application, falsifying records, or providing false receipts for reimbursement from ATCOG.

Each member of management should be familiar with the types of improprieties that might occur within his or her area of responsibility and should be alert for any indication of irregularity. Any irregularity that is detected or suspected must be reported immediately to the Executive Director, the Deputy Director, or the Human Resources Office, who coordinates all investigations with the appropriate authorities, both internal and external.

### **D. ACTIONS CONSTITUTING FRAUD**

The terms defalcation, misappropriation, and other fiscal irregularities refer to, but are not limited to:

- Any dishonest or fraudulent act;
- Misappropriation of funds, securities, supplies, or other assets;
- Impropriety in the handling or reporting of money or financial transactions;
- Accepting or seeking anything of material value from contractors, vendors, providers, or persons providing services/materials to ATCOG (Exception:

Gifts less than \$50 in value that can be used/enjoyed by all employees, i.e., cookies at Christmas);

- Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment; and/or
- Any similar or related irregularity.

#### **E. OTHER IRREGULARITIES**

Irregularities concerning an employee's moral, ethical, or behavioral conduct should be resolved by departmental management and the Executive Director.

If there is any question as to whether an action constitutes fraud, contact the Executive Director immediately for guidance.

#### **F. INVESTIGATION RESPONSIBILITIES**

Employees must be good stewards of resources entrusted to them and exercise due diligence to prevent and detect criminal conduct and noncompliance with laws and policies. All employees must report suspected fraud, waste, abuse or noncompliance to the Executive Director, the Deputy Director or the Human Resources Office immediately.

The Deputy Director has the primary responsibility for the investigation of all suspected fraudulent acts as defined in this Fraud Policy. If the investigation substantiates that fraudulent activities have occurred, the Executive Director will issue reports to appropriate designated personnel and to the Board of Directors through the Audit Committee.

Decisions to prosecute or refer the examination results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with legal counsel and the Executive Director, as will final decisions on disposition of the case.

#### **G. CONFIDENTIALITY**

The Executive Director, the Deputy Director and the Human Resources Office will treat all information received in a confidential manner. Any employee who suspects dishonest or fraudulent activity will notify either the Executive Director, the Deputy Director or the Human Resources Office immediately, and should not attempt to personally conduct investigations or interviews/interrogations related to any suspected fraudulent act. (See **Reporting Procedure** below)

Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected, but subsequently found innocent, of wrongful conduct and to protect ATCOG from potential civil liability.

#### **H. AUTHORIZATION FOR INVESTIGATING SUSPECTED FRAUD**

The Executive Director, the Deputy Director and the Human Resources Office will have:

- Free and unrestricted access to all company records and premises, whether owned or rented; and
- The authority to examine, copy, and/or remove all or any portion of the contents of files, desks, cabinets, and other storage facilities on the premises without prior knowledge or consent of any individual who might use or have custody of any such items or facilities when it is within the scope of their investigation.

## **I. REPORTING PROCEDURES**

Great care must be taken in the investigation of suspected improprieties or irregularities so as to avoid mistaken accusations or alerting suspected individuals that an investigation is underway.

An employee who discovers or suspects fraudulent activity will contact the Executive Director, the Deputy Director or the Human Resources Office immediately, or may contact the toll-free Fraud Hot line at 800/892-8548. The employee or other complainant may remain anonymous. All inquiries concerning the activity under investigation from the suspected individual, his or her attorney or representative, or any other inquirer should be directed to the Executive Director. No information concerning the status of an investigation will be given out. (Additional reporting tips found at <https://www.txdot.gov/inside-txdot/division/compliance/reporting-fraud.html> )

The reporting individual should be informed of the following:

- Do not contact the suspected individual in an effort to determine facts or demand restitution.
- Do not discuss the case, facts, suspicions, or allegations with anyone unless specifically asked to do so by the Executive Director.

## **J. TERMINATION**

If an investigation results in a recommendation to terminate an individual, the recommendation will be reviewed for approval by the Executive Director and, if necessary, outside counsel before any action is taken.

## **K. ADMINISTRATION**

The Executive Director and the Deputy Director are responsible for the administration, revision, interpretation, and application of this Policy. As part of the Ethics Manual, the Fraud Policy will be reviewed annually and revised as needed.

**SECTION III**  
**EQUAL OPPORTUNITY EMPLOYMENT**

### **III. EQUAL OPPORTUNITY EMPLOYMENT**

#### **A. GENERAL POLICY**

Ark-Tex Council of Governments (ATCOG) is an equal opportunity employer. It is the policy of ATCOG to promote and ensure equal employment opportunities to all applicants for employment and to all employees regardless of race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity, or expression.

This Equal Opportunity Employment Policy is adopted to prohibit discrimination against any person in job structuring, recruitment, examination, selection, appointment, placement, training, promotion, demotions, discipline, or any other aspect of personnel administration based on race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity, or expression. Employment, promotion, demotion, training, discipline and any related decisions will be made only on the basis of bona fide occupational qualifications and job-related factors such as education, training, experience, knowledge, attitude, aptitude, and necessary skills and abilities to perform a specific job. Discrimination has no place at ATCOG and will not be tolerated.

#### **B. AFFIRMATIVE ACTION**

The ATCOG is committed to maintaining and promoting equal opportunities for all qualified employees, applicants for employment, and program services for clients without regard to their race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity, or expression. ATCOG's commitment, in this regard, creates a positive obligation on the part of all management and participants for the adoption of and compliance with this affirmative action policy. Affirmative action includes, but is not limited to, hiring, placement, employment upgrading, promotions or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and services provided to clients. In addition, ATCOG will actively seek qualified members of minority groups and other protected classes in its services to clients and application and hiring processes.

#### **C. COMPLIANCE AND ADMINISTRATION**

It is the responsibility of each and every employee to insure compliance with the Equal Employment Opportunity; however, the Executive Director shall have the ultimate responsibility to insure compliance with all phases of this policy.

1. The Human Resources Manager is the Equal Employment Opportunity (EEO) Officer and, as such, is responsible to administer the ATCOG's Equal Employment Opportunity Policy.
2. The EEO Officer will be responsible for:

- a. Developing and implementing an Affirmative Action Plan.
- b. Assuring compliance by all employees and reporting any deviation to the Executive Director.
- c. Maintaining records and preparing status reports as necessary.
- d. Receiving, investigating, and responding to complaints in accordance with established procedures.
- e. Insuring that this policy is disseminated to all employees.

**D. PERSONS WITH DISABILITIES**

- 1. It is the policy of ATCOG to fully comply with the Americans With Disabilities Act of 1990, as amended, and prohibit discrimination against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
- 2. In compliance with the Americans with Disabilities Act of 1990, as amended, ATCOG will insure all programs and services administered by ATCOG are accessible to qualified persons with disabilities. ATCOG will further provide appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and to enjoy the benefits of its programs and services.

**E. WHISTLEBLOWERS PROTECTION**

ATCOG encourages its employees to report improper activities in the workplace and will protect employees from retaliation for making any such report in good faith.

- 1. **EMPLOYEE RIGHTS:** Employees have the right to report, without suffering retaliation, any activity by ATCOG or an employee of ATCOG that the reporting employee reasonably believes:
  - a. Violates any state or federal law;
  - b. Violates or amounts to noncompliance with a state or federal rule or regulation; or
  - c. Violates fiduciary responsibilities to its employees.

In addition, employees can refuse to participate in an activity that would result in a violation of state or federal statutes, or a violation or noncompliance with a state or federal rule or regulation.

Employees are also protected from retaliation for having exercised any of these rights in any former employment.

The whistleblower protection laws do not entitle employees to violate a confidential privilege of ATCOG (such as the attorney-client privilege) or improperly disclose trade-secret information.

2. **WHERE TO REPORT:** Employees have the duty to comply with all applicable laws and to assist ATCOG to ensure legal compliance. An employee who suspects a problem with legal compliance is required to report the situation(s) to their supervisor or other appropriate member of management, to include the Executive Director.
3. **PROTECTION FROM RETALIATION:** Any employee who believes they have been retaliated against for whistleblowing may file a complaint with ATCOG's Equal Employment Opportunity (EEO) Officer. The EEO Officer, designated by the Executive Director, shall be responsible for receipt, documentation, investigation and report of all such complaints in accordance with established procedures.

**F. ADMINISTRATION**

The Human Resources Manager as the Equal Employment Opportunity (EEO) Officer shall be responsible for receipt, documentation, investigation, and report of all such complaints of violations of the Equal Opportunity Employment Policy in accordance with established procedures.

**SECTION IV  
SEXUAL HARRASSMENT,  
SEXUAL MISCONDUCT  
AND BULLYING**



#### **IV. SEXUAL HARRASSMENT, SEXUAL MISCONDUCT AND BULLYING**

##### **A. GENERAL POLICY**

It is the policy of Ark-Tex Council of Governments (ATCOG) to provide an employment environment free of sexual harassment, sexual misconduct or bullying. Any and all forms of sexual harassment, sexual misconduct and/or bullying are strictly prohibited and ATCOG will not tolerate any such form(s) of harassment, misconduct or bullying in the workplace.

##### **B. SEXUAL HARASSMENT**

Sexual harassment may include sexual advances, sexual solicitation, requests for sexual favors, or other verbal or physical conduct of a sexual nature where any of the three criteria exist:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or continued employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

##### **C. SEXUAL MISCONDUCT**

Sexual misconduct includes behavior that is short of sexual harassment, but may include offensive language, offensive jokes, offensive bantering or any other behavior of a sexual nature deemed to be offensive and unwelcomed by the employee who is offended. This sexual misconduct is unprofessional and inappropriate and it will not be tolerated at ATCOG.

##### **D. BULLYING**

Any and all forms of bullying are strictly prohibited. Bullying is defined as any form of intimidation or aggressive behavior in which someone intentionally and repeatedly causes another person injury or discomfort. Bullying can take the form of physical contact, words or more subtle actions or attacks.

##### **E. CONDUCT EXPECTATIONS**

It is the expectation of ATCOG that all employees will treat each other and the general public with professionalism, respect and fairness. Employees must conduct themselves with courtesy and restraint at all times on the job and at all times when they may be perceived in any manner as representing ATCOG.

**F. REPORTING PROCEDURES**

1. Any employee who feels he/she is being subjected to sexual harassment, sexual misconduct or bullying by any person in the workplace must report the incident to the appropriate supervisor or manager immediately. Likewise, any employee who witnesses any incident that appears to be a violation of sexual harassment, sexual misconduct or bullying policies is also required to report the incident immediately. If the subject of a complaint is the employee's supervisor or manager, the employee must report the complaint directly to the Human Resources Office, the Deputy Director or the Executive Director.
2. Supervisors or managers who receive reports of sexual harassment, sexual misconduct or bullying must report the complaint(s) to the Human Resources Office, the Deputy Director or to the Executive Director, regardless of the form of the complaint (formal or informal) or whether it precisely follows ATCOG's complaint procedures. Ignoring a report of sexual harassment, sexual misconduct or bullying is unacceptable.
3. Accurate records of all complaints must be kept. Supervisors or managers will work with the Human Resources Office, the Deputy Director and the Executive Director to ensure appropriate action that actually stops the harassment, misconduct or bullying is taken.

**G. PROTECTION FROM RETALIATION**

ATCOG encourages its employees to report any sexual harassment, sexual misconduct or bullying in the workplace. Employees who report any form of sexual harassment, sexual misconduct or bullying are protected against retaliation by state and federal laws. (See III. Equal Opportunity Employment, E. Whistleblowers Protection)

**H. TERMINATION**

Sexual harassment, sexual misconduct and/or bullying will not be tolerated. Disciplinary action will be taken against any employee who is proven through investigation to have engaged in such activity, up to and including termination.

**I. ADMINISTRATION**

The Human Resources Office, the Deputy Director and the Executive Director are responsible for the receipt, documentation, investigation and report of all such complaints of sexual harassment, sexual misconduct or bullying.

(Rev. 4/27/2017)

**SECTION V**  
**CONFLICTS OF INTEREST**

## **V. CONFLICTS OF INTEREST**

### **A. GENERAL POLICY**

Conflict of interest is a situation in which the private interest of an employee or officer of Ark-Tex Council of Governments (ATCOG) conflicts with or raises a reasonable question of conflict with job-related duties or responsibilities of that employee or officer. This is usually financial or economic in nature.

### **B. EMPLOYEES**

An employee shall not engage in any activity that would create a conflict of interest or even the appearance of a conflict, to include:

1. Make a personal investment in any enterprise that would create a substantial conflict between the employee's private interest and ATCOG.
2. Engage in outside business or professional activities or accept employment if the activities create a conflict between the employee's private interests and ATCOG.
3. Use or appear to use information obtained in connection with the employee's duties for ATCOG or that could be expected to impair the employee's independence of judgment in the performance of the employee's duties for ATCOG.

### **C. PUBLIC OFFICIALS**

Local public officials, including a member of the ATCOG governing body or another officer, whether elected, appointed, paid or unpaid, are subject to the Conflict of Interest provisions in Chapter 171 of the Texas Local Government Code. Chapter 171 establishes the standard for determining when a local official has a conflict of interest that would affect his or her ability to discuss, decide or vote on a particular item.

1. Officers of ATCOG will neither have financial interests in the profits of any contract, service, or other work performed for ATCOG nor derive personal profit directly or indirectly from any contract, purchase, sale, or service between the ATCOG and any person or company.
2. An officer shall not:
  - a. Participate in the selection, award, or administration of a contract in which public funds are used where, to their knowledge, they or their immediate families or partners or organizations in which their immediate families or partners have a financial interest or with whom they are negotiating or have any arrangement concerning prospective employment.

- b. Solicit or accept gratuities, favors or anything of monetary value from potential or existing contractors, vendors or providers.
- c. Solicit or accept or agree to accept a financial benefit, other than from ATCOG, that might reasonably tend to influence his or her performance of duties for ATCOG or that he knows or should know is offered with intent to influence the officer's performance;
- d. Accept employment or compensation that might reasonably induce him to disclose confidential information acquired in the performance of official ATCOG duties or that might reasonably tend to impair independence of judgment in performance of official ATCOG duties;
- e. Make any personal investment that might reasonably be expected to create a substantial conflict between the officer's private interest and responsibilities for ATCOG; or
- f. Solicit or accept or agree to accept a financial benefit from another person in exchange for having performed duties as an ATCOG officer in favor of that person.

**D. CONTRACTS**

- 1. With reference to contracts, no officer or employee of ATCOG who exercises any functions or responsibilities in the review or approval of an undertaking or the carrying out of one of the ATCOG's contracts shall participate in any decision relating to that contract if the decision affects his personal pecuniary interest.
- 2. Officers and other members of the ATCOG governing body must file a conflicts disclosure statement relating to any person that ATCOG has contracted with or is considering contracting with if that officer or member of the governing body or any of their family members has certain business relationships with that person.

**E. ADMINISTRATION**

The Executive Director and the Deputy Director are responsible for the administration, interpretation, and application of this Conflicts of Interest Policy. Legal counsel will be consulted as necessary in order to ensure all provisions of this Policy are strictly adhered to.

**SECTION VI  
PERSONAL USE OF  
ATCOG PROPERTY**

## **VI. PERSONAL USE OF ATCOG PROPERTY**

### **A. GENERAL POLICY**

It is the policy of Ark-Tex Council of Governments (ATCOG) to provide each employee with all reasonable and necessary tools, equipment, and property to adequately perform their job. All such tools, equipment and property owned by, leased by or provided to ATCOG may only be used for official purposes.

### **B. USE OF TOOLS, EQUIPMENT AND PROPERTY**

1. Employees who are assigned tools, equipment, or any other ATCOG property are responsible for them and for their proper use and maintenance.
2. ATCOG tools, equipment, materials, supplies, or property may not be used for personal or political use.

### **C. USE OF INFORMATION SYSTEMS RESOURCES**

1. Employees who are assigned information system resources, including personal computers and peripheral devices, are responsible for them and for their proper use and maintenance.
2. ATCOG information system resources may not be used for personal or political use.

### **D. USE OF BUILDINGS AND PREMISES**

Use of ATCOG buildings and premises by employees shall be in compliance with law and with ATCOG policies regarding authorized uses and may not be used for personal or political use.

### **E. USE OF ATCOG CREDIT CARD**

It is the policy of ATCOG to maintain credit cards to be used specifically and exclusively for the purpose of conducting essential ATCOG business. The designated custodian of all ATCOG credit cards is the Finance Manager, as directed by the Executive Director. The Finance staff will monitor the use of credit cards through payment of monthly invoices. Receipts for purchases will be given to the Finance staff to help reconcile the invoices prior to payment. ATCOG credit cards may not be used for personal or political use.

### **F. MISUSE OF ATCOG PROPERTY**

Any misuse or unauthorized use of ATCOG's property, including information system resources, is subject to disciplinary action. Misuse of official property may also result in criminal prosecution.

**SECTION VII**  
**GIFTS AND HONORARIA**



## **VII. GIFTS AND HONORARIA**

### **A. GENERAL POLICY**

Employees and officers of Ark-Tex Council of Governments (ATCOG) are prohibited from accepting any favor or gift from a person who wants, or may want, or may be seen to want, an official favor within the authority of that employee or officer.

### **B. GIFTS TO EMPLOYEES**

It is unethical for any ATCOG employee to accept or give a gift that is meant to sway a decision in favor of the gift-giver. Employees may not:

1. Solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, or any other thing of monetary value, from a person who has, or is seeking to obtain, contractual or other business or financial relations with ATCOG for private interests of the employee. However, this paragraph does not prohibit soliciting or accepting donations or gifts from businesses, regardless of relation to ATCOG, for agency-wide events such as those for employee appreciation and holiday celebrations where items will be distributed among employees randomly.
2. Solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than the employee. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.
3. Any such gift or gratuity, the receipt of which is prohibited by this policy, shall be returned to the donor with a written explanation as to why the return is necessary.

### **C. GIFTS TO OFFICERS**

Officers or other members of the governing body are prohibited from accepting any gift that would sway a decision in favor of the gift-giver.

1. Officers and members of the governing body must disclose a vendor's or provider's offer of gifts worth a value of \$250 or more to them or to any family member using the Conflict of Interest Form approved by the Texas Ethics Commission.
2. Local Government Code Chapter 176 requires that the officer or member of the governing body disclose this offer of a gift even if the offer is refused.
3. An officer or member of the governing body who knowingly violates the disclosure requirements and violates Local Government Code Chapter 176 commits a Class C misdemeanor.

### **D. GIFTS TO STATE EMPLOYEES**

State employees are legally and ethically prohibited from accepting gifts and honoraria, except in very limited situations.

1. ATCOG employees are prohibited from offering or conferring any benefit to a state employee in exchange for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant that would benefit either ATCOG or the employee.
2. "Benefit" is defined as anything reasonably regarded as financial gain or financial advantage, including a benefit to any other person in whose welfare the beneficiary has an interest. Benefit does not include an item with a value of less than \$50 or a small gift or other benefit conferred on account of kinship or an independent relationship.
3. ATCOG employees may be held criminally liable for violation of this Policy.

**E. ADMINISTRATION**

The Executive Director and Deputy Director are responsible for administration and interpretation of this Policy and will investigate any report of wrongdoing.

**AS REVISED -**                      **January 31, 2013**  
   **March 27, 2014**  
   **April 27, 2017**  
   **February 22, 2018**

\_\_\_\_\_  
**L. D. Williamson, President**  
**Ark-Tex Council of Governments**

**ATTEST:**

\_\_\_\_\_  
**M. C. Superville, Jr., Vice-President**  
**Ark-Tex Council of Governments**



**EQUAL EMPLOYMENT OPPORTUNITY PLAN**

Updated September 2022

ATCOG EEO Officer:  
Leslie McBride  
Email: [Lmcbride@ATCOG.org](mailto:Lmcbride@ATCOG.org)  
Office: (903) 255-3513

4808 Elizabeth Street, Texarkana, TX 75503 ♦ 903-832-8636 ♦ [www.ATCOG.org](http://www.ATCOG.org)

## Introductory Information

### Policy Statement

The Ark-Tex Council of Governments (ATCOG) will provide a work environment that is free from discrimination, including harassment, based on race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression, or any other characteristic protected by federal, state or local laws. The prohibition against employment discrimination and harassment may extend to conduct that employees are subjected to from vendors, contractors, providers, customers, or others who enter the workplace. Unlawful discrimination may include, but is not limited to, employment actions related to recruitment, hiring, examination, transfer, appointment, training, promotion, demotion, compensation, termination, layoffs, or the administration of employee benefits. ATCOG shall give a veteran's preference in employment to applicants who are eligible under state statutes, and may give preference to applicants who are spouses or immediate family members of eligible veterans. The degree of such preference shall be determined by the ATCOG Executive Director and/or other supervisor(s) involved in the selection process for the position being filled. ATCOG intends to continue giving preference to veterans and their spouses or immediate family members until such time as at least 40% of the employees of ATCOG are members of this category. **An applicant must meet the minimum standards for the position being filled, or must be capable of meeting such standards within a reasonable time, or that applicant cannot be considered for employment, regardless of any preference that may apply.** ATCOG is committed to complying with all applicable federal, state, and local civil rights laws that pertain to employment. Any person employed by ATCOG who fails to comply with this policy is subject to disciplinary action.

Further, ATCOG affirms:

- ATCOG and contractors commit to equal employment for all persons, regardless of race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, or gender identity or expression;
- A commitment to undertake an affirmative action program, including goals and timetables, in order to overcome the effects of past discrimination on minorities and women;
- Commit to develop a written nondiscrimination program that sets forth the policies, practices, and procedures, with goals and timetables, to which the agency is committed and make the EEO Program available for inspection by any employee or applicant for employment upon request;
- That the responsibility for the implementation of the EEO Program is assigned to the Human Resources Director, who is the designated EEO Officer;
- That all management/supervisory personnel share in this responsibility and will be assigned specific tasks to assure that compliance is achieved;
- That applicants and employees have the right to file complaints alleging discrimination with the appropriate official;
- That performance by managers, supervisors, etc., will be evaluated on the success of the EEO program the same way as their performance on their agency's goals; and
- That successful achievement of EEO goals will provide benefits to ATCOG through the fuller utilization and development of previously underutilized human resources.

ATCOG is also committed to making reasonable accommodation for individuals to practice or observe their religion or for the known physical or mental limitations of qualified individuals with disabilities and qualified veterans with disabilities, unless such accommodation would impose an undue hardship on the conduct of ATCOG business. ATCOG is equally committed to engaging in an interactive process with any person requesting accommodation as needed to determine a reasonable accommodation.

Additionally, colleagues and applicants shall not be subjected to any harassment, threats, coercion, intimidation, retaliation, or discrimination because they have requested reasonable accommodation; filed a complaint; and assisted or participated in an investigation, compliance review, hearing or any other activity related to the administration of any federal, state or local law requiring equal employment opportunity; opposed any act or practice made unlawful by any federal, state or local law requiring equal opportunity; or exercised any other right protected by federal, state or local law requiring equal employment opportunity.

The Human Resources Director shall act as the EEO Officer and be responsible for implementing the EEO Program. The Human Resources Director reports directly to the Executive Director. The EEO Officer's contact information is below:

Leslie McBride, Human Resources Director  
Ark-Tex Council of Governments  
4808 Elizabeth Street, Texarkana, Texas 75503  
Telephone: (903) 255-3513  
Fax: (903) 793-0420  
Email address: [lmcbride@atcog.org](mailto:lmcbride@atcog.org)

The adoption of this EEO plan by the ATCOG Executive Committee is a reaffirmation of adherence to and promotion by the Committee of the policy of nondiscrimination in all action affecting ATCOG employees. The guidelines and objectives contained in this plan are designed to assist ATCOG and all of its employees in adhering to that policy.

\_\_\_\_\_  
Chris Brown, Executive Director  
Ark-Tex Council of Governments

\_\_\_\_\_  
Date

### **Internal Dissemination**

1. The ATCOG Human Resources Director and senior management officials, at least semi-annually in an All-Staff meeting for employees, as well as at each orientation program for new employees, will include a discussion of the EEOP Policy and will inform employees that a copy is available to them upon request.
2. ATCOG will post a PDF file of the EEOP Policy, that any user may access and download, on its intranet system for all employees.

3. ATCOG will keep two bound copies of the EEOP Policy on display in the brochure rack in the reception area of its main office at the ATCOG office building, and will provide a copy to each department head.
4. ATCOG will include a written notice in the standard Employee Handbook, explaining the EEPO.
5. At each ATCOG job site and office, ATCOG will post a written notice on the bulletin boards in employee break areas, providing information on the EEOP.

### **External Dissemination**

1. ATCOG will post on its public website a PDF file of the EEOP that any user may access and download.
2. All advertisements for open positions for ATCOG will include a statement that the agency is an 'Equal Opportunity Employer.' This includes advertisements in all public media sources, such as radio and TV, newspapers, magazines, and association journals.
3. All ATCOG employment applications shall include a statement that the agency is an 'Equal Opportunity Employer.'
4. ATCOG will provide written notice to all job applicants, vendors, providers and contractors that they may obtain a copy of the EEOP by downloading it from the ATCOG website, or upon request.
5. ATCOG will provide its EEOP to all regular recruitment sources, including Texas Workforce Commission, as well as any minority groups, women's groups, civil rights groups, disabled advocates, community groups, unions, or other employment organizations.
6. ATCOG will meet with affinity groups to seek input on the implementation of the EEO Plan.

## **Equal Employment Opportunity Program**

### **Purpose**

The purposes of the Equal Employment Opportunity / Affirmative Action Program are to:

- Establish company policy and commitment to equal employment opportunities;
- Identify jobs and departments where minorities and females are underrepresented;
- Set specific, measurable, attainable hiring and promotion goals (including target dates);
- Monitor job descriptions and hiring criteria to ensure they communicate actual job needs only;
- Locate minorities and women who qualify or can become qualified to fill goals.

### **Affirmative Action Plan**

All ATCOG staff, potential employees, and applicants are entitled to equal employment opportunities and will not be discriminated against because of race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, or gender identity or expression, providing they are otherwise qualified and meet requirements established by ATCOG for the job they seek.

ATCOG will do the following, as a minimum effort, to utilize minorities and women in all levels of the workplace and in all parts of our workforce:

- Post job openings in locations frequently utilized by protected classes, such as the Work in Texas website, Unemployment Office, etc.
- Announce job openings in local media, to include minority newspapers.
- Encourage minorities and women to apply for open positions.
- Promote minorities and women who are qualified or can become qualified into open positions, if the promotion supports needed diversity in the workplace.

### **EEO Officer: General Responsibilities**

The Human Resources Director is the designated Equal Employment Opportunity Officer for ATCOG. This position will be responsible for implementing and managing the EEO program. Individuals who would like to discuss this policy, and/or file a complaint alleging discrimination, should contact the Human Resources Director at 903/255-3513 or [lmcbride@atcog.org](mailto:lmcbride@atcog.org).

The EEO Officer will perform the following duties:

- Develop and recommend EEO policy, a written EEO program, and internal and external communication procedures;
- Assist management in collecting and analyzing employment data, identifying problem areas, setting goals and timetables, and developing programs to achieve goals;
- Design, implement, and monitor internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed;
- Report semiannually to the Executive Director on the progress of each unit in relation to the agency's goals and contractor and vendor compliance;
- Serve as liaison between the agency, Federal, State, county, and local governments, regulatory agencies, minority, handicapped and women's organizations, and other community groups;
- Assure that current legal information affecting affirmative action is disseminated to responsible officials;
- Assist in recruiting minority, handicapped and women applicants and establishing outreach sources for use by hiring officials;
- Audit postings of the EEO policy statement to ensure compliance information is posted and up to date;
- Concur in all hires and promotions;
- Process employment discrimination complaints; and
- Periodically review employment practices policies concerning complaint policies, reasonable accommodation, performance evaluations and grievance procedures.

The responsibilities assigned to ATCOG Management are to:

- Assist in identifying problem areas and establishing agency and unit goals and objectives;
- Be actively involved with local minority organizations, women's and handicapped groups, community action organizations and community service programs designed to promote EEO;
- Actively participate in periodic audits of all aspects of employment, to identify and remove barriers obstructing the achievement of goals and objectives;
- Conduct regular discussions with other managers, supervisors, employees, and affinity groups to assure the agency's policies and procedures are being followed;
- Review the qualifications of all employees to assure that minorities, handicapped persons, and women are given full opportunities for transfers, promotions, training, salary increases, and other forms of compensation;
- Participate in the review and investigation of complaints alleging discrimination;
- In conjunction with the EEO Officer, maintain and update the personnel database for generating reports required for the nondiscrimination program;
- Encourage employee participation to support the advancement of the EEO Program by offering professional development, career growth opportunities, positing promotional opportunities, shadowing, and mentoring;
- Conduct and support career counseling for all employees; and
- Participate in periodic audits to ensure that each agency unit is in compliance (e.g., EEO posters are properly displayed on all employee bulletin boards).

## **Review and Revision of Employment Practices**

### **Recruitment and Testing**

- ATCOG will follow procedures for recruiting and selecting employees established by the Executive Director. Recruitment and selection will be non-discriminatory and shall be based substantially on bona fide occupational qualifications. These procedures include: advertising, scoring applications, conducting interviews and offer of employment.
- All job openings will be posted on the ATCOG website, various job boards associated with ATCOG's web-based application system, the website associated with Workforce Solutions East Texas (WorkinTexas.org), placed in the local newspaper when needed, and an internal job posting link will be emailed to all ATCOG staff.
- All job postings will contain the following statement. "An Equal opportunity / Affirmative Action Employer."
- When testing is performed for a position, it is done to ensure that the applicant has the minimum level of knowledge, skill or ability required for the position. Identical testing materials and conditions will be provided to every applicant interviewing for the specific job.

### **Position Descriptions**

- All position descriptions will be developed using a job information questionnaire that includes the job duties, educational requirements, minimum number of years of experience required, skills and abilities needed to perform the work, and all physical requirements of the position.
- These detailed requirements will be included in the posting on the ATCOG website. Each additional posting method used will direct applicants to the ATCOG website to view the full job description for each position.



### **Promotion and Transfer procedures**

- The leadership team will focus on one's ability to perform assigned tasks and duties, rather than longevity.
- Employees' applications or resumes and employees' files will be reviewed prior to making a selection.

### **Seniority Practices**

- The Executive Director has established procedures for recruiting and selecting ATCOG employees. Recruitment and selection will be non-discriminatory and shall be based substantially on bona fide occupational qualifications.

### **Interview procedures**

- At least two people will perform driver interviews.
- One Interviewer will be of a different gender, race, or both, when possible.

### **Promotion**

- No applicant will be denied a promotion on the basis of gender or any other prohibited criteria.
- Applicants will be given a trial on the job to prove their capability, if they are otherwise eligible for the promotion.

### **Wage Procedures**

- All wages for new employees, transfers and promotions must meet the budgetary requirements of the division or specific grant.
- Wages must have the Executive Director's approval prior to the Human Resources division submitting changes to Payroll department.

### **Salary Level and other Benefits**

- Salaries for a position are determined based on the responsibilities contained in the job requirements and the scope of services required of the position.
- The benefits available to an employee are based on their employment status with ATCOG (e.g., full-time, part-time)
- The benefits offered to employees are always included in the ATCOG Personnel Policies which are set and approved by the ATCOG Executive Committee.

### **Disciplinary Procedures**

- ATCOG adheres to a discipline policy, which is outlined in the ATCOG Policies and Procedures Manual.
- ATCOG may use any of the following types of discipline at any time:
  - Counseling
  - Suspension without pay for a period of up to 3 days
  - Termination

### **Termination and Layoff**

- ATCOG employees are employed at will and, within the limits of state and federal law applying to public employment, may at any time during their employment, be terminated with or without notice, for any lawful reason or for no reason.
- An employee may be laid off when his or her position is abolished, or when there is

either a lack of funds or a lack of appropriate work. When reductions in force are necessary, decisions on individual separations will be made after considering (1) the relative necessity of each position to the organization, (2) the performance record of each employee, (3) transferability of the employee's skills to remaining positions with the ATCOG, and (4) the employees length of service with ATCOG.

### **Training**

- Training programs shall be designed to upgrade the skills of employees so that they can improve performance in their present position.
- On-the-job training will be designed so that employees have an opportunity to acquire skills needed to qualify for a better position with ATCOG.
- Employees with managerial ability will be encouraged to acquire skills on-the-job or through more formalized training prior to their advancement into a management position.
- All employees, including managers, will receive periodic EEO training. New supervisors or managers will receive training within 90 days of their appointment.
- The Human Resources Director will advise employees and applicants of training programs and professional development opportunities and the entrance requirements.

## **EEO Complaint Process**

Individuals who would like to discuss and/or file a complaint alleging discrimination should contact the EEO Officer or Executive Director. **The EEO Officer should be contacted immediately, if you believe you have been discriminated against.** The following procedures will be used to process discrimination complaints.

### **Counseling**

The first step in resolving discrimination complaints is counseling. The purpose of counseling is to determine whether there is a problem and, if there is, to correct it as soon as possible. Emphasis at this point is on early resolution.

The EEO Officer is responsible for clarifying the problem and attempting to resolve it to everyone's satisfaction. The EEO Officer will:

- Clarify the issues;
- Identify whether the problems are covered by the EEO Office's Discrimination Complaint Process;
- Outline alternative procedures;
- Identify options;
- Attempt to work out a resolution agreeable to all concerned, if possible;
- Provide information on external enforcement agencies (*i.e.*, the EEOC, the Texas Commission on Human Rights, FTA and the DOT).

The Complainant must sign the EEO Discrimination Complaint Form issued by the EEO Officer before an informal process can begin. The EEO Officer has fifteen (15) working days to counsel and make efforts to resolve the issue informally. If, at the end of this time period there is no resolution in sight, the Complainant will be informed of their right to proceed with a formal complaint. If they wish to continue to pursue their allegations and have the EEO Officer begin a formal investigation, the Complainant may file a formal complaint within 5 working days.

### **Filing a Formal Complaint**

The Complainant must sign the Internal Discrimination Complaint Form issued by the EEO Officer before a formal investigation can begin. The Complainant should be prepared to support any allegations claimed to be discriminatory by furnishing all pieces of pertinent evidence: letters, memos, dates, times, and/or witnesses to the claim alleged in the complaint. A mere allegation of discrimination may be insufficient to make a determination. The investigative part of the process is designed to establish the facts, once clear basic information is provided.

### **Rejecting a Complaint**

If the EEO Officer decides to reject a complaint, the Complainant will be notified in writing within ten (10) working days after a formal complaint is filed.

The EEO Officer may reject any claim, if the officer determines that the allegations are not within the realm of the discrimination guidelines. If the EEO Officer makes this determination, the notice of rejection will be final and cannot be appealed unless new evidence can be presented which falls within the discrimination guidelines of race, color, creed, religion, national origin, genetic information, disability, sex or age.

### **Investigation**

In order to maintain the integrity of an EEO investigation, if a formal complaint is accepted, the EEO Officer will designate someone outside of the Human Resources Division, up to and including an independent contractor, to perform a full investigation of the complaint received. The investigation will be completed within twenty-five (25) working days of receiving the formal complaint. An investigation may be extended beyond the twenty-five (25) working days if it is deemed necessary to conduct a more thorough, in-depth investigation. The designated individual will conduct interviews, take affidavits from Complainant(s) and other apparent witnesses, and will gather any other pertinent information from all available sources.

Proper investigation of any allegation of discrimination requires that any employee with relevant knowledge assist in the investigation. Such participation may be in the form of verbal communications, written statements, or providing other records that may be relevant. Any employee deemed to have relevant knowledge of the allegations shall participate to the best of his or her ability during these investigations.

### **Informal Resolution**

During and at the conclusion of the investigation, the EEO Officer, when feasible and consistent with ATCOG policies and procedures, will continue to attempt to resolve the complaint on an informal basis. The Complainant(s) must sign and date any resolution offered that has been accepted. Such acceptance constitutes settlement of the complaint; however, any resolution offered and accepted does not constitute an admission of any wrongdoing by ATCOG or any of its agents.

One of the major objectives of the complaint process is fairness and early resolution of complaints. Consequently, ATCOG regards the efforts made by all parties in early resolution attempts as extremely important and crucial to the integrity and intent of this process.

### **Complaint Disposition**

At the conclusion of the investigation, the designee will issue findings of fact and conclusions and will make recommendations for corrective action, if required, or other resolutions. The Complainant will be contacted to receive and sign-off on their acknowledgment of receipt of the designee's disposition of their complaint. Thereafter, the accused person(s) will be notified of the designee's recommendations.

### **Appeal of Disposition**

If the Complainant is not in agreement with the investigation findings and determination contained in the disposition, he or she may appeal the decision in writing within ten (10) working days to the Executive Director.

The Executive Director will then investigate the alleged violation and review relevant facts, and upon completion of this investigation, the Executive Director will issue a decision within ten (10) working days, in consultation with designated investigator and the EEO Officer. If the Complainant is not in agreement with the Executive Director's finding and determination, he or she may appeal the Executive Director's decision in writing within seven (7) working days to the ATCOG Executive Committee.

The Complainant will be advised that if the final decision is unacceptable, an appeal may be made to the EEOC, Texas Commission on Human Rights, or the FTA.

### **Special Provision**

If any allegation of discrimination arises with the EEO Officer and/or against the EEO Officer, such allegations will be referred to the Executive Director to process and investigate accordingly. Likewise, if any allegation of discrimination arises with the Executive Director and/or against the Executive Director, the EEO Officer will involve the ATCOG Board President. Any attempts at resolution will be according to the above stated procedures.

For more information regarding ATCOG Equal Opportunity policy, please contact:

Leslie McBride, Human Resources Director  
Ark-Tex Council of Governments  
4808 Elizabeth Street, Texarkana, Texas 75503  
Telephone: (903) 255-3513  
Fax: (903) 793-0420  
Email address: [lmcbride@atcog.org](mailto:lmcbride@atcog.org)

### **Monitoring and Reporting System**

1. ATCOG has a monitoring system that monitors the following EEO components:
  - a. Dissemination-ATCOG adheres to all statements made in the dissemination plan. The EEO Officer ensures all actions are completed.
  - b. Statistical Employment Practices-The EEO Officer maintains spreadsheets to ensure employment practices statistics is kept up to date.
2. ATCOG is in the process of obtaining contractors' EEO Programs. ATCOG is also ensuring that all facilities have proper posting of the EEO Policy and Statement.

ATCOG currently only has one contractor for the Transportation Department, which is Allied Compliance for drug and alcohol testing. ATCOG will contact Allied Compliance to ensure they have a current EEO Program.

TRANSPORTATION CONTRACTORS	
NAME	SERVICES
Allied Compliance	Drug and Alcohol Testing

3. ATCOG does not have a union so therefore ATCOG does not have any union contracts to review.
4. ATCOG currently doesn't have any EEO complaints. However, in the future should we receive a complain the EEO Officer will maintain a spreadsheet with the following data:
  - a. Monitoring of Trends- The spreadsheet will break down what area the complaint is pertaining to such as race, gender, origin, etc.
  - b. Timeliness of Investigations-The spreadsheet will contain dates such as the day the complaint is received, any progress made and resolution.
  - c. Resolutions-The spreadsheet will contain what was done to resolve the complaint.
  - d. Reporting to Management-The spreadsheet will contain who in management, when, how they were notified of the complaint.
5. Meetings will be held between the Executive Director and EEO Officer to discuss the progress of the EEO Program and the results of the monitoring. The EEO Officer will provide the data collected concerning hiring, promotions, status of complaints, etc. to the Executive Director.
6. The EEO Office will keep a log of all EEO related meetings held with the Executive Director. This log will include topics covered and any follow up actions that are needed.
7. The EEO Officer will ensure hiring officials review current EEO goals and statistics on employment practices and policies. The EEO Officer will verify that all job descriptions contain legitimate position requirements and all testing is validated.
8. The EEO Officer will maintain list of all contractors who are being monitored and the services they provide.
9. The EEO Officer will obtain proof of contractors' EEO Programs and retain copies of any documentation pertaining to these programs.
10. The EEO Officer will maintain an organizational chart of the agency showing reporting relationships of all employees.

By signing below as the Executive Director of the agency, I certify and agree to adhere to the ATCOG EEO Policy and Affirmative Action Plan in its entirety.

Chris Brown, Executive Director  
Ark-Tex Council of Governments

Date

### ATCOG Employment Practices

	SEPARATIONS														Total
	Race/Ethnicity														
	Hispanic or Latino		Non-Hispanic or Latino							Female					
	Male	Female	Male			Female				Female					
Male	Female	White	Black or African American	Native Hawaiian or other Pacific Islander	Asian	American Indian or Alaska Native	2 or More Races	White	Black or African American	Native Hawaiian or other Pacific Islander	Asian	American Indian or Alaska Native	2 or More Races		
Resignation	2		5	2					1	4					14
Retirement				1											1
Retirement in Lieu of Termination															0
Termination/Discipline			1							1					2
Disability Retirement															0
Reduction in Force (RIF)															0
Death															0
<b>Total</b>	<b>2</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>17</b>

	DISCIPLINARY ACTIONS														Total
	Race/Ethnicity														
	Hispanic or Latino		Non-Hispanic or Latino							Female					
	Male	Female	Male			Female				Female					
Male	Female	White	Black or African American	Native Hawaiian or other Pacific Islander	Asian	American Indian or Alaska Native	2 or More Races	White	Black or African American	Native Hawaiian or other Pacific Islander	Asian	American Indian or Alaska Native	2 or More Races		
Termination			1												1
Written Warning	1		2	2					1						6
Verbal Warning															0
<b>Total</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>

Job Categories	PROMOTIONS																					TOTAL APPLICANTS
	Hispanic			White			Black or African American			Native Hawaiian or other Pacific Islander			Asian			American Indian or Alaska Native			2 or More Races			
	Applied	Promoted	% Promoted	Applied	Promoted	% Promoted	Applied	Promoted	% Promoted	Applied	Promoted	% Promoted	Applied	Promoted	% Promoted	Applied	Promoted	% Promoted	Applied	Promoted	% Promoted	
Executive/Senior Level Officials and Managers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
First/Mid Level Officials and Managers	0	0	0%	2	2	100%	0	0	100%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	2
Professionals	0	0	0%	0	0	100%	0	0	100%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Technicians	0	0	0%	1	1	100%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	1
Sales Workers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Administrative Support Workers	0	0	0%	0	0	100%	0	0	100%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Craft Workers	0	0	0%	0	0	100%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Operatives	0	0	0%	0	0	100%	0	0	100%	0	0	0%	0	0	0%	1	1	100%	0	0	0%	1
Laborers and Helpers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Service Workers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>3</b>	<b>3</b>	<b>100%</b>	<b>0</b>	<b>0</b>	<b>100%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>1</b>	<b>1</b>	<b>100%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>4</b>

Job Categories	APPLICANTS-MALE																					TOTAL APPLICANTS
	Hispanic			White			Black or African American			Native Hawaiian or other			Asian			American Indian or Alaska			2 or More Races			
	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	
Executive/Senior Level Officials and Managers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
First/Mid Level Officials and Managers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Professionals	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Technicians	0	0	0%	0	0	#DIV/0!	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Sales Workers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Administrative Support Workers	2	0	0%	4	0	0%	5	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	11
Craft Workers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Operatives	7	0	50%	47	3	6%	25	1	4%	0	0	0%	0	0	0%	1	0	0%	0	0	0%	80
Laborers and Helpers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Service Workers	0	0	100%	1	0	0%	1	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	2
<b>Total</b>	<b>9</b>	<b>0</b>	<b>150%</b>	<b>52</b>	<b>3</b>	<b>6%</b>	<b>31</b>	<b>1</b>	<b>3%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>1</b>	<b>0</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>93</b>

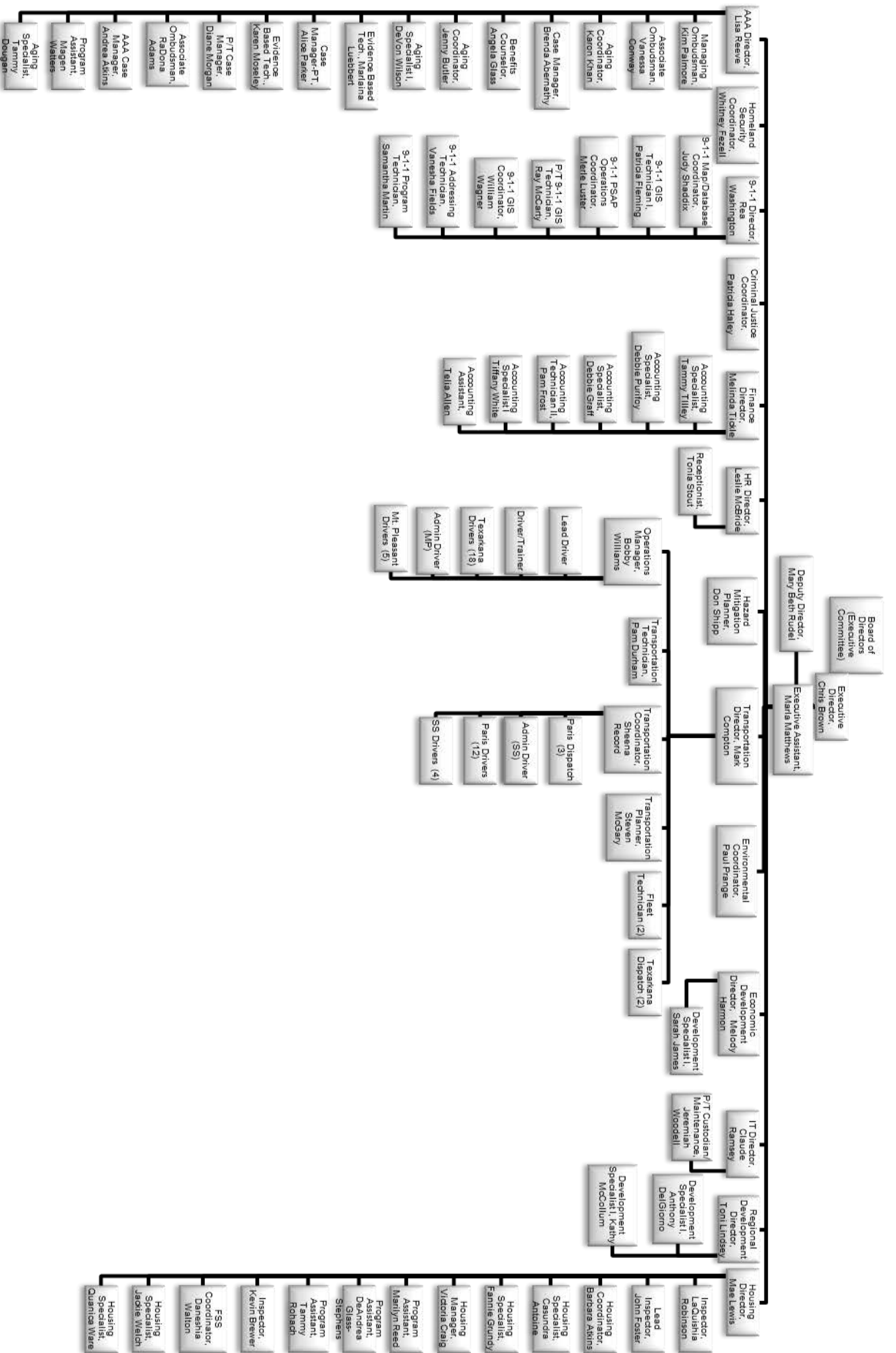
Job Categories	APPLICANTS-FEMALE																					TOTAL APPLICANTS
	Hispanic			White			Black or African American			Native Hawaiian or other			Asian			American Indian or Alaska			2 or More Races			
	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	Applied	Hired	% Hired	
Executive/Senior Level Officials and Managers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
First/Mid Level Officials and Managers	0	0	0%	0	0	0%	1	1	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	1
Professionals	0	0	0%	1	1	100%	0	0	#DIV/0!	0	0	0%	0	0	0%	0	0	0%	0	0	0%	1
Technicians	0	0	0%	0	0	100%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Sales Workers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Administrative Support Workers	2	0	100%	31	2	6%	47	3	6%	0	0	0%	0	0	0%	0	0	0%	2	0	0%	82
Craft Workers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Operatives	3	0	0%	27	0	0%	36	2	6%	0	0	0%	0	0	0%	1	0	100%	2	0	0%	69
Laborers and Helpers	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	0
Service Workers	0	0	0%	1	0	0%	4	0	0%	0	0	0%	0	0	0%	0	0	0%	0	0	0%	5
<b>Total</b>	<b>5</b>	<b>0</b>	<b>0%</b>	<b>60</b>	<b>3</b>	<b>5%</b>	<b>88</b>	<b>6</b>	<b>7%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>1</b>	<b>0</b>	<b>100%</b>	<b>4</b>	<b>0</b>	<b>0%</b>	<b>158</b>

<b>Totals</b>	
Separations	17
Disciplinary Actions	7
Applicants	251
Promotions	4
Hires	13

Job Categories	EMPLOYEE TRAINING-MALE														TOTAL TRAINED
	Hispanic		White		Black or African American		Native Hawaiian or other Pacific		Asian		American Indian or Alaska Native		2 or More Races		
	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	
Officials and Managers	0	0	2	2	1	1	0	0	0	0	1	1	0	0	4
Professionals	0	0	0	0	1	1	0	0	0	0	0	0	0	0	1
Technicians	0	0	3	3	0	0	0	0	0	0	0	0	0	0	3
Sales Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support Workers	0	0	1	1	0	0	0	0	0	0	0	0	0	0	1
Craft Workers	1	1	1	1	0	0	0	0	0	0	1	1	0	0	3
Operatives	0	0	19	19	9	9	0	0	0	0	0	0	0	0	28
Laborers and Helpers	0	0	1	1	0	0	0	0	0	0	0	0	0	0	1
Service Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	1	1	27	27	11	11	0	0	0	0	2	2	0	0	41

Job Categories	EMPLOYEE TRAINING-FEMALE														TOTAL TRAINED
	Hispanic		White		Black or African American		Native Hawaiian or other Pacific		Asian		American Indian or Alaska Native		2 or More Races		
	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	Total Employees	# Trained	
Officials and Managers	0	0	6	6	3	3	0	0	0	0	0	0	0	0	9
Professionals	0	0	12	12	12	12	0	0	0	0	0	0	0	0	24
Technicians	0	0	4	4	2	2	0	0	0	0	0	0	0	0	6
Sales Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support Workers	0	0	10	10	5	5	0	0	0	0	0	0	0	0	15
Craft Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operatives	0	0	6	6	5	5	0	0	0	0	0	0	0	0	11
Laborers and Helpers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Service Workers	0	0	4	4	1	1	0	0	0	0	0	0	0	0	5
Total	0	0	42	42	28	28	0	0	0	0	0	0	0	0	70





# **THE ARK TEX COUNCIL OF GOVERNMENT FBP CAFETERIA PLAN**

## **SUMMARY PLAN DESCRIPTION**

## Introduction

ARK TEX COUNCIL OF GOVERNMENT FBP sponsors the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan (the "Cafeteria Plan") that allows eligible Employees to choose from a menu of different benefits paid for with pre-tax dollars. (Such plans are also commonly known as "salary reduction plans" or "Section 125 plans").

This Summary Plan Description ("SPD") describes the basic features of the Cafeteria Plan, how it generally operates and how Employees can gain the maximum advantage from it.

PLEASE NOTE: This SPD is for general informational purposes only. It does not describe every detail of the Cafeteria Plan. If there is a conflict between the Cafeteria Plan documents and this SPD, then the Cafeteria Plan documents will control.

## Cafeteria Plan

### **CAF Q-1. How do I pay for ARK TEX COUNCIL OF GOVERNMENT FBP benefits on a pre-tax basis?**

If you become eligible for the plan during the plan year, your Employer will automatically enroll you in the plan unless you indicate to your Employer in writing (or electronically) that you do not wish to be so enrolled.

For subsequent plan years, you may elect to pay for benefits on a pre-tax basis by entering an election with the Employer during the Open Enrollment Period. At the Employer's option, this may be done with a traditional "paper" salary reduction agreement or it may be done in electronic form. Whatever medium is used, it shall be referred to as a Salary Reduction Agreement for purposes of this SPD.

When you pay for benefits on a pre-tax basis, you reduce your salary to pay for your share of the cost of coverage with pretax funds instead of receiving a corresponding amount of your regular pay that would otherwise be subject to taxes.");

Example CAF Q-1(a): Sally is paid an annual salary of \$30,000. Sally elects to pay for \$2,000 worth of benefits for the Plan Year on a pre-tax basis. By doing so, she is electing to reduce her salary, and therefore also her taxable income, by \$2,000 for the year to \$28,000.

From then on, you must pay contributions for such coverage by having that portion deducted from each paycheck on a pre-tax basis (generally an equal portion from each paycheck, or an amount otherwise agreed to or as deemed appropriate by the Plan Administrator).

Example CAF Q-1(b): Using the same facts from Example Q-1(a), suppose Sally is paid 26 times a year (bi-weekly). Because she has elected \$2,000 in benefits, she will have \$76.92 deducted from each paycheck for the year (\$2,000 divided by 26 paychecks equals \$76.92).

### **CAF Q-2. What benefits may be elected under the Cafeteria Plan?**

The Cafeteria Plan includes the following benefit plans:

The Premium Payment Component permits an Employee to pay for his or her share of contributions for insurance plans with pretax dollars. Under the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan, these benefits may include:

- \* Accident
- \* Bridge
- \* Dental
- \* Disability
- \* Hospital Indemnity
- \* Specific Disease or Condition
- \* Medical
- \* Vision

If you select any or all of these benefits, you will likely pay all or some of the contributions; the Employer may contribute some or no portion of them. The applicable amounts will be described in documents furnished separately to you as necessary from time to time.

The Employer may at its own discretion offer cash in lieu of benefits for participants who do not choose benefits. If the Employer does choose this option, participants will be informed through other communications.

### **CAF Q-3. Who can participate in the Cafeteria Plan?**

Employees who are working 30 hours per week or more are eligible to participate in the Cafeteria Plan following 90 days of employment with the Employer, provided that the election procedures in CAF Q-5 are followed.

An "Employee" is any individual who the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll.

Please note: "Employee" does not include the following:

(a) any leased employee (including but not limited to those individuals defined as leased employees in Code § 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer;

(b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer;

(c) \*\*\*RESERVED\*\*\*;

(d) any individual considered "self-employed" by the IRS because of an ownership interest in ARK TEX COUNCIL OF GOVERNMENT FBP;

#### **CAF Q-4. What tax savings are possible under the Cafeteria Plan?**

You may save both federal income tax and FICA (Social Security/Medicare) taxes by participating in the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan.

Example CAF Q4(a): Suppose Sally pays 15% in federal income taxes for the year. With an annual salary of \$30,000, that could mean as much as \$4,500 in federal income taxes, plus \$2,295 in FICA taxes (calculated at 7.65% of income). But by electing \$2,000 of cafeteria plan benefits for the year, Sally lowers her income by \$2,000, meaning she is only taxed on \$28,000. This comes out to \$4,200 in income tax plus \$2,142 in FICA tax. That's a \$453 tax savings for the year.

**(Caution:** This example is intended to illustrate the general effect of "pre-taxing" benefits through a cafeteria plan. It does not take into account the effects of filing status, tax exemptions, tax deductions and other factors affecting tax liability.

Furthermore, the amount of the contributions used in this example is not meant to reflect your actual contributions. It is also not intended to reflect specifically upon your particular tax situation. You are encouraged to consult with your accountant or other professional tax advisor with regard to your particular tax situation, especially with regard to state and local taxes.)

#### **CAF Q-5. When does participation begin and end in the Cafeteria Plan?**

After you satisfy the eligibility requirements, you can become a Participant on the first day of the next calendar month by electing benefits in a manner such as described in CAF Q-1. An eligible Employee who does not elect benefits will not be able to elect any benefits under the Cafeteria Plan until the next Open Enrollment Period (unless a "Change in Election Event" occurs, as explained in CAF Q-7).

An Employee continues to participate in the Cafeteria Plan until (a) termination of the Cafeteria Plan; or (b) the date on which the Participant ceases to be an eligible Employee (because of retirement, termination of employment, layoff, reduction of hours, or any other reason). However, for purposes of pre-taxing COBRA coverage for Health Insurance Benefits, certain Employees may be able to continue eligibility in the Cafeteria Plan for certain periods. See CAF Q-8 and CAF Q-12 for more information about this as information about how termination of participation affects your Benefits.

#### **CAF Q-6. What is meant by "Open Enrollment Period" and "Plan Year"?**

The "Open Enrollment Period" is the period during which you have an opportunity to participate under the Cafeteria Plan by electing to do so. (See Q-5.) You will be notified of the timing and duration of the Open Enrollment Period, which for any new Plan Year generally will occur during the quarter preceding the new Plan Year.

The Plan Year for the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan is the period beginning on 10/1/2021 and ending on 9/30/2022.

#### **CAF Q-7. Can I change my elections under the Cafeteria Plan during the Plan Year?**

Except in the case of HSA elections, you generally cannot change your election to participate in the Cafeteria Plan or vary the salary reduction amounts that you have selected during the Plan Year (this is known as the "irrevocability rule"). Of course, you can change your elections for benefits and salary reductions during the Open Enrollment Period, but those election changes will apply only for the following Plan Year.

However, there are several important exceptions to the irrevocability rule, many of which have to do with events in your personal or professional life that may occur during the Plan Year.

Here are the exceptions to the irrevocability rule:

## 1. Leaves of Absence

You may change an election under the Cafeteria Plan upon FMLA and non-FMLA leave only as described in CAF Q-14.

## 2. Change in Status.

If one or more of the following Changes in Status occur, you may revoke your old election and make a new election, provided that both the revocation and new election are on account of and correspond with the Change in Status (as described in item 3 below). Those occurrences that qualify as a Change in Status include the events described below, as well as any other events that the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations:

- a change in your legal marital status (such as marriage, death of a Spouse, divorce, legal separation, or annulment);
- a change in the number of your Dependents (such as the birth of a child, adoption or placement for adoption of a Dependent, or death of a Dependent);
- any of the following events that change the employment status of you, your Spouse, or your Dependent and that affect benefits eligibility under a cafeteria plan (including this Cafeteria Plan) or other employee benefit plan of you, your Spouse, or your Dependents. Such events include any of the following changes in employment status: termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; a change in worksite; switching from salaried to hourly-paid, union to non-union, or full-time to part-time (or vice versa); incurring a reduction or increase in hours of employment; or any other similar change that makes the individual become (or cease to be) eligible for a particular employee benefit;
- an event that causes your Dependent to satisfy or cease to satisfy an eligibility requirement for a particular benefit (such as an employee's child covered as a dependent by an accident or health plan who turns 27 during the taxable year); or
- a change in your, your Spouse's, or your Dependent's place of residence.

## 3. Change in Status - Other Requirements.

If you wish to change your election based on a Change in Status, you must establish that the revocation is on account of and corresponds with the Change in Status. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, shall determine whether a requested change is on account of and corresponds with a Change in Status. As a general rule, a desired election change will be found to be consistent with a Change in Status event if the event affects coverage eligibility.

In addition, you must satisfy the following specific requirements in order to alter your election based on that Change in Status:

- *Loss of Spouse or Dependent Eligibility; Special COBRA Rules.* For Health Insurance Benefits, a special rule governs which type of election changes are consistent with the Change in Status. For a Change in Status involving your divorce, annulment, or legal separation from your Spouse, the death of your Spouse or your Dependent, or your Dependent's ceasing to satisfy the eligibility requirements for coverage, you may elect only to cancel the accident or health benefits for the affected Spouse or Dependent. A change in election for any individual other than your Spouse involved in the divorce, annulment, or legal separation, your deceased Spouse or Dependent, or your Dependent that ceased to satisfy the eligibility requirements would fail to correspond with that Change in Status.

However, if you, your Spouse, or your Dependent elects COBRA continuation coverage under the Employer's plan because you ceased to be eligible because of a reduction of hours or because your Dependent ceases to satisfy eligibility requirements for coverage, and if you remain a Participant under the terms of this Cafeteria Plan, then you may in certain circumstances be able to increase your contributions to pay for such coverage. See CAF Q-12.

- *Gain of Coverage Eligibility Under Another Employer's Plan.* For a Change in Status in which you, your Spouse, or your Dependent gains eligibility for coverage under another Employer's cafeteria plan (or qualified benefit plan) as a result of a change in your marital status or a change in your, your Spouse's, or your Dependent's employment status, your election to cease or decrease coverage for that individual under the Cafeteria Plan would correspond with that Change in Status only if coverage for that individual becomes effective or is increased under the other Employer's plan.

## 4. Special Enrollment Rights.

In certain circumstances, enrollment for Health Insurance Benefits may occur outside the

Open Enrollment Period, as explained in materials provided to you separately describing the Health Insurance Benefits. When a special enrollment right explained in those separate documents applies to your Medical Insurance Benefits, you may change your election under the Cafeteria Plan to correspond with the special enrollment right. Special enrollments may also be available as a result of a loss of eligibility for Medicaid or for coverage under a state children's health insurance program (SCHIP) or as a result of eligibility for a state premium assistance subsidy under the plan from Medicaid or SCHIP.

**5. Certain Judgments, Decrees, and Orders.** If a judgment, decree, or order from a divorce, separation, annulment, or custody change requires your child (including a foster child who is your Dependent) to be covered under the Health Insurance Benefits, you may change your election to provide coverage for the child. If the order requires that another individual (such as your former Spouse) cover the child, then you may change your election to revoke coverage for the child, provided that such coverage is, in fact, provided for the child.

**6. Medicare or Medicaid.** If you, your Spouse, or your Dependent becomes entitled to (i.e., becomes enrolled in) Medicare or Medicaid, then you may reduce or cancel that person's accident or health coverage under the Medical Insurance Plan. Similarly, if you, your Spouse, or your Dependent who has been entitled to Medicare or Medicaid loses eligibility for such coverage, then you may elect to commence or increase that person's accident or health coverage.

**7. Change in Cost.** If the cost charged to you for your Health Insurance Benefits significantly increases during the Plan Year, then you may choose to do any of the following: (a) make a corresponding increase in your contributions; (b) revoke your election and receive coverage under another benefit package option (if any) that provides similar coverage, or elect similar coverage under the plan of your Spouse's employer; or (c) drop your coverage, but only if no other benefit package option provides similar coverage. Coverage under another employer plan, such as the plan of a Spouse's or Dependent's employer, may be treated as similar coverage if it otherwise meets the requirements of similar coverage.) If the cost of Health Insurance significantly decreases during the Plan Year, then the Plan Administrator may permit the following election changes: (a) if you are enrolled in the benefit package option that has decreased in cost, you may make a corresponding decrease in your contributions; (b) if you are enrolled in another benefit package option (such as the HMO option under the Medical Insurance Plan), you may change your election on a prospective basis to elect the benefit package option that has decreased in cost (such as the PPO option under the Medical Insurance Plan); or (c) if you are otherwise eligible, you may elect the benefit package option that has decreased in cost on a prospective basis, subject to the terms and limitations of the benefit package option.

For insignificant increases or decreases in the cost of benefits, however, the Plan Administrator will automatically adjust your election contributions to reflect the minor change in cost.

The Plan Administrator generally will notify you of increases or decreases in the cost of Health Insurance benefits.

**8. Change in Coverage.** You may also change your election if one of the following events occurs:

- **Significant Curtailment of Coverage.** If your Health Insurance Benefits coverage is significantly curtailed without a loss of coverage (for example, when there is an increase in the deductible under the Medical Insurance Benefits), then you may revoke your election for that coverage and elect coverage under another benefit package option that provides similar coverage. (Coverage under a plan is significantly curtailed only if there is an overall reduction of coverage under the plan generally loss of one particular physician in a network does not constitute significant curtailment.) If your Health Insurance Benefits coverage is significantly curtailed with a loss of coverage (for example, if you lose all coverage under the option by reason of an overall lifetime or annual limitation), then you may either revoke your election and elect coverage under another benefit package option that provides similar coverage, elect similar coverage under the plan of your Spouse's employer, or drop coverage, but only if there is no option available under the plan that provides similar coverage. (The Plan Administrator generally will notify you of significant curtailments in Medical Insurance Benefits coverage.)
- **Addition or Significant Improvement of Cafeteria Plan Option.** If the Cafeteria Plan adds a new option or significantly improves an existing option, then the Plan Administrator may permit Participants who are enrolled in an option other than the new or improved option to elect the new or improved option. Also, the Plan Administrator may permit eligible Employees to elect the new or improved option on a prospective basis, subject to limitations imposed by the applicable option.
- **Loss of Other Group Health Coverage.** You may change your election to add group health coverage for you, your Spouse, or your Dependent, if any of you loses coverage under any group health coverage sponsored by a governmental or educational institution (for example, a state children's health insurance program or certain Indian tribal programs).
- **Change in Election Under Another Employer Plan.** You may make an election change that is on account of and corresponds with a change made under another employer plan (including a plan of the Employer or a plan of your

Spouse's or Dependent's employer), so long as (a) the other cafeteria plan or qualified benefits plan permits its participants to make an election change permitted under the IRS regulations; or (b) the Cafeteria Plan permits you to make an election for a period of coverage (for example, the Plan Year) that is different from the period of coverage under the other cafeteria plan or qualified benefits plan, which it does.

For example, if an election to drop coverage is made by your Spouse during his or her Employer's open enrollment, you may add coverage under the Cafeteria Plan to replace the dropped coverage.

#### **9. Intention or Need to Obtain Coverage through a Marketplace Established under the Affordable Care Act.**

You may revoke your Health Insurance Benefits coverage mid-Plan Year if either one of the following applies:

- You are seeking to enroll yourself and any other related individuals in coverage to be obtained through a Marketplace.
- You have experienced a reduction of hours and reasonably expect to be working less than 30 hours for the foreseeable future and will seek coverage to be obtained through a Marketplace.

#### **CAF Q-8. What happens if my employment ends during the Plan Year or I lose eligibility for other reasons?**

If your employment with the Employer is terminated during the Plan Year, then your active participation in the Cafeteria Plan will cease and you will not be able to make any more contributions to the Cafeteria Plan for Insurance Benefits.

See CAF Q-12 for information on your right to continued or converted group health coverage after termination of your employment.

For purposes of pre-taxing COBRA coverage for Health Insurance Benefits, certain Employees may be able to continue eligibility in the Cafeteria Plan for certain periods. See CAF Q-12.

If you are rehired within the same Plan Year and are eligible for the Cafeteria Plan, then you may make new elections, provided that you are rehired more than 30 days after you terminated employment. If you are rehired within 30 days or less during the same Plan Year, then your prior elections will be reinstated.

If you cease to be an eligible Employee for reasons other than termination of employment, such as a reduction of hours, then you must complete the waiting period described in CAF Q-3 before again becoming eligible to participate in the Plan.

#### **CAF Q-9. \*\*\*RESERVED\*\*\***

#### **CAF Q-10. How long will the Cafeteria Plan remain in effect?**

Although the Employer expects to maintain the Cafeteria Plan indefinitely, it has the right to amend or terminate all or any part of the Cafeteria Plan at any time for any reason. It is also possible that future changes in state or federal tax laws may require that the Cafeteria Plan be amended accordingly.

#### **CAF Q-11. What happens if my claim for benefits is denied?**

##### *Insurance Benefits*

The applicable insurance company will decide your claim in accordance with its claims procedures. If your claim is denied, you may appeal to the insurance company for a review of the denied claim. If you don't appeal on time, you will lose your right to file suit in a state or federal court, as you will not have exhausted your internal administrative appeal rights (which generally is a prerequisite to bringing a suit in state or federal court). For more information about how to file a claim and for details regarding the medical insurance company's claims procedures, consult the claims procedure applicable under that plan or policy, as described in the plan document or summary plan description for the Insurance Plan.

##### *Appeals.*

If your claim is denied in whole or part, then you (or your authorized representative) may request review upon written application to the "Committee" (the Benefits Committee that acts on behalf of the Plan Administrator with respect to appeals). Your appeal must be made in writing within 180 days after your receipt of the notice that the claim was denied. If you do not appeal on time, you will lose the right to appeal the denial and the right to file suit in court. Your written appeal should state the reasons that you feel your claim should not have been denied. It should include any additional facts and/or documents that you feel support your claim. You will have the opportunity to ask additional questions and make written comments, and you may review (upon request and at no charge) documents and other information relevant to your appeal.

##### *Decision on Review.*

Your appeal will be reviewed and decided by the Committee or other entity designated in the Plan in a reasonable time not later than 60 days after the Committee receives your request for review. The Committee may, in its discretion, hold a hearing on the denied claim. Any medical expert consulted in connection with your appeal will be different from and not subordinate to any expert consulted in connection with the initial claim denial. The identity of a medical expert consulted in connection with your appeal will be provided. If the decision on review affirms the initial denial of your claim, you will be furnished with a notice of adverse benefit determination on review setting forth:

- the specific reason(s) for the decision on review;
- the specific Plan provision(s) on which the decision is based;
- a statement of your right to review (upon request and at no charge) relevant documents and other information;
- if an internal rule, guideline, protocol, or other similar criterion is relied on in making the decision on review, then a description of the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied on and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to you upon request;

#### **CAF Q-12. What is "Continuation Coverage" and how does it work?**

##### *COBRA*

If you have elected Health Insurance Benefits under this Plan, you may have certain rights to the continuation of such benefits after a "Qualifying Event" (e.g., a termination of employment). See Appendix B of this SPD for a detailed description of your rights to "continuation coverage" under COBRA.

##### *USERRA*

Continuation and reinstatement rights may also be available if you are absent from employment due to service in the uniformed services pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). More information about coverage under USERRA is available from the Plan Administrator.

#### **CAF Q-13. How will participating in the Cafeteria Plan affect my Social Security and other benefits?**

Participating in the Cafeteria Plan will reduce the amount of your taxable income, which may result in a decrease in your Social Security benefits and/or other benefits which are based on taxable income. However, the tax savings that you realize through Cafeteria Plan participation will often more than offset any reduction in other benefits. If you are still unsure, you are encouraged to consult with your accountant or other tax advisor.

#### **CAF Q-14. How do leaves of absence (such as under FMLA) affect my benefits?**

##### *FMLA Leaves of Absence.*

If the Employer is subject to the federal Family and Medical Leave Act of 1993 and you go on a qualifying leave under the FMLA, then to the extent required by the FMLA your Employer will continue to maintain your Health Insurance Benefits on the same terms and conditions as if you were still active (that is, your Employer will continue to pay its share of the contributions to the extent that you opt to continue coverage). Your Employer may require you to continue all Medical Insurance Benefits coverage while you are on paid leave (so long as Participants on non-FMLA paid leave are required to continue coverage). If so, you will pay your share of the contributions by the method normally used during any paid leave (for example, on a pre-tax salary-reduction basis).

If you are going on unpaid FMLA leave (or paid FMLA leave where coverage is not required to be continued) and you opt to continue your Insurance Benefits, then you may pay your share of the contributions in one of three ways: (a) with after-tax dollars while on leave; (b) with pretax dollars to the extent that you receive compensation during the leave, or by pre-paying all or a portion of your share of the contributions for the expected duration of the leave on a pre-tax salary reduction basis out of your pre-leave compensation, including unused sick days and vacation days (to pre-pay in advance, you must make a special election before such compensation normally would be available to you (but note that prepayments with pre-tax dollars may not be used to pay for coverage during the next Plan Year); or (c) by other arrangements agreed upon by you and the Plan Administrator (for example, the Plan Administrator may pay for coverage during the leave and withhold amounts from your compensation upon your return from leave).

If your Employer requires all Participants to continue Insurance Benefits during the unpaid FMLA leave, then you may discontinue paying your share of the required contributions until you return from leave. Upon returning from leave, you must pay your share of any required contributions that you did not pay during the leave. Payment for your share will be withheld from your compensation either on a pre-tax or after-tax basis, depending on what you and the Plan Administrator agree to.

If your Health Insurance coverage ceases while you are on FMLA leave (e.g., for non-payment of required contributions), you will be permitted to re-enter such Benefits, as applicable, upon return from such leave on the same basis as when you were



participating in the Plan before the leave or as otherwise required by the FMLA. You may be required to have coverage for such Benefits reinstated so long as coverage for Employees on non-FMLA leave is required to be reinstated upon return from leave.

If you are commencing or returning from FMLA leave, then your election for non-health benefits provided under this Plan, if any, will be treated in the same way as under your Employer's policy for providing such Benefits for Participants on a non-FMLA leave (see below). If that policy permits you to discontinue contributions while on leave, then upon returning from leave you will be required to repay the contributions not paid by you during leave. Payment will be withheld from your compensation either on a pre-tax or after-tax basis, as agreed to by the Plan Administrator and you or as the Plan Administrator otherwise deems appropriate.

#### *Non-FMLA Leaves of Absence.*

If you go on an unpaid leave of absence that does not affect eligibility, then you will continue to participate and the contribution due from you (if not otherwise paid by your regular salary reductions) will be paid by pre-payment before going on leave, with after-tax contributions while on leave, or with catch-up contributions after the leave ends, as determined by the Plan Administrator. If you go on an unpaid leave that does affect eligibility, then the Change in Status rules will apply.

## **Premium Payment Benefits**

### **PREM Q-1. What are "Premium Payment Benefits"?**

As described in CAF Q-1, if you elect Premium Payment Benefits you will be able to pay for your share of contributions for Insurance Benefits with pre-tax dollars by electing to do so. Because the share of the contributions that you pay will be with pre-tax funds, you may save both federal income taxes and FICA (Social Security) taxes. See Q-4.

### **PREM Q-2. How are my Premium Payment Benefits paid?**

As described in CAF Q-1 and in PREM Q-1, if you select an Insurance Plan described in CAF Q-2, then you may be required to pay a portion of the contributions. When you complete the Election Form/Salary Reduction Agreement, if you elect to pay for benefits on a pre-tax basis you agree to a salary reduction to pay for your share of the cost of coverage (also known as contributions) with pre-tax funds instead of receiving a corresponding amount of your regular pay that would otherwise be subject to taxes. From then on, you must pay a contribution for such coverage by having that portion deducted from each paycheck on a pre-tax basis (generally an equal portion from each paycheck, or an amount otherwise agreed to or as deemed appropriate by the Plan Administrator).

The Employer may contribute all, some, or no portion of the Premium Payment Benefits that you have selected, as described in documents furnished separately to you from time to time.

## **Miscellaneous**

### **MISC Q-1**

#### **What are my ERISA Rights?**

The Cafeteria Plan is not an ERISA welfare benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA). The SPDs of the various benefits components of the Plan will describe your rights under ERISA, if applicable, under that component.

Regardless, a participant in the Cafeteria Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all participants shall be entitled to:

- Examine, without charge, at the Plan Administrator's office and at other specified locations (such as worksites) all documents governing the Plan, including insurance contracts, and a copy of the latest annual report (Form 5500 Series), if any, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;
- Obtain, upon written request to the Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series)

- and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies); and
- Receive a summary of the Plan's annual financial report, if any. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

**COBRA and HIPAA Rights.** You have a right to continue your Health Insurance Plan coverage for yourself if there is a loss of coverage under the plan as a result of a qualifying event. You or your dependents may have to pay for such coverage. Review this SPD and the documents governing the plan on the rules governing your COBRA continuation coverage rights.

**HIPAA Privacy Rights.** Under another provision of HIPAA, group health plans are required to take steps to ensure that certain "protected health information" (PHI) is kept confidential. You may receive a separate notice from the Employer (or medical insurers) that outlines its health privacy policies.

**Fiduciary Obligations.** In addition to creating rights for participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefits plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other participants.

**No Discrimination.** No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a plan benefit or exercising your rights under ERISA.

**Right to Review.** If your claim for a benefit is denied or ignored in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

**Enforcing Your Rights.** Under ERISA, there are steps that you can take to enforce these rights. For instance, if you request a copy of plan documents or the latest annual report (if any) from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive them, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits that is denied or ignored in whole or in part, then you may file suit in a state or federal court (but only if you have first filed your claim under the Plan's claims procedures and, if applicable, filed a timely appeal of any denial of your claim).

If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

**Assistance With Your Questions.** If you have any questions about your plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA or HIPAA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration

## **MISC Q-2. What other general information should I know?**

This MISC Q-2 contains certain general information that you may need to know about the Plan.

### **Plan Information**

Official Name of the Plan: ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan

Plan Number: 501

Effective Date: 10/1/2021.

Plan Year: 10/1/2021 to 9/30/2022. Your Plan's records are maintained on this period of time

Type of Plan: Welfare plan providing various insurance benefits

### **Employer/Plan Sponsor Information**

Name and Address:

ARK TEX COUNCIL OF GOVERNMENT FBP

PO BOX 5307  
TEXARKANA, TX 75505  
Federal employee tax identification number (EIN): 751293383

**Plan Administrator Information**

Name, Address, and business telephone number:

ARK TEX COUNCIL OF GOVERNMENT FBP

PO BOX 5307  
TEXARKANA, TX 75505  
Attention: Human Resources Manager  
Telephone: 9038328636

**Agent for Service of Legal Process**

The name and address of the Plan's agent for service of legal process is:

ARK TEX COUNCIL OF GOVERNMENT FBP

PO BOX 5307  
TEXARKANA, TX 75505  
Attention: Benefits Committee

**Qualified Medical Child Support Order**

The Health Insurance Plans will provide benefits as required by any qualified medical child support order (QMCSO), as defined in ERISA § 609(a). The Plan has detailed procedures for determining whether an order qualifies as a QMCSO. Participants and beneficiaries can obtain, without charge, a copy of such procedures from the Plan Administrator.

**Newborns' and Mothers' Health Protection Act of 1996**

Group health plans and health insurance issuers generally may not, under federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery or to less than 96 hours following a cesarean section. However, federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours, as applicable). In any case, plans and issuers may not, under federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

# Appendix A

**\*\*\*Affiliated Employers\*\*\***

## Appendix B

### **COBRA CONTINUATION COVERAGE RIGHTS under the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan (the "Plan")**

The following paragraphs generally explain COBRA coverage, when it may become available to you and your family, and what you need to do to protect the right to receive it. PLEASE READ THE FOLLOWING CAREFULLY.

The ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan has group health insurance components and you may be enrolled in one or more of these components. COBRA (and the description of COBRA coverage contained in this SPD) applies only to the group health plan benefits offered under the Plan and not to any other benefits offered under the Plan or by ARK TEX COUNCIL OF GOVERNMENT FBP. The Plan provides no greater COBRA rights than what COBRA requires - nothing in this SPD is intended to expand your rights beyond COBRA's requirements.

#### **What Is COBRA Coverage?**

COBRA coverage is a continuation of Plan coverage when coverage would otherwise end because of a life event known as a "qualifying event." Specific qualifying events are listed below in the section entitled "Who Is Entitled to Elect COBRA?"

*COBRA coverage may become available to "qualified beneficiaries"*

After a qualifying event occurs and any required notice of that event is properly provided to ARK TEX COUNCIL OF GOVERNMENT FBP, COBRA coverage must be offered to each person losing Plan coverage who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries and would be entitled to elect COBRA if coverage under the Plan is lost because of the qualifying event. (Certain newborns, newly adopted children, and alternate recipients under QMCSOs may also be qualified beneficiaries. This is discussed in more detail in separate paragraphs below.)

#### **Who Is Entitled to Elect COBRA?**

We use the pronoun "you" in the following paragraphs regarding COBRA to refer to each person covered under the Plan who is or may become a qualified beneficiary.

##### *Qualifying events for the covered employee*

If you are an employee, you will be entitled to elect COBRA if you lose your group health coverage under the Plan because either one of the following qualifying events happens:

- your hours of employment are reduced; or
- your employment ends for any reason other than your gross misconduct.

##### *Qualifying events for the covered spouse*

If you are the spouse of an employee, you will be entitled to elect COBRA if you lose your group health coverage under the Plan because any of the following qualifying events happens:

- your spouse dies;
- your spouse's hours of employment are reduced;
- your spouse's employment ends for any reason other than his or her gross misconduct;
- you become divorced or legally separated from your spouse. Also, if your spouse (the employee) reduces or eliminates your group health coverage in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the divorce or legal separation may be considered a qualifying event for you even though your coverage was reduced or eliminated before the divorce or separation.

##### *Qualifying events for dependent children*

If you are the dependent child of an employee, you will be entitled to elect COBRA if you lose your group health coverage under the Plan because any of the following qualifying events happens:

- your parent-employee dies;
- your parent-employee's hours of employment are reduced;

- your parent-employee's employment ends for any reason other than his or her gross misconduct;
- you stop being eligible for coverage under the Plan as a "dependent child."

### *Electing COBRA after leave under the Family and Medical Leave Act (FMLA)*

Under special rules that apply if an employee does not return to work at the end of an FMLA leave, some individuals may be entitled to elect COBRA even if they were not covered under the Plan during the leave. Contact ARK TEX COUNCIL OF GOVERNMENT FBP for more information about these special rules.

### *Special second election period for certain eligible employees who did not elect COBRA*

Certain employees and former employees who are eligible for federal trade adjustment assistance (TAA) or alternative trade adjustment assistance (ATAA) are entitled to a second opportunity to elect COBRA for themselves and certain family members (if they did not already elect COBRA) during a special second election period of 60 days or less (but only if the election is made within six months after Plan coverage is lost).

### **When Is COBRA Coverage Available?**

When the qualifying event is the end of employment, reduction of hours of employment, or death of the employee, the Plan will offer COBRA coverage to qualified beneficiaries. You need not notify ARK TEX COUNCIL OF GOVERNMENT FBP of any of these qualifying events.

#### **Caution:**

You stop being eligible for coverage as dependent child whenever you fail to satisfy any part of the plan's definition of dependent child.

### *You must notify the plan administrator of certain qualifying events by this deadline*

For the other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), a COBRA election will be available to you only if you notify ARK TEX COUNCIL OF GOVERNMENT FBP in writing within 60 days after the later of (1) the date of the qualifying event; or (2) the date on which the qualified beneficiary loses (or would lose) coverage under the terms of the Plan as a result of the qualifying event.

### *No COBRA election will be available unless you follow the Plan's notice procedures and meet the notice deadline*

In providing this notice, you must use the Plan's form entitled "Notice of Qualifying Event Form" and you must follow the notice procedures specified in the section below entitled "Notice Procedures." If these procedures are not followed or if the notice is not provided to ARK TEX COUNCIL OF GOVERNMENT FBP during the 60-day notice period, YOU WILL LOSE YOUR RIGHT TO ELECT COBRA.

### *How to elect COBRA*

To elect COBRA, you must complete the Election Form that is part of the Plan's COBRA election notice and mail or hand-deliver it to ARK TEX COUNCIL OF GOVERNMENT FBP. An election notice will be provided to qualified beneficiaries at the time of a qualifying event. You may also obtain a copy of the Election Form from ARK TEX COUNCIL OF GOVERNMENT FBP.

### *Deadline for COBRA election*

If mailed, your election must be postmarked (or if hand-delivered, your election must be received by the individual at the address specified on the Election Form) no later than 60 days after the date of the COBRA election notice provided to you at the time of your qualifying event (or, if later, 60 days after the date that Plan coverage is lost). IF YOU DO NOT SUBMIT A COMPLETED ELECTION FORM BY THIS DUE DATE, YOU WILL LOSE YOUR RIGHT TO ELECT COBRA.

### *Independent election rights*

Each qualified beneficiary will have an independent right to elect COBRA.

Any qualified beneficiary for whom COBRA is not elected within the 60-day election period specified in the Plan's COBRA election notice WILL LOSE HIS OR HER RIGHT TO ELECT COBRA COVERAGE.

### **Special Considerations in Deciding Whether to Elect COBRA**

In considering whether to elect COBRA, you should take into account that a failure to elect COBRA will affect your future rights under federal law. You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your spouse's employer) within 30 days after your group health coverage

under the Plan ends because of one of the qualifying events listed above. You will also have the same special enrollment right at the end of COBRA coverage if you get COBRA coverage for the maximum time available to you.

## **Length of COBRA Coverage**

COBRA coverage is a temporary continuation of coverage. The COBRA coverage periods described below are maximum coverage periods.

COBRA coverage can end before the end of the maximum coverage period for several reasons, which are described in the section below entitled "Termination of COBRA Coverage Before the End of the Maximum Coverage Period."

### *Death, divorce, legal separation, or child's loss of dependent status*

When Plan coverage is lost due to the death of the employee, the covered employee's divorce or legal separation, or a dependent child's losing eligibility as a dependent child, COBRA coverage under the Plan's Medical and Dental components can last for up to a total of 36 months.

*If the covered employee becomes entitled to Medicare within 18 months before his or her termination of employment or reduction of hours.*

When Plan coverage is lost due to the end of employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA coverage under the Plan's Medical and Dental components for qualified beneficiaries (other than the employee) who lose coverage as a result of the qualifying event can last until up to 36 months after the date of Medicare entitlement. For example, if a covered employee becomes entitled to Medicare eight months before the date on which his employment terminates, COBRA coverage for his spouse and children who lost coverage as a result of his termination can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus eight months). This COBRA coverage period is available only if the covered employee becomes entitled to Medicare within 18 months BEFORE the termination or reduction of hours.

### *Termination of employment or reduction of hours*

Otherwise, when Plan coverage is lost due to the end of employment or reduction of the employee's hours of employment, COBRA coverage under the Plan's Medical and Dental components generally can last for only up to a total of 18 months.

## **Extension of Maximum Coverage Period**

If the qualifying event that resulted in your COBRA election was the covered employee's termination of employment or reduction of hours, an extension of the maximum period of coverage may be available if a qualified beneficiary is disabled or a second qualifying event occurs. You must notify ARK TEX COUNCIL OF GOVERNMENT FBP of a disability or a second qualifying event in order to extend the period of COBRA coverage. Failure to provide notice of a disability or second qualifying event will eliminate the right to extend the period of COBRA coverage.

### *Disability extension of COBRA coverage*

If a qualified beneficiary is determined by the Social Security Administration to be disabled and you notify ARK TEX COUNCIL OF GOVERNMENT FBP in a timely fashion, all of the qualified beneficiaries in your family may be entitled to receive up to an additional 11 months of COBRA coverage, for a total maximum of 29 months. This extension is available only for qualified beneficiaries who are receiving COBRA coverage because of a qualifying event that was the covered employee's termination of employment or reduction of hours. The disability must have started at some time before the 61st day after the covered employee's termination of employment or reduction of hours and must last at least until the end of the period of COBRA coverage that would be available without the disability extension (generally 18 months, as described above). Each qualified beneficiary will be entitled to the disability extension if one of them qualifies.

*You must notify ARK TEX COUNCIL OF GOVERNMENT FBP of a qualified beneficiary's disability by this deadline*

The disability extension is available only if you notify ARK TEX COUNCIL OF GOVERNMENT FBP in writing of the Social Security Administration's determination of disability within 60 days after the latest of:

- the date of the Social Security Administration's disability determination;
- the date of the covered employee's termination of employment or reduction of hours; and
- the date on which the qualified beneficiary loses (or would lose) coverage under the terms of the Plan as a result of the covered employee's termination of employment or reduction of hours.

You must also provide this notice within 18 months after the covered employee's termination of employment or reduction of hours in order to be entitled to a disability extension.

*No disability extension will be available unless you follow the Plan's notice procedures and meet the notice deadline*

In providing this notice, you must use the Plan's form entitled "Notice of Disability Form" and you must follow the notice procedures specified in the section below entitled "Notice Procedures."

If these procedures are not followed or if the notice is not provided to ARK TEX COUNCIL OF GOVERNMENT FBP during the 60-day notice period and within 18 months after the covered employee's termination of employment or reduction of hours, then there will be no disability extension of COBRA coverage.

#### *Second qualifying event extension of COBRA coverage*

An extension of coverage will be available to spouses and dependent children who are receiving COBRA coverage if a second qualifying event occurs during the 18 months (or, in the case of a disability extension, the 29 months) following the covered employee's termination of employment or reduction of hours. The maximum amount of COBRA coverage available when a second qualifying event occurs is 36 months. Such second qualifying events may include the death of a covered employee, divorce or legal separation from the covered employee, or a dependent child's ceasing to be eligible for coverage as a dependent under the Plan. These events can be a second qualifying event only if they would have caused the qualified beneficiary to lose coverage under the Plan if the first qualifying event had not occurred. (This extension is not available under the Plan when a covered employee becomes entitled to Medicare after his or her termination of employment or reduction of hours.)

*You must notify ARK TEX COUNCIL OF GOVERNMENT FBP of a second qualifying event by this deadline*

This extension due to a second qualifying event is available only if you notify ARK TEX COUNCIL OF GOVERNMENT FBP in writing of the second qualifying event within 60 days after the date of the second qualifying event.

*No extension will be available unless you follow the Plan's notice procedures and meet the notice deadline*

In providing this notice, you must use the Plan's form entitled "Notice of Second Qualifying Event Form" (you may obtain a copy of this form from ARK TEX COUNCIL OF GOVERNMENT FBP at no charge), and you must follow the notice procedures specified in the section below entitled "Notice Procedures." If these procedures are not followed or if the notice is not provided to ARK TEX COUNCIL OF GOVERNMENT FBP during the 60-day notice period, then there will be no extension of COBRA coverage due to a second qualifying event.

#### **Termination of COBRA Coverage Before the End of the Maximum Coverage Period**

COBRA coverage will automatically terminate before the end of the maximum period if:

- any required premium is not paid in full on time;
- a qualified beneficiary becomes entitled to Medicare benefits (under Part A, Part B, or both) after electing COBRA;
- the employer ceases to provide any group health plan for its employees; or
- during a disability extension period, the disabled qualified beneficiary is determined by the Social Security Administration to be no longer disabled (COBRA coverage for all qualified beneficiaries, not just the disabled qualified beneficiary, will terminate).

COBRA coverage may also be terminated for any reason the Plan would terminate coverage of a participant or beneficiary not receiving COBRA coverage (such as fraud).

*You must notify ARK TEX COUNCIL OF GOVERNMENT FBP if a qualified beneficiary becomes entitled to Medicare or obtains other group health plan coverage*

You must notify ARK TEX COUNCIL OF GOVERNMENT FBP in writing within 30 days if, after electing COBRA, a qualified beneficiary becomes entitled to Medicare (Part A, Part B, or both) or becomes covered under other group health plan coverage. In addition, if you were already entitled to Medicare before electing COBRA, notify Employer of the date of your Medicare entitlement at the address shown in the section below entitled "Notice Procedures."

*You must notify ARK TEX COUNCIL OF GOVERNMENT FBP if a qualified beneficiary ceases to be disabled*

If a disabled qualified beneficiary is determined by the Social Security Administration to no longer be disabled, you must notify ARK TEX COUNCIL OF GOVERNMENT FBP of that fact within 30 days after the Social Security Administration's determination.

#### **Cost of COBRA Coverage**

Each qualified beneficiary is required to pay the entire cost of COBRA coverage. The amount a qualified beneficiary may be required to pay may not exceed 102% (or, in the case of an extension of COBRA coverage due to a disability, 150%) of the



cost to the group health plan (including both employer and employee contributions) for coverage of a similarly situated plan participant or beneficiary who is not receiving COBRA coverage. The amount of your COBRA premiums may change from time to time during your period of COBRA coverage and will most likely increase over time. You will be notified of COBRA premium changes.

## **Payment for COBRA Coverage**

### *How premium payments must be made*

All COBRA premiums must be paid by check. Your first payment and all monthly payments for COBRA coverage must be mailed or hand-delivered to the individual at the payment address specified in the election notice provided to you at the time of your qualifying event. However, if the Plan notifies you of a new address for payment, you must mail or hand-deliver all payments for COBRA coverage to the individual at the address specified in that notice of a new address.

### *When premium payments are considered to be made*

If mailed, your payment is considered to have been made on the date that it is postmarked. If hand-delivered, your payment is considered to have been made when it is received by the individual at the address specified above. You will not be considered to have made any payment by mailing or hand-delivering a check if your check is returned due to insufficient funds or otherwise.

### *First payment for COBRA coverage*

If you elect COBRA, you do not have to send any payment with the Election Form. However, you must make your first payment for COBRA coverage not later than 45 days after the date of your election. (This is the date your Election Form is postmarked, if mailed, or the date your Election Form is received by the individual at the address specified for delivery of the Election Form, if hand-delivered.) See the section above entitled "Electing COBRA Coverage."

Your first payment must cover the cost of COBRA coverage from the time your coverage under the Plan would have otherwise terminated up through the end of the month before the month in which you make your first payment. (For example, Sue's employment terminates on September 30, and she loses coverage on September 30. Sue elects COBRA on November 15. Her initial premium payment equals the premiums for October and November and is due on or before December 30, the 45th day after the date of her COBRA election.)

You are responsible for making sure that the amount of your first payment is correct. You may contact ARK TEX COUNCIL OF GOVERNMENT FBPs using the contact information provided below to confirm the correct amount of your first payment. Claims for reimbursement will not be processed and paid until you have elected COBRA and made the first payment for it.

If you do not make your first payment for COBRA coverage in full within 45 days after the date of your election, you will lose all COBRA rights under the Plan.

### *Monthly payments for COBRA coverage*

After you make your first payment for COBRA coverage, you will be required to make monthly payments for each subsequent month of COBRA coverage. The amount due for each month for each qualified beneficiary will be disclosed in the election notice provided to you at the time of your qualifying event. Under the Plan, each of these monthly payments for COBRA coverage is due on the first day of the month for that month's COBRA coverage. If you make a monthly payment on or before the first day of the month to which it applies, your COBRA coverage under the Plan will continue for that month without any break. ARK TEX COUNCIL OF GOVERNMENT FBPs will not send periodic notices of payments due for these coverage periods (that is, we will not send a bill to you for your COBRA coverage - it is your responsibility to pay your COBRA premiums on time).

### *Grace periods for monthly COBRA premium payments*

Although monthly payments are due on the first day of each month of COBRA coverage, you will be given a grace period of 30 days after the first day of the month to make each monthly payment. Your COBRA coverage will be provided for each month as long as payment for that month is made before the end of the grace period for that payment. However, if you pay a monthly payment later than the first day of the month to which it applies, but before the end of the grace period for the month, your coverage under the Plan will be suspended as of the first day of the month and then retroactively reinstated (going back to the first day of the month) when the monthly payment is received. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.

If you fail to make a monthly payment before the end of the grace period for that month, you will lose all rights to COBRA coverage under the Plan.

## **More Information About Individuals Who May Be Qualified Beneficiaries**

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*Children born to or placed for adoption with the covered employee during a period of COBRA coverage*

A child born to, adopted by, or placed for adoption with a covered employee during a period of COBRA coverage is considered to be a qualified beneficiary provided that, if the covered employee is a qualified beneficiary, the covered employee has elected COBRA coverage for himself or herself. The child's COBRA coverage begins when the child is enrolled in the Plan, whether through special enrollment or open enrollment, and it lasts for as long as COBRA coverage lasts for other family members of the employee. To be enrolled in the Plan, the child must satisfy the otherwise applicable Plan eligibility requirements (for example, regarding age).

#### *Alternate recipients under QMCSOs*

A child of the covered employee who is receiving benefits under the Plan pursuant to a qualified medical child support order (QMCSO) received by ARK TEX COUNCIL OF GOVERNMENT FBP during the covered employee's period of employment with ARK TEX COUNCIL OF GOVERNMENT FBP is entitled to the same rights to elect COBRA as an eligible dependent child of the covered employee.

### **NOTICE PROCEDURES ARK TEX COUNCIL OF GOVERNMENT FBP Welfare Benefits Plan (the Plan)**

WARNING: If your notice is late or if you do not follow these notice procedures, you and all related qualified beneficiaries will lose the right to elect COBRA (or will lose the right to an extension of COBRA coverage, as applicable).

#### **Notices Must Be Written and Submitted on Plan Forms**

Any notice that you provide must be in writing and must be submitted on the Plan's required form (the Plan's required forms are described above in this SPD, and you may obtain copies from ARK TEX COUNCIL OF GOVERNMENT FBP without charge). Oral notice, including notice by telephone, is not acceptable. Electronic (including e-mailed or faxed) notices are not acceptable.

#### **How, When, and Where to Send Notices**

You must mail or hand-deliver your notice to:

Human Resources Manager

ARK TEX COUNCIL OF GOVERNMENT FBP  
PO BOX 5307  
TEXARKANA TX 75505

However, if a different address for notices to the Plan appears in the Plan's most recent summary plan description, you must mail or hand-deliver your notice to that address (if you do not have a copy of the Plan's most recent summary plan description, you may request one from ARK TEX COUNCIL OF GOVERNMENT FBP).

If mailed, your notice must be postmarked no later than the last day of the applicable notice period. If hand-delivered, your notice must be received by the individual at the address specified above no later than the last day of the applicable notice period. (The applicable notice periods are described in the paragraphs above entitled "You must notify the plan administrator of certain qualifying events by this deadline," "You must notify ARK TEX COUNCIL OF GOVERNMENT FBP of a qualified beneficiary's disability by this deadline", and "You must notify ARK TEX COUNCIL OF GOVERNMENT FBP of a second qualifying event by this deadline.")

#### **Information Required for All Notices**

Any notice you provide must include (1) the name of the Plan (ARK TEX COUNCIL OF GOVERNMENT FBP Welfare Benefits Plan); (2) the name and address of the employee who is (or was) covered under the Plan; (3) the name(s) and address(es) of all qualified beneficiary(ies) who lost coverage as a result of the qualifying event; (4) the qualifying event and the date it happened; and (5) the certification, signature, name, address, and telephone number of the person providing the notice.

#### **Additional Information Required for Notice of Qualifying Event**

If the qualifying event is a divorce or legal separation, your notice must include a copy of the decree of divorce or legal separation. If your coverage is reduced or eliminated and later a divorce or legal separation occurs, and if you are notifying ARK TEX COUNCIL OF GOVERNMENT FBP that your Plan coverage was reduced or eliminated in anticipation of the divorce or legal separation, your notice must include evidence satisfactory to ARK TEX COUNCIL OF GOVERNMENT FBP that your coverage was reduced or eliminated in anticipation of the divorce or legal separation.

#### **Additional Information Required for Notice of Disability**

Any notice of disability that you provide must include (1) the name and address of the disabled qualified beneficiary; (2) the date that the qualified beneficiary became disabled; (3) the names and addresses of all qualified beneficiaries who are still receiving COBRA coverage; (4) the date that the Social Security Administration made its determination; (5) a copy of the Social Security Administration's determination; and (6) a statement whether the Social Security Administration has

subsequently determined that the disabled qualified beneficiary is no longer disabled.

### **Additional Information Required for Notice of Second Qualifying Event**

Any notice of a second qualifying event that you provide must include (1) the names and addresses of all qualified beneficiaries who are still receiving COBRA coverage; (2) the second qualifying event and the date that it happened; and (3) if the second qualifying event is a divorce or legal separation, a copy of the decree of divorce or legal separation.

### **Who May Provide Notices**

The covered employee, a qualified beneficiary who lost coverage due to the qualifying event described in the notice, or a representative acting on behalf of either may provide notices. A notice provided by any of these individuals will satisfy any responsibility to provide notice on behalf of all qualified beneficiaries who lost coverage due to the qualifying event described in the notice.

**THIS CONCLUDES THE SUMMARY OF YOUR CONTINUATION COVERAGE RIGHTS UNDER COBRA. PLEASE CONTACT THE HUMAN RESOURCES OFFICE (OR THE EQUIVALENT THEREOF) OF ARK TEX COUNCIL OF GOVERNMENT FBIF IF YOU HAVE ANY QUESTIONS OR NEED MORE INFORMATION.**

# **ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan Summary Plan Description Addendum with Regard to Health Savings Accounts**

## **HSA Q-1. What are "HSA Benefits"?**

As described in HSA Q-2, an HSA permits Employees to make pre-tax contributions to an HSA established and maintained outside the Plan with the Employee's HSA trustee/custodian. For purposes of this Cafeteria Plan, HSA Benefits consist solely of the ability to make such pre-tax contributions under this Cafeteria Plan.

If you elect HSA Benefits, then you will be able to provide a source of pre-tax contributions by entering into a Salary Reduction Agreement with your Employer. Because the share of the contributions that you pay will be with pre-tax funds, you may save both federal income taxes and FICA taxes.

To participate in the HSA Benefits, you must be an "HSA-Eligible Individual." This means that you are eligible to contribute to an HSA under the requirements of Code § 223 and that you have elected qualifying High Deductible Health Plan coverage offered by the Employer and have not elected any disqualifying non- High Deductible Health Plan coverage offered by the Employer. ("High Deductible Health Plan" means the high deductible health plan offered by your Employer that is intended to qualify as a high deductible health plan under Code § 223(c)(2), as described in materials that will be provided separately to you by the Employer.) If you elect HSA Benefits, you will be required to certify that you meet all of the requirements under Code § 223 to be eligible to contribute to an HSA. These requirements include such things as not having any disqualifying coverage and you should be aware that coverage under a Spouse's plan could make you ineligible to contribute to an HSA.

In order to elect HSA Benefits under the Plan, you must establish and maintain an HSA outside of the Plan with an HSA trustee/custodian and you must provide sufficient identifying information about your HSA to facilitate the forwarding of your pre-tax Salary Reductions through the Employer's payroll system to your designated HSA trustee/custodian.

## **HSA Q-2. What is my "HSA"?**

The HSA is not an employer-sponsored employee benefit plan it is an individual trust or custodial account that you open with an HSA trustee/custodian to be used primarily for reimbursement of "eligible medical expenses" as set forth in Code § 223. Your HSA is administered by your HSA trustee/custodian. Consequently, an HSA trustee/custodian, not the Employer, will establish and maintain your HSA. Your Employer's role is limited to allowing you to contribute to your HSA on a pre-tax Salary-Reduction basis. The HSA trustee/custodian will be chosen by you, as the Participant, and not by the Employer. Your Employer may, however, limit the number of HSA providers to whom it will forward pretax Salary Reductions, a list of whom will be provided upon request. Any such list of HSA trustees/custodians, however, shall be maintained for administrative simplification and shall not be an endorsement of any particular HSA trustee/custodian. Your Employer has no authority or control over the funds deposited in your HSA.

The Plan Administrator will maintain records to keep track of HSA contributions that you make via pre-tax Salary Reductions, but it will not create a separate fund or otherwise segregate assets for this purpose.

## **HSA Q-3. What are the maximum HSA Benefits that I may elect under the Cafeteria Plan?**

Your annual contribution for HSA Benefits is equal to the annual benefit amount that you elect (for example, if a \$2,000 annual benefit amount is elected for 2010, then the annual contribution amount is also \$2,000). The amount you elect must not exceed the statutory maximum amount for HSA contributions applicable to your High Deductible Health Plan coverage option (i.e., single or family) for the calendar year in which the contribution is made. (Note: The statutory limits for 2021 are \$3,600 for single and \$7,200 for family. The 2022 limits have been updated to \$3,650 for single and \$7,300 for family and the 2023 limits are \$3,850 for single and \$7,750 for family.) An additional catch-up contribution of up to \$1,000 may be made if you are age 55 or older.

In addition, the maximum annual contribution shall be: (a) reduced by any matching (or other) Employer contribution made on your behalf with Pre-Tax salary reductions made under the Plan; and (b) pro-rated for the number of months in which you are an HSA-Eligible Individual.

Note that if you are an HSA-Eligible Individual for only part of the year but you meet all of the requirements under Code § 223 to be eligible to contribute to an HSA on December 1, you may be able to contribute up to the full statutory maximum amount for HSA contributions applicable to your coverage option (i.e., single or family). However, any contributions in excess of your annual contribution under the Plan for HSA benefits (as described above), but not in excess of the applicable full statutory maximum amount, must be made outside the Plan. In addition, if you do not remain eligible to contribute to an HSA under the requirements of Code § 223 during the following year, the portion of HSA contributions attributable to months that you were not actually eligible to contribute to an HSA will be includible in your gross income and subject to a 10% penalty (exceptions apply in the event of death or disability).

## **HSA Q-4. How are my HSA Benefits paid for under the Cafeteria Plan?**

When you complete the Salary Reduction Agreement, you specify the amount of HSA Benefits that you wish to pay for with your salary reduction. From then on, you make a contribution for such coverage by having that portion deducted from each paycheck on a pre-tax basis (generally an equal portion from each paycheck or an amount otherwise agreed to or as deemed appropriate by the Plan Administrator).

For example, suppose that you have elected to contribute up to \$2,000 per year for HSA Benefits and that you have chosen no other benefits under the Cafeteria Plan. If you pay all of your contributions, then our records would reflect that you have contributed a total of \$2,000 during the Plan Year. If you are paid biweekly, then our records would reflect that you have paid \$76.92 (\$2,000 divided by 26) each pay period in contributions for the HSA Benefits that you have elected. Such contributions will be forwarded to the HSA trustee/custodian (or its designee) within a reasonable time after being withheld.

The Employer may make contributions to your HSA, however, your Employer has no authority or control over the funds deposited in your HSA.

#### **HSA Q-5. Will I be taxed on the HSA Benefits that I receive?**

You may save both federal income taxes and FICA taxes by participating in the Cafeteria Plan. However, very different rules apply with respect to taxability of HSA Benefits than for other Benefits offered under this Plan. For more information regarding the tax ramifications of participating in an HSA as well as the terms and conditions of your HSA you may want to refer to the communications materials provided by your HSA trustee/custodian as well as IRS Publication 969 ("Health Savings Accounts and Other Tax-Favored Health Plans").

The Employer cannot guarantee that specific tax consequences will flow from your participation in the Cafeteria Plan. Ultimately, it is your responsibility to determine the tax treatment of HSA Benefits. Remember that the Plan Administrator is not providing legal advice. If you need an answer upon which you can rely, you may wish to consult a tax advisor.

#### **HSA Q-6. Who can contribute to an HSA under the Cafeteria Plan?**

Only Employees who are HSA-Eligible Individuals can participate in the HSA Benefits. An HSA-Eligible Individual means an individual who meets the eligibility requirements of Code § 223 and who has elected qualifying High Deductible Health Plan coverage offered by the Employer and who has not elected any disqualifying non-High Deductible Health Plan coverage. The terms of the High Deductible Health Plan that has been selected by your Employer will be further described in materials that will be provided separately to you by the Employer.

#### **HSA Q-7. Can I change my HSA Contribution under the Cafeteria Plan?**

Unlike the other benefits offered under the Cafeteria Plan, you may increase, decrease, or revoke your HSA contribution election at any time during the plan year for any reason by submitting an election change form to the Plan Administrator (or to its designee). Your election change will be prospectively effective on the first day of the month following the month in which you properly submitted your election change. Your ability to make pre-tax contributions under this Plan to the HSA identified above ends on the date that you cease to meet the eligibility requirements.

#### **HSA Q-8. Where can I get more information on my HSA and its related tax consequences?**

For details regarding your rights and responsibilities with respect to your HSA (including information regarding the terms of eligibility, what constitutes a qualifying High Deductible Health Plan, contributions to the HSA, and distributions from the HSA), please refer to your HSA trust or custodial agreement and other documentation associated with your HSA and provided to you by your HSA trustee/custodian. You may also want to review IRS Publication 969 ("Health Savings Accounts and Other Tax-Favored Health Plans").

# **THE ARK TEX COUNCIL OF GOVERNMENT FBP CAFETERIA PLAN**

## **ARTICLE I. Introductory Provisions**

ARK TEX COUNCIL OF GOVERNMENT FBPs ("the Employer") hereby amends and restates the ARK TEX COUNCIL OF GOVERNMENT FBPs Cafeteria Plan ("the Plan") effective as of 10/1/2013 5:00:00 AM. The Plan was originally effective 10/1/2010 5:00:00 AM. Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II.

This Plan is designed to allow an Eligible Employee to pay for his or her share of Contributions under one or more Insurance Plans on a pre-tax Salary Reduction basis.

This Plan is intended to qualify as a "cafeteria plan" under Code § 125 and the regulations issued thereunder. The terms of this document shall be interpreted to accomplish that objective.

Although reprinted within this document, the different components of this Plan shall be deemed separate plans for purposes of administration and all reporting and nondiscrimination requirements imposed on such components by the Code.

## **ARTICLE II. Definitions**

**"Accident Insurance Benefits (Also includes Accidental Death & Dismemberment (AD&D))"** means the Employee's Accident/Accidental Death & Dismemberment Insurance Plan coverage for purposes of this Plan.

**"Accident Plan(s) (Also includes Accidental Death & Dismemberment (AD&D)Plans)"** means the plan(s) that the Employer maintains for its Employees providing benefits through a group insurance policy or policies in the event of injury or accidental death and/or dismemberment. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**"Benefits"** means the Premium Payment Benefits.

**"Benefit Package Option"** means a qualified benefit under Code § 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

**"Change in Status"** has the meaning described in Section 4.6.

**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Contributions"** means the amount contributed to pay for the cost of Benefits (including self-funded Benefits as well as those that are insured), as calculated under Section 6.2 for Premium Payment Benefits.

**"Committee"** means the Benefits Committee (or the equivalent thereof) of ARK TEX COUNCIL OF GOVERNMENT FBPs

**"Compensation"** means the wages or salary paid to an Employee by the Employer, determined prior to (a) any Salary Reduction election under this Plan; (b) any salary reduction election under any other cafeteria plan; and (c) any compensation reduction under any Code § 132(f)(4) plan; but determined after (d) any salary deferral elections under any Code § 401(k), 403(b), 408(k), or 457(b) plan or arrangement. Thus, "Compensation" generally means wages or salary paid to an Employee by the Employer, as reported in Box 1 of Form W-2, but adding back any wages or salary forgone by virtue of any election described in (a), (b), or (c) of the preceding sentence.

**"Dental Insurance Benefits"** means the Employee's Dental Insurance Plan coverage for purposes of this Plan.

**"Dental Insurance Plan(s)"** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing dental benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**"Dependent"** means any individual who is a tax dependent of the Participant as defined in Code § 152, with the following exceptions: (a) for purposes of accident or health coverage (to the extent funded under the Premium Payment Component, and for purposes of the Health FSA Component), (1) a dependent is defined as in Code § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof; and (2) any child to whom IRS Rev. Proc. 2008-48 applies. Furthermore, notwithstanding anything in the foregoing that may be to the contrary, a "Dependent" shall also include for purposes of any accident or health coverage provided under this plan a child of a Participant who has not attained age 27 by the end of any given taxable year.

**"Disability Insurance Benefits"** means the Employee's Disability Insurance Plan coverage for purposes of this Plan.

**"Disability Insurance Plan(s)"** means the plan(s) that the Employer maintains for its Employees providing benefits through either or both a short-term or long-term disability insurance policy or policies in the event the disability of a covered Participant. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**"Earned Income"** means all income derived from wages, salaries, tips, self-employment, and other Compensation (such as disability or wage continuation benefits), but only if such amounts are includible in gross income for the taxable year. Earned income does not include any other amounts excluded from earned income under Code § 32(c)(2), such as amounts received under a pension or annuity or pursuant to workers' compensation.

**"Effective Date"** of this Plan has the meaning described in Article 1.

**"Election Form/Salary Reduction Agreement"** means the form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan by electing Salary Reductions to pay for Premium Payment Benefits. This form may be in either paper or electronic form at the Employer's discretion in accordance with the procedures detailed in Article IV.

**"Eligible Employee"** means an Employee eligible to participate in this Plan, as provided in Section 3.1.

**"Employee"** means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code § 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any employee covered under a collective bargaining agreement; (d) any self-employed individual; (e) any partner in a partnership; (f) any more-than-2% shareholder in a Subchapter S corporation. The term "Employee" does include "former Employees" for the limited purpose of allowing continued eligibility for benefits under the Plan for the remainder of the Plan Year in which an Employee ceases to be employed by the Employer, but only to the extent specifically provided elsewhere under this Plan.

**"Employer"** means ARK TEX COUNCIL OF GOVERNMENT FBP, and any Related Employer that adopts this Plan with the approval of ARK TEX COUNCIL OF GOVERNMENT FBP. Related Employers that have adopted this Plan, if any, are listed in Appendix A of this Plan. However, for purposes of Articles XI and XIV and Section 15.3, "Employer" means only ARK TEX COUNCIL OF GOVERNMENT FBP.

**"Employment Commencement Date"** means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"FMLA"** means the Family and Medical Leave Act of 1993, as amended.

**"Health Insurance Benefits"** means any insurance benefits providing medical or other health insurance coverage through a group insurance policy or policies.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended.

**"HMO"** means the health maintenance organization Benefit Package Option under the Medical Insurance Plan.

**"Hospital Indemnity Benefits"** means the Employee's Hospital Indemnity Plan coverage for purposes of this Plan.

**"Hospital Indemnity Plan(s)"** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing certain indemnity benefits in the event of hospitalization or other similar medical event through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**"HRA"** means a health reimbursement arrangement as defined in IRS Notice 2002-45.

**"Insurance Benefits"** means benefits offered through the Insurance Plans.

**"Insurance Plan(s)"** means a plan or plans offering benefits through a group insurance policy or policies.

**"Medical Insurance Benefits"** means the Employee's Medical Insurance Plan coverage for purposes of this Plan.



**"Medical Insurance Plan(s)"** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing major medical type benefits through a group insurance policy or policies (with HMO and PPO options). The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**"Open Enrollment Period"** with respect to a Plan Year means any period before the beginning of the Plan Year that may be prescribed by the Administrator as the period of time in which Employees who will be Eligible Employees at the beginning of the Plan Year may elect benefits.

**"Participant"** means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III. Participants include (a) those who elect one or more of the Medical Insurance Benefits and (b) those who elect instead to receive their full salary in cash and to pay for their share of their Contributions under the Medical Insurance Plan.

**"Period of Coverage"** means the Plan Year, with the following exceptions: (a) for Employees who first become eligible to participate, it shall mean the portion of the Plan Year following the date on which participation commences, as described in Section 3.1; and (b) for Employees who terminate participation, it shall mean the portion of the Plan Year prior to the date on which participation terminates, as described in Section 3.2.

**"Plan"** means the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan as set forth herein and as amended from time to time.

**"Plan Administrator"** means the ARK TEX COUNCIL OF GOVERNMENT FBP Human Resources Manager or the equivalent thereof for ARK TEX COUNCIL OF GOVERNMENT FBP, who has the full authority to act on behalf of the Plan Administrator, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Plan Administrator, as described in Section 13.1.

**"Plan Year"** means the 12-month period commencing 10/1/2021 and ending on 9/30/2022, except in the case of a short plan year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short plan year.

**"PPO"** means the preferred provider organization Benefit Package Option under the Medical Insurance Plan.

**"Premium Payment Benefits"** means the Premium Payment Benefits that are paid for on a pre-tax Salary Reduction basis as described in Section 6.1.

**"Premium Payment Component"** means the Component of this Plan described in Article VI.

**"QMCSO"** means a qualified medical child support order, as defined in ERISA § 609(a).

**"Related Employer"** means any employer affiliated with ARK TEX COUNCIL OF GOVERNMENT FBP that, under Code § 414(b), § 414(c), or § 414(m), is treated as a single employer with ARK TEX COUNCIL OF GOVERNMENT FBP for purposes of Code § 125(g)(4).

**"Salary Reduction"** means the amount by which the Participant's Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the Benefits, as permitted for the applicable Component, before any applicable state and/or federal taxes have been deducted from the Participant's Compensation (i.e., on a pre-tax basis).

**"Specified Disease or Illness Insurance Benefits"** means the Employee's Specified Disease or Illness Insurance Plan coverage for purposes of this Plan.

**"Specified Disease or Illness Insurance Plan(s)"** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing certain benefits with regard to a particular critical illness or illnesses (e.g., a "cancer policy" or the like) through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits, terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

**"Spouse"** means an individual who is legally married to a Participant as determined under applicable state law (and who is treated as a spouse under the Code).

**"Vision Insurance Benefits"** means the Employee's Vision Insurance Plan coverage for purposes of this Plan.

**"Vision Insurance Plan(s)"** means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan(s)) providing vision benefits through a group insurance policy or policies. The Employer may substitute, add, subtract, or revise at any time the menu of such plans and/or the benefits,

terms, and conditions of any such plans. Any such substitution, addition, subtraction, or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

### **ARTICLE III. Eligibility and Participation**

#### **3.1 Eligibility to Participate**

An individual is eligible to participate in this Plan if the individual: (a) is an Employee; (b) is working 30 hours or more per week; and (c) has been employed by the Employer for a consecutive period of 90 days, counting his or her Employment Commencement Date as the first such day. Eligibility for Premium Payment Benefits may also be subject to the additional requirements, if any, specified in the Medical Insurance Plan. Once an Employee has met the Plan's eligibility requirements, the Employee may elect coverage effective the first day of the next calendar month, in accordance with the procedures described in Article IV.

#### **3.2 Termination of Participation**

A Participant will cease to be a Participant in this Plan upon the earlier of:

- the termination of this Plan; or
- the date on which the Employee ceases (because of retirement, termination of employment, layoff, reduction of hours, or any other reason) to be an Eligible Employee. Notwithstanding the foregoing, for purposes of pre-taxing COBRA coverage certain Employees may continue eligibility for certain periods on the terms and subject to the restrictions described in Section 6.4 for Insurance Benefits.

Termination of participation in this Plan will automatically revoke the Participant's elections. The Medical Insurance Benefits will terminate as of the date specified in the Medical Insurance Plan.

#### **3.3 Participation Following Termination of Employment or Loss of Eligibility**

If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within 30 days or less after the date of a termination of employment, then the Employee will be reinstated with the same elections that such individual had before termination. If a former Participant is rehired more than 30 days following termination of employment and is otherwise eligible to participate in the Plan, then the individual may make new elections as a new hire as described in Section 3.1. Notwithstanding the above, an election to participate in the Premium Payment Component will be reinstated only to the extent that coverage under the Medical Insurance Plan (here, major medical insurance) is reinstated. If an Employee (whether or not a Participant) ceases to be an Eligible Employee for any reason (other than for termination of employment), including (but not limited to) a reduction of hours, and then becomes an Eligible Employee again, the Employee must complete the waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

#### **3.4 FMLA Leaves of Absence**

*(a) Health Benefits.* Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA, then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Health Insurance Benefits on the same terms and conditions as if the Participant were still an active Employee. That is, if the Participant elects to continue his or her coverage while on leave, the Employer will continue to pay its share of the Contributions.

An Employer may require participants to continue all Health Insurance Benefits coverage for Participants while they are on paid leave (provided that Participants on non-FMLA paid leave are required to continue coverage). If so, the Participant's share of the Contributions shall be paid by the method normally used during any paid leave (for instance, on a pre-tax Salary Reduction basis).

In the event of unpaid FMLA leave (or paid FMLA leave where coverage is not required to be continued), a Participant may elect to continue his or her Health Insurance Benefits during the leave. If the Participant elects to continue coverage while on FMLA leave, then the Participant may pay his or her share of the Contributions in one of the following ways:

- with after-tax dollars, by sending monthly payments to the Employer by the due date established by the Employer;
- with pre-tax dollars, by having such amounts withheld from the Participant's ongoing Compensation (if any), including unused sick days and vacation days, or pre-paying all or a portion of the Contributions for the expected duration of the leave on a pre-tax Salary Reduction basis out of pre-leave Compensation. To pre-pay the Contributions, the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (pre-tax dollars may not be used to fund coverage during the next Plan Year); or
- under another arrangement agreed upon between the Participant and the Plan Administrator (e.g., the Plan Administrator may fund coverage during the leave and withhold "catch-up" amounts from the Participant's Compensation on a pre-tax or after-tax basis) upon the Participant's return.

If the Employer requires all Participants to continue Health Insurance Benefits during an unpaid FMLA leave, then the Participant may elect to discontinue payment of the Participant's required Contributions until the Participant returns from

leave. Upon returning from leave, the Participant will be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as agreed to by the Plan Administrator and the Participant.

If a Participant's Health Insurance Benefits coverage ceases while on FMLA leave (e.g., for non-payment of required contributions), then the Participant is permitted to re-enter the Medical Insurance Benefits upon return from such leave on the same basis as when the Participant was participating in the Plan prior to the leave, or as otherwise required by the FMLA. In addition, the Plan may require Participants whose Health Insurance Benefits coverage terminated during the leave to be reinstated in such coverage upon return from a period of unpaid leave, provided that Participants who return from a period of unpaid, non-FMLA leave are required to be reinstated in such coverage.

*(b) Non-Health Benefits.* If a Participant goes on a qualifying leave under the FMLA, then entitlement to non-health benefits is to be determined by the Employer's policy for providing such Benefits when the Participant is on non-FMLA leave, as described in Section 3.5. If such policy permits a Participant to discontinue contributions while on leave, then the Participant will, upon returning from leave, be required to repay the Contributions not paid by the Participant during the leave. Payment shall be withheld from the Participant's Compensation either on a pre-tax or after-tax basis, as may be agreed upon by the Plan Administrator and the Participant or as the Plan Administrator otherwise deems appropriate.

**3.5 Non-FMLA Leaves of Absence** If a Participant goes on an unpaid leave of absence that does not affect eligibility, then the Participant will continue to participate and the Contributions due for the Participant will be paid by pre-payment before going on leave, by after-tax contributions while on leave, or with catch-up contributions after the leave ends, as may be determined by the Plan Administrator. If a Participant goes on an unpaid leave that affects eligibility, then the election change rules detailed in Article IV will apply.

## **ARTICLE IV. Method and Timing of Elections; Irrevocability of Elections**

### **4.1 Elections When First Eligible**

Unless an Employee who becomes an Eligible Employee mid-Plan Year informs the Employer in writing (or in an electronic form accepted by Employer) that he or she does not want to be enrolled in any benefits under the Plan, such Employee will be automatically enrolled in the benefits on the first day of the month after the eligibility requirements have been satisfied.

Benefits shall be subject to the additional requirements, if any, specified in the Medical Insurance Plan. The provisions of this Plan are not intended to override any exclusions, eligibility requirements, or waiting periods specified in any Insurance Plans.

### **4.2 Elections During Open Enrollment Periods**

During each Open Enrollment Period with respect to a Plan Year, the Plan Administrator shall provide an Election Form/Salary Reduction Agreement to each Employee who is eligible to participate in this Plan. The Election Form/Salary Reduction Agreement shall enable the Employee to elect to participate in the various Components of this Plan for the next Plan Year and to authorize the necessary Salary Reductions to pay for the Benefits elected. The Election Form/Salary Reduction Agreement must be returned to the Plan Administrator on or before the last day of the Open Enrollment Period, and it shall become effective on the first day of the next Plan Year. If an Eligible Employee fails to return the Election Form/Salary Reduction Agreement during the Open Enrollment Period, then the Employee may not elect any Benefits under this Plan until the next Open Enrollment Period, unless an event occurs that would justify a mid-year election change, as described in Article IV.

The Employer reserves the right, within its discretion, to allow or require any or all of the election procedures detailed in this Article 4.2 to be performed electronically.

### **4.3 Failure of Eligible Employee to File an Election Form/Salary Reduction Agreement**

If an Eligible Employee fails to file an Election Form/Salary Reduction Agreement within the time period described in Section 4.2, then the Employee may not elect any Benefits under the Plan (a) until the next Open Enrollment Period; or (b) until an event occurs that would justify a mid-year election change, as described in Article IV. If an Employee who fails to file an Election Form/Salary Reduction Agreement is eligible for Medical Insurance Benefits and has made an effective election for such Benefits, then the Employee's share of the Contributions for such Benefits will be paid with after-tax dollars outside of this Plan until such time as the Employee files, during a subsequent Open Enrollment Period (or after an event occurs that would justify a mid-year election change as described in Article IV), a timely Election Form/Salary Reduction Agreement to elect Premium Payment Benefits. Until the Employee files such an election, the Employer's portion of the Contribution will also be paid outside of this Plan.

### **4.4 Irrevocability of Elections**

Unless an exception applies (as described in this Article IV), a Participant's election under the Plan is irrevocable for the duration of the Period of Coverage to which it relates.

Unless otherwise noted in this section, a Participant's election under the Plan is irrevocable for the duration of the Period of

Coverage to which it relates. In other words, unless an exception applies, the Participant may not change any elections for the duration of the Period of Coverage regarding:

- Participation in this Plan;
- Salary Reduction amounts; or
- election of particular Benefit Package Options.

#### **4.5 Procedure for Making New Election If Exception to Irrevocability Applies**

*(a) Timeframe for Making New Election.* A Participant (or an Eligible Employee who, when first eligible under Section 3.1 or during the Open Enrollment Period, declined to be a Participant) may make a new election within 30 days of the occurrence of an event described in Section 4.6 or 4.7, as applicable, but only if the election under the new Election Form/Salary Reduction Agreement is made on account of and is consistent with the event and if the election is made within any specified time period (e.g., for Sections 4.7(d) through 4.7(j), within 30 days after the events described in such Sections unless otherwise required by law). Notwithstanding the foregoing, a Change in Status (e.g., a divorce or a dependent's losing dependent status) that results in a beneficiary becoming ineligible for coverage under the Medical Insurance Plan shall automatically result in a corresponding election change, whether or not requested by the Participant within the normal 30-day period.

*(b) Effective Date of New Election.* Elections made pursuant to this Section 4.5 shall be effective for the balance of the Period of Coverage following the change of election unless a subsequent event allows for a further election change. Except as provided in Section 4.7(e) for HIPAA special enrollment rights in the event of birth, adoption, or placement for adoption, all election changes shall be effective on a prospective basis only (i.e., election changes will become effective no earlier than the first day of the next calendar month following the date that the election change was filed, but, as determined by the Plan Administrator, election changes may become effective later to the extent that the coverage in the applicable Benefit Package Option commences later).

#### **4.6 Change in Status Defined**

Participant may make a new election upon the occurrence of certain events as described in Section 4.7, including a Change in Status, for the applicable Component. "Change in Status" means any of the events described below, as well as any other events included under subsequent changes to Code § 125 or regulations issued thereunder, which the Plan Administrator, in its sole discretion and on a uniform and consistent basis, determines are permitted under IRS regulations and under this Plan:

*(a) Legal Marital Status.* A change in a Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation, or annulment;

*(b) Number of Dependents.* Events that change a Participant's number of Dependents, including birth, death, adoption, and placement for adoption;

*(c) Employment Status.* Any of the following events that change the employment status of the Participant or his or her Spouse or Dependents: (1) a termination or commencement of employment; (2) a strike or lockout; (3) a commencement of or return from an unpaid leave of absence; (4) a change in worksite; and (5) if the eligibility conditions of this Plan or other employee benefits plan of the Participant or his or her Spouse or Dependents depend on the employment status of that individual and there is a change in that individual's status with the consequence that the individual becomes (or ceases to be) eligible under this Plan or other employee benefits plan, such as if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid, union to non-union, or full-time to part-time (or vice versa), with the consequence that the employee ceases to be eligible for the Plan;

*(d) Dependent Eligibility Requirements.* An event that causes a Dependent to satisfy or cease to satisfy the Dependent eligibility requirements for a particular benefit, such as attaining a specified age, or any similar circumstance; and

*(e) Change in Residence.* A change in the place of residence of the Participant or his or her Spouse or Dependents.

#### **4.7 Events Permitting Exception to Irrevocability Rule**

A Participant may change an election as described below upon the occurrence of the stated events for the applicable Component of this Plan:

*(a) Open Enrollment Period.* A Participant may change an election during the Open Enrollment Period.

*(b) Termination of Employment.* A Participant's election will terminate under the Plan upon termination of employment in accordance with Sections 3.2 and 3.3, as applicable.

*(c) Leaves of Absence.* A Participant may change an election under the Plan upon FMLA leave in accordance with Section 3.4 and upon non-FMLA leave in accordance with Section 3.5.

(d) *Change in Status.* A Participant may change his or her actual or deemed election under the Plan upon the occurrence of a Change in Status (as defined in Section 4.6), but only if such election change is made on account of and corresponds with a Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer (referred to as the general consistency requirement). A Change in Status that affects eligibility for coverage under a plan of the Employer or a plan of the Spouse's or Dependent's employer includes a Change in Status that results in an increase or decrease in the number of an Employee's family members (i.e., a Spouse and/or Dependents) who may benefit from the coverage.

(1) *Loss of Spouse or Dependent Eligibility; Special COBRA Rules.* For a Change in Status involving a Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or a Dependent, or a Dependent's ceasing to satisfy the eligibility requirements for coverage, a Participant may only elect to cancel accident or health insurance coverage for (a) the Spouse involved in the divorce, annulment, or legal separation; (b) the deceased Spouse or Dependent; or (c) the Dependent that ceased to satisfy the eligibility requirements. Canceling coverage for any other individual under these circumstances would fail to correspond with that Change in Status. Notwithstanding the foregoing, if the Participant or his or her Spouse or Dependent becomes eligible for COBRA (or similar health plan continuation coverage under state law) under the Employer's plan (and the Participant remains a Participant under this Plan in accordance with Section 3.2), then the Participant may increase his or her election to pay for such coverage (this rule does not apply to a Participant's Spouse who becomes eligible for COBRA or similar coverage as a result of divorce, annulment, or legal separation).

(2) *Gain of Coverage Eligibility Under Another Employer's Plan.* For a Change in Status in which a Participant or his or her Spouse or Dependent gains eligibility for coverage under a cafeteria plan or qualified benefit plan of the employer of the Participant's Spouse or Dependent as a result of a change in marital status or a change in employment status, a Participant may elect to cease or decrease coverage for that individual only if coverage for that individual becomes effective or is increased under the Spouse's or Dependent's employer's plan. The Plan Administrator may rely on a Participant's certification that the Participant has obtained or will obtain coverage under the Spouse's or Dependent's employer's plan, unless the Plan Administrator has reason to believe that the Participant's certification is incorrect.

(e) *HIPAA Special Enrollment Rights.* If a Participant or his or her Spouse or Dependent is entitled to special enrollment rights under a group health plan (other than an excepted benefit), as required by HIPAA under Code § 9801(f), then a Participant may revoke a prior election for group health plan coverage and make a new election (including, when required by HIPAA, an election to enroll in another benefit package under a group health plan), provided that the election change corresponds with such HIPAA special enrollment right. As required by HIPAA, a special enrollment right will arise in the following circumstances:

- a Participant or his or her Spouse or Dependent declined to enroll in group health plan coverage because he or she had coverage, and eligibility for such coverage is subsequently lost because: (1) the coverage was provided under COBRA and the COBRA coverage was exhausted; or (2) the coverage was non-COBRA coverage and the coverage terminated due to loss of eligibility for coverage or the employer contributions for the coverage were terminated; or

- a new Dependent is acquired as a result of marriage, birth, adoption, or placement for adoption.

An election to add previously eligible Dependents as a result of the acquisition of a new Spouse or Dependent child shall be considered to be consistent with the special enrollment right. An election change on account of a HIPAA special enrollment attributable to the birth, adoption, or placement for adoption of a new Dependent child may, subject to the provisions of the underlying group health plan, be effective retroactively (up to 30 days).

For purposes of this Section 4.7(e), the term "loss of eligibility" includes (but is not limited to) loss of eligibility due to legal separation, divorce, cessation of dependent status, death of an employee, termination of employment, reduction of hours, or any loss of eligibility for coverage that is measured with reference to any of the foregoing; loss of coverage offered through an HMO that does not provide benefits to individuals who do not reside, live, or work in the service area because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual), and in the case of HMO coverage in the group market, no other benefit package is available to the individual; a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits; and a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

(f) *Certain Judgments, Decrees and Orders.* If a judgment, decree, or order (collectively, an "Order") resulting from a divorce, legal separation, annulment, or change in legal custody (including a QMCSO) requires accident or health coverage (including an election for Health FSA Benefits) for a Participant's child (including a foster child who is a Dependent of the Participant), then a Participant may (1) change his or her election to provide coverage for the child (provided that the Order requires the Participant to provide coverage); or (2) change his or her election to revoke coverage for the child if the Order requires that another individual (including the Participant's Spouse or former Spouse) provide coverage under that individual's plan and such coverage is actually provided.

(g) *Medicare and Medicaid.* If a Participant or his or her Spouse or Dependent who is enrolled in a health or accident plan under this Plan becomes entitled to (i.e., becomes enrolled in) Medicare or Medicaid (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), then the Participant may prospectively reduce or cancel the health or accident coverage of the person becoming entitled to Medicare or Medicaid. Furthermore, if a Participant or his or her Spouse or Dependent who has been entitled to Medicare or Medicaid loses

eligibility for such coverage, then the Participant may prospectively elect to commence or increase the accident or health coverage of the individual who loses Medicare or Medicaid eligibility.

*(h) Change in Cost.* For purposes of this Section 4.7(h), "similar coverage" means coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide major medical coverage are considered to be similar coverage.

*(1) Increase or Decrease for Insignificant Cost Changes.* Participants are required to increase their elective contributions (by increasing Salary Reductions) to reflect insignificant increases in their required contribution for their Benefit Package Option(s), and to decrease their elective contributions to reflect insignificant decreases in their required contribution. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will determine whether an increase or decrease is insignificant based upon all the surrounding facts and circumstances, including but not limited to the dollar amount or percentage of the cost change. The Plan Administrator, on a reasonable and consistent basis, will automatically effectuate this increase or decrease in affected employees' elective contributions on a prospective basis.

*(2) Significant Cost Increases.* If the Plan Administrator determines that the cost charged to an Employee of a Participant's Benefit Package Option(s) significantly increases during a Period of Coverage, then the Participant may (a) make a corresponding prospective increase in his or her elective contributions (by increasing Salary Reductions); (b) revoke his or her election for that coverage, and in lieu thereof, receive on a prospective basis coverage under another Benefit Package Option that provides similar coverage; or (c) drop coverage prospectively if there is no other Benefit Package Option available that provides similar coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost increase is significant in accordance with prevailing IRS guidance.

*(3) Significant Cost Decreases.* If the Plan Administrator determines that the cost of any Benefit Package Option significantly decreases during a Period of Coverage, then the Plan Administrator may permit the following election changes: (a) Participants enrolled in that Benefit Package Option may make a corresponding prospective decrease in their elective contributions (by decreasing Salary Reductions); (b) Participants who are enrolled in another Benefit Package Option may change their election on a prospective basis to elect the Benefit Package Option that has decreased in cost Medical Insurance Plan); or (c) Employees who are otherwise eligible under Section 3.1 may elect the Benefit Package Option that has decreased in cost on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a cost decrease is significant in accordance with prevailing IRS guidance.

*(i) Change in Coverage.* The definition of "similar coverage" under Section 12.4(h) applies also to this Section 12.4(i).

*(1) Significant Curtailment.* If coverage is "significantly curtailed" (as defined below), Participants may elect coverage under another Benefit Package Option that provides similar coverage. In addition, as set forth below, if the coverage curtailment results in a "Loss of Coverage" (as defined below), then Participants may drop coverage if no similar coverage is offered by the Employer. The Plan Administrator in its sole discretion, on a uniform and consistent basis, will decide, in accordance with prevailing IRS guidance, whether a curtailment is "significant," and whether a Loss of Coverage has occurred.

*(a) Significant Curtailment Without Loss of Coverage.* If the Plan Administrator determines that a Participant's coverage under a Benefit Package Option under this Plan (or the Participant's Spouse's or Dependent's coverage under his or her employer's plan) is significantly curtailed without a Loss of Coverage (for example, when there is a significant increase in the deductible, the co-pay, or the out-of-pocket cost-sharing limit under an accident or health plan during a Period of Coverage, the Participant may revoke his or her election for the affected coverage, and in lieu thereof, prospectively elect coverage under another Benefit Package Option that provides similar coverage. Coverage under a plan is deemed to be "significantly curtailed" only if there is an overall reduction in coverage provided under the plan so as to constitute reduced coverage generally.

*(b) Significant Curtailment With a Loss of Coverage.* If the Plan Administrator determines that a Participant's Benefit Package Option coverage under this Plan (or the Participant's Spouse's or Dependent's coverage under his or her employer's plan) is significantly curtailed, and if such curtailment results in a Loss of Coverage during a Period of Coverage, then the Participant may revoke his or her election for the affected coverage and may either prospectively elect coverage under another Benefit Package Option that provides similar coverage or drop coverage if no other Benefit Package Option providing similar coverage is offered by the Employer.

*(c) Definition of Loss of Coverage.* For purposes of this Section 4.7(i)(1), a "Loss of Coverage" means a complete loss of coverage (including the elimination of a Benefit Package Option, an HMO ceasing to be available where the Participant or his or her Spouse or Dependent resides, or a Participant or his or her Spouse or Dependent losing all coverage under the Benefit Package Option by reason of an overall lifetime or annual limitation). In addition, the Plan Administrator, in its sole discretion, on a uniform and consistent basis, may treat the following as a Loss of Coverage:

- a substantial decrease in the medical care providers available under the Benefit Package Option (such as a major hospital ceasing to be a member of a preferred provider network or a substantial decrease in the number of physicians participating in the PPO for the Medical Insurance Plan or in an HMO);

- a reduction in benefits for a specific type of medical condition or treatment with respect to which the Participant or his or her

Spouse or Dependent is currently in a course of treatment; or

- any other similar fundamental loss of coverage.

*(2) Addition or Significant Improvement of a Benefit Package Option.* If during a Period of Coverage the Plan adds a new Benefit Package Option or significantly improves an existing Benefit Package Option, the Plan Administrator may permit the following election changes: (a) Participants who are enrolled in a Benefit Package Option other than the newly added or significantly improved Benefit Package Option may change their elections on a prospective basis to elect the newly added or significantly improved Benefit Package Option; and (b) Employees who are otherwise eligible under Section 3.1 may elect the newly added or significantly improved Benefit Package Option on a prospective basis, subject to the terms and limitations of the Benefit Package Option. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether there has been an addition of, or a significant improvement in, a Benefit Package Option in accordance with prevailing IRS guidance.

*(3) Loss of Coverage Under Other Group Health Coverage.* A Participant may prospectively change his or her election to add group health coverage for the Participant or his or her Spouse or Dependent, if such individual(s) loses coverage under any group health coverage sponsored by a governmental or educational institution, including (but not limited to) the following: a state children's health insurance program (SCHIP) under Title XXI of the Social Security Act; a medical care program of an Indian Tribal government (as defined in Code § 7701(a)(40)), the Indian Health Service, or a tribal organization; a state health benefits risk pool; or a foreign government group health plan, subject to the terms and limitations of the applicable Benefit Package Option(s).

*(4) Change in Coverage Under Another Employer Plan.* A Participant may make a prospective election change that is on account of and corresponds with a change made under an employer plan (including a plan of the Employer or a plan of the Spouse's or Dependent's employer), so long as (a) the other cafeteria plan or qualified benefits plan permits its participants to make an election change that would be permitted under applicable IRS regulations; or (b) the Plan permits Participants to make an election for a Period of Coverage that is different from the plan year under the other cafeteria plan or qualified benefits plan. For example, if an election is made by the Participant's Spouse during his or her employer's open enrollment to drop coverage, the Participant may add coverage to replace the dropped coverage. The Plan Administrator, in its sole discretion and on a uniform and consistent basis, will decide whether a requested change is on account of and corresponds with a change made under the other employer plan, in accordance with prevailing IRS guidance. A Participant entitled to change an election as described in this Section 4.7 must do so in accordance with the procedures described in Section 4.5.

*(j) Revocation Due to Reduction in Hours*

A Participant may revoke his or her Major Medical coverage, along with that of any related individuals, if the Participant experiences a reduction of hours such that he or she will be reasonably expected to work fewer than 30 hours a week on a regular basis and the Participant intends to enroll, along with any such related individuals, in another plan no later than the first day of the second full month following the revocation.

*(k) Revocation of Coverage for Purposes of Enrolling in Marketplace Coverage*

A Participant may revoke his or her Major Medical coverage if he or she is seeking to enroll, along with any related individuals who cease coverage due to such revocation, in Marketplace coverage (either during the Marketplace's annual open enrollment period or during a special enrollment period) immediately after the revoked coverage ends.

*(l) CHIP Special Enrollment Rights*

Notwithstanding anything else in this document to the contrary, special enrollment rights shall be made available as a result of a loss of eligibility for Medicaid or for coverage under a state children's health insurance program (SCHIP) or as a result of eligibility for a state premium assistance subsidy under the plan from Medicaid or SCHIP.

**4.8 \*\*\*Reserved\*\*\***

**4.9 Election Modifications Required by Plan Administrator**

The Plan Administrator may, at any time, require any Participant or class of Participants to amend the amount of their Salary Reductions for a Period of Coverage if the Plan Administrator determines that such action is necessary or advisable in order to (a) satisfy any of the Code's nondiscrimination requirements applicable to this Plan or other cafeteria plan; (b) prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of benefits hereunder than would otherwise be recognized; (c) maintain the qualified status of benefits received under this Plan; or (d) satisfy Code nondiscrimination requirements or other limitations applicable to the Employer's qualified plans. In the event that contributions need to be reduced for a class of Participants, the Plan Administrator will reduce the Salary Reduction amounts for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction amount and continuing with the Participant in the class who had elected the next-highest Salary Reduction amount, and so forth, until the defect is corrected.

## 5.1 Benefits Offered

When first eligible or during the Open Enrollment Period as described under Article IV, Participants will be given the opportunity to elect Premium Payment Benefits, as described in Article VI.

## 5.2 Employer and Participant Contributions

(a) *Employer Contributions.* For Participants who elect Insurance Benefits described in Article VI, the Employer may contribute a portion of the Contributions as provided in the open enrollment materials furnished to Employees and/or on the Election Form/Salary Reduction Agreement.

(b) *Participant Contributions.* Participants who elect any of the Medical Insurance Benefits described in Article VI may pay for the cost of that coverage on a pre-tax Salary Reduction basis, or with after-tax deductions, by completing an Election Form/Salary Reduction Agreement.

## 5.3 Using Salary Reductions to Make Contributions

(a) *Salary Reductions per Pay Period.* The Salary Reduction for a pay period for a Participant is, for the Benefits elected, (1) an amount equal to the annual Contributions for such Benefits (as described in Section 6.2 for Premium Payment Benefits; (2) an amount otherwise agreed upon between the Employer and the Participant; or (3) an amount deemed appropriate by the Plan Administrator (i.e., in the event of shortage in reducible Compensation, amounts withheld and the Benefits to which Salary Reductions are applied may fluctuate).

(b) *Considered Employer Contributions for Certain Purposes.* Salary Reductions are applied by the Employer to pay for the Participant's share of the Contributions for the Premium Payment Benefits are considered to be Employer contributions.

(c) *Salary Reduction Balance Upon Termination of Coverage.* If, as of the date that any elected coverage under this Plan terminates, a Participant's year-to-date Salary Reductions exceed or are less than the Participant's required Contributions for the coverage, then the Employer will, as applicable, either return the excess to the Participant as additional taxable wages or recoup the due Salary Reduction amounts from any remaining Compensation.

(d) *After-Tax Contributions for Premium Payment Benefits.* For those Participants who elect to pay their share of the Contributions for any of the Medical Insurance Benefits with after-tax deductions, both the Employee and Employer portions of such Contributions will be paid outside of this Plan.

## 5.4 Funding This Plan

All of the amounts payable under this Plan shall be paid from the general assets of the Employer, but Premium Payment Benefits are paid as provided in the applicable insurance policy. Nothing herein will be construed to require the Employer or the Plan Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account, or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid. While the Employer has complete responsibility for the payment of Benefits out of its general assets (except for Premium Payment Benefits paid as provided in the applicable insurance policy), it may hire an unrelated third-party paying agent to make Benefit payments on its behalf. The maximum contribution that may be made under this Plan for a Participant is the total of the maximums that may be elected as Employer and Participant Contributions for Premium Payment Benefits, as described in Section 6.2.

## ARTICLE VI. Premium Payment Component

### 6.1 Benefits

The only Insurance Benefits that are offered under the Premium Payment Component are benefits under the Medical, Dental, Vision, Accident, Bridge, Disability, Hospital Indemnity, Specific Disease or Condition Insurance Plan(s). Notwithstanding any other provision in these Plan(s), these benefits are subject to the terms and conditions of the Insurance Plan(s), and no changes can be made with respect to such Insurance Benefits under this Plan (such as mid-year changes in election) if such changes are not permitted under the applicable Insurance Plan. An Eligible Employee can (a) elect benefits under the Premium Payment Component by electing to pay for his or her share of the Contributions for Medical Insurance Benefits on a pretax Salary Reduction basis (Premium Payment Benefits); or (b) elect no benefits under the Premium Payment Component and to pay for his or her share of the Contributions, if any, for Medical Insurance Benefits with after-tax deductions outside of this Plan. Unless an exception applies (as described in Article IV), such election is irrevocable for the duration of the Period of Coverage to which it relates.

The Employer may at its discretion offer cash in lieu of benefits for Participants who do not choose Insurance Benefits.

### 6.2 Contributions for Cost of Coverage

The annual Contribution for a Participant's Premium Payment Benefits is equal to the amount as set by the Employer, which



may or may not be the same amount charged by the insurance carrier.

### **6.3 Insurance Benefits Provided Under Insurance Plans**

Insurance Benefits will be provided by the Insurance Plans, not this Plan. The types and amounts of Insurance Benefits, the requirements for participating in the Insurance Plans, and the other terms and conditions of coverage and benefits of the Insurance Plans are set forth in the Insurance Plans. All claims to receive benefits under the Insurance Plans shall be subject to and governed by the terms and conditions of the Insurance Plans and the rules, regulations, policies, and procedures adopted in accordance therewith, as may be amended from time to time.

### **6.4 Health Insurance Benefits; COBRA**

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, a Participant and his or her Spouse and Dependents, as applicable, whose coverage terminates under the Health Insurance Benefits because of a COBRA qualifying event (and who is a qualified beneficiary as defined under COBRA), shall be given the opportunity to continue on a self-pay basis the same coverage that he or she had under the Health Insurance Plan(s) the day before the qualifying event for the periods prescribed by COBRA.

Such continuation coverage shall be subject to all conditions and limitations under COBRA. Contributions for COBRA coverage for Health Insurance Benefits may be paid on a pre-tax basis for current Employees receiving taxable compensation (as may be permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year) where COBRA coverage arises either (a) because the Employee ceases to be eligible because of a reduction in hours; or (b) because the Employee's Dependent ceases to satisfy the eligibility requirements for coverage. For all other individuals (e.g., Employees who cease to be eligible because of retirement, termination of employment, or layoff), Contributions for COBRA coverage for Health Insurance Benefits shall be paid on an after-tax basis (unless may be otherwise permitted by the Plan Administrator on a uniform and consistent basis, but may not be prepaid from contributions in one Plan Year to provide coverage that extends into a subsequent Plan Year).

### **ARTICLES VII. - XII. \*\*\*RESERVED\*\*\***

### **ARTICLE XIII. Appeals Procedure**

#### **13.1 Procedure If Benefits Are Denied Under This Plan**

If a claim for reimbursement under this Plan is wholly or partially denied, then claims shall be administered in accordance with the claims procedure set forth in the summary plan description for this Plan. The Committee acts on behalf of the Plan Administrator with respect to appeals.

#### **13.2 Claims Procedures for Insurance Benefits**

Claims and reimbursement for Insurance Benefits shall be administered in accordance with the claims procedures for the Insurance Benefits, as set forth in the plan documents and/or summary plan description(s) for the Insurance Plan(s).

### **ARTICLE XIV. Recordkeeping and Administration**

#### **14.1 Plan Administrator**

The administration of this Plan shall be under the supervision of the Plan Administrator. It is the principal duty of the Plan Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

#### **14.2 Powers of the Plan Administrator**

The Plan Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Plan Administrator shall have the following discretionary authority:

(a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan (provided that, notwithstanding the first paragraph in this Section 14.2, the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 13.1);

(b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;

(c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Plan

Administrator determines to be appropriate;

(d) to request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;

(e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Plan Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide benefits under this Plan;

(f) to receive, review, and keep on file such reports and information regarding the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper;

(g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;

(h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;

(i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal; and

(j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

#### **14.3 Reliance on Participant, Tables, etc.**

The Plan Administrator may rely upon the direction, information, or election of a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Plan Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions, and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Plan Administrator.

#### **14.4 \*\*\*Reserved\*\*\***

#### **14.5 Fiduciary Liability**

To the extent permitted by law, the Plan Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

#### **14.6 Compensation of Plan Administrator**

Unless otherwise determined by the Employer and permitted by law, any Plan Administrator that is also an Employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

#### **14.7 Bonding**

The Plan Administrator shall be bonded to the extent required by ERISA.

#### **14.8 Insurance Contracts**

The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any benefits under the Plan; and (b) to replace any of such insurance companies or contracts at its discretion. Any dividends, retroactive rate adjustments, or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of and be retained by the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

#### **14.9 Inability to Locate Payee**

If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.

#### **14.10 Effect of Mistake**

In the event of a mistake as to the eligibility or participation of an Employee, the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Plan Administrator shall, to the

extent that it deems administratively possible and otherwise permissible under Code § 125 or the regulations issued thereunder, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the account or distributions to which he or she is properly entitled under the Plan. Such action by the Plan Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

## **ARTICLE XV. General Provisions**

### **15.1 \*\*\*Reserved\*\*\***

### **15.2 No Contract of Employment**

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

### **15.3 Amendment and Termination**

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan at any time for any reason and any such amendment or termination will automatically apply to the Related Employers that are participating in this Plan.

### **15.4 Governing Law**

This Plan shall be construed, administered, and enforced according to the laws of TX, to the extent not superseded by the Code, ERISA, or any other federal law.

### **15.5 Code and ERISA Compliance**

It is intended that this Plan meet all applicable requirements of the Code , ERISA (if ERISA is applicable) and of all regulations issued thereunder. This Plan shall be construed, operated, and administered accordingly, and in the event of any conflict between any part, clause, or provision of this Plan and the Code and/or ERISA (if ERISA is applicable), the provisions of the Code and ERISA (if ERISA is applicable) shall be deemed controlling, and any conflicting part, clause, or provision of this Plan shall be deemed superseded to the extent of the conflict.

### **15.6 No Guarantee of Tax Consequences**

Neither the Plan Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state, or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state, and local income tax purposes and to notify the Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.

### **15.7 Indemnification of Employer**

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis and if such payments do not qualify for such treatment under the Code, then such Participant shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

### **15.8 Non-Assignability of Rights**

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent required by law.

### **15.9 Headings**

The headings of the various Articles and Sections are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

### **15.10 Plan Provisions Controlling**

In the event that the terms or provisions of any summary or description of this Plan are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

### **15.11 Severability**

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising the ARK TEX COUNCIL OF GOVERNMENT FBP Salary Reduction Plan, ARK TEX COUNCIL OF GOVERNMENT FBP has caused this Plan to be executed in its name and on its behalf, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ARK TEX COUNCIL OF GOVERNMENT FBP**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Amendment to the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan with Regard to Health Savings Accounts  
Effective , the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan is amended as follows:**

**ARTICLE II is amended by adding the following:**

**"Benefits"** can mean, according to the context used, either Premium Payment Benefits or HSA Benefits (in the form of Contributions to an HSA).

**"Contributions"** can mean, according to the context used, either 1) the amount contributed to pay for the cost of Benefits (including self-funded Benefits as well as those that are insured), as calculated under Section 6.2 for Premium Payment Benefits or 2) contributions to a health savings account.

**"Health Savings Account (HSA)"** has the meaning provided in § 223 of the Code.

**"High-Deductible Health Plan (HDHP)"** has the meaning given in § 223 of the Code.

**"Participant"** means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III. Participants include (a) those who elect one or more of the Medical Insurance Benefits and/or elect to make HSA Contributions under this Plan, or (b) those who elect instead to receive their full salary in cash and to pay for their share of their Contributions under the Medical Insurance Plan.

**ARTICLE IX is not "Reserved" but instead reads as follows:**

**ARTICLE IX. HSA Component**

**9.1 HSA Benefits**

An Eligible Employee can elect to participate in the HSA Component by electing to pay the Contributions on a pre-tax Salary Reduction basis to the Employee's HSA established and maintained outside the Plan by a trustee/custodian to which the Employer can forward contributions to be deposited (this funding feature constitutes the HSA Benefits offered under this Plan). Any language in the document to the contrary notwithstanding, such election can be increased, decreased or revoked prospectively at any time during the Plan Year, effective no later than the first day of the next calendar month following the date that the election change was filed.

**9.2 Contributions for Cost of Coverage for HSA; Maximum Limits**

The annual Contribution for a Participant's HSA Benefits is equal to the annual benefit amount elected by the Participant. In no event shall the amount elected exceed the statutory maximum amount for HSA contributions applicable to the Participant's High Deductible Health Plan coverage option (i.e., single or family) for the calendar year in which the Contribution is made.

An additional catch-up Contribution may be made for Participants who are age 55 or older.

In addition, the maximum annual Contribution shall be:

(a) reduced by any matching (or other) Employer Contribution, if any, made on the Participant's behalf made under the Plan; and

(b) prorated for the number of months in which the Participant is an HSA-Eligible Individual.

**9.3 \*\*\*Reserved\*\*\***

**9.4 Recording Contributions for HSA**

As described in Section 9.6, the HSA is not an employer-sponsored employee benefit plan - it is an individual trust or custodial account separately established and maintained by a trustee/custodian outside the Plan. Consequently, the HSA trustee/custodian, not the Employer, will establish and maintain the HSA. The HSA trustee/custodian will be chosen by the Participant, not by the Employer. The Employer may, however, limit the number of HSA providers to whom it will forward contributions that the Employee makes via pre-tax Salary Reductions - such a list is not an endorsement of any particular HSA provider. The Plan Administrator will maintain records to keep track of HSA Contributions an Employee makes via pre-tax Salary Reductions, but it will not create a separate fund or otherwise segregate assets for this purpose. The Employer has no authority or control over the funds deposited in an HSA.

**9.5 Tax Treatment of HSA Contributions and Distributions**

The tax treatment of the HSA (including contributions and distributions) is governed by Code § 223.

**9.6 Trust/Custodial Agreement; HSA Not Intended to Be an ERISA Plan**

HSA Benefits under this Plan consist solely of the ability to make Contributions to the HSA on a pre-tax Salary Reduction basis. Terms and conditions of coverage and benefits (e.g., eligible medical expenses, claims procedures, etc.) will be provided by and are set forth in the HSA, not this Plan. The terms and conditions of each Participant's HSA trust or custodial account are described in the HSA trust or custodial agreement provided by the applicable trustee/custodian to each electing Participant and are not a part of this Plan.

The HSA is not an employer-sponsored employee benefits plan. It is a savings account that is established and maintained by an HSA trustee/custodian outside this Plan to be used primarily for reimbursement of "qualified eligible medical expenses" as set forth in Code § 223(d)(2). The Employer has no authority or control over the funds deposited in a HSA. Even though this Plan may allow pre-tax Salary Reduction contributions to an HSA, the HSA is not intended to be an ERISA benefit plan sponsored or maintained by the Employer.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising an amendment to the ARK TEX COUNCIL OF GOVERNMENT FBP Cafeteria Plan, ARK TEX COUNCIL OF GOVERNMENT FBP has caused this amendment to be executed in its name and on its behalf, on this 12th day of September 2022.

**ARK TEX COUNCIL OF GOVERNMENT FBP**

By: \_\_\_\_\_

Its: \_\_\_\_\_



# ARK-TEX AREA AGENCY ON AGING POLICY & PROCEDURES MANUAL

Revision Date: April 2021

FUNDED IN PART BY  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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## Chapter 1: Area Agency on Aging Operations

### **Purpose**

The Ark-Tex Area Agency on Aging, hereafter referred to as (AAA), is an agency mandated under the Older Americans Act of 1965, as amended, Section 305. The AAA has the sole responsibility for providing services in the Northeast Texas Region to qualified older Texans and their family caregivers. Health and Human Services (HHSC) has designated the Ark-Tex Council of Governments (ATCOG) as the Area Agency on Aging for State Planning Region 83102, and serves Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus counties. In addition, the AAA establishes policies, develops procedures, provides technical assistance, and conducts monitoring of programs as may be necessary to ensure compliance with state and federal law and with all terms and conditions of the contract it enters into with HHSC.

### **Mission**

To advocate on behalf of disabled adults and the senior population and assist them in living independent, meaningful, and dignified lives.

### **Vision**

To be the best advocate and service provider for seniors in the Ark-Tex region.

### **Responsibilities**

The AAA's coordinated community-based system shall follow the State approved Area Plan. Listed are a few responsibilities:

1. Have a visible focal point of contact where anyone can call for help, information or referral on any aging issue;
2. Provide a range of options listed in the Area Plan;
3. Ensure that these options are readily accessible to all older persons, including those who are independent, semi-dependent, and totally dependent, no matter what their income;
4. Offer special or targeted resources for vulnerable older individuals who are in danger of losing their independence; and
5. Provide effective referral from agency to agency, no matter how or where contact is made in the community.

Reference: [26 TAC §213.151](#)

## Chapter 2: Administrative Responsibilities

### Purpose

1. The AAA has established the responsibilities in developing and maintaining an organized and efficient system of administration that demonstrates accountability and compliance with state and federal law and with all terms and conditions of the contract it enters into with HHSC; and
2. Applies to a service under the Older Americans Act provided to a program participant that is funded, in whole or in part, by HHSC.

### Structure of AAA

1. Will identify and employ a person as the director and/or manager of the AAA;
2. If the director and/or manager position becomes vacant, the Executive Director will ensure that a qualified staff person is assigned to perform the duties of the manager until the position is filled;
3. Will budget all positions based on the projected percentage of time to be spent performing the duties of an identified service; according to the Ark-Tex Staff Activities Chart (see [Attachment A](#)).
4. Will maintain documentation to support the actual time spent performing the duties of an identified service; and
5. Will comply with the Service Definitions for Area Agencies on Aging for all services funded by HHSC.
6. Will establish an advisory council, according to the Older Americans Act 306(a)(6)(D) using the By-Laws in [Attachment B](#).

### Duties of Regional Advisory Council Members

1. Review/Approve the Annual budget.
2. Review/Approve the Area plan before it is due to make any necessary suggestions as to how the unmet needs in the nine-county region may be met.
3. Visit the Senior Centers in our region and fill out the AAA form that will give the AAA feedback as to how the site is performing. The RAC member either mails the form back to the AAA or gives it to staff upon the next RAC meeting. If there are reported issues or concerns from the members, then the AAA will make a monitoring visit to the site.
4. Advocate for the organization and enhance the AAA's visibility.
5. Represents the interests of the AAA and the clientele it serves.

## Conflict of Interest

### Purpose

This section establishes the AAA's policies and procedures concerning conflicts of interest.

### Policy

The AAA must ensure that its board members, employees, volunteers, and aging advisory committee members are not subject to a conflict of interest in accordance with HHSC PI-500, and provide proper notification when potential conflicts of interest do occur.

### Procedures

The AAA requires the Notification of Conflict of Interest Form (see [Attachment C](#)) to be completed by all individuals working or volunteering with the AAA to:

1. Ensure that no current employee, volunteer, aging advisory committee member, or governing board member holds a substantial financial interest in the profits of any entity from which services or goods are contracted or purchased by the AAA or any long-term care facility.
2. Ensure that no current employee, aging advisory committee member, or governing board member who exercises any functions or responsibilities in the review of award of any contract or the procurement of services or goods on behalf of the AAA, participates in any decision for contract or procurement of services or goods in which he/she has a direct or indirect substantial personal financial interest.
3. Ensure that no representative of the office of the state long-term care ombudsman, paid or volunteer, directly or indirectly shall have:
  - a. Direct involvement in the licensing or certification of a long-term care facility or of a provider of long-term care service;
  - b. Have a family member residing in a long-term care facility that he/she is assigned or provides advocacy;
  - c. Has ownership or direct investment interest in a long-term care service;
  - d. Is employed by or participates in the management of a long-term care facility, or receives or has the right to receive, directly or indirectly, remuneration under a compensation arrangement with the owner or operator of a long-term care facility;
  - e. Ensure that all respondents to Requests for Proposals and Provider Applications disclose whether potential conflicts of interest exist and, if so:
    - 1) The person and nature for which the potential conflict of interest exists; and
    - 2) The relationship to any current or former employee, current or former advisory council member, current or former board member.

Reference: [26 TAC §213.151](#) (b)(3)(A)(i-ii)

## **Compliance with Laws, Rules, Regulations, and Other Requirements**

### **Purpose**

This section sets forth the AAA's policies and procedures regarding compliance with laws, rules, regulations, and other requirements.

### **Policy**

The AAA will comply with applicable federal and state laws rules, and regulations, standards, and instructions including:

1. The Older Americans Act of 1965;
2. State laws regarding the financial operation of The AAA;
3. 45 Code of Federal Regulations (CFR) §1321.67;
4. 45 CFR §92.25;
5. Uniform Grant Management Standards;
6. Office of Management and Budget Circulars; and
7. HHSC Program Instructions.

Reference: [26 TAC §213.151](#) (c)

## **Accountability**

### **Purpose**

This section sets forth the AAA's policies and procedures concerning its accountability to meet programmatic and fiscal performance targets.

### **Procedures**

1. Financial and Programmatic
  - a. The ATCOG Finance Department maintains and uses a software program, MIP, which is capable of producing expenditure reports, cost center analyses, budgets, and state and federal reports.
  - b. The ATCOG Finance Department computers are backed-up by the ATCOG IT Department hourly.
2. Data Backup Procedures
  - a. A file server contains the AAA files and is backed up hourly using Dell's Data Protection/Rapid Recovery software. All data is replicated hourly at an offsite location 65 miles away in order to provide geographical redundancy. The MedData program along with the HomeMeds/Evidence Based program servers are located in other locations in other states and backed up accordingly by those agencies.
  - b. AAA uses the SPURS Database through Wellsky Aging and Disability System. This is a web-based software program and all data is backed up on a daily basis at their home offices.
3. Performance Measure Projections

- a. The AAA programmatic and fiscal performance targets as outlined in the approved budget are monitored on a monthly basis by the AAA Director and/or Manager and the ATCOG Accounting Specialist, in order to stay within the five percent variance.
  - b. In the event that it cannot meet its performance measure targets for selected key measures, the AAA will request a revision to an approved performance target from HHSC. Such revisions will be requested when the actual performance reflects a five percent variance.
  - c. The AAA will base the explanation for the revision on the methodology used to prepare the current approved projection as follows:
    - 1) If the methodology used to prepare the current approved projection was flawed, explaining the method used and why the method was flawed.
    - 2) If the methodology used to prepare the approved projection was correct at the time the Area Plan was prepared, but because of unforeseen circumstances the projection must be revised, explaining the revision.
  - d. The AAA will submit a key performance measure revision form for each target revision requested. The form must be completed electronically and sent to HHSC's Helpdesk.
4. Submission of Required Reports
- a. The AAA will utilize the AAA Reports Due date Schedule as a tool to ensure that all required reports are completed and submitted to HHSC in a timely manner.
  - b. The AAA will submit reports, via e-mail, to HHSC's Help Desk using the proper Subject Line Nomenclature.
  - c. In the event the AAA is unable to submit a report by the due date, the AAA will request an extension in writing to the Help Desk through electronic notification on or before the due date of the report for which the request is made. The AAA is aware that HHSC may grant the AAA up to two extensions per report and the AAA may be granted no more than eight extensions per fiscal year. The length of extension will be negotiated, with HHSC making the final decision regarding the length of the extension.
5. Comply with Terms of Applicable Interagency Agreements
- a. The AAA will comply with the terms of all applicable interagency agreements, including those agreements legislatively mandated or to which HHSC and the AAA are parties.

## **Quarterly Performance Report Data Verification Process**

### **Purpose**

To track the services and test the overall performance of the AAA subcontractors to ensure quality services are provided to the clients in the communities we serve and that accurate reports are submitted to the AAA.

## Policy

The Ark-Tex Area Agency on Aging establishes the following process in order to assure that data at the Fiscal, Performance and Program levels is reported correctly to HHSC Access and Intake Division.

## Procedures

1. On a monthly basis after all units of services have been entered into the SPURS Software Program, the AAA Coordinator or designee runs monthly data reports. This information is verified and entered on the QPR quarterly.
2. When preparing the QPR report, the ATCOG Accounting Specialist or designee obtains the expenditures from the General Ledger.
3. The ATCOG Accounting Specialist or designee then inserts the unduplicated clients, unduplicated Providers, and monthly units from the report provided by SPURS in the respective columns of the QPR. In addition, the ATCOG Accounting Specialist or designee then inserts the amounts from the General Ledger into the HHSC Total Expenditures area on the QPR.
4. The QPR is reviewed by the AAA Director and/or Manager and the ATCOG Accounting Specialist or designee before submission to the HHSC Help Desk.
5. The ATCOG Accounting Specialist or designee will submit the QPR Report to [AAA.Help@HHSC.state.tx.us](mailto:AAA.Help@HHSC.state.tx.us) with the correct subject line Nomenclature (83102 – QPR FYxx – Qx)

Reference: [26 TAC §213.151](#)

## Targeting Service Delivery

### Purpose

This section sets forth the AAA's policies and procedures for targeting individuals in accordance with the OAA, as amended, to ensure that those most in need receive services and to reduce individual and social barriers to economic and personal independence for older individuals.

### Policy

The AAA gives preference for Title III services, with the exception of Title III-E caregiver services, to older individuals age 60+ who are residing in rural areas and show any of the following as described in the Older Americans Act, §306(a)(4)(B)(i). The AAA uses HHSC [AAA-TA301 Poverty Guidelines](#) to define "greatest economic need".

### Procedures

The AAA employs specific procedures which include, but are not limited to, the following:

1. The AAA case managers perform an assessment to determine an individual's needs for our services. The case managers place emphasis on the targeted populations addressed in the



Older Americans Act, during these assessments. Benefits Counselors and the Local Managing Ombudsman utilize this same principle when dealing with their clients.

2. Requiring service providers to adhere to the targeting policy implemented by the AAA and stated in the Provider Agreement.

Reference: [26 TAC §213.151](#)

## **Interest Lists**

### **Purpose**

This section describes the policies and procedures regarding the AAA’s method for targeting requirements to prioritize people on interest lists.

### **Policy**

The AAA may use an interest list if resources are insufficient to meet the demand for services. Staff will screen individuals that may be on an interest list and provide resources and referrals as needed. This is to ensure compliance with OAA requirements when sudden or unexpected changes in demand or resources occur.

### **Procedures**

The AAA will use the following indicators to be used to find eligible people with a high probability of service need:

1. Functional impairment or disability resulting in limited mobility; inadequate housing and environment; homebound; living alone; minority; limited English; isolation and lack of access to social and recreational activities; caregiver “burnout” found or no caregiver is available; high-risk nutritional status; the lack of skills or knowledge to select and prepare nourishing and well-balanced meals; disabling illness or chronic health condition; and recent illness, injury or hospitalization.
2. The AAA will require service providers that utilize interest lists to adhere to the same or similar indicators as listed above.
3. The AAA and service providers will be able to list reasons people are on an interest list.

Reference: C-1000 Area Agency on Aging Administration | Texas Health and Human Services

## **Means Testing**

### **Purpose**

The AAA must not use means testing for purposes of determining a person’s eligibility to receive services, in accordance with the Older Americans Act, 315(b)(3).

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**Policy**

The AAA does not use Means Testing, or a person's income and resource data to determine if services will be provided.

**Procedure**

1. The AAA Director/Manager instructs all staff members they are not to use Means Testing or a person's income and resource data to determine eligibility for services provided by the AAA.
2. Requiring service providers to adhere to the means testing policy implemented by the AAA.

Reference: [26 TAC §213.151](#)

**Confidentiality****Purpose**

The AAA will comply with all applicable state and federal laws, rules, and regulations related to the confidentiality of program participant information, including [45 CFR 1321.51](#).

**Policy**

The AAA will comply with confidentiality utilizing the following procedures.

**Procedures**

The following procedures will be followed:

1. AAA staff members will keep records of their program participant(s) in a secure and locked filing cabinet when not in use.
2. The HHSC computer information system (SPURS) is password protected so only authorized staff members can access program participant(s) records.
3. Requiring service providers to adhere to the confidentiality policy implemented by the AAA.

Reference: [26 TAC §213.151](#)

**Satisfaction with Services****Purpose**

The AAA must, at least annually, give a program participant an opportunity to express his or her level of satisfaction with the services provided.

**Policy**

The AAA will comply with satisfaction with services utilizing the following procedures:

**Procedures**

The following procedures will be used in order to evaluate the satisfaction of services provided to program participants.

1. Congregate Meals, Home Delivered Meals, and Transportation
  - a. The AAA will utilize a survey form to complete this portion of the annual customer satisfaction survey of their program participants and clients.
2. Care Coordination and Caregiver Clients
  - a. The AAA case managers attempt to make contact with their clients on a monthly basis to ensure satisfaction with services.

Reference: [26 TAC §213.151](#)

## **Grievance/Complaints**

### **Purpose**

The AAA must implement grievance procedures in accordance with [TAC §81.19](#) of this title (relating to Grievance Procedures for Participants in Older Americans Act Programs); and inform service provider and a program participant of the grievance/complaint procedures.

### **Policy**

The AAA allows participants in Older Americans Act programs to submit grievances, either orally or in writing, regarding specific actions or activities affecting their personal participation in the program or the conduct of the program as it relates to all participants at that site or location.

1. Ensuring that service providers and the AAA staff members notify all Older Americans Act participants of their right to submit a grievance and the proper procedures to follow. In partial fulfillment of the requirement, the AAA will distribute the HHSC “Client Rights and Responsibilities for Older Americans Act Programs Form” to service providers and require that they provide the documents to clients, and case managers will be required to provide this same form to their clients.
2. Accepting grievances in writing or orally.
3. Accepting grievances by an individual on behalf of the participant. If the participant elects this option, he or she will accompany that spokesperson to every meeting at which the appeal is discussed.

### **Procedures**

The AAA employs specific procedures which include, but are not limited to the following:

1. The AAA attempts to resolve grievances at the lowest level of authority to avoid undue paperwork or loss of time. Advising participants orally or in writing that authorities should be contacted concerning a grievance in the order indicated:
  - a. Service Provider Contact
  - b. Area Agency on Aging Director/Manager
  - c. ATCOG Executive Director

2. Asking that an oral grievance state in detail the basis for the appeal and the reasons the participant objects to the action or circumstances in question. To facilitate this statement, a written outline should be prepared for the oral grievance. This outline should contain or refer to the following:
  - a. Ensure that Service Provider and/or the AAA performs the following: Obtains and maintains documentation of receipt of the complaint procedure by the program participant;
  - b. Date stamps receipt of a written complaint;
  - c. Documents receipt of an oral complaint, with the date of receipt and a narrative of the allegations; and
  - d. Investigates each complaint and responds, with phone call or in writing, to the program participant regarding the results of the investigation in a timely manner.
3. If the facts support the grievance, the AAA will ask the site manager or service provider director to make the changes necessary to resolve the issue within 30 working days of the receipt of the written grievance.
4. If the site manager's or service provider's director's decision is not acceptable to the participant, the participant may, within ten working days, appeal to the next higher authority as indicated above relating to resolving issues at the lowest possible level of authority. The site manager or service provider director, and each level of authority at which the grievance has been unresolved, will within ten working days following receipt of a request for continuing grievance action, develop a memorandum detailing the circumstances of the grievance, attach all pertinent documentation regarding the findings and actions taken at that level of authority, and forward it to the next level with a request for a meeting of the parties concerned with the issue.
5. If the grievance is resolved, parties to the grievance will jointly notify each level of authority involved in the grievance of this fact in writing.
6. If the grievance cannot be informally or formally resolved and it becomes necessary to refer it to the Health and Human Services, the Executive Director will issue a decision on behalf of HHSC.

Reference: [26 TAC §213.151\(j\)](#) and [40 TAC, Rule §81.19](#)

## **Service Participation**

### **Purpose**

The AAA must not require a program participant to be a member in a specific private organization, group, association, or fraternal organization as a condition of receiving services, which includes permitting services to be provided in an organization's facility to which admission is limited to members of the organization.

### **Policy**

The AAA does not require a program participant to be a member of a specific private organization, group, association, or fraternal organization as a condition of receiving services, which includes permitting services to be provided in an organization's facility to which admission is limited to members of the organization.

### **Procedures**

1. The AAA Director/Manager or designee will instruct the AAA staff and service providers of this policy.
2. Requiring service providers to adhere to the service participation policy implemented by the AAA.

Reference: [26 TAC §213.151](#)

### **Contributions**

#### **Purpose**

The AAA must provide a program participant with an opportunity to contribute toward the cost of the services the program participant receives, must not require a program participant to contribute toward the cost of services the program participant receives, must establish appropriate procedures to safeguard and account for all contributions made, and must use all program participant contributions to support or expand services for which the program participant contributed, in accordance with applicable state and federal laws, rules and regulations.

#### **Policy**

The AAA collects program income in accordance with the Older Americans Act; [45 CFR §92.25](#), and the Uniform Grant Management Standards.

#### **Procedures**

The AAA employs specific procedures which include, but are not limited to, the following:

1. Assuring that each service provider:
  - a. Provides each older person with an opportunity to voluntarily contribute to the cost of the service;
  - b. Protects the privacy of each older person with respect to his/her contributions; and
  - c. Establishes appropriate procedures to safeguard and account for all contributions.

Reference: [26 TAC §213.151](#)

## **Facilities**

### **Purpose**

The AAA must ensure that facilities in which services are provided are in compliance with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations.

### **Policy**

The AAA creates controls so that service providers' public facilities are as safe, accessible, and visible as possible.

### **Procedures**

Ensure that service providers comply with all applicable local building codes, ordinances, and health department requirements, as well as all federal and state laws and regulations.

Reference: [26 TAC §213.151](#)

## **Tobacco Policy**

### **Purpose**

The AAA must prohibit the use of tobacco during the hours of operation of and in areas designated for Older Americans Act programs.

### **Policy**

The AAA will ensure the posting of non-smoking signs at senior meal sites and in areas designated for Older Americans Act programs.

Reference: [26 TAC §213.151](#)

## **Insurance**

### **Purpose**

The AAA must maintain insurance that protects the health and safety of its employees and of program participants and complies with all applicable state and federal laws rules, and regulations.

### **Policy**

The AAA will require that all applicable providers will have and maintain the appropriate insurance and license(s).

### **Procedures**

1. The AAA requires our meal and transportation providers, to submit, on a yearly basis, a copy of their current Proof of Liability Insurance Policy.
2. The AAA requires that all home health agencies provide, on a yearly basis, a copy of their current Proof of Liability Insurance Policy.

Reference: [26 TAC §213.151](#)

## **Records**

### **Purpose**

This section sets forth the AAA's policies and procedures for developing, maintaining, and retaining records in accordance with the Uniform Grant Management Standards, Subpart C.

### **Policy**

The AAA establishes written procedures to adequately assure proper development, maintenance, and retention of all financial records, supporting documents, statistical records, and all other records relating to its performance.

### **Procedures**

1. The AAA will keep financial and program supporting documents, statistical records, and any other records pertinent to the services for which a claim for reimbursement was submitted to the AAA. The records and documents will be kept for a minimum of five years following the end of the federal fiscal year to which the record pertains and until any pending litigation, claim or audit findings, issuance or proposed disallowed costs or other disputes have been resolved.
2. The AAA Service Providers will maintain documentation of the following:
  - a. Provider Documents
  - b. Expenditure reports and all accounting records used to prepare the expenditure reports, including records for program income and other cash and in-kind contributions.
  - c. Programmatic records, including client information and services provided to each client.
3. Make available at reasonable times and for required periods all fiscal and program participant records, books, and supporting documents pertaining to services provided for purposes of inspection, monitoring, auditing, or evaluations by the AAA staff, the Comptroller General of the United States and the State of Texas, through any authorized representative(s).
4. Other records that are required by the contract with HHSC and relevant sections of the TAC.
  - a. The AAA and its service providers retain all records for a minimum of five years after termination of the contract and/or Provider agreement and until any pending litigation, claim or audit involving these records is resolved.
  - b. The AAA, HHSC and/or authorized representatives have access to these records for purpose of audit or to make examinations, excerpts, and transcripts for hearings or other administrative proceedings.
  - c. Unless required by Federal, State, or local law, service providers are not required to permit public access to such records.

Reference: [26 TAC §213.151](#)

## **Contingency Plan**

### **Policy**

The AAA must have a written plan ensuring continuity of services to a program participant in the event a service provider is unable to provide a service.

### **Procedure**

The AAA has a contingency plan in place, please see [Attachment D](#).

## **Designation of Focal Points**

### **Purpose**

This section sets forth the AAA's policies and procedures for identification of focal points, defined as facilities established to encourage the maximum collocation and coordination of services for older individuals.

### **Policy**

The AAA designates focal point(s), in compliance with Sections 102 and 306.53 (c) of the Older Americans Act, [26 TAC §213.151](#), and identifies these focal points in grants, contracts, and agreements that implement the area plan. (See [Attachment E](#))

### **Procedures**

1. Establish a strong local role and clear identity of the AAA as a source of access and assistance for eligible person(s) and/or their family members or other caregivers which includes the designation of community focal points at our senior meal centers.
2. Provide information about services provided by our community partners.

Reference: [26 TAC §213.151](#)

## **Visibility**

### **Purpose**

The AAA must use the logo designed by HHSC to ensure a uniform, statewide symbol for AAAs.

### **Policy**

The AAA uses the logo designed by HHSC to ensure a uniform, region-wide symbol for its designation for public information purposes.

### **Procedures**

1. Uses HHSC required logo on all printed materials it develops.



2. Identifies its sponsor agency (HHSC) on all printed materials and other public communication.

Reference: [26 TAC §213.151](#)

## **AAA Contact Information**

### **Purpose**

1. The AAA must publicize its contact information through a variety of media such as telephone directories, resource directories, the Internet, and other outreach tools for persons who reside in any geographical area that lies in whole or in part in the planning and service area served by the AAA.
2. Contact information must begin with the words “area agency on aging” and must include the host agency, as applicable. The AAA must ensure that a telephone call to the AAA is answered “area agency on aging.”

### **Policy**

The AAA will publicize its contact information through a variety of media such as telephone directories, resource directories, the Internet, and other outreach tools for persons who reside in any geographical area that lies in whole or in part in the planning and service area served by the AAA.

### **Procedures**

1. The toll-free number will be answered with the following phrase: “Ark-Tex Area Agency on Aging.”
2. All voice recordings will start with the words “Area Agency on Aging.”

Reference: [26 TAC §213.151](#)

## **Phrase for Printed Material**

### **Purpose**

The AAA must cite HHSC as the primary funding source using the phrase “Funded by the Health and Human Services” or “Funded in part by the Health and Human Services” on all printed material.

### **Policy**

The AAA ensures that HHSC is recognized as the program funding source for the AAA.

### **Procedures**

Citing the Health and Human Services as the AAA’s primary funding source, using the phrase, “Funded by the Health and Human Services” or “Funded in part by the Health and Human Services” on all printed material.

Reference: [26 TAC §213.151](#)

## Identification of the AAA Facility

### Purpose

The AAA must prominently display a sign outside its primary place of business that: adheres to local ordinances concerning signs and conforms to the requirements of [26 TAC §213.151](#)(t).

### Policy

The AAA posts a sign outside the main ATCOG office building.

### Procedures

1. The AAA posts a sign in front of the main ATCOG office building located at 4808 Elizabeth Street in Texarkana, Texas.
2. The AAA requested the Department of Transportation place a sign at the intersection of Texas Boulevard and Elizabeth Street indicating the location of the Ark-Tex Area Agency on Aging.

Reference: [26 TAC §213.151](#)

## Emergency Management

### Purpose

When a disaster occurs, the AAA must notify HHSC of its need to provide for emergency management activities, provide information to HHSC regarding the impact of the disaster on the older population in its service area, provide emergency management services in accordance with current Administration on Aging disaster relief guidelines, and collect pertinent data necessary to submit reimbursement requests for disaster services.

### Policy

The AAA will consult with the appropriate agencies that have an interest or role in meeting the needs of persons 60 years of age or older, to plan for the occurrence and aftermath of natural, civil defense, or man-made disasters.

### Procedures

1. Develops an emergency disaster plan in accordance with HHSC requirements.
2. Require by provider agreement that service providers develop plans for emergency management.
3. Provide assistance, as necessary, to service provider staff persons regarding emergency management activities.

Reference: [26 TAC, Rule §213.151](#) (x)

## Reporting Abuse, Neglect, or Exploitation

### Purpose

The AAA must instruct its staff persons and representatives, other than a representative of the Office as defined in 26 TAC §88.2, to report allegations of abuse, neglect, or exploitation of a program participant to the Department of Family and Protective Services (DFPS) in accordance with Texas Human Resources Code, Chapter 48. A report must be made by calling 1-800-252-5400 or by following the instructions available at [www.txabusehotline.org](http://www.txabusehotline.org).

### Policy

The AAA protects the confidentiality of all information related to complaints of abuse, neglect or exploitation and ensures referrals to the appropriate reporting agency.

### Procedures

The AAA must take appropriate corrective action if:

1. A staff person, other than a representative of the Office as defined in 26 TAC 88.2, does not report an allegation of abuse, neglect, or exploitation of a program participant in accordance with Texas Human Resources Code, Chapter 48; or
2. DFPS confirms abuse, neglect, or exploitation of a program participant by a staff person of the AAA.
3. ***\*\*The Ombudsman staff will follow guidelines in the LTC Ombudsman Policy and Procedures when reporting abuse, neglect, and exploitation.\*\****

[26 TAC, Rule §213.151](#) (y)

## Emergency Services

### Purpose

The AAA must instruct all of its staff persons to call 911 or another local emergency hotline for fire-fighting, police, medical, or other emergency services, as appropriate, in the event of an emergency involving a program participant.

### Policy

The AAA staff will call 911 or another local emergency hotline if an emergency arises involving one of the program participant(s).

### Procedures

1. Instruct staff to call 911 or another local emergency hotline when an emergency arises involving one of their program participants.
2. Instruct service provider of the requirement to call 911 or another local emergency hotline when an emergency arises involving one of their program participants.

[26 TAC, Rule §213.151](#) (z)

## Reporting Waste, Abuse, or Fraud

### Purpose

The AAA must instruct its staff and representatives to report allegations of waste, abuse, or fraud, as defined in [1 TAC §371.1601](#) (relating to Definitions), regarding a service described in subsection (a)(2) of [26 TAC §213.151](#).

### Policy

The AAA will instruct staff members to report allegations of waste, abuse or fraud, to the AAA Director/Manager and then to the Texas Health and Human Services and Office of the Inspector General.

### Procedures

A report must be made to:

1. Instruct the AAA staff members to report any allegations of waste, abuse or fraud to the AAA Director/Manager,
2. the Texas Health and Human Services Commission (HHSC), Office of the Inspector General, in accordance with the HHSC instructions available at [www.hhs.state.tx.us](http://www.hhs.state.tx.us); and
3. HHSC by calling 1-800-436-6184.
4. The Office of the Inspector General investigates reports of waste, abuse, or fraud in accordance with [1 TAC, Chapter 371](#), Subchapter G.
5. Instruct service provider to report any allegations of waste, abuse or fraud to the AAA Manager and also to the appropriate agencies.

[26 TAC, Rule §213.151](#) (aa)

## Ethical Conduct

### Purpose

The AAA must ensure that its staff and representatives conduct themselves in an ethical manner.

### Policy

1. The AAA Director/Manager will instruct staff to conduct themselves in an ethical manner.
2. The AAA Director/Manager will instruct staff they may not:
  - a. Engage in inappropriate treatment of a program participant or person seeking services;
  - b. Withhold or suppress a complaint or report against the AAA or HHSC;
  - c. Retain or distribute program participant information for personal gain;
  - d. Obtain a certification by fraud or deceit; or
  - e. Knowingly participate in the preparation of false or misleading program participant information.

3. Instruct all staff persons and representatives to report allegations of unethical conduct, to HHSC's AAA Section Manager.
4. Instruct service providers to have their staff conduct themselves in an ethical manner and follow instructions from Section 2 above.

[26 TAC, Rule §213.151](#) (bb)

## **Service Provider Compliance**

### **Policy**

The AAA will ensure that a service provider complies with requirements described in [26 TAC, Rule §213.151](#) (y), (z), (aa)(1)(A), and (bb).

## **Complaints**

### **Policy**

The AAA must ensure that a service provider:

1. on or before initiation of a service described in Subchapter D of this chapter, informs a program participant, in writing, of the procedure by which the program participant may file a complaint regarding such service;
2. obtains and maintains documentation of receipt of the complaint procedure by the program participant;
3. date stamps receipt of a written complaint;
4. documents receipt of an oral complaint, with the date of receipt and a narrative of the allegations;
5. investigates each complaint and responds, in writing, to the program participant regarding the results of the investigation in a timely manner; and
6. maintains a written log of complaints filed by program participants that is accessible to the AAA and contains the following information:
  - a. the date of the service provider's receipt of the complaint;
  - b. the name of the person who filed the complaint;
  - c. a description of the nature of the complaint;
  - d. the name of the staff person who conducted the investigation of the complaint;
  - e. the names of persons who were contacted during the investigation of the complaint;
  - f. the outcome of the complaint; and
  - g. the date final action was taken by the service provider in response to the complaint.

### **Language Barrier Policy**

The AAA takes reasonable steps to provide services and information in appropriate languages other than English to ensure that persons with limited English proficiency are effectively informed and can effectively participate in and benefit from its program.

### **Language Barrier Procedures**

The AAA employs the following that include, but are not limited to:

1. Making language translation services through qualified agency employees, volunteers and/or contractual agreements with qualified interpreters through The Language Line.
2. The AAA also supplies a bi-lingual agency brochure for the convenience of the community.

## **Chapter 3: Fiscal Responsibilities**

### **Purpose**

The fiscal responsibilities of the AAA, including responsibilities related to purchases of goods and services, audits, costs allocation plans, and service and administrative match.

### **Procedures**

The AAA will follow the guidelines set forth in [26 TAC §213.153](#) for the following:

1. Purchases of goods and services
2. Independent audit
3. Indirect Cost Allocation Plan
4. Unallowable costs
5. Refunding of payments
6. Capital Expenditures
7. Budget submissions
8. Service and administrative match
9. Program income

10. Adequate proportion
11. Caregiver support program limitation
12. Administrative services

[26 TAC, Rule §213.153](#)

## **Fixed Assets**

### **Inventory Control**

An asset number is assigned to each piece of property and tagged. Property items with a value of \$5,000 or more are entered into the Fixed Asset module of the Accounting software. The Technician responsible for maintaining the Fixed Asset module will be provided with all necessary documentation of acquisition or disposal of all fixed assets.

A physical inventory is conducted every two years and reconciled to the property records in the computer. Any discrepancies are investigated and the cause is documented and corrected.

Approval from the funding agency is obtained, if necessary, before disposal of the asset. ATCOG will provide the funding agency with any required documentation of the disposal. The proceeds of a sale will be credited to the appropriate program.

A separate ledger will be maintained for the computers and other electronic equipment by the IT Director. Any transfer of this type of equipment will be the responsibility of the IT Director.

## **Budget, Request for Reimbursement, and Request for Adjust Journal Submissions**

### **Purpose**

This section sets forth the AAA's policies and procedures concerning its reporting of expenses.

### **Policy**

The AAA ensures that its financial reports meet HHSC's requirements.

### **Procedures**

The AAA employs specific procedures which include, but are not limited to, the following:

1. ATCOG fiscal staff will run a general ledger report that will include vendor and internal costs.
2. Requests for payment will be based on expenditures already booked in the general ledger at that point in time. The expenditures will be requested based upon the service categories that are coded to in the general ledger.
3. The most restrictive funds are drawn first.
4. Year-To-Date General Ledger expenditure reports are compared to Year-To-Date draws to maintain accuracy.

5. RfAJ's are done when necessary to make corrections or to reclassify expenditures.

## **Compliance with the AAA Responsibilities, Rewards and Sanctions**

### **Purpose**

Background. To the extent feasible, and subject to the availability of funds and other resources, the Department will give rewards to those area agencies on aging which the Department finds have demonstrated exceptional performance. When a contractor has failed to comply with the terms of a contract which governs the use of monies appropriated under that contract, the Texas Department on Aging may take actions, described in this section, as may be legally available and appropriate to the circumstance. It is the intent of this rule to outline the rewards available for compliance with a contract and the sanctions available for non-compliance with contract terms and conditions.

### **Policy**

The AAA will follow [40 TAC §81.13](#) Compliance with Contractor Responsibilities, Rewards and Sanctions.

Reference: [40 TAC §81.13](#)

## **Contracting**

### **Purpose**

This section sets forth the AAA's policies and procedures concerning contracting for the provision of services to eligible individuals.

### **Policy**

The AAA applies prudent business judgment in areas of contracting for services and goods to be purchased and the reimbursement methodologies to be used in funding such contracts.

### **Procedures**

The AAA employs specific procedures which include, but are not limited to, the following:

1. Basing its authority to contract on the Older Americans Act of 1965, as amended; HHSC regulations on Administration of Grants Title 45 Code of Federal Regulations (CFR), [Part 74](#); [Title 45 CFR, Part 92](#) Title [45 CFR, Part 1321](#); Title [45 CFR, Part 91](#) all policies and rules established by HHSC; and with all state and local laws as they pertain to contracting and reimbursement methodologies;

Reference: [26 TAC §213.153](#)

2. Allowing faith-based providers to be eligible on the same basis as other organizations, and not discriminating for or against because of the religious character or lack of religious character or affiliation; and
3. Prohibiting direct government funding to be used to pay for inherently religious activities such as worship, religious instruction, and proselytizing.



Reference: [AAA - PI 303](#)

## Policy

The AAA uses any or all of four contracting methodologies for the procurement of goods and services for the provision of services to older individuals. These contracting methods are Cost Reimbursement, Performance Based Unit Rate, Direct Purchase; and Sole Source Procurement.

## Procedures

The AAA employs the following procedures when using any or all of the four contract methodologies:

1. **Cost Reimbursement:** If the AAA uses the cost reimbursement methodology, it pays the service provider on a reimbursable basis for services rendered. It does not adjust reimbursement to offset poor management planning. Any adjustment it does make to a reimbursement rate is judged on its own merits. The AAA considers adjustments to the share of expenses that federal and/or state funds will pay only in instances where:
  - a. The service provider experiences significant operating losses due to events over which it has no control or reasonably and could not have anticipated; or
  - b. The service provider experiences excess revenues over operational costs due to unanticipated, and/or unbudgeted additional resources; or
  - c. Reductions are made in expenses due to a change in cost allocation methodology.
2. **Fixed Unit Rate:** If the AAA uses the unit rate performance based contracting method, it agrees to pay to the service provider in the amounts and upon the terms, provisions and budgets as set forth in the contract/vendor agreement as a result of negotiation of a suitable unit rate. The AAA pays the service provider on a unit rate reimbursement basis for services actually rendered. The service provider agrees to deliver specific services on an at-risk basis. The AAA undergoes a systematic process to ensure that performance-based unit rates are allowable, reasonable, and in compliance with HHSC requirements relating to direct services.
3. **Direct Purchase of Service:** If the AAA uses the direct purchase of service methodology, it purchases services on a client-by-client basis as determined by an assessment of the individual's service need. See [TAC §83.19](#)
4. **Sole Source Procurement:** If the AAA uses the sole source method of procurement, it does so only when the award of a contract is not feasible under the other procurement methods. In this event, the AAA complies with the procedures in UGMS and 45 CFR [92.36\(d\)\(4\)](#) concerning procurement by noncompetitive proposals. Specifically, it: ensures that at least one of the following conditions is met:
  - a. The item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. HHSC authorizes noncompetitive proposals;
  - d. After solicitation of a number of sources, competition is considered inadequate.

Reference: [CRG 92.36\(d\)\(4\)\(i\)](#)

5. Competitive Bidding. The AAA complies with competitive bidding procedures to promote fair and open competition in the procurement process through the use of formal bidding, informal bidding, or competitive proposals as appropriate. Documentation will be maintained by the AAA to demonstrate all such efforts.
6. All service provider contracts/provider agreements require the service provider to have an accounting system that identifies all costs for each specific service being purchased or provided and that complies with [45 CFR, Section 1321, Subpart D](#).
7. The AAA references in the service provider contract/vendor agreement all relevant sections of the TAC relating to the service(s) provided, regardless of the procurement process used.

Reference: [26 TAC §213.153](#)

8. All Requests for Proposal (RfPs) (and all contract files) include the following assurances:
  - a. Title VI of the Civil Rights Act of 1964 ([42 U.S.C. §2000d et seq.](#))
  - b. Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. §794](#))
  - c. Americans with Disabilities Act of 1990 ([42 U.S.C. §12101 et seq.](#))
  - d. Age Discrimination in Employment Act of 1975 ([42 U.S.C. §§6101-6107](#))
  - e. Title IX of the Education Amendments of 1972 ([20 U.S.C. §§1681-1688](#))
  - f. Food Stamp Act of 1977 ([7 U.S.C. §200 et seq.](#))
  - g. [Drug Free Workplace Act of 1988](#)
  - h. Texas Senate Bill 1 - 1991, as applicable
  - i. HHS administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement
  - j. Certification Regarding Debarment – 45 CFR §92.35 Sub awards to debarred and suspended parties; this document is required annually as long as this agreement is in effect.
  - k. Notice of Conflict of Interest (Texas Administrative Code [26 TAC, Rule §213.151](#))
  - l. Obligation to Identify Individuals or Entities Excluded from Participation in Federal Health Care Programs

## Service and Administrative Match

### Purpose

This section sets forth the AAA's policies and procedures concerning match for services provided to eligible individuals.

### Policy

The AAA meets the match requirements, as required by the [Older Americans Act §304](#).

### Procedures

The AAA employs specific procedures which include, but are not limited to, the following:

1. Provide funds and in-kind contributions, in accordance with the Older Americans Act, §304, to match the expenditures of federal funds made to HHSC for the cost of providing goods and services; and
2. Ensure that an appropriate portion of funds or in-kind contributions is generated to match the federal fund expenditure based on the cost of services it provides.
3. The valuation of services or goods as reported as in-kind must be based on fair market value.
4. The AAA may use state general revenue to match funds appropriated under Title III, Part E of the Older Americans Act.
5. The AAA must not use state general revenue to match administrative funds.

Reference: [26 TAC §213.153](#)

## **Program Income**

### **Purpose**

This section sets forth the AAA's policies and procedures concerning the administration of program income contributions.

### **Policy**

The AAA collects program income in accordance with the Act; [45 CFR, Part 1321](#); [45 CFR, Part 92.25](#), and the Uniform Grant Management Standards.

### **Procedures**

The AAA employs specific procedures which include, but are not limited to, the following:

1. Assuring that each service provider must provide individuals who benefit from funded services under the Older Americans Act to be given the opportunity to voluntarily contribute to all or part of the cost of the services provided. Congregate meal providers must post the full cost of the meals for ineligible individuals.
  - a. The method of solicitation must be non-coercive, means testing may not be utilized, and no older person shall be denied services because of his/her failure to contribute to all or part of the cost of such service.
  - b. The amount of each individual's contribution shall be kept confidential. Appropriate procedures must be in place to safeguard and account for all contributions such as a locked box at congregate meal sites.
  - c. Client contributions may not be used as non-federal match. All collected contributions must be used to expand the service for which the contributions were given and to supplement (not supplant) Title III funds received.
2. AAA staff will:

- a. Inform consumer of the right to contribute through the Client's Rights & Responsibilities form.
  - b. Inform consumer that all contributions are kept confidential.
  - c. Inform consumer that services will not be denied if an eligible person is unable or chooses not to make a contribution.
  - d. Inform consumer that voluntary contributions are returned to services received in order to help other individuals in need.
3. Nutrition and Transportation Services
- a. Each provider will collect client contributions and report monthly to the AAA.
  - b. The AAA will document the number of units that program income covers the cost of the service on a monthly basis for each vendor and for each service.
  - c. The cumulative amount of program income for each service is reported on the QPR.

## **Adequate Proportion**

### **Purpose**

This section sets forth the AAA's policies and procedures regarding its responsibility to meet adequate proportion regulations.

### **Policy**

The AAA meets adequate proportion through the expenditure of funding for specific support services categories. HHSC establishes an adequate proportion of the funding received under Title III, Part B, of the Older Americans Act, as amended, for support services to be expended to comply with the Act, Section 306(a)(2).

### **Procedures**

The AAA employs specific procedures which include, but are not limited to, the following:

1. In accordance with the [Older Americans Act, §306\(a\)\(2\)](#), the AAA must expend funds appropriated under Title III, Part B of the Older Americans Act to meet an adequate proportion requirement, as determined by HHSC, for:
  - a. access services;
  - b. in-home services; and
  - c. legal assistance.
2. The AAA may request, in writing, by September 30 of each year, that DADS waive or revise the adequate proportion requirement for any of the categories of services listed in paragraph (1) of this subsection for the next federal fiscal year, in accordance with the Older Americans Act, §306(c).
  - a. The AAA must demonstrate to HHSC there are sufficient services available in the requested category to meet the need for such services.

- b. The AAA must submit a separate request for each category of service for which a waiver is sought.
3. The AAA must comply with HHSC instructions regarding adequate expenditures for the Medication Management Program funds appropriated under the Older Americans Act, Title III, Part D.

Reference: [26 TAC, Rule § 213.153](#)

## **Ombudsman Minimum Funding Requirement**

### **Purpose**

This section sets forth the AAA's policies and procedures to ensure that it meets the ombudsman minimum funding requirement.

### **Policy**

The AAA meets the minimum funding requirement for ombudsman activities, as defined in the [Older Americans Act, Section 306\(a\)\(9\)](#).

### **Procedures**

The AAA employs specific procedures which include, but are not limited to, the following:

1. Remaining cognizant of its minimum funding requirement, defined by the Health and Human Services Commission as the amount of all funds expended during fiscal year 2019, plus any additional funding earmarked for the Ombudsman program received over that amount in subsequent years, and ensuring that the current year's funding meets or exceeds this funding level.<sup>1</sup>

<sup>1</sup> HHSC has taken the position that Title III funds, Title VII funds, and State General Revenue funds are included when calculating the minimum funding requirement (MFR). Local funds are not taken into consideration when calculating the MFR.

Since the OAA establishes a base year (currently Fiscal Year 2019), an area agency on aging is allowed to increase, and then decrease, federal funds dedicated to the ombudsman program during subsequent years, as long as total ombudsman program expenditures do not fall below the MFR. The MFR can be met with federal funds, state funds, local funds, or any combination thereof.

The only exception to this rule occurs when an area agency on aging receives an increase in its Title VII Ombudsman allocation. All increases in Title VII funds must be dedicated to the ombudsman program, and may not supplant other federal funds. As such, ombudsman program expenditures must increase each year the area agency on aging is awarded more Title VII funds, in an amount that is equal to or greater than the increase in the Title VII funds.

## Chapter 4: Access and Assistance

### Purpose

This section establishes the AAA's policies and procedures for its system of access and assistance.

### Policy

The AAA system of access and assistance will provide services to individuals that meet the eligibility requirements listed under Targeting Service Delivery.

### Procedures

The AAA system of access and assistance will:

1. Employ staff members who possess necessary general and specialized knowledge in the following areas:
  - Information, Referral and Assistance
  - Benefits Counseling
  - Care Coordination
  - Ombudsman Services
- a. Where applicable, the AAA staff members will complete all training and certification requirements necessary for their respective positions as established by HHSC.
- b. Develop working relationships with local service providers to build an integrated service delivery system.
- c. Provide short-term AAA services, if a person is in immediate need of service provision, while awaiting eligibility approval from the regional HHSC office.
- d. Conduct outreach and marketing efforts to inform eligible persons and/or their family members or other caregivers of available services.
- e. Have the capability to respond to racially, culturally and ethnically diverse groups.
- f. Serve as a source of connection to comprehensive information on services, benefits, and opportunities so eligible persons and/or their family members or other caregivers can make informed decisions about services.
- g. Connect a person with existing benefits and services.
- h. Provide clients with an opportunity to express their level of satisfaction with access and assistance services received.
- i. Provide services so that clients maintain hope, dignity, respect and independence.
2. Prohibited Service Activities
  - The AAA will not:
    - a. Accept gifts from a client.
    - b. Lend or borrow money or articles from a client.
    - c. Transport a client in an access and assistance staff person's automobile.

- d. Drive or ride in a client's automobile.
3. Client Eligibility/Client Intake
- The AAA Benefits Counselors and Case managers will:
- a. Perform an initial assessment, using the required HHSC forms, in order to determine if client is 60 years and older.
  - b. Determine which clients to serve based upon the AAA policy Targeting Service Delivery policy.
  - c. Eligibility for services will not be based upon a person's income and resource data. (Reference: AAA Policy - Means Testing)
4. Confidentiality of Client Records
- The AAA staff members, who maintain client files, will comply with the AAA policy in Confidentiality.
5. Client Contributions
- Case managers will comply with the AAA policy in Contributions.
6. Conflict of Interests
- The AAA staff will ensure that any conflicts of interest between the function of A&A and provision of direct client services are disclosed to HHSC. The intent is to separate the function of access and assistance from the provision of other client services. (Reference: AAA Policy Conflict of Interest.)
7. Reporting
- The AAA staff will comply with the AAA policy in Accountability.
8. Information, Referral, and Assistance
- a. The AAA provides an information, referral, and assistance process that assesses the needs of the inquirer, evaluates appropriate resources, assesses appropriate response modes, identifies organizations capable of meeting those needs, provides enough information about each organization to help inquirers make an informed choice, helps inquirers for whom services are unavailable by locating alternative resources, when necessary, actively participates in linking the inquirer to needed service and following up on referrals to ensure the service was received or provided.
    - 1) Target Population
      - Information, referral and assistance services shall be provided to any person age 60 years and older and/or his/her family member or other caregiver.
      - Information, referral and assistance services shall be provided to Medicare beneficiaries of any age under the provisions of funds received from the Centers for Medicare and Medicaid Services.

- 2) Access and assistance staff shall provide telephone, electronic or walk-in information, referral and assistance services in which the inquirer has one-to-one contact with an information, referral and assistance specialist.
- 3) The published phone number will be answered "Area Agency on Aging" when the call is received.
- 4) Service providers shall coordinate with emergency response organizations, such as local law enforcement agencies or other existing agencies/activities as appropriate to provide the necessary coverage.
- 5) The area agency on aging telephone messaging system will provide callers with appropriate emergency phone numbers when calls are received after hours.
- 6) Resource Information
  - Access and assistance staff shall develop criteria for the inclusion or exclusion of agencies and programs in the resource database or use criteria developed by other information, referral and assistance entities. These criteria shall be uniformly applied and published so that staff and the public will be aware of the scope and limitations of the database.
  - A standardized profile shall be developed for each organization that is part of the community service delivery system.
  - Information in the resource database shall be indexed and accessible in ways that support the information, referral and assistance process.
  - Access and assistance staff shall use the AIRS/Infoline Taxonomy to facilitate retrieval of community resource information and to promote the reliability and consistency of information across the service region and across the state.
  - The resource database shall be updated through continuous revision or at intervals sufficiently frequent to ensure accuracy of information and comprehensiveness of its content.
- 7) AAA Information, Referral and Assistance Log
  - Access and assistance staff shall maintain a system for collecting and organizing inquirer information that facilitates appropriate referrals and provides a basis for describing requests.
  - A unit of service is a client's initial request for information or assistance. The area agency on aging shall have a system for recording both initial inquiries and follow-up contacts made by either the client or the agency.
  - The area agency on aging shall use information it records to identify service gaps and overlaps, assist with needs assessments, support the development of products, identify issues for staff training, facilitate the development of the resource information system.
- 8) Cooperation with Local Information and Referral (I&R) Providers.
  - In communities with comprehensive and/or specialized information and referral (I&R) providers, including Area Information Centers, when applicable, the area agency on aging shall develop cooperative working relationships to build an integrated system of information, referral and assistance which



ensures broad access to services, maximizes the utilization of existing resources, avoids duplication of effort and encourages seamless access to community resource information.

- If the area agency on aging is designated by the Texas Information and Referral Network as an Area Information Center, the area agency on aging must meet the expectations of the designation.

9) Professional Conduct

- Access and assistance staff providing information, referral and assistance services shall adhere to the standards of conduct set forth by the Alliance of Information and Referral Systems which are adopted by reference.
- Area agencies on aging are encouraged to seek and maintain agency accreditation with the Alliance of Information and Referral Systems.

Reference: [40 TAC Rule §83.3](#)

## Care Coordination

### Purpose

This section sets forth the AAA's Policies and Procedures regarding its care coordination services.

### Policy

Through the AAA's care coordination and caregiver support programs, the AAA case managers assess the needs of clients and effectively plan, arrange, coordinate and follow-up on services that most appropriately meet the identified needs, as mutually defined by access and assistance staff, the client, and where appropriate, a family member(s) or other caregiver.

### Procedures

The AAA Care Coordination program is dictated by the needs of the area agency on aging service area and includes a combination of levels of care. These levels of care coordination include:

1. Service Authorization requiring an assessment

The AAA case manager will conduct an assessment in-person or by phone, complete the HHSC forms, to determine if the client is eligible for services below. This eligibility will be based on the AAA Policy and Procedure Manual under Targeting.

- Adult Day Services
- Caregiver Respite – In Home
- Chore Maintenance
- Emergency Response Services
- Health Maintenance
- Home Delivered Meals
- Homemaker
- Income Support

- Personal Assistance
- Residential Repair
- Voucher- Homemaker

2. Care Management. Care management is a process that assists clients with multiple needs by developing and implementing comprehensive plans of care. Care management services may be provided only to persons' age 60 years and older and/or his/her family member or other caregiver, with priority given to those:
- a. who have recently suffered a major illness or health care crisis or have recently been hospitalized and need additional attention during the recuperation period in accordance with Human Resource Code, Chapter 101, Subchapter C, relating to Options for Independent Living;
  - b. who live in a rural area;
  - c. who are moderately to severely impaired in activities of daily living and instrumental activities of daily living;
  - d. have insufficient caregiver support; or
  - e. who are in great economic or social need, particularly low-income, minority older persons.

Care Management must include the following:

- a. Comprehensive Client Assessment: A needs assessment may be provided, procured or accepted from a qualified source and must include the following components as listed in [40 TAC §83.3 \(I\)\(-a\)-\(-h-\)](#).
- b. Care plan. Care Managers shall develop a written plan that is based upon the client's preferences, as supported by identified priority needs and within available public/private resources. The care plan must specify the amount, frequency and duration of each service to be provided and identify the outcomes to be achieved.
- c. Service Arrangement. Care managers shall arrange for services identified in the care plan to begin at the earliest possible date, consistent with the capacity of the provider and may include, but is not limited to conditions listed in [40 TAC §83.3 \(III\)\(-a\)-\(-e-\)](#).
- d. Monitoring/Follow-up Activities. Care managers shall conduct monitoring and follow-up activities which include verifying service delivery, determining the extent to which services meet the needs and expectations of the client, and where necessary, advocating for improvements in service delivery. Monitoring shall include at least monthly contacts with the client and a home visit not less than every six months.
- e. Reassessment. Reassessments shall be conducted and the care plan shall be amended as needed based on changes in client status and provider effectiveness and may be conducted by phone or in person.
- f. Client Case Records. A confidential client case record shall be maintained on each client served and shall be protected from damage, theft and unauthorized inspection and shall contain at least the items as listed in [40 TAC §83.3 \(VI\)\(-a\)-\(-j-\)](#).

- g. Care management may not be provided by any entity with a vested interest in the delivery of services purchased by the area agency on aging without an approved waiver from the Department.
- h. Professional Conduct. Care managers must adhere to the pledge of ethics and the standards of practice for professional geriatric care managers as set forth by the National Association of Professional Geriatric Care Managers and adopted by reference.

Reference: [40 TAC Rule §83.3](#)

## **Intake and Assessment Procedures**

### **Purpose**

The Ark-Tex Area Agency on Aging requires Case managers responsible for doing client intake and assessment forms to ensure that all forms are signed by all parties as required, including the Case manager's signature on the AAA Consumer Needs Evaluation. Unsigned client information will not be accepted and client services will not be authorized until the properly completed paperwork is submitted.

### **Policy**

This policy is effective immediately. Non-compliance to this policy will result in a delay of service authorizations and fewer units of service.

### **Procedures**

1. The AAA case managers will interview potential clients during a home visit and/or telephone visit and assess their needs according to the criteria of the program appropriate to the client's needs within two weeks of the initial contact for services. If the client is not seen within two weeks of contact, there must be documentation of the circumstances that prevented the home visit.
2. The AAA case managers will use the required forms, including the AAA Consumer Needs Evaluation to perform the assessments. All forms must be completed entirely and signed by all parties involved. If the client is unable to sign the form and a representative is signing for them, they must identify themselves as signing for the actual care recipient.

The required forms to complete are:

- HHSC Client Intake and Service Request Form
- HHSC Determine Your Nutrition Health
- HHSC Client Rights and Responsibilities for Older Americans Act
- Client Information Release Consent Form (HIPAA Form)
- AAA Consumer Needs Evaluation

- HHSC Caregiver Assessment (caregiver clients only)
3. The AAA case manager will determine eligibility for services based on the AAA Policy and Procedures in Targeting and HHSC Program Instruction 310.
  4. A Care Coordination eligible client that has recently been released from the hospital due to a major illness, surgery, or health care crisis and in need of services during their recuperation period will be given priority, if applicable.
  5. A Caregiver Support Coordination eligible client must be taking care of an individual who is in need of in-home care.
  6. Once the Intake and Assessment forms are deemed correct and entered into the SPURS database system, the AAA case manager will create a service order and obtain approval from the director/manager or designee. The service order will be faxed or emailed securely to the provider.

Reference: [40 TAC §83.3](#)

## **Client Records and Care Plan Procedures**

### **Purpose**

The Ark-Tex Area Agency on Aging requires case managers who are responsible for providing Client care to adhere to all required AOA/ACL and State guidelines and to ensure in writing that the rules are followed by all parties involved.

### **Procedures**

1. Once the Intake and Assessment procedures have been completed by the AAA Case Managers, the client information will be entered into the SPURS System and ensure accuracy of information.
2. The AAA case managers will create a care plan that fits the needs of the client. The care plan will specify the amount, frequency and duration of each service to be provided and identify the outcomes to be achieved.
3. The AAA case manager will contact an appropriate provider to ensure services are available and to arrange services.
4. The AAA case manager will develop a service order detailing the care plan to the provider and submit to the AAA director/manager or designee for approval and signature.
5. Once the service order is approved, the case manager will fax, or email securely, the service order to the provider.
6. The AAA case manager shall complete a service delivery in the SPURS database which includes all time spent on allowable care coordination and/or caregiver support coordination activities for each client they provided services, in addition to a service delivery narrative.

Caregiver coordination contacts include direct contact with the caregiver, care recipient, and/or service provider.

7. The AAA case manager shall collaborate with the provider ensuring services are provided. The provider will submit a Form 2067 to the case manager whenever services cannot be provided as authorized.
8. The case managers will monitor services by conducting a monthly follow-up phone call to ensure that services are being provided, determine the extent to which services meet the needs and expectations of the client, and where necessary, advocate for improvement in service delivery. The case managers will also monitor services by mailing out a Consumer Satisfaction Survey at least annually to each client that has been assisted that year. This survey is included with a self-addressed envelope for the client to return. The survey is to ensure that services are provided, determine whether services meet the needs and expectations of the client, and where necessary advocate for improvement in service delivery.
9. The case managers will reassess clients once every six months and amend the care plan if necessary.
10. The case managers will maintain Client Case Records in accordance with the AAA Policy and Procedure Confidentiality Records and [40 TAC §83.3 \(o\)\(C\)\(ii\)\(VI\)](#).

## **Benefits Counseling**

### **Purpose**

This section sets forth the AAA's Policies and Procedures regarding its benefits counseling services, comprised of both legal assistance and legal awareness services.

### **Policy**

Through the AAA's benefits counseling program, the AAA Benefits Counselor will provide an array of services by assessing the needs of clients and determine the services that most appropriately meet the identified needs, for the client, and where appropriate, a family member(s) or other caregiver.

### **Procedures**

The AAA Benefits Counselor will provide the following services:

1. **Legal Assistance.** Legal assistance includes the provision of client-specific advice, counseling and representation on matters involving insurance issues, public/private benefits, consumer problems and other legal issues.
2. **Legal Awareness.** Legal awareness includes general education and outreach on matters involving insurance issues, public/private benefits, consumer problems and other legal issues.
3. **Targeting**

- a. Benefits counseling services will be provided to people age 60 years and older and/or their family caregiver or other caregivers.
  - b. Benefits counseling services shall be provided to Medicare beneficiaries of any age under the provision of funds received from the Centers for Medicare and Medicaid Services.
4. Focus
- a. Income Maintenance/Public Benefit. Food Stamps, Social Security, Social Security Disability, Supplemental Security Income, veteran's benefits, pensions, railroad retirement, child support, unemployment compensation, general assistance and other income benefits.
  - b. Medical Entitlements. Medicare, Medicaid, QMB/SLMB, Veterans Administration Medical, indigent health and other medical entitlements.
  - c. Insurance. Medicare Supplement, HMO, long-term care policies, individual health policies, group health policies/COBRA and non-health insurance.
  - d. Surrogate Decision Making. Advance directives, durable/general powers of attorney and money management.
  - e. Individual Rights. Age discrimination, disability discrimination, abuse, neglect, exploitation and dispute resolution.
  - f. Housing. Landlord/tenant issues, repair/modification, utilities, rent subsidy, alternative housing, home equity lending/reverse mortgage, homestead tax credit, weatherization, property tax, housing relocation and general property.
  - g. Institutional Care. Acute care, nursing facility care, assisted living facility care and mental health care.
  - h. Consumer Issues. Bankruptcy, collections, financial counseling, bill reductions, solicitation and unfair sales practices/fraud.
5. Benefits Counseling Services Procedures. The AAA Benefits counselor will:
- a. Refer the client to an appropriate provider in the area if a request for assistance involving any of the priority issue areas requires intervention by an attorney or paralegal.
  - b. Develop an appropriate and timely referral process, in consultation with the local legal provider(s), for the purpose of handling requests or referrals which originate from sources other than the Area Agency on Aging.
  - c. Regardless of the referral source, the benefits counselor shall determine whether or not the clients who require legal assistance may be assisted with other resources, such as the Legal Hotline for Older Texans, pro-bono or reduced-fee providers or through services funded by the Legal Services Corporation.
  - d. Monitor services by mailing out an annual Consumer Satisfaction Survey to each client that has been assisted that year. This survey is included with a self-addressed envelope to make it easier for the client to return. The survey is to ensure that services were provided and to determine whether services met the needs and expectations of the client.
6. Relationship with Providers. The AAA Benefits counselor will:

- a. Coordinate with the Texas Legal Services Center, Texas Young Lawyers Association, the private bar and local legal programs (such as law clinics or student law programs), Legal Services Corporation grantees, the Ombudsman Program or other programs.
  - b. Utilize Texas Legal Services Center to provide legal consultation and back-up to access and assistance staff, as needed.
  - c. If consultation/back-up is needed for access and assistance staff in addition to that described above, obtaining such assistance through agreements with programs such as pro-bono or reduced-fee attorneys, law school students, local legal programs or Legal Services Corporation grantees.
7. Education and Outreach. The AAA Benefits Counselor will:
- a. Disseminate accurate, timely and relevant information regarding any issue identified under the priority areas to targeted persons identified above.
  - b. Provide education and outreach to individuals or through a group setting such as forums, workshops, seminars and training sessions and other public venues, and will be reported as legal awareness.
8. Classification of Activities
- a. The provision of activities to eligible persons in a one-on-one setting or by telephone where detailed information is provided but no client intake is necessary shall be reported as legal awareness.
  - b. The provision of advice, counseling and/or representation on matters involving insurance issues, public/private benefits, consumer problems and other legal issues shall be reported as legal assistance if a client intake is completed.
  - c. If a client has a simple request for information on any topic including those identified under 40 TAC 83.3 (3), it shall be reported as information, referral and assistance.
  - d. While education and outreach initiatives that include the dissemination of information through mass media may be budgeted as associated costs under legal awareness, the activities may not be reported as units of service.
  - e. Presentations or other activities that describe the services of the area agency on aging in general, including the benefits counseling program, may not be reported as units of service.
9. The area agency on aging shall collaborate with local, state and federal entities to provide education and outreach. Such entities may include but are not limited to the Texas Department of Insurance, Texas Legal Services Center, Texas Medical Foundation, the Centers for Medicare and Medicaid Services and the Social Security Administration.
10. Benefits counselors shall complete the training and certification requirements as set forth in the benefits counseling certification manual issued by the Department.

Reference: [40 TAC §83.3](#)

**Intake Procedures**

1. The following forms will be completed by the Benefits Counselor during the intake process:

- HHSC Client Intake and Service Request Form
- HHSC Clients Rights and Responsibilities for Older American Act Form
- HIPAA Form

#### **Training for Benefits Counselor and/or Volunteers**

1. The AAA Benefits Counselor will complete training and certification requirements as set forth in the [Texas Legal Services Center \(TLSC\) Benefits Counseling Certification Manual](#), to ensure that the AAA staff member who provides benefits counseling possesses the necessary skills and expertise to perform the duties and responsibilities of a benefits counselor.
2. The AAA Certified Benefits Counselor will train all volunteers prior to the volunteer providing services to the public. All volunteers will also complete training and certification requirements as set forth in the Texas Legal Services Center (TLSC) Benefits Counseling Certification Manual.
3. The volunteer will submit an application to become a volunteer Benefits Counselor and submit the completed application to the Benefits Counselor for screening. The BC will then submit the application to the manager or designee for screening and approval. References will be checked after screening approval and the criminal history check will be run at that time. All completed documents will be retained in a locked file with the BC or designee.
4. The volunteer BC is required to submit signed verification of automobile insurance to the manager of the Area Agency on Aging.
5. The volunteer will attend orientation for the volunteer position.

#### **Certification of Benefits Counselors Regarding the Preparation of Advanced Directives**

##### **Policy**

The AAA Benefits Counselor will be trained to assist clients with the preparation of advanced directives.

##### **Procedures**

The AAA will require that a benefits counselor meet the following requirements in order to be certified:

1. Be an employee of the Ark-Tex Area on Aging and affiliated with the Texas Health and Human Services who provides benefits counseling services through an area agency on aging system of access and assistance to persons' age 60 years and older and/or their family members or other caregivers, and
2. Complete the training and certification requirements, set forth in Texas Legal Service Center's benefit counseling and certification manual.

The training referred to above must:



- a. Be approved by the Texas Health and Human Services; and
- b. Includes the following components:
  - 1) Statutory, regulatory, and policy provisions applicable to advance directives in Texas;
  - 2) The use of letters, questionnaires, and checklists for gathering information to provide technical advice, consultation and document preparation for clients;
  - 3) Conducting the client interview (including confidentiality and conflict of interest considerations);
  - 4) How to complete, sign, and witness, the Advance Directives provided for in the Texas Health and Safety Code, Chapter 166, and how to complete, sign, and witness, the Designation of Guardian Before Need Arises provided for in the Texas Probate Code §679;
  - 5) How revocation of the Advanced Directives is accomplished; and
  - 6) Proper procedures for filing and informing health care personnel about the Advance Directives documents.
3. Include an assessment tool approved by HHSC that verifies that the employee or volunteer providing benefits counseling through an area agency on aging system of access and assistance has sufficient knowledge after the training described above, to provide high quality services that meet the needs of clients for technical advice, consultation, and document preparation in regard to the Advance Directives in Texas Health and Safety Code, Chapter 166, and in regard to the Designation of Guardian Before Need Arises provided for in the Texas Probate Code §679. The assessment tool shall require a score of 70% correct answers as the minimum passing grade.

TLSC shall certify an employee or volunteer providing benefits counseling through The AAA system of access and assistance who has completed the training described in above and who has completed the assessment tool with a score of 70% or higher to provide services under [Texas Government Code §81.1011](#).

Reference: [40 TAC §83.4](#)

### **Long-Term Care Ombudsman Program**

Ark-Tex Council of Governments (ATCOG) is a host agency, as defined in Title 26, Texas Administrative Code (TAC), [§88.2](#), that contracts with the Health and Human Services Commission to ensure that the ATCOG local ombudsman entity implements the Ombudsman Program in the ATCOG region.

Policy: ATCOG is responsible for personnel management of persons employed by ATCOG who perform the functions of the Ombudsman Program, in accordance with Title 26, Texas Administrative Code, [§88.402](#).

The ATCOG local ombudsman entity (LOE) will implement the Ombudsman Program in the ATCOG region in accordance with:

- [Title 42, United States Code, §3058g](#);
- [Title 45, Code of Federal Regulations, Part 1324](#);
- [Title 26, Texas Administrative Code, Chapter 88](#);

- HHSC Ombudsman Policies and Procedures Manual;
- HHSC Ombudsman Program Protocols; and
- HHSC Ombudsman Certification Training Manual.

## **Direct Purchase of Service (DPS)**

### **Purpose**

This section establishes the AAA's policies and procedures for the Direct Purchase of Service (DPS) procurement method.

### **Policy**

The AAA will use the Direct Purchase of Service (DPS) procurement method to purchase services from providers on a client-by-client basis, as determined by an assessment of the individual's service needs.

### **Procedures**

**The AAA will:**

#### **Provider Pool**

Develop and maintain a provider pool using open enrollment which allows eligible service providers to enroll at any time during the program year.

#### **Provider Agreement**

1. Execute a Provider Agreement and obtain all necessary signatures prior to permitting the provider to provide services.
2. The *Certification Regarding Debarment, Suspension, Ineligibility* and HHSC Data Use Agreement will be updated annually.
3. Adhere to Section 2 A and B under terms of Agreement in the signed Provider Agreement.

#### **Service Authorization**

The AAA staff members will develop service authorizations, for the specified services, and fax or email securely, to the service provider and will include the following information:

- Service to be provided
- Number of units authorized
- Frequency of service
- Start date and end date of services

## **Provider Review (Quality Assurance)**

### **Purpose**

This section sets forth the AAA's policies and procedures for reviewing provider program and fiscal activities, and imposing penalties and/or sanctions on service providers for non-performance of the contract/provider agreement or non-compliance with service delivery requirements.

### **Policy**

Since the AAA utilizes the Direct Purchase of Service method in dealing with Providers, the following quality assurance areas are assessed:

1. Fiscal and Program: To track the services and test the overall performance of the AAA subcontractors to ensure quality services are provided to the elderly clients in the communities served and that accurate reports are submitted to the AAA.
  - a. NOTATION: Performance Measure Testing is done on a monthly basis. The AAA requires their Service Providers to provide intakes, rosters, invoices, and/or time sheets (if necessary), on a monthly basis. Annual Satisfaction surveys are completed to ensure quality performance from Service Providers.

### **Procedures**

1. Each month the ATCOG Accounting Specialist receives the stamped and dated Provider Payment Invoices from the Service Providers through the ATCOG mail route, email, fax or the Service Providers will hand deliver the paperwork to the ATCOG main office.
2. The ATCOG Accounting Specialist or designee checks the required forms and documentation that accompanies the Provider Payment Invoice. If documentation has been omitted or is incorrect, the ATCOG Accounting Specialist or designee will contact the service provider to resolve the issue.

### **Congregate Meals, Home Delivered Meals, and Transportation**

1. The following documentation is required from the above service providers:
  - a. Provider Payment Invoice for each service provided
  - b. Monthly SPURS Roster for each service
  - c. Summary Report of Meals and Donations
  - d. Worksheet for Calculation of Monthly Units Purchased from Program Income and Non-Federal Cash Match
  - e. Worksheet for Monthly Calculations of Units
    - 1) The AAA Coordinator or designee verifies all dates on required HHSC Intake forms, checks birthdate for eligibility, and then enters intakes into the SPURS database.
    - 2) The AAA Coordinator or designee tallies each roster to verify the monthly units.
    - 3) The ATCOG Accounting Specialist or designee verifies the Summary Report of Meals and Donations Form for program income and HHSC approved In-kind contribution forms.
    - 4) The AAA Coordinator or designee verifies the Worksheet for Monthly Calculations of Units.

- 5) The AAA Coordinator or designee verifies the Provider Payment Invoice.
- 6) The AAA Coordinator or designee enters HHSC Units, Program Income Units, and Other Local Fund Units into the SPURS Database from each roster.
- 7) The AAA Coordinator or designee prints a monthly SPURS Agency Summary Report verifying the data entered into the SPURS Database with the Provider Payment Invoice.
- 8) The AAA Director and/or Manager signs the Provider Payment Invoice for approval and payment.

#### **Quality Assurance**

1. At the beginning of each fiscal year, the AAA staff designee will determine which sites to be subject to a Quality Assurance Review. The tools that appear in the Quality Assurance Monitoring Workbook ([See Attachment H](#)) will be used for this purpose.
2. The AAA will track all findings until resolution, continually providing written status reports and technical assistance to service providers concerning all findings and notifying service providers of completion of the process.
5. Each participant with the AAA provider will be mailed a survey. The participant will fill out the survey and mail it back in the provided postage paid envelope.
6. The AAA will track all findings and notify the service provider of findings, if any.

#### **Homemaker and Caregiver In-Home Respite**

1. The following documentation is required from the above service providers:
  - a. Billing Statement for each service provided
  - b. Time Sheets for each client for the month, for each service provided
2. The ATCOG Accounting Specialist or designee verifies the number of units recorded on the Billing Statement with the monthly timesheets.
3. The ATCOG Accounting Specialist or designee then verifies the time sheets with the Service Order to see that services have been provided correctly for each client.
4. If the ATCOG Accounting Specialist or designee finds any discrepancies, the AAA Case Managers are provided documentation in order for them to check that a Form 2067 has been provided by the Service Provider explaining why the services were not provided according to the Service Order.
5. The ATCOG Accounting Specialist or designee enters HHSC units into the SPURS database for each service.
6. The ATCOG Accounting Specialist or designee prints a monthly SPURS Agency Summary Report verifying the data entered into the SPURS Database with the Billing Statement.
7. The authorized Case Management Disbursement Voucher is prepared for payment.

## **Direct Service Program Performance Measure Testing (PMT)**

### **Purpose**

Ark-Tex Area Agency on Aging establishes the following process in order to assure that data at the Fiscal, Performance and Program levels is reported correctly to HHSC Access and Intake Division.

### **Policy**

To schedule client file review which will include the review of intakes and other HHSC required forms, assessments, service authorizations, and care plans. This will also include reconciliation of direct service units entered into the SPURS Database and service delivery reports, when requested by management.

### **Procedures**

#### **Benefits Counseling**

1. The following forms will be completed by the benefits counselor during the intake process:
  - a. HHSC Client Intake and Service Request Forms
  - b. HHSC Clients Rights and Responsibilities for Older Americans Act Form
  - c. HIPAA form
2. Completed documents prepared by the AAA benefits counselor will be submitted to the AAA Director/Manager or the AAA Coordinator to review a random sampling for accuracy once the information has been entered into the SPURS database system. If errors are found, the documents will be returned to the benefits counselor to obtain the necessary corrections.
3. The AAA Program Assistant and or designee will select a random sample of HICAP and legal assistance clients to review the monthly narrative documentation along with the units that have been entered into the SPURS database system.
4. The AAA Program Assistant and or designee, on a monthly basis, will perform the required screening of all the AAA employees involved in HICAP Assistance, Legal Assistance and Legal Awareness, to determine if they have been excluded from participation in federal health care programs. Exclusion will occur when such person has been convicted of health care fraud. Each AAA staff member that is included in the screening process signs a letter explaining the Notice of Required Employee Screening.
  - a. The screening will include searching both the Office of Inspector General state and federal databases using the employee's name.
  - b. If a name appears, it will be promptly reported to the Health and Human Services Commission.

#### **Case Management**

1. The following forms will be completed by the Case manager during the intake process:
  - a. HHSC Client Intake and Service Request Form
  - b. HHSC Determine Your Nutrition Health Form
  - c. HHSC Clients Rights and Responsibilities for Older Americans Act Program Form

- d. HIPAA form
  - e. AAA Consumer Needs Evaluation
  - f. HHSC Caregiver Assessment (caregiver clients only)
2. The AAA Director and/or Manager or the AAA Coordinator will select a random sample of monthly unduplicated care coordination and caregiver client files for verification.

Reference: [AAA-PI 501](#) (Quality Assurance (QA) Reviews for Direct Purchase of Service (DPS) Service Providers

## **Contractor/Provider Responsibilities, Rewards and Sanctions**

### **Provider Agreements Policy**

The AAA holds its service providers responsible for meeting the terms of their Provider agreements. See [Attachment F](#) for Provider Application and [Attachment G](#) for Provider Agreement.

### **Provider Agreement Procedures**

The AAA executes specific procedures that include, but are not limited to, the following:

1. Requiring service providers to comply with contracts/provider agreements, including all operational requirements for implementing such contracts/provider agreements.
2. Requiring that service providers meet routine and standard administrative requirements as published by HHSC and the AAA, including submitting all budget documents and required reports in a complete, timely and accurate manner.
3. Requiring service providers to respond to requests by the AAA for specific corrective action as a result of:
  - a. The proposal review;
  - b. Program and fiscal reviews and assessments;
  - c. Investigation and response to complaints;
  - d. Incorrect or incomplete information on program performance reports; and
  - e. Failure to meet other routine and standard administrative requirements.

### **Sanction Policy**

The AAA takes appropriate action to secure the continuing administrative compliance of its service providers through penalties or sanctions. Sanctions are imposed upon service providers for failure to comply with routine and standard administrative or operational requirements; or failure to comply with federal and state statutes and regulations. When a contractor or service provider has failed to comply with the terms of a Provider agreement, or with federal and/or state statutes, codes, and/or rules that detail the legal obligations and responsibilities incurred as a result of agreeing to the terms of a Provider agreement, the AAA reserves the right to take actions as may be legally available and appropriate to the circumstance.

## **Sanction Procedures**

The AAA will utilize the following steps:

1. Contacting the service provider to resolve the issue.
2. If issue cannot be resolved via the initial contact, confirm the request in writing, specifying the items for which compliance is requested and the date on which such response is due to the AAA.
3. Notifying the service provider by certified mail of the items for which compliance has not been demonstrated and the effective date of the sanction to be imposed, if no adequate response is received from the service provider.
4. Withholding funds from the service provider on a temporary basis for a specifically budgeted function or service or any part thereof, for failure to meet administrative and operational requirements referenced in this Section. Funds are withheld until such time as the matter is resolved to the satisfaction of the AAA.
5. Releasing funds to the service provider once compliance has been demonstrated.
6. Notifying the service provider by certified mail, return receipt requested, of its intention to impose the sanction of termination of the Provider agreement, if the matter is not resolved within a timeframe specified by the AAA.
7. Terminating the Provider agreement as a result of failure to comply as described in this Section, using the following procedures:
  - a. Requesting the service provider's compliance and simultaneously confirming the request in writing by certified mail, return receipt requested, specifying the items for which compliance is requested.
  - b. If no response is received in ten working days, forwarding a written request to the governing official of the service provider by certified mail, return receipt requested, seeking compliance and specifying the sanction to be imposed.
  - c. Imposing the sanction of termination by issuance of a letter of notification by certified mail, return receipt requested, citing the items for which compliance has not been demonstrated, and the effective date of termination of the contract. Such letter will state that payment to the service provider will be made only for costs incurred under the terms of the Provider agreement, up to the date that the termination is effective.
  - d. Providing payment to the contractor or service provider for allowable costs incurred under the terms of the contract/Provider agreement until the date on which the contract/Provider agreement termination is effective.

## **Data Management**

### **Purpose**

This section establishes the AAA's policies and procedures for Data Management services.

**Policy**

The AAA will perform data management activities as described in HHSC Program Instruction [AAA-PI-312](#) *Data Management Guide*.

**PROCEDURES:****The AAA will:**

1. Provide Data Management as a direct service.
2. Identify the AAA staff members providing such services on the narrative required during the annual budget submission.
3. Utilize the chart referenced in the HHSC Program Instruction AAA – PI – 312.
4. Utilize the SPURS Project Training: Job Aids for data entry by all the AAA staff members.

Reference: [26 TAC §213.157](#)



## Chapter 6: Older Americans Act Services

1. The following nutrition services are provided by the AAA through service providers:
  - Congregate Meals
  - Home Delivered Meals
  - Nutrition Education
2. The following services to assist independent living are provided by the AAA through service providers:
  - Adult Day Services
  - Caregiver Respite – In-Home
  - Caregiver Information Services
  - Chore Maintenance
  - Emergency Response
  - Health Maintenance
  - Homemaker
  - Income Support
  - Personal Assistance
  - Residential Repair
  - Transportation Demand Response
  - Voucher - Homemaker

### Transportation Services

#### Purpose

This section establishes the requirements for transportation services, a service provided under the Older Americans Act and funded, in whole or in part, by HHSC.

#### Policy

The AAA will provide transportation services to individuals that meet the eligibility requirements listed in Chapter II of the Policy and Procedures Manual under Targeting Service Delivery and in accordance to HHSC [AAA-PI 308](#).

#### Procedures

##### The AAA will:

1. Require that demand-response transportation provide, at a minimum, curb-to-curb, non-emergency services. (Demand-response is defined as transportation designed to carry older individuals from specific origination to specific destination upon request). Clients request the

transportation in advance of their need, usually twenty-four to forty-eight hours prior to the trip.

2. Ensures that transportation services are in compliance with the ADA.
3. Comply with all of the General Service Requirements outlined in [26 TAC §213.201](#).
4. Require that transit providers receiving Title III funding provide transit staff with training in the areas of scheduling and dispatching, defensive driving, passenger handling and assistance, first aid, and CPR training.
5. Prohibit Title III-B funds from being used to purchase transportation for persons who are under the age of 60.
6. Monitor and evaluate performance of transportation programs in accordance with Provider Review (Quality Assurance).

## **Transportation: Service Provider Forms Procedures**

### **Purpose**

The Ark-Tex Area Agency on Aging requires Service Providers/Providers who are responsible for completing the Client Intake and Service Request Form and the Client's Rights and Responsibilities Form to ensure that all forms are signed by all parties as required. Incomplete client information and/or unsigned forms will not be accepted and client services will not be authorized until the properly completed paperwork is submitted

### **Procedures**

1. The AAA Service Providers/Contractors will be responsible for the initial and renewed Client Intakes of transportation participants and will make recommendations as to each client's need for this service. They will use the required HHSC forms, and all forms must be completed entirely and signed by all parties involved. If the client is unable to sign the form and a representative is signing for them, they must identify themselves as signing for the actual care recipient.
2. The required forms to complete are:
  - HHSC Client Intake and Service Request Form
  - HHSC Clients Rights and Responsibilities for Older Americans Acts Programs Form
3. If errors are found that cannot be corrected with a telephone call, the documents will be returned to the appropriate Service Provider to obtain the necessary corrections.
4. The AAA Program Assistant or designee will enter the new clients into the SPURS database using the HHSC Client Intake and Service Request Form.
5. HHSC required forms provided by our Service Providers must be updated no less than annually. These forms are valid until the last day of the month, one year after the original intake date. No units of service for a client will be paid to the Service Provider until an updated set of forms is provided to the AAA.

6. Any intakes that accompany the monthly invoice/rosters will be examined by the AAA Aging Coordinator or designee for accuracy and verify the dates on all HHSC required forms against the first date of service provided on the monthly roster form.

Reference: [40 TAC §83.19](#) and [26 TAC §213.201](#)

## **Nutrition Services**

### **Purpose**

This section establishes the requirements for nutrition services, a service provided under the Older Americans Act and funded, in whole or in part, by HHSC.

### **Policy**

The AAA will provide nutrition services (congregate and home delivered meals) to individuals that meet the eligibility requirements listed in the Policy and Procedures Manual under Targeting Service Delivery and in accordance to HHSC AAA-PI 307.

### **Procedures**

#### **The AAA will:**

1. Secure Providers utilizing the Direct Purchase of Service (DPS) procurement method.
2. Establish yearly rates utilizing the HHSC Rate Setting process.
3. Request submission of waiver request from nutrition service provider(s) who serve home delivered meals less than five days a week. A congregate meal provider is not required to request a waiver when its nutrition project is cumulatively serving a total of five days a week between all meal sites.
4. The AAA does not need to seek a waiver in order for nutrition providers to close on holidays. (Please note that there may be no more than 10 holidays per year on which the provider does not serve, unless HHSC has granted prior approval for additional days to be without meal service).
5. Monitor and evaluate performance of nutrition programs in accordance with Provider Review (Quality Assurance).

#### **The Service Provider will:**

1. Develop written policy and procedures regarding senior center operations and make them available to senior center staff persons and program participants.
2. Receive written approval from the AAA before the service provider contracts with any entity for meal preparation or service delivery.
3. Require service Provider to develop procedures that protect a client's privacy regarding voluntary contributions, and ensure that no otherwise eligible person is denied service because they will not or cannot contribute to the service.

5. Submit monthly Provider Payment Invoices according to Provider Review (Quality Assurance).
6. Prohibits smoking of tobacco during the hours of operation of senior programs and in footage designated for senior activities funded by HHSC.

## **Intakes and Assessment Procedures**

### **Purpose**

The Ark-Tex Area Agency on Aging requires Case managers and Service Providers/Providers who are responsible for completing Client Intake and Assessment forms to ensure that all forms are signed by all parties as required, including the Case manager's signature on the HHSC [Form 2060](#). Unsigned client information will not be accepted and client services will not be authorized until the properly completed paperwork is submitted. Non-compliance to this policy will result in a delay of service authorizations and fewer units of service.

### **Procedures**

1. Require site managers at congregate meal sites to have clients complete the required HHSC forms: Client Intake and Service Request Form, Client Rights & Responsibilities for Older Americans Act Program Form, and Determine Your Nutrition Health. All forms must be completed prior to the initiation of service and updated every 12 months thereafter.
2. Intakes, Assessments and Nutritional Risk Assessments provided by our Service Providers/Providers must be updated no less than annually. Intakes, Assessments and Nutritional Risk Assessments are valid until the last day of the month, one year after the original evaluation date. No units of service for an individual will be paid to the Service Provider until an updated set of forms are provided.
3. The AAA case managers or Service Providers/Providers will use the required forms, including the AAA Consumer Needs Evaluation. All forms must be completed entirely and signed by all parties involved. If the client is unable to sign the form and a representative is signing for them, they must identify themselves as signing for the actual care recipient. Home visit must be completed prior to the initiation of service and reassessed at least every 12 months thereafter. \*\*Special circumstances may prohibit a home visit, such as a home visit, and a phone assessment would be appropriate. The AAA will notify the Provider if the home visit is waived.
4. The required forms to complete are:
  - [HHSC Client Intake and Service Request Form](#)
  - [HHSC Determine Your Nutrition Health](#)
  - HHSC Clients Rights and Responsibilities for Older Americans Acts Programs
  - [AAA Consumer Needs Evaluation](#) (Home Delivered Meal Clients Only)
  - [HHSC Caregiver Assessment](#) (Case managers Only If Caregiver Situation)

5. Completed documents prepared by the Service Providers/Providers will be submitted to the AAA Program Assistant to examine for accuracy before entering into the SPURS database system. If errors are found prior to data entry, the documents will be returned to the appropriate individual to obtain the necessary corrections.
6. The AAA will reimburse the service Provider for a maximum of two attempted but unsuccessful meal deliveries per program participant per month.

#### **Facilities and Food Service Procedures**

##### **Through quality assurance visits the AAA will:**

1. Determine that service providers follow procedures and maintain facilities that are in compliance with all applicable federal, state and local fire, health, sanitation and safety laws and regulations. All food preparation, handling, and service activities shall comply with Texas Department of State Health Services Division of Food and Drug, Texas Food Establishment. Reference 25 TAC, Chapter 229 (related to Food and Drug).
2. Determine that senior center complies with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations including the Americans with Disabilities Act and the Rehabilitation Act of 1973, Section 504.
3. The contractor must provide a copy of all required inspection results to the AAA within thirty calendar days of receiving results.
4. Post a copy of the latest fire prevention inspection report is posted in a conspicuous place in the senior center and a copy of the report is maintained in the files of the senior center.
5. Determine that service providers comply with requirements described in [26 TAC §213.151](#), relating to records and under Policy and Procedure Manual: Records.
6. Determine that facilities are located in close proximity to the majority of older individuals' residences. The preferred location is a multipurpose senior center within walking distance or with transportation service provided.
7. Determines that all doors, outside stairs, and fire escapes are free from obstruction and in proper condition.
8. Determines that basic first aid supplies are available and maintained, clearly marked, and accessible to all senior center staff persons and program participants.
9. Require that service Provider adhere to the AAA Policy and Procedures: Grievances/Complaints.

#### **Nutrition Services Incentive Program**

The AAA must ensure that a service provider:

1. complies with the Older Americans Act, [§311](#), relating to the Nutrition Services Incentive Program; and
2. includes only eligible meals (that is, meals delivered to program participants who meet the criteria described in [26 TAC 213.203 subsection \(b\)](#) of this section) in reports related to the Nutrition Services Incentive Program.

### **Meal Costs**

THE AAA must ensure that a service provider:

1. posts the cost of a meal for purposes of cost recovery as described in [26 TAC 213.203](#) paragraph (2) of this subsection;
2. keeps payments for ineligible meals separate from contributions from program participants.

### **Meal Requirements**

1. Service Provider will comply with the requirements of the [Older Americans Act §339](#) (2)(A) Nutrition Program.
2. Service Provider develops menus based on the new HHSC Dietary Reference Intakes (DRI) and Dietary Guidelines for Americans (DGA) Guidelines.

### **Menus**

The AAA must ensure that, for each meal included on the menu and listed allowable substitutions, a service provider obtains:

1. approval, in writing, from a dietitian consultant that the meal meets one third of the recommended dietary allowance as referenced in the Dietary Reference Intakes for a person 60 years of age or older and the current Dietary Guidelines for Americans as required by the Older Americans Act, [§339\(2\)\(A\)](#); and
2. the written approval before the date the meal is served.

The dietitian consultant required by [26 TAC 213.203](#) paragraph (1) of this subsection must:

- a. be a licensed dietitian in accordance with [Texas Occupations Code, Chapter 701](#);
- b. be a registered dietitian with the Commission on Dietetic Registration/American Dietetic Association; or
- c. have a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

The AAA must ensure that a service provider's planned menus provide for variety in flavor, consistency, texture, and temperature.

### **Standard Recipes**

The AAA must ensure that a service provider plans and manages food production through the use of standardized recipes adjusted to yield the number of servings needed and to provide for consistency in quality and documented nutrient content of food prepared.

### **Emergency or Inclement Weather or Service Frequency Less Than 5 Days a Week**

If a service provider delivers frozen, chilled, or shelf-stable meals for emergency or inclement weather situations, or if the service provider's service frequency is less than five days per week, the AAA must ensure that the service provider:

1. delivers the meals only if the program participant has sanitary and safe conditions for storing, thawing, and reheating the meals;
2. determines the meals can be safely handled by the program participant or another available person if the participant is unable to safely handle the meal.

### **Meal Packaging**

The AAA must ensure that a service provider:

1. uses supplies and carriers to package and transport hot foods separately from cold foods;
2. uses enclosed meal carriers used to transport easily damaged trays or containers of hot or cold foods to protect such food from contamination, crushing, or spillage and equips the meal carriers with insulation or supplemental hot or cold sources as is necessary to maintain safe temperatures; and
3. complies with the following in packaging meals:
  - a. seals the meal container to prevent moisture loss or spillage to the outside of the container;
  - b. maintains a safe temperature of the packaged meal throughout transport;
  - c. uses a container designed with compartments to separate food items for visual appeal and to minimize spillage between compartments; and
  - d. uses a container a program participant can easily open.

### **Holding Time**

The AAA must ensure that a service provider does not allow more than four hours to expire from the time the cooking or reheating of food is completed and the time the food is served to the program participant.

1. A service provider must keep meals that are prepared and packaged for delivery at the following temperatures:
  - a. 40 degrees Fahrenheit or below for cold food items; and
  - b. 135 degrees Fahrenheit or above for hot food items;
2. does not leave meals unattended at the program participant's residence; and
3. develops written procedures:
  - a. ensuring meals are safe and sanitary for the program participant;
  - b. requiring follow-up with a program participant who was not available when a meal delivery was attempted on the same day the attempt was made; and
  - c. ensuring a significant change in a program participant's physical or mental condition or environment is reported to the service provider and appropriate action taken by the service provider on the same day the service provider is notified of the change.
4. Adheres to [Texas Food Establishment Rules](#) (TFER):
  - a. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;
  - b. The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control;

- c. The food in unmarked containers or packages or marked to exceed a four-hour limit shall be discarded; and
- d. Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request that ensure compliance with clauses (i) – (iv).

### **Training**

The AAA must ensure that a service provider provides at least one hour of training to a staff person or volunteer of a service provider who is involved in the administration or provision of nutrition services before the staff person or volunteer assumes duties. The training topics must include:

- program participant confidentiality;
- procedures used in handling emergency situations involving clients;
- sanitary methods used in serving and delivering meals;
- general knowledge and basic techniques of working with persons who are aged and persons who are disabled; and
- personal hygiene.

The AAA must ensure that a service provider provides the following training to a staff person or volunteer of a service provider who is involved only in the administration of nutrition services before the staff person or volunteer assumes duties:

1. the training described in paragraph (1) of this subsection; and
2. one hour of training on the content and implementation of applicable forms, rules, procedures, and policies of HHSC, the AAA, and the service provider relating to the administration or provision of nutrition services.

The AAA must ensure that a service provider provides at least two hours of training to a food service supervisor before the supervisor assumes duties. Training topics must include:

- personal hygiene;
- food storage, preparation, and service, including prevention of food-borne illness;
- equipment cleaning before, during, and after meal service;
- selection of proper utensils and equipment for transporting and serving foods;
- automatic and manual dishwashing procedures; and
- accident prevention.

In addition to the training required by paragraph (3) of this subsection, the AAA must ensure that a service provider provides at least six hours of training to a food service supervisor no later than 30 days after the supervisor assumes duties. Training topics must include:

1. practical procedures for food preparation, storage and serving;
2. portion control of food in appropriate dishes;
3. use of standardized recipes;
4. nutritional needs and meal pattern requirements of older adults to be served; and



5. quality control of:

- flavor;
- consistency;
- texture;
- temperature; and
- appearance (including the use of garnishes).

The AAA must ensure that the service provider's food service supervisor complies with [25 TAC §229.172](#) (relating to Management and Personnel).

The AAA must ensure that a service provider documents the provision of training required by paragraphs (1) - (4) of this subsection. The documentation must include the names of the staff person or volunteer being trained and the trainer; the topics covered; and the date, time, and length of the training.

- a. Require the service provider to have an adequate number of staff persons available at the congregate meal site who are certified in:
- First aid;
  - Cardiopulmonary resuscitation; and
  - Operating an automatic external defibrillator, if one is available.

#### **Nutrition Education**

Nutrition education helps to promote nutritional well-being and to delay the onset of adverse health conditions from poor nutritional health or sedentary behavior by providing accurate and culturally sensitive information and instruction on nutrition, physical fitness, or health (as it relates to nutrition).

Design material to provide participants with the understanding, skills, and motivation necessary to make informed food, activity, and behavioral choices that can improve their health and prevent chronic disease.

A qualified dietitian or a person with equivalent education and training in nutrition science must develop and approve the material. After the qualified dietitian or other qualified person provides training and guidance on using the materials, a nurse, social worker, therapist, congregate meal site director, wellness coordinator or other person may provide the nutrition education session.

While educational or informational flyers or handouts are good reinforcements of nutrition education, the distribution of flyers or handouts alone is not nutrition education.

Provide nutrition education to all recipients of nutrition services at least once every 12 months. Participants must receive at least 15 minutes of nutrition education annually.

Provide nutrition education to recipients of congregate meals in group settings or one-on-one.

Provide nutrition education to recipients of HDMs:

- in person;

- by phone; or
  - through other electronic means such as webcasts, if such electronic means can give each person an opportunity to ask questions.
1. Document that nutrition education was provided and include the following:
    - name of the meal provider;
    - date of the session;
    - name of the person providing the education;
    - lesson plan or curriculum approved by the qualified dietitian; and
    - name of each person receiving the service.
  2. Report the total units of service and the estimated number of eligible people who received nutrition education using the HHSC information management system.  
A unit of service = one session per participant. Count a session for every eligible person attending a nutrition education session.

Reference: [F-1330 OAA AAA Policy and Procedures Manual](#)

#### **Political Activity**

The service provider will not:

1. Use a congregate meal site for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate.
2. Distribute political materials at a congregate meal site.

#### **Religious Activities and Prayer**

The service provider will not:

1. Allow a nutrition site staff person to lead a prayer or other religious activity.
2. Prohibit a program participant from praying silently or audibly at a congregate meal site if the program participant so chooses.

#### **Emergency Conditions, Inclement Weather, Disasters and Holidays**

The meal provider must ensure there are sanitary and safe conditions for storing, thawing and reheating meals when the provider distributes chilled, frozen, or other meals for emergency conditions, inclement weather, disasters or holidays. The meal provider must also ensure the person can physically manage the meals.

The meal must be labeled and provide the expiration date in large print with instructions for storing, thawing, and reheating, as appropriate.

Meal providers must develop and keep written procedures to address congregate meal site closures and suspension of HDMs for emergency conditions, inclement weather, disasters, and holidays. The AAA's meal provider contract must address the provision of congregate and HDM services during meal site closures. The AAA, sub-recipients, and their meal providers must define emergency

conditions, inclement weather, disasters, and holidays and include those terms in the contract for OAA meals.

Meal providers must ensure people receiving meals are aware of the date, or approximate date, the meal service will resume when they stop meals due to an emergency, inclement weather, disaster or holiday.

The AAA must ensure meal providers:

- keep food, facilities, and equipment available for emergencies and disasters according to a plan developed by the meal provider, who gives priority to program participants 60 years or older; and
- adopt written procedures ensuring the availability of food for eligible people during emergencies, inclement weather, disasters, and holidays.

Reference: [C-1211 OAA AAA Policy and Procedures, 26 TAC §213.203](#)

## **Homemaker Services**

### **Purpose**

This section establishes the requirements for homemaker services, a service provided under the Older Americans Act and funded, in whole or in part, by HHSC.

### **Policy**

The AAA will provide homemaker services to individuals that meet the eligibility requirements listed in the Policy and Procedures Manual under Targeting Service Delivery and in accordance to HHSC [AAA-PI 310](#).

### **Procedures**

The AAA will:

1. Secure Providers utilizing the Direct Purchase of Service (DPS) procurement method, or
2. Provide consumer directed services by providing vouchers to program participant, allowing the program participant to select a homemaker, establish a work schedule and payment rate, and provide the homemaker information and training on the program participant's needs.
3. Informing program participant of options. If the AAA provides homemaker services as both an agency managed service and as a consumer directed service, the AAA must inform a program participant that he or she may choose to receive homemaker services in either of those two ways.
4. Provide the service provider with a monthly service order for each program participant, receiving this service, in accordance with [§83.3\(o\)\(2\)\(B\)](#) prior to start of services.
5. Monitor and evaluate performance of homemaker programs in accordance with Provider Review (Quality Assurance).

The Service Provider will:

1. Adhere to Section 2 A and B under Terms of Agreement in the signed Provider Agreement.
2. Ensure that program supervisor for homemaker services meets the criteria in 26 TAC [§213.207](#).
3. Ensure that homemaker (the person who provides homemaker services to the program participants meets the criteria in 26 TAC [§213.207](#).
4. Ensure that homemaker provides services in accordance with the Texas Health and Human Services definition:

“A service provided by trained and supervised homemakers involving the performance of housekeeping and home management, meal preparation, or escort tasks and shopping assistance provided to older individuals who require assistance with these activities in their place of residence. The objective is to help the recipient sustain independent living in a safe and healthful home environment.”

5. Prohibited Activities: Homemaker services do not include the following:
  - a. personal assistance services as described in TAC §85.305.
  - b. home repair
  - c. pet grooming
  - d. yard maintenance
  - e. moving heavy objects
  - f. performing services for members of the household other than the client.
  - g. transporting the program participant in their own personal vehicle to health care services and other necessary services.
  - h. performing services not requested in the service order/authorization.
  - i. accepting gifts from the program participant.
  - j. bringing persons to the program participant’s home who are not there in any homemaker service-related capacity.
  - k. taking personal property from the program participant’s residence;
  - l. assuming control of the financial or personal affairs of the client or his/her estate, including power of attorney, guardianship or conservatorship; or
  - m. committing any act of abuse, neglect, or exploitation.
  - n. consuming client’s food or drink.
6. Ensure that homemaker does not provide homemaker services prior to the receipt of a service order from the AAA case manager.
7. Submit monthly Provider Payment Invoices according to Provider Review (Quality Assurance).

## Emergency Response Services

### Purpose

This section establishes the requirements for emergency response services, a service provided under the Older Americans Act and funded, in whole or in part, by HHSC.

### Policy

The AAA will provide emergency response services to individuals that meet the eligibility requirements listed in the Policy and Procedures Manual under Targeting Service Delivery and in accordance to HHSC [AAA-PI 310](#).

### Eligibility Requirements

1. Must meet at least one of the following criteria:
  - Lives alone and in a private residence;
  - Routinely alone for eight or more hours during a 24-hour period; or
  - Lives with an incapacitated person who is not able to call for help or otherwise assist in an emergency.
2. Is at risk, such as being prone to falling or having an existing medical condition that may be life-threatening if the program participant does not receive immediate assistance.

The AAA case manager, through completing HHSC required forms, will determine that program participant is:

1. Mentally alert enough to operate the equipment properly.
2. Program participant maintains a private telephone line, if the system requires a private line to function properly.

### Procedures

The AAA will:

1. Secure Providers utilizing the Direct Purchase of Service (DPS) procurement method.
2. Provide the service provider with an annual service order for each program participant, receiving this service, in accordance with [§83.3\(o\)\(2\)\(B\)](#) prior to start of services.
3. Evaluate performance of emergency response services in accordance with Provider Review (Quality Assurance).

The Service Provider will:

1. Adhere to Section 2 A and B under Terms of Agreement in the signed Provider Agreement.
2. Ensure that Provider is licensed by the Public Security Bureau of the Texas Department of Public Safety as an alarms systems company or by the Department of State Health Services as a personal emergency response system provider.
3. Ensure that emergency response services are provided in accordance with the Texas Health and Human Services definition:

“Services provided to the homebound, frail older individuals who use an automatic monitoring system to link them to emergency medical services when their life or safety are in jeopardy. ERS services include the installation of the individual monitoring unit, training associated with the use of the system, periodic checking to ensure that the unit is functioning properly, equipment maintenance calls, response to an emergency call by a medical professional, para-professional or volunteer, and follow-up with the older individual.”

4. Services are not provided prior to the receipt of a service order from the AAA Case manager.
5. Submit monthly Provider Payment Invoices according to Chapter II – E. Provider Review (Quality Assurance).

#### **Service Activities**

1. Coordinate and oversee the installation and management of the system.
2. Coordinate with the program participant and the AAA case manager to see that equipment is installed and operational and services are initiated with 14 days after the service effective data on the service order.

#### **Responder Requirements**

1. The AAA must, before emergency response services are initiated, obtain or must ensure that a vendor obtains from the program participant as many names, as possible, of persons who will serve as responders.
2. The AAA must designate or must ensure that a vendor designates public service personnel as the responder of last resort for each program participant.

#### **Prerequisites to Service**

1. Obtain a release statement from the program participant that allows the responder to make a forced entry into the program participant’s home if he /she is asked to respond to an activated alarm call and has no other means of entering the home to respond.
2. Train program participant how to use the system, demonstrate how to activate an alarm call, and verify that program participants understand the operation of the ERS system during a test run.
3. Explain that program participant must:
  - Provide name and phone numbers of two volunteers who are willing to respond to the program participant when the alarm is activated. These volunteers are in addition to police, fire, and emergency medical services personnel.
  - Participate in a monthly system check. \*\*Unless service provider conducts system checks remotely with equipment.
  - Contact service provider if program participant’s telephone number or address changes.
  - Contact service provider if one or more of the program participant’s volunteer responders’ changes.
  - Ensure that electronic monitoring system is not willfully abused or damaged.

### **Program Participant File**

The ERS Service Provider will maintain a file for each program participant that includes:

- The name, telephone number, address and medical condition of the program participant
- The name and telephone number of the program participant's physician or primary health care provider
- The name and telephone number of each responder
- A record of all completed and attempted system checks
- A record of each incident or alarm call
- A copy of all required notices sent to the AAA
- Home entry release statement
- The program participant's acknowledgment the equipment belongs to the Provider
- Service Orders from the AAA case manager
- Record program participant received a verbal explanation and written copy of the provider agency's complaint procedures

### **Service Delivery**

1. Ensure their ERS service is available and able to respond to an alarm call from a program participant 24 hours a day, seven days a week.
2. In response to an alarm call will:
  - a. Attempt to contact the program participant within one minute of the call, to verify an emergency exists before contacting a responder.
  - b. Immediately contacts a responder if:
    - program participant verifies there is an emergency, or
    - Provider is unable to reach the program participant.
  - c. Documents an alarm call at the time it is received and after it is resolved which includes:
    - name of the program participant
    - date and time the alarm is received
    - time ERS monitor called the program participant in response to an alarm call
    - the name of the contacted responder
    - brief description of the incident and how the incident was resolved
  - d. Notify the responder within 24 hours after becoming aware of a significant change in the program participant's physical or mental condition.
  - e. Notify the AAA case manager, in writing, of any significant change in a program participant's physical or mental condition or environment within seven days after becoming aware of the change.

### **System Checks**

1. Conduct and document a system check by activating the call button to test the electronic monitoring system at least once during each calendar month for each program participant that the AAA case manager has issued a service order.

2. If system check fails to activate the electronic monitoring system of the program participant, completes a system check three times on three different days within one week of such failure.
3. Contact a responder (other than public service personnel) to conduct a system check if the Provider is unable to complete the monthly system check after three attempts to schedule with the program participant.
4. Contact the AAA case manager, by phone and in writing, within 10 days after an unsuccessful system checks.

#### **Equipment Maintenance**

1. Connect the home unit equipment to the monitoring system and ensure that the equipment has an alternate power source if the power fails.
2. Replace and repair faulty equipment in the program participant's electronic monitoring system within one business day after learning of the faulty equipment or as soon as program participant is available.
3. Instruct program participant, caregiver, or responder how to replace a battery.
4. Visit program participant's residence to check the electronic monitoring system equipment within five business days after the equipment has registered five or more "low battery" signals in a 72-hour period and replace the defective battery.
5. Document and maintain a record of each instance of faulty equipment and low battery signal.

#### **Suspension and Termination of Services**

1. Contact the AAA case manager in order to suspend services before the end date of a service order and remove equipment from program participant's residence if:
  - Program participant moves to an area where the Provider does not provide services;
  - Program participant is admitted to an institution, personal care home, foster care setting, or any other setting where 24-hour supervision is available;
  - Client dies; or
  - Client requests that services end.

#### **Special Reporting Considerations**

1. Contact the AAA case manager within one workday of awareness that program participant abuses the service by:
  - Activating four false alarms within a six-month period that result in a response by emergency personnel;
  - 20 false alarms of any kind within a six-month period;
  - Client is away from the home or is unable to participate in the service delivery for at least three consecutive months;
  - Client is no longer mentally alert enough to operate the equipment properly; and/or
  - Client threatens other's health and safety.

Reference: [26 TAC §213.213](#)



## **Residential Repair Services**

### **Purpose**

This section establishes the requirements for residential repair services, a service provided under the Older Americans Act and funded, in whole or in part, by HHSC.

### **Policy**

The AAA will provide residential repair services to individuals that meet the eligibility requirements listed in the Policy and Procedures Manual under Targeting Service Delivery.

### **Eligibility Requirements**

1. Program participant lives in a residence that requires repair or modification to enhance or address:
  - Energy efficiency;
  - Structural integrity; or
  - Health and safety of the program participant.

### **Procedures**

The AAA will:

1. Secure Providers utilizing the Direct Purchase of Service (DPS) procurement method.
2. Complete an on-site visit and complete the required HHSC forms to ensure that the requested residential repairs are essential for the maintaining the health, safety, and independence of the program participant living in the residence.
3. Submit a request in writing to HHSC for approval of repairs in the excess of \$5000 for a unit of service at one residence in a current federal fiscal year. Services will not be performed until a written approval is received from HHSC.
4. Provide the service provider with a service order for each program participant, receiving this service, in accordance with §83.3(o)(2)(B) prior to start of services.
5. Take before and after pictures to assure that service provider has completed the necessary repairs.

The Service Provider will:

1. Adhere to Section 2 A and B under Terms of Agreement in the signed Provider Agreement.
2. Ensure that residential repair service services are provided in accordance with the Texas Health and Human Services definition:  
“Services consist of repairs or modifications of dwellings occupied by older individuals that are essential for the health and safety of the occupant(s).”
3. Services are not provided prior to the receipt of a service order from the AAA Case manager.
4. Submit monthly Provider Payment Invoices according to Provider Review (Quality Assurance).

### **Descriptions of residential repair services**

The AAA will provide the following types of residential repair services:

1. Structural, defined as repairs to the structure that are necessary for the program participant's health and safety.
2. Accessibility modification, defined as structural adaptations that meets the needs of individuals who have a disabling condition.
3. Electrical defined as services are replacement, repair, and installation of essential electrical wiring or fixtures including telephone wiring.
4. Plumbing, defined as replacing, repairing and/or installing essential plumbing lines or fixtures.
5. Weatherization, defined as protecting the home or its resident(s) from the effective of the weather and conserving energy.
6. Safety and security modification, defined as measures taken to prevent accidents, fires, or intrusion into a dwelling and the repair, modification, treatment, or removal of safety hazards in the residence.
7. Essential appliances. Essential appliances are appliances necessary to sustain a healthy environment and independent living.

### **Rental Units**

If the residence in which a program participant is living is not owned by the program participant, the AAA must obtain a signed agreement from the owner authorizing the services before services are provided.

### **Prohibited Activities**

The AAA will not provide the following residential repair services:

1. Construct, repair, or maintain outbuildings such as garages, carports, animal shelters or greenhouses;
2. Install, repair, or maintain nonessential appliances or fixtures;
3. Beautify the property or other activities that are strictly for cosmetic purposes

### **Services completed before payment**

The AAA must ensure that before payment is made for residential repair services one of the following occurs:

1. the program participant acknowledges, in writing, the services have been completed; or
2. the AAA has confirmed by an on-site visit that the services have been completed.

Reference: [26 TAC §213.215](#)

### **Senior Centers**

#### **Purpose**

This section establishes the requirements for senior centers, a service provided under the Older Americans Act and funded, in whole or in part, by HHSC.

## **Policy**

As provided in the Older Americans Act, §102(36), a senior center is a community facility used for the organization and provision of a broad spectrum of services for persons 60 years of age or older, which may include provision of health (including mental health); social, nutritional, and educational services; and the provision of facilities for recreational activities.

## **Operations**

The AAA must ensure that a service provider of a senior center:

1. complies with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations including the Americans with Disabilities Act and the Rehabilitation Act of 1973, Section 504;
2. establishes the senior center in an area central to and easily accessible by program participants;
3. conducts fire prevention inspections on a monthly basis using a trained senior staff person or volunteer of the service provider;
4. posts a copy of the latest fire prevention inspection report in a conspicuous place in the senior center and files the report at the senior center for review by the AAA;
5. keeps doors, outside stairs, and fire escapes free from obstruction and in proper condition;
6. has basic first aid supplies at the senior center available and maintained, clearly marked, and accessible to all senior center staff persons and program participants;
7. has an adequate number of service center staff persons available at the center, during the time the center is open to the public, who are certified in:
  - a. first aid;
  - b. cardiopulmonary resuscitation; and
  - c. operating an automatic external defibrillator, if one is available; and
8. develops written policies and procedures regarding senior center operations and makes them available to senior center staff persons and program participants.

## **Political Activity**

The AAA must ensure that a service provider does not:

1. use a senior center for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or
2. distribute political materials at a senior center.

## **Religious Activities and Prayer**

The AAA must ensure that a service provider does not:

1. allow a prayer or other religious activity to be officially sponsored, led, or organized by a senior center staff person or volunteer; or

2. prohibit a program participant from praying silently or audibly at a senior center if the program participant so chooses.

### **Inventory**

The AAA must maintain an accurate inventory of senior centers that were renovated, acquired, or constructed, in whole or in part, with funds provided by HHSC.

### **Change in ownership or purpose of a senior center**

The AAA must ensure that:

1. a grantee of funds from HHSC to purchase or construct a senior center notifies the AAA, in writing, of the purchase or construction of the center within 30 days after such purchase or completion; and
2. a grantee of funds described in subparagraph (A) of this paragraph and any successor owner of the senior center:
  - a. notifies the AAA, in writing, of
    - a change in the ownership of the senior center; or
    - a change in the purpose of the senior center from the purpose for which it was purchased or constructed; and
  - b. makes such notification 30 days before the change described in clause (i) of this subparagraph.

The AAA must notify HHSC if, within 10 years after purchase of or 20 years after completion of construction of a senior center, either of the following occurs:

1. the owner of a senior center ceases to be a public or nonprofit private agency or organization; or
2. there is a change in the purpose of the senior center from the purpose for which it was purchased or constructed.

The notice required by paragraph (2) of this subsection must be in writing and be given to HHSC within 10 days after the AAA is notified of the occurrence.

If, within 10 years after the purchase of a senior center or 20 years after the completion of construction of a senior center, either of the conditions described in paragraph (2) of this subsection occurs, the United States Government is entitled to recover from the owner of the senior center an amount to be determined by the Older Americans Act, §312.

### **Insurance**

The AAA must ensure that the owner or operator of a senior center maintains insurance coverage for total replacement cost of the center and for the contents of a center funded by HHSC.

Reference: [26 TAC §213.217](#)

Attachments  
Attachment A

**AAA STAFF ACTIVITIES CHART**

<b>TITLE</b>	<b>ACTIVITY</b>	<b>% OF TIME</b>
AAA Director/Manager	Administration	60%
	Care Coordination	10%
	Caregiver Support Coordination	10%
	HICAP	10%
	Ombudsman	10%
ATCOG Accounting Specialist	Administration	80%
Aging Coordinator	Data Management	10%
	IR&A	20%
	Admin	30%
	HICAP	30%
	Care Coordination	10%
Program Assistant	Data Management	60%
	IR&A	34%
	Evidence Based	6%
Benefits Counselor	Legal Assistance -60	2%
	Legal Assistance +60	38%
	HICAP	38%
	MIPPA	2%
	IR&A	20%
Case manager Coordinator	Care Coordination	40%
	Caregiver Support Coordination	40%
	Admin	10%
	IR&A	10%
Case manager	Care Coordination	45%
	Caregiver Support Coordination	35%
	IR&A	20%
Case manager P/T	Care Coordination	45%
	Caregiver Support Coordination	35%
	IR&A	20%
Case manager P/T	Care Coordination	45%
	Caregiver Support Coordination	35%
	IR&A	20%
Managing Local Ombudsman	Ombudsman	81%
	ALF	19%
Assisted Living Ombudsman	ALF	76%
	Ombudsman	24%

**Attachment B**

**BY-LAWS  
OF THE  
ARK-TEX COUNCIL OF GOVERNMENTS  
AREA AGENCY ON AGING  
REGIONAL ADVISORY COUNCIL**

**ARTICLE I - NAME OF ORGANIZATION**

The name of this organization shall be the Ark-Tex Council of Governments (ATCOG) Area Agency on Aging (AAA) Regional Advisory Council. ATCOG has been designated by the Texas Health and Human Services Commission as the AAA for planning and services in Region V. Region V includes the nine (9) counties of Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River and Titus.

**ARTICLE II - AUTHORITY**

The creation of the ATCOG AAA Regional Advisory Council was authorized by ATCOG on November 7, 1974, under Section 903.66 of Public Law 93-29, as amended, as a necessary component to enable ATCOG to initiate and conduct area wide aging planning under the above cited act and according to the State Plan for Aging Programs for the State of Texas.

**ARTICLE III - PURPOSE**

The purpose of the ATCOG AAA Regional Advisory Council, shall be to fulfill the mandate of the Older Americans Act of 1965, as amended, Section 903.66 (13), to advise the ATCOG AAA on all matters relating to the development and administration of the area plan on aging and operations conducted thereunder.

**ARTICLE IV - MEMBERSHIP**

**Section 1** - The Council shall consist of the following:

- A. One (1) representative from each of the nine (9) counties in the Ark-Tex region;
- B. Two (2) elected officials;
- C. One (1) representative from the general public;
- D. One (1) representative from the private sector;

- E. One (1) representative from a health care organization;
- F. One (1) representative from the Title III Service Providers;
- G. One (1) representative from the Veterans Administration;
- H. Two (2) representatives from social service agencies;
- I. One (1) representative from a hospital;
- J. Any Texas Silver-Haired Legislature member representing the Ark-Tex region.

Section 2 - Representatives shall be appointed for a term of five (5) years or until a replacement is found. Regional Advisory Council members are appointed to the Council by the ATCOG Board of Directors, the County Judge, or Title III Service Providers, subject to approval by the ATCOG Board of Directors.

Section 3 - Representatives are expected to attend all meetings. Members who cannot attend the meeting are expected to send a replacement with a written proxy. Two (2) consecutive unexcused absences from meetings without a written proxy shall be cause for removal from the Regional Advisory Council. Unexcused absences shall be defined as those absences which do not carry proxies or in which no notification has been given to the Area Agency on Aging in advance of the absence.

Section 4 - Representatives shall act as liaisons between the Area Agency on Aging staff, the general public, health care organizations, private sector, elected officials, service providers, and older adults in disseminating information and planning for the elderly within the ATCOG region.

Section 5 - Service Providers (those entities holding bonafide contracts with the AAA) may appoint one voting representative to the Regional Advisory Council with the approval of the ATCOG Board of Directors.

Section 6 - The Regional Advisory Council shall consist of more than fifty percent (50%) persons age sixty (60) and older.

## ARTICLE V - MEETINGS

Section 1 - The ATCOG Regional Advisory Council shall meet quarterly and at such times as the Chairperson deems necessary. If a meeting is cancelled, the meeting will be rescheduled as soon as possible.

Section 2 - The quarterly ATCOG Regional Advisory Council will meet the first Thursday in Mt. Pleasant, Texas, unless otherwise specified. Notices thereof shall be mailed and emailed by the AAA to each member, the county judges' office for posting in the courthouse, and to the area news media no fewer than five (5) days prior to a regular meeting.

Section 3 - Notice of any special meeting, in matters of urgent business, shall be distributed at least seventy-two (72) hours prior to any special meeting.

Section 4 - All meetings of the Council or of special committees shall be open to the public, and public notice of such meeting shall be given.

Section 5 - A quorum at any Council meeting will be a minimum of at least five (5) voting members in attendance. An act of the majority of the Council members, in a meeting at which a quorum is present will be the act of the Council, unless otherwise specified in the By-Laws.

Section 6 - The Manager of the Area Agency on Aging of the ATCOG and/or a designated ATCOG staff person shall serve as an ex-officio member of all committees; and said person, shall attend each Council and committee meeting.

Section 7 – The Texas Silver-Haired Legislators representing the Ark-Tex region will serve as ex-officio members of the Council.

Section 8 - A voting member of the Council is one that is appointed/elected to represent a county, an elected official, a general public representative, the private sector representative, a health care organization representative, a Title III Service provider representative, or a representative of the Veterans Administration. A voting member or the chairperson may carry a written proxy vote for an absent representative.

#### ARTICLE VI - OFFICERS

Section 1 - The officers of the Council shall be a Chairperson and a Vice-Chairperson, both of whom shall be elected from the voting membership for the Council. Officers shall serve terms for two (2) years, with election to occur prior to the start of the fiscal year meeting of each year for office to begin at the commencement of each fiscal year.

Section 2 - The Chairperson shall preside at all meetings of the Council. The Chairperson shall be an ex-officio member of all committees. The Chairperson shall represent the Council in presentations to the ATCOG Board of Directors, unless such responsibility is delegated by the Chairperson.

Section 3 - The Vice-Chairperson shall perform all duties of the Chairperson in the case of the absence or disability of the former, and such other duties as may arise, from time to time, when required or requested by the Council.

Section 4 - In case the Chairperson and the Vice-Chairperson are both absent or



unable to perform their duties, the Council shall appoint a Chairperson pro-tempore.

Section 5 - The staff of the Area Agency on Aging, under the direction of the Manager of the Area Agency on Aging, shall assist the officers of the Council in any fashion desired. Specifically, the Manager of the Area Agency on Aging will appoint a member of the staff to take and maintain the minutes of the Council meetings, arrange for the mailing of minutes, agendas, and any other information which is deemed pertinent.

#### ARTICLE VII- COMMITTEES

Section 1 - Special committees may be appointed by the Chairperson with approval of the Council. Special committees shall serve for special purposes to comply with special needs under Article III.

Section 2 - Terms of membership on special committees shall be established to achieve the purpose for which the committee was created.

Section 3 - Standing committees will be appointed by the Chairperson with approval of the Council. Membership on standing committees shall be for one year. Consecutive terms are permitted.

Section 4 - The method for calling committee meetings shall be the same as that for Council meetings. Special/standing committees may be convened at the discretion of the committee membership to discharge their responsibility. Public notice shall be required, when applicable.

Section 5 - The special/standing committee chairperson shall be selected by the chairperson of the Advisory Council.

#### ARTICLE VIII - AMENDMENTS

Amendment by the Regional Advisory Council. These By-Laws may be amended by a vote of the Regional Advisory Council approving the amendment at any meeting, provided that the proposed amendment has been submitted in writing to each member of the Council at least five (5) days in advance of each meeting and ratified by a majority vote of fifty-one percent (51%) of the Regional Advisory Council members present and/or voting by proxy at any meeting.

#### ARTICLE IX - AMENDMENT TO BY-LAWS

Section 1 - Regional Advisory Council members who are Title III subcontractors shall not vote on agenda items that would be considered conflict of interest. Advisory Council members who have a conflict of interest on any agenda item of a meeting recorded in the minutes of the meeting stand as an official record of the abstention. A conflict of interest would be indicated when an individual is:

- A. employed by, cohabitates with, or the spouse of an employee or council member, or participates in the management of a business entity, agency or other organization regulated by or receiving funds from Title III program;
- B. uses or receives a substantial amount of tangible goods, services, or funds from program authorized by the Older Americans Act of 1965, as amended.

**Attachment C**

**NOTIFICATION OF CONFLICT OF INTEREST**

I have read the Texas Administrative Code 26 TAC, Rule § 213.151 (b)(3)(A) (i-ii) and hereby notify the Manager of the Ark-Tex Area Agency on Aging of a conflict of interest I hold. That conflict of interest is as follows:

My association with the Ark-Tex Area Agency on Aging is:

- Employee
- Volunteer working within programs
- Advisory council member
- Governing Board member
- Service Provider
- Paid or Volunteer State Long-Term Care Ombudsman

In that capacity, I agree not to participate in any decision relating to:

- the contract or procurement of services of goods in which I have a direct or indirect substantial personal interest or
- have a substantial financial interest, directly or indirectly, in the contract or procurement of services or goods or the proceeds thereof.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

## Attachment D

### Area Agency on Aging Protocol Disaster Plan

#### Introduction:

The Ark-Tex Area Agency on Aging (AAA) is a program of the Ark-Tex Council of Governments. The staff of the AAA will conduct all agency level response operations using the preparation, communication and documentation protocols identified in the main body of this Business Continuity and Emergency Operations Plan.

In addition, the AAA has contractual responsibilities dictated by the Health and Human Services Commission related to disaster preparedness and services for the elderly per the Texas Administrative Code 40 85.201x:

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(x) Emergency management.

(1) When a disaster occurs, the AAA must notify HHSC of its need to provide for emergency management activities, provide information to HHSC regarding the impact of the disaster on the older population in its service area, provide emergency management services in accordance with current Administration on Aging disaster relief guidelines, and collect pertinent data necessary to submit reimbursement requests for disaster services.

(2) The AAA must consult with the appropriate agencies that have an interest or role in meeting the needs of persons 60 years of age or older to plan for the occurrence and aftermath of natural, civil defense, or man-made disasters. To accomplish this, the AAA must:

(A) develop an emergency disaster plan in accordance with HHSC requirements;

(B) require by contract or provider agreement that a service provider develop plans for emergency management; and

(C) provide technical assistance as necessary to service provider staff persons regarding emergency management activities.

(y) Reporting abuse, neglect, or exploitation.

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#### Procedures Related to Providers and Clients:

The AAA will maintain information concerning its clients in Homemaker, Respite and “lifeline” services that are most at risk in a disaster. Risk factors may include rural, isolated, frail individuals with no family nor means to evacuate. The AAA case managers will assist such clients, upon their consent, to call the 211 registry during their routine home visits.

Service providers are required by provider agreement to have emergency plans. Plans from Nutrition providers are submitted to the AAA. Nutrition providers are also advised to review and/or update their emergency plans and to assure their 3-day supply of emergency meals is readily available. Current Senior Center Manager contact information is obtained by the AAA and on the atcog.org website.

During a known event with sufficient warning, such as a hurricane, advance communication is issued to providers. If possible, 36 hours prior to landfall, providers will be notified to be prepared to activate their emergency response plans, notify clients of possible closures and distribute emergency meals as appropriate. Senior Center staff notifies the AAA of any unusual client circumstances or unmet need so the issue can be directed to the appropriate emergency management authority. Providers report to the AAA regarding status prior, during and post event, to include the number of clients impacted and the scope of the disaster as it relates to their operations. The AAA Manager will compile the data and communicate all required information to the Health and Human Services Commission as directed.

In the event there is no access to the Ark-Tex Council of Governments location, essential personnel will follow the Emergency Contact Chart and notify essential backups and support staff with plan instructions. The AAA 800 number will be forwarded remotely to designated staff. Staff will perform work duties at home. If the emergency prevents working from home, an alternate site will be given to the staff when initially notified.

If the disaster is community-wide, the coordinators will run reports of active III-B lifeline clients receiving services. Clients requiring welfare checks will be coordinated. The coordinators will ensure that providers rendering AAA services are able to provide services assigned.

If the disaster destroys records retained onsite, client information can be retrieved from the State software system. Documents that are not stored in the system are scanned onto the ATCOG/AAA shared drive and can be retrieved.

**Disaster Coordination:**

The AAA coordinates with many response and recovery organizations to advocate for people over 60 in times of disaster. They include ATCOG Homeland Security, County Emergency Management Personnel, Salvation Army, Red Cross, United Way, Local Emergency Planning Committee, and the local office of the Texas Department of State Health Services .

**Recovery:**

The AAA will request disaster relief funds, as needed, through the Health and Human Services Commission.

**Reconstitution:**

Staff will be updated daily by essential personnel as to the progress of restoration of operations and return to work date.

The following is a list of personnel designated as Essential Personnel, Essential Personnel Backup, and Support Staff:

Essential: Chris Brown and Lisa Reeve

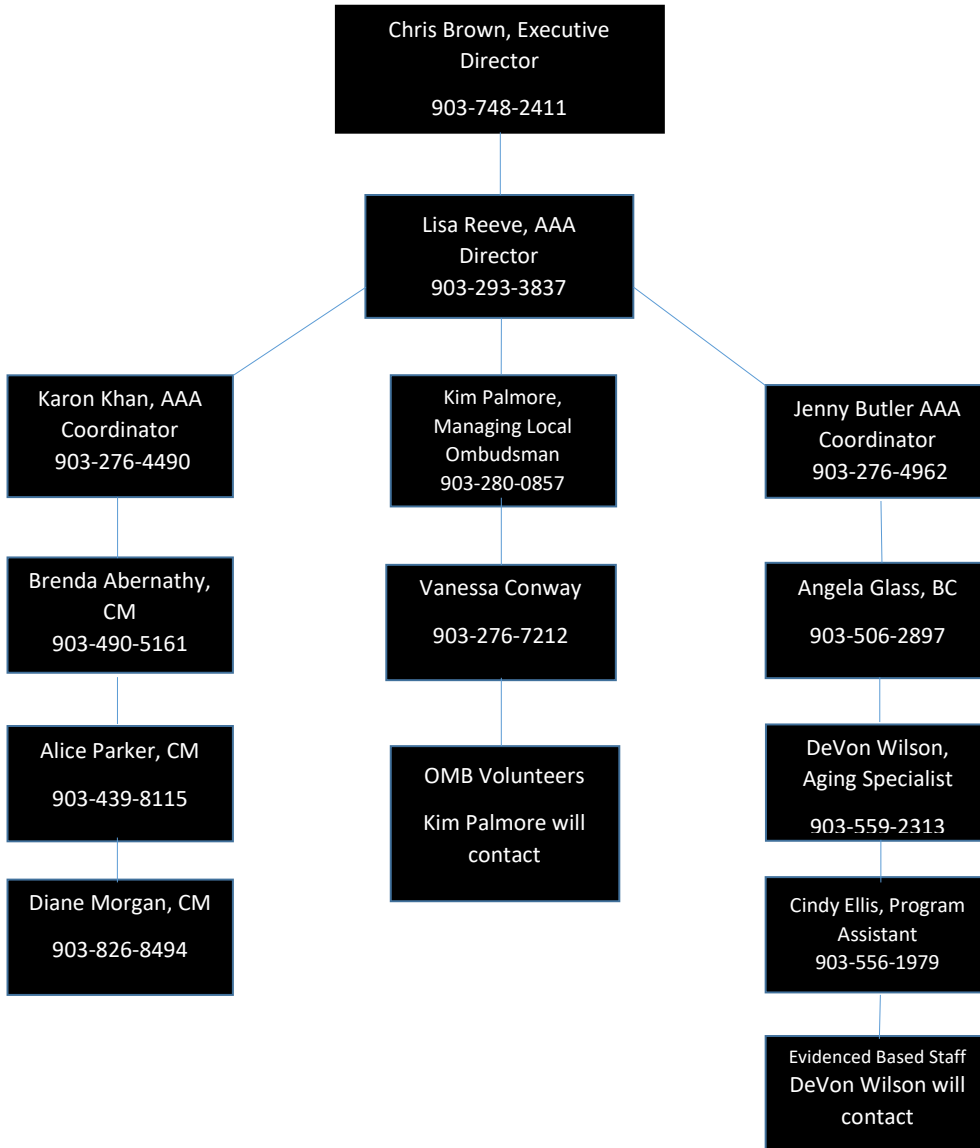
Essential Backup: Karon Khan, Jenny Butler and Kim Palmore

Support Staff: Vanessa Conway, Brenda Abernathy, Angela Glass, DeVon Wilson, Alice Parker, Diane Morgan, and Cynthia Ellis.

Depending on the disaster, providers will be contacted as directed from the Executive Director and/or the AAA Manager.

Contact information for staff is listed on the Emergency Contact Chart. The provider information can be found on the shared drive under Area Agency on Aging, Disaster Plan folder.

# EMERGENCY CONTACT CHART



**Attachment E**

**ARK-TEX AREA AGENCY ON AGING**

**FOCAL POINTS FOR REGION**

**SENIOR CITIZENS SERVICES OF TEXARKANA, INC.**

*Eden Leach, Executive Director  
905 Kilgore  
Texarkana, Texas 75501  
Phone: 903-831-7696*

**Bowie County Meal Centers**

Hooks Senior Center (Griffin Center) 107 Main Street Hooks, Texas 75561	Site Manager: Carolyn Coston Sub Site Mgr: James Latimer	903-276-5247
High-Rise Center (Robison Terrace) 1010 Dan Haskins Way Texarkana, TX 75501	Site Manager: Beverly Shurbet Sub Site Mgr: Robert Jackson	903-838-6683
New Boston Senior Center (Oak Terrace) 200 N. Lindsey New Boston, Texas 75570	Site Manager: Dot Upton Sub Site Mgr: Angela Eastman	903-628-5441
Our Place Day Respite Center Alzheimer's Alliance 100 Memory Lane Texarkana, Texas 75503	Site Manager: Allan Wren	903-223-8021
Texarkana Senior Center (Collins Center) 3000 Texas Boulevard Texarkana, Texas 75503	Site Manager: Gaylan Carter Sub Site Mgr: Venus Pace	903-793-5545
Wake Village Senior Center Twin Cities Baptist Temple 216 Wake Village Road Wake Village, Texas 75501	Site Manager: Teri Lusk Sub Site Mgr: Venus Pace	903-733-1447

**Cass County Meal Centers**

Atlanta Senior Center 306 W. Miller Street Atlanta, Texas 75551	Site Manager: Martha Cauley Sub Site Mgr: Kandie Loy	903-799-7766
Linden Senior Center 507 S. Kaufman Street Linden, Texas 75563	Site Manager: Georganna Morris Sub Site Mgr: Diane Pierce Carolyn Brockett	903-756-3907



**Morris County Meal Center**

Daingerfield Senior Center Church on the Rock 909 Linda Drive Daingerfield, Texas 75638	Site Manager: Shelli Stovall Sub Site Mgr: Valerie Cherry	903-645-2493
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**Titus County Meal Center**

Mount Pleasant Senior Center 1406 North Edwards Mount Pleasant, Texas 75455	Site Manager: Jennifer Seaton Sub Site Mgr: Carnella Johnson	903-572-3919
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**LAMAR COUNTY HUMAN RESOURCES COUNCIL, INC.**

*Shelly Braziel, Executive Director  
1273 NW 19<sup>th</sup> Street  
Paris, Texas 75416  
Phone: 903-784-2580*

**Lamar County Meal Centers**

Pshigoda Meal Center (Pshigoda Foundation) 2215 East Cherry Street Paris, Texas 75460	Site Manager:	903-784-0160
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Paris Retirement Village 1400 West Washington Street Paris, Texas 75460	Site Manager: Vicki Skaggs	903-783-9160
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**Delta County Meal Center**

Cooper Senior Center (Delta Co. Community Center) 221 E. Bonham St. Cooper, Texas 75432	Site Manager: Robbie Craig	903-450-3102
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**Red River County Meal Center**

Clarksville Senior Center  
The Hub Community Center  
501 W Broadway Street  
Clarksville, Texas 75426

## Attachment F

### ARK-TEX COUNCIL OF GOVERNMENTS Area Agency on Aging

#### DIRECT PURCHASE OF SERVICE INFORMATION

#### I. DIRECT PURCHASE APPLICATION REQUIREMENTS:

##### A. Purpose

The purpose is to request applications for the provision of services on a Direct Purchase of Service (DPS) basis to qualified participants eligible to receive services under Title III of the Older Americans Act of 1965. As amended, and state general revenue funds.

##### B. Eligibility To Apply

Organizations eligible to apply are private non-profit, private for-profit, and local city-county governmental entities, which have the capacity to meet the requirements of service delivery under DPS procedures.

##### 1. For-Profit Applicants

Private for-profit entities applying for funding will not require approval by the Texas Department on Aging (TDoA) prior to beginning of service delivery.

##### 2. Debarred/Suspended Parties

Debarred or suspended parties are ineligible to apply for funding and are excluded for participation in this program.

##### C. Definition of Direct Purchase of Service (DPS)

DPS is a contracting methodology for the purchase of services on client-by-client basis in lieu of annualized contracting, or a fixed sum basis. It is a procurement methodology, which provides flexibility in the purchasing of services for participants in the Title III Programs.

##### D. Application Process

Interested parties may apply for consideration for participation in the provider pool by submitting a completed and signed Direct Purchase Application; Direct Purchase Of Service Provider Agreement Application; and forms (Assurance of Compliance With the Americans With Disabilities Act of 1990, as Amended, Assurance Of Compliance With the Department Of Health & Human Services Regulations Under Title VI of the Civil Rights Act Of 1964, Assurance Of Compliance With Section 504 Of the Rehabilitation Act Of 1973, As Amended, Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion For Covered Contracts And Grants and Notification of Conflict of Interest).

ARK-TEX COUNCIL OF GOVERNMENTS  
AREA AGENCY ON AGING

**DIRECT PURCHASE OF SERVICE APPLICATION**

**Provider Information:**

Legal Agency Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Authorizing Official: \_\_\_\_\_ Title: \_\_\_\_\_

Billing Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Type of Agency: Public \_\_\_\_\_ Private Non-Profit \_\_\_\_\_ Private for Profit \_\_\_\_\_

**Certification:**

State or federal agency that licenses and regulates your services: \_\_\_\_\_

**Please attach a copy of your license(s).**

**Bonding:**

Is your agency bonded? No \_\_\_\_\_ Yes \_\_\_\_\_

If yes, state the Bonding Agency: \_\_\_\_\_

**Please attach documentation of the bond.**

**Conflicts of Interest:**

Please indicate all family relationships the officers of your company may have to any Area Agency on Aging staff person or Advisory Council Member: \_\_\_\_\_

**Service and Bidding Information:**

1. Proposed Service \_\_\_\_\_

A. Capacity: Number of units per month \_\_\_\_\_

B. Define your unit of service: \_\_\_\_\_

C. Number of qualified staff available to provide service: \_\_\_\_\_

D. Service Area: \_\_\_\_\_

E. Proposed service cost per unit \$ \_\_\_\_\_

2. Proposed Service \_\_\_\_\_

A. Capacity: Number of units per month \_\_\_\_\_

B. Define your unit of service: \_\_\_\_\_

C. Number of qualified staff available to provide service: \_\_\_\_\_

D. Service Area: \_\_\_\_\_

E. Proposed service cost per unit \$ \_\_\_\_\_

3. Proposed Service \_\_\_\_\_

A. Capacity: Number of units per month \_\_\_\_\_

B. Define your unit of service: \_\_\_\_\_

C. Number of qualified staff available to provide service: \_\_\_\_\_

D. Service Area: \_\_\_\_\_

E. Proposed service cost per unit \$ \_\_\_\_\_

**Required Attachments:**

In addition, please include the following:

- Agency Quality Assurance and Grievance Policy
- Signed Statement indicating compliance with the American Disabilities Act
- Signed Statement indicating compliance with the Civil Rights Act of 1964
- Signed Statement indicating compliance with the Rehabilitation Act of 1973
- Signed Certification Regarding Debarment
- Copies of all licenses required in your service provision

Please submit Application and Attachments to:  
Ark-Tex Council of Governments  
Area Agency on Aging  
P.O. Box 5307  
Texarkana, Texas 75505-5307

### III. TERMS OF AGREEMENT

A. ATCOG/AAA shall:

1. Provide a single entry point to social and health services of high risk elder residents in the Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus Counties.
2. Assess and re-asses the health and social needs of qualified elders over age 60.
3. Develop an objective care plan to meet the needs of the target population and to adjust the plan as necessary.
4. Provide a service brokerage function by arranging for, and re-arranging when necessary, frequency and duration of relevant PROVIDER AGENCY services to meet the needs of the target population.
5. Provide technical assistance to the PROVIDER AGENCY as requested and available.
6. Offer the PROVIDER AGENCY information on the needs of area elders.

B. PROVIDER AGENCY shall:

1. Accept and serve on a priority basis, high-risk elders in accordance with the submitted Service Information/Bid Agreement and with arrangements provided by the ATCOG/AAA service brokering function.
2. Provide services in accordance with current or revised Texas Department on Aging policies and standards.
3. Provide ATCOG/AAA with regular and on going feedback on participants in relation to services provided.
4. Participate in planning meetings with ATCOG/AAA to set goals and priorities for services in ATCOG/AAA Region for the target population.
5. Provide services with strict adherence to specified and agreed upon care plan. Notify ATCOG/AAA immediately if for any reason PROVIDER AGENCY becomes unable to perform the service(s) specified.
6. Comply with respective licensing standards of the PROVIDER AGENCY to assure quality of service delivery for ATCOG/AAA participants.

PROVIDER AGENCY shall submit reports of eligible units of service to ATCOG/AAA on a monthly basis. Payment of funds to the PROVIDER AGENCY by ATCOG/AAA under the terms of this agreement shall be subject to the following procedures and conditions:

- A. PROVIDER AGENCY will submit a bill/invoice to ATCOG/AAA on or before the fifth (5<sup>th</sup>) day of the month requesting reimbursement for eligible units of service during the previous month.
- B. PROVIDER AGENCY requests for reimbursement will be supported by auditable records kept on file by the PROVIDER AGENCY for a minimum of five years after termination of services. These records will be available for purposes of inspection, monitoring, auditing, or evaluations by AAA staff, the Comptroller General of the United States and the State of Texas, through any authorized representative at all reasonable time.
- C. ATCOG/AAA will reimburse the PROVIDER AGENCY within approximately 30 days of receipt of a proper request form, contingent upon receipt of ATCOG/AAA funds authorized for this purpose from the Texas Department on Aging.
- D. PROVIDER AGENCY certifies compliance with federal and state drug-free workplace laws and requirement (*Federal Drug-Free Workplace Act of 1988 and Texas Senate Bill 1-1991*).
- E. PROVIDER AGENCY certifies compliance with the requirements established under the *Americans with Disabilities Act of 1990* as they pertain to PROVIDER AGENCY.
- F. PROVIDER AGENCY certifies compliance with the *Age Discrimination in Employment Act of 1967 (29 USC 621 et.seq)*.
- G. PROVIDER AGENCY certifies compliance with the requirements established under Texas Administrative Code 40 TAC, Rule § 85.201(b)(3)(A)(i-ii) which states:
  - (A) A conflict of interest includes:
    - (i) having a substantial financial interest, directly or indirectly, in the profits of any entity from which services or goods are contracted or otherwise procured by the Provider Agency; and
    - (ii) deriving a personal profit, directly or indirectly, from any entity that would conflict in any manner or degree with the performance of responsibilities of the board member, employee, advisory committee member, or volunteer.

**VI. SIGNATURES**

This Provider Agreement may be reviewed and amended at any time by an agreement in writing executed by an authorized representative of each entity involved.

Executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINT NAME OF OWNER(S) SOCIAL SECURITY NUMBER/FEDERAL TAX ID#

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved and accepted on behalf of the Ark-Tex Council of Governments

\_\_\_\_\_  
Chris Brown, Executive Director

## Attachment G

### ARK-TEX AREA AGENCY ON AGING OF PROVIDER AGREEMENT

\_\_\_\_\_, hereinafter referred to as Provider, and Ark-Tex Area Agency on Aging (AAA) do hereby agree to provide services effective beginning October 1, 20XX, in accordance with the Older Americans Act of 1965 (OAA), as amended, regulations of the Health and Human Services (HHS), the AAA Direct Purchase of Services program and the stated Scope of Services.

The AAA Direct Purchase of Services program is designed to promote the development of a comprehensive and coordinated service delivery system to meet the needs of older individuals (60 years of age or older) and their caregivers. This agreement provides a mechanism for the creation of an individualized network of community resources accessible on a program participant-by-program participant basis in compliance with the Older Americans Act, as amended, and Texas HHSC AAA Access and Assistance guidelines.

The purpose of the system of Access and Assistance is to develop cooperative working relationships with service providers to build an integrated service delivery system that ensures broad access to and information about community services, maximizes the use of existing resources, avoids duplication of effort, identifies gaps in services, and facilitates the ability of people who need services to easily find the most appropriate Provider.

#### 1. SCOPE OF SERVICES

The Provider agrees to provide the following service(s) as identified below to program participants authorized by the AAA staff, in accordance with the Provider application, all required assurances, licenses, certifications and rate setting documents, as applicable.

*Service:*

*Service Definition:*

*Unit Definition:*

*Service Area:*

*All Texas Administrative Code standards are located at the Texas Secretary of State website:*

*[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=40&pt=1&ch=85](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=40&pt=1&ch=85)*

*All Older Americans Act and other required rules and regulations are located at*

*<https://acl.gov/about-acl/authorizing-statutes/older-americans-act>*

**Targeting:** AAA Access and Assistance services are designed to identify eligible program participants, with an emphasis on high-risk program participants and to serve older individuals with greatest economic and social need, low-income minorities and those residing in rural areas, as required by the OAA.



B. Services & Reimbursement Methodology:

Service	Fixed Rate (include rate)	Variable Rate (identify range)	Cost Reimbursement

2. TERMS OF AGREEMENT

A. The Provider agrees to:

1. Provide services in accordance with current or revised HHS policies and standards and the OAA.
2. Submit billings with appropriate documentation as required by the AAA by the close of business on the fifth (5th) day of each month following the last day of the month in which services were provided.
  - a. If the fifth (5th) day falls on a weekend or holiday, the information shall be delivered by the close of business on the preceding business day.
  - b. The AAA cannot guarantee payment of a reimbursement request received for more than 45 calendar days of service delivery.
  - c. No reimbursement for services provided will be made if Provider payment invoices are not submitted to the AAA within 45 days of service delivery.
  - d. Reimbursement requests for the month of September, which is the last month of the AAA fiscal year, must be received within 30 days after delivery of services. No reimbursement for services provided for the month of September will be made if Provider payments invoices are not submitted to the AAA within 30 days after delivery of services.
  - e. All checks must be deposited or cashed within two weeks of receipt.
3. Encourage program participant contributions (program income) on a voluntary and confidential basis. Such contributions will be properly safeguarded and accurately accounted for as receipts and expenditures on Provider’s financial reports if contributions are not required to be forwarded to the AAA. Client contributions (program income) will be reported fully, as required, to the AAA. Provider agrees to expend all program income to expand or enhance the program/service under which it is earned.
4. Notify the AAA Access and Assistance division within 24 hours/1day if, for any reason, the Provider becomes unable to provide the service(s).
5. Maintain communication and correspondence concerning program participants’ status.
6. Establish a method to guarantee the confidentiality of all information relating to the program participant in accordance with applicable federal and state laws, rules, and regulations. This provision shall not be construed as limiting the AAA or any federal or state authorized representative’s right of access to program participant case records or other information relating to program participants served under this agreement.

7. Send all electronic communications (emails) in a secure encrypted format when corresponding to the AAA regarding a program participant that includes personal information such as name, date of birth, address, phone number, or any other identifiable data.
8. Keep financial and program supporting documents, statistical records, and any other records pertinent to the services for which a claim for reimbursement was submitted to the AAA. The records and documents will be kept for a minimum of five years after close of contract year. (Fiscal Year October 1 – September 30)
9. Have an accounting system that identifies all costs for each specific service being purchased or provided and that complies with 45 CFR, Section 1321, Subpart D.
10. Make available at reasonable times and for required periods all fiscal and program participant records, books, and supporting documents pertaining to services provided under this agreement, for purposes of inspection, monitoring, auditing, or evaluations by the AAA staff, the Comptroller General of the United States and the State of Texas, through any authorized representative(s).

A. The Provider further agrees:

1. *The agreement may be terminated for cause or without cause upon the giving of thirty (30) days advance written notice.*
2. *The agreement does not guarantee a total level of reimbursement other than for individual units/services authorized; contingent upon receipt of funds.*
3. *Acknowledgement it is an independent provider, NOT an agent of the AAA. Thus, the Provider indemnifies, saves and holds harmless the AAA/Ark-Tex Council of Governments against expense or liability of any kind arising out of service delivery performed by the Provider. Provider must immediately notify the AAA if the Provider becomes involved in or is threatened with litigation related to Access and Assistance participants.*
4. *Employees of the Provider will not solicit or accept gifts or favors of monetary value by or on behalf of program participants as a gift, reward or payment.*

B. Through the Direct Purchase of Services program, the Ark-Tex Area Agency on Aging agrees to:

1. Review program participant intake and assessment forms completed by the Provider, as applicable, to determine program participant eligibility. Service authorization is based on program participant need and the availability of funds.
2. Provide timely written notification to Provider of program participant's eligibility and authorization to receive services.
3. Send all electronic communications (emails) in a secure encrypted format when corresponding to the Provider regarding a program participant that includes personal information such as name, date of birth, address, phone number, or any other identifiable data.
4. Maintain communication and correspondence concerning the program participants' status.
5. Provide timely technical assistance to Provider as requested and as available.

6. Conduct quality-assurance procedures, which may include on-site visits, to ensure quality services are being provided.
7. Provide written policies, procedures, and standard documents concerning program participant authorization to release information (both a general and medical/health related release), client rights and responsibilities, contributions, and complaints/grievances and appeals to all program participants.
8. Reimburse the Provider based on the agreed reimbursement methodology, approved rate(s), service(s) authorized, and in accordance with subsection (A)(2) of this document, within 30 days of the AAA's receipt of Provider's invoice.
9. Reimburse the Provider upon receipt of a properly prepared Provider payment invoice, identified in (7) of this subsection, contingent upon the AAA's receipt of funds authorized for this purpose from HHSC.

### 3. ASSURANCES

The Provider shall comply with:

- m. *Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.)*  
*It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.*
- n. *Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)*  
*Section 504 works together with the ADA and IDEA to protect children and adults with disabilities from exclusion, and unequal treatment in schools, jobs and the community.*
- o. *Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.)*  
*Addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications.*
- p. *Age Discrimination in Employment Act of 1975 (42 U.S.C. §§6101-6107)*  
*Prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.*
- q. *Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688)*  
*Prohibits discrimination on the basis of sex in any federally funded education program or activity.*
- r. *Food Stamp Act of 1977 (7 U.S.C. §200 et seq.)*
- s. *Drug Free Workplace Act of 1988*
- t. *Texas Senate Bill 1 - 1991, as applicable*
- u. HHS administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement
- v. *Certification Regarding Debarment - 45CFR §92.35 Sub awards to debarred and suspended parties; this document is required annually as long as this agreement is in effect*
- w. *Notice of Conflict of Interest (Texas Administrative Code 40 TAC, Rule §85.201 (b) (3) (A) (i-ii)*
- x. *Obligation to Identify Individuals or Entities Excluded from Participation in Federal Health Care Programs*

### 4. ATTACHMENT

List of Focal Points in the Ark- Tex AAA Region.

5. SIGNATURES

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective October 1, 20XX.

Authorized Provider Signature

Print Name

Title

Authorized Signature

Date

(Agency)

(Address)

(City, State, Zip)

(Date)

Attachment H



MONITORING WORKBOOK

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>VENDOR FILE CHECKLIST</b>			
Prior to the Entrance Conference, review the vendor's files for the following documents:			
<input type="checkbox"/> Copy of most recent health inspection <input type="checkbox"/> Approval/Waiver to provide a frozen meal <input type="checkbox"/> Approval/Waiver to provide meal service delivery less than five days per week <input type="checkbox"/> Determine location of meal packaging/preparation and meal delivery sites during previous monitoring			
<b>1. INSPECTIONS</b>			
<b>Did the meal preparation site pass the most recent health and fire inspections?</b>			
Review the annual health and fire inspections of the meal preparation site to verify the status of the inspections			
If the vendor has not been able to obtain an inspection, request documentation that the vendor has requested an inspection within the last six months of the monitoring period.			
<small>Reference: Title III/OAA: 26 TAC §213.203 Nutrition Services; 25 TAC §229.171 Compliance and Enforcement</small>			
Comments:			
Vendor Response and Initials:			
<b>2. Were the most recent health inspection results of the meal preparation site provided to the AAA representative within five calendar days of the vendors's receipt of results?</b>			
Review contract file for date of receipt of most recent health inspection. If the report was not received within five calendar days of the date of receipt of the inspection, ask vendor for documentation to show inspection results were sent to the AAA within the required timeframe.			
<small>Reference: Title III/OAA: 26 TAC §213.203 Nutrition Services; 40 TAC §69.55 Contract Administration-Sub grants and Subcontracts; 25 TAC §229.171 Compliance and Enforcement</small>			
Comments:			
Vendor Response and Initials:			

**3. Does the vendor have a copy of the Texas Department of Health Manual on Sanitation?**

Yes  No

**4. Does the Texas Department of Health inspect the facilities routinely?**

Yes  No

**5. Has copy of the inspection report been mailed to Ark-Tex AAA?**

Yes  No

**6. Have discrepancies noted in the inspection report been corrected?**

Yes  No

Comments:

Vendor Response  
and Initials:



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>POLICIES AND PROCEDURES</b>			
<b>1. Are complaints documented and investigated?</b>			
Review vendor's complaint log or record of complaints to verify the vendor documents and investigates reported complaints.			
Reference: Title III/OAA: 40 TAC §81.19 Grievance Procedures for Participants in Older Americans Act Programs; 40 TAC §55.43 Complaints			
Comments:			
Vendor Response and Initials:			
<b>2. Does the vendor have a policy/procedure that requires individuals to be informed, both orally and in writing, of his/her Rights and Responsibilities and the procedure for filing a complaint to include the name and telephone number of the person to call to make a verbal complaint?</b>			
<input type="checkbox"/> Title III - Individuals are required to be informed prior to service initiation			
Reference: Title III/OAA: 40 TAC §81.19 Grievance Procedures for Participants in Older Americans Act programs; 26 TAC §213.151 Area Agency on Aging Administrative Responsibilities; 40 TAC §55.5 Contracting Requirements for Provider Agencies			
Comments:			
Vendor Response and Initials:			
<b>3. Does the vendor submit a 2067 for a significant change in the individual's physical or mental condition in a timely manner?</b>			
<b>Note:</b> A significant change could be, but is not limited to: individual is home but unable to answer the door; change in individual's physical or mental condition; change in condition or appearance of the individual's living space, etc.			
Reference: Title III/OAA 26 TAC §213.203 Nutrition Services			
Comments:			
Vendor Response and Initials:			

<p><b>4. Does the vendor's distribution of information regarding voluntary contributions comply with Federal and State requirements?</b></p> <p>Review the vendor's procedure regarding contributions to include the materials and method of distribution.</p> <p>Verify the materials indicate that contributions are (1) voluntary; (2) services will not be denied if a contribution is not made; and (3) the distribution of the information meets the applicable requirement:</p> <p><input type="checkbox"/> Title III- Contribution requests may target individuals in service as long as the solicitation method in non-coercive.</p> <p>Reference: Title III/OAA: §315(b) OAA, Voluntary Contributions; 26 TAC §213.151 AAA Administrative Responsibilities; A&amp;I AAA Program Instruction 304</p>	
<p>Vendor Response and Initials:</p>	
<p><b>5. Was Nutrition Education Provided to Individuals as required ?</b></p> <p>Request a copy of the latest materials/presentation and date provided.</p> <p>Review the vendor's Nutritional Education Plan and materials to verify that the nutrition education program/materials meet the following requirements:</p> <p><b>Title III</b> - nutrition education program is overseen by a dietician or individual of comparable expertise and materials are developed, reviewed and approved by a dietician consultant annually.</p> <p>Reference: Title III/OAA: 6 TAC §213.203 Nutrition Services; A&amp;I-AAA Program Instruction 313 Nutrition Screening and Education Documentation and reporting Requirements.</p>	
<p>Comments:</p>	
<p>Vendor Response and Initials:</p>	
<p><b>6. Is confidentiality of individual information protected?</b></p> <p>Review the vendor's procedures and actions for protecting the confidentiality of information.</p> <p>Action should include use of locked record storage area, locking file cabinets to store records.</p> <p>Reference: Title III/OAA: 26 TAC §213.151 AAA Administrative Responsibilities</p>	
<p>Comments:</p>	
<p>Vendor Initials:</p>	
<p><b>7. Does the written Emergency Management Plan ensure the availability of food to individuals in emergencies and disasters?</b></p> <p>Review the vendor's Emergency Management Plan to verify:</p> <p><input type="checkbox"/> procedures to provide food to individuals in emergencies and disasters</p> <p><input type="checkbox"/> the plan addresses availability of facilities and equipment with high-risk older individuals as a priority</p> <p>Reference: Title III/OAA: 26 TAC §213.151 Area Agency on Aging Administrative Responsibilities; 26 TAC §213.203 Nutrition Services</p>	
<p>Comments:</p>	
<p>Vendor Response and Initials:</p>	





**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>TRAINING</b>			
<b>1. Have employees and volunteers received required training?</b>			
<small>Reference: Title III/OAA: 26 TAC §213.203 Nutrition Services; 25 TAC §229.163</small>			
Required training within 30 days of assuming duties: <ul style="list-style-type: none"> <li>a. personal hygiene to include proper hair coverings</li> <li>b. food storage, preparation, and service</li> <li>c. equipment cleaning before, during and after meal service</li> <li>d. selections of proper utensils and equipment for transporting and serving food</li> <li>e. accident prevention</li> <li>f. client confidentiality</li> <li>g. general knowledge and basic techniques of working with the aged</li> <li>h. sanitary methods used in serving and delivering meals</li> </ul>			
Vendor Response and Initials			
<b>2. Are employees and volunteers trained for fire emergencies, first aid, emergency, and health and accident procedures, including filing of reports?</b>			
<small>Reference: Title III/OAA: 26 TAC §213.203 Nutrition Services</small>			
Comments:			
Vendor Response and Initials			



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:	Begin:		
Last Name:	End:		
<b>EXITS, SAFETY &amp; FIRST AID</b>			
<p>1. Are there two means of exit from the facility, as remote from each other as possible?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Do the doors open easily in an outward direction in one motion?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Are emergency exits clearly marked and false exits marked "NO EXIT?"  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Does the facility have an adequate number of smoke detectors?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. Are all smoke detectors in working order? (Have staff test alarm in monitor's presence.)  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. Does the facility have an adequate number of fire extinguishers that are properly mounted and inspected regularly?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Are charts and signs posted for:</p> <p>a. Fire exit routes? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>b. Instructions for reporting fires? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>c. Emergency telephone numbers? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Are employees and volunteers trained for fire emergencies?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>9. Is a first kit accessible, well marked and properly maintained?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>10. Are danger, caution and safety signs posted where necessary, especially hazardous areas?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
Comments			
Vendor Reponse and Initials			



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>EXTERIOR OF FOCAL FACILITY</b>			
1. Are walking areas, steps and ramps in good condition? <input type="checkbox"/> Yes <input type="checkbox"/> No			
2. Is there a sign to identify the facility and hours of operation? <input type="checkbox"/> Yes <input type="checkbox"/> No			
3. Are there handrails for steps and ramps? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
4. Are there any barriers difficult for an elderly person to negotiate? <input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>INTERIOR OF FOCAL FACILITY</b>			
1. Is the facility kept clean and orderly? <input type="checkbox"/> Yes <input type="checkbox"/> No			
2. Are all walking areas (floors, steps, ramps, stairs) uncluttered, even and non-slippery? <input type="checkbox"/> Yes <input type="checkbox"/> No			
3. Are window screens in place and in good repair? Free of flies. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
4. Are all floors in good repair and have a cleanable surface? <input type="checkbox"/> Yes <input type="checkbox"/> No			
5. If there are rugs, are they securely fastened? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
6. Is there at least one primary entrance useable by individuals in wheelchairs? <input type="checkbox"/> Yes <input type="checkbox"/> No			
7. Are "No Smoking" signs posted where needed (food preparation areas, etc)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
8. Are steps and stairs in good repair with securely fastened handrails? <input type="checkbox"/> Yes <input type="checkbox"/> No			
9. Are lighting and ventilation adequate in all areas of facility? <input type="checkbox"/> Yes <input type="checkbox"/> No			
10. Is adequate space maintained between furniture for wheelchairs, walkers, etc? <input type="checkbox"/> Yes <input type="checkbox"/> No			
11. Do restrooms have:			
a. Grab bars present at toilet? <input type="checkbox"/> Yes <input type="checkbox"/> No			
b. Stalls wide enough and deep enough for wheelchairs (32" wide x 48" deep)? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
c. Doors that swing out? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
d. Handrails on each side of toilet and 32" high? <input type="checkbox"/> Yes <input type="checkbox"/> No			
			Vendor Initials



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>FOOD PREPARATION AREAS</b>			
1. Is the area free of litter, debris and/or unnecessary articles? <input type="checkbox"/> Yes <input type="checkbox"/> No			
2. Are floors clean and dry? <input type="checkbox"/> Yes <input type="checkbox"/> No			
3. Is all kitchen equipment in good repair and operating condition? <input type="checkbox"/> Yes <input type="checkbox"/> No			
4. Are the following areas thoroughly clean?			
a. Under sinks?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
b. Behind counters?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
c. Base of mixers?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
d. Top of fixed equipment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
e. Top of hood?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
f. Hood of air vent?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
5. Is trash collected regularly? <input type="checkbox"/> Yes <input type="checkbox"/> No			
6. Are utensils rather than hands used for mixing? <input type="checkbox"/> Yes <input type="checkbox"/> No			
7. Are disposable gloves used if food is manipulated by hand? <input type="checkbox"/> Yes <input type="checkbox"/> No			
8. Are can openers clean? <input type="checkbox"/> Yes <input type="checkbox"/> No			
9. Are food thermometers available and used to check food temperatures? <input type="checkbox"/> Yes <input type="checkbox"/> No			
10. Are all hot foods maintained at 135 degrees F. from preparation to serving? <input type="checkbox"/> Yes <input type="checkbox"/> No			
11. Are all cold foods maintained at 40 degrees F. from preparation to serving? <input type="checkbox"/> Yes <input type="checkbox"/> No			
12. Are refrigerators:			
a. Clean?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
b. Frost free and have no more than 1/4 inch frost?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
c. Set at temperature of 40 degrees F. or less?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
d. Leftovers dated?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
13. Are unauthorized personnel in the food preparation area at any time? <input type="checkbox"/> Yes <input type="checkbox"/> No			
14. Is fresh produce in sound condition and free from spoilage? <input type="checkbox"/> Yes <input type="checkbox"/> No			
15. Are workers instructed to NOT:			
a. use tobacco in the kitchen or in serving area?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
b. eat on a serving line?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

c. eat in the kitchen other than in an area specified for that purpose?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. touch food with hands more than necessary?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
16. Do workers wash hands thoroughly after:		
a. visiting the toilet?	<input type="checkbox"/> Not observed	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. smoking?	<input type="checkbox"/> Not observed	<input type="checkbox"/> Yes <input type="checkbox"/> No
c. eating ?	<input type="checkbox"/> Not observed	<input type="checkbox"/> Yes <input type="checkbox"/> No
d. coughing, sneezing or blowing?	<input type="checkbox"/> Not observed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Comments		
Vendor Reponse and Initials		



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>DINING AREAS</b>			
1. Are food spills cleaned up immediately? <input type="checkbox"/> Yes <input type="checkbox"/> No			
2. Are dining tables surfaces cleaned and sanitized daily? <input type="checkbox"/> Yes <input type="checkbox"/> No			
3. Are chairs free of dust and food particles? <input type="checkbox"/> Yes <input type="checkbox"/> No			
4. Are trays and carts in good condition and sturdy? <input type="checkbox"/> Yes <input type="checkbox"/> No			
5. Are trays and carts kept out of traffic isles? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Comments			
Vendor Reponse and Initials			



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	
<b>DRY STORAGE AREAS</b>			
<p>1. Is the storeroom kept neat and clean?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Is the temperature maintained between 40 to 70 degrees F?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Are all foods stored 6 inches off the floor and 2 inches from the wall?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Is light bulb two feet from stored items?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. Are flammables stored separately and marked "flammable?"  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. Are scoops stored in bulk containers?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Are items stacked to hazardous heights?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
<b>REFRIGERATED STORAGE</b>			
<p>1. Is temperature of frozen food recorded daily?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Is frozen food wrapped in moisture proof materials?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Is "first-in, first-out" storage system used?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Are foods stored no longer than the recommended storage time? (one month)  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. Are walk-in refrigerators floor dry, clean and non-slippery?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. Does an emergency device on door permit exit if locked in?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Is aisle space adequate and uncluttered?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Are lights in refrigerators/walk-in freezers in operation?  <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
			Vendor Initials



**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	

**CONGREGATE MEALS**

1. Does the meal being served today correspond to the meal listed on the menu?  
 Yes  No
2. Does the meal include:
 

a. 3 ounces meat, cheese, beans or egg?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. Two 1/2 cup servings of vegetables?	<input type="checkbox"/> Yes <input type="checkbox"/> No
c. One serving of bread?	<input type="checkbox"/> Yes <input type="checkbox"/> No
d. Butter or margarine?	<input type="checkbox"/> Yes <input type="checkbox"/> No
e. Eight ounces of milk?	<input type="checkbox"/> Yes <input type="checkbox"/> No
f. Whole fruit or 1/2 cup dessert?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Does staff take food temperature at the beginning of the food service?  
 Yes  No
4. Correct utensils used to ensure proper portion control?  
 Yes  No
5. Are hot foods above 135 F. at service?  
 Yes  No
6. Are cold foods below 41 F. at service?  
 Yes  No
7. Participant attendance records are kept by use of a sign in sheet?  
 Yes  No
8. Are all persons handling food directly wearing disposable sanitary gloves and hair nets?  
 Yes  No
9. Are hand washing supplies available and used by all persons who cook, serve or handle food?  
 Yes  No
10. Are there wrapped straws or sanitary glasses for milk?  
 Yes  No
11. Were congregate participants prohibited from taking milk, butter or margarine from site?  
 Yes  No
12. Daily menus are repeated one time or less each month?  
 Yes  No
13. No participant is denied service because they cannot contribute to the cost?  
 Yes  No
14. Does staff welcome participant to the site?  
 Yes  No
15. Does the staff encourage contribution?  
 Yes  No

16. Are contributions collected in manner that maintains the confidentiality of the participant and the donation?  
 Yes  No

17. Are contributions placed in a lock box?  
 Yes  No

18. Are the following posted at the congregate meal site in a location that is easily visible to participants?

a. grievance procedures for participants  Yes  No

b. menus for the current and upcoming week  Yes  No

c. evacuation plan  Yes  No

d. amount of the contribution and purpose of the contributions  Yes  No

e. full meal costs for ineligible individuals  Yes  No

f. Poster regarding non-discrimination compliance policy  Yes  No  
(Spanish and English)

g. Texas Health and Human Services Information and Referral toll free 1-800-392-0055 poster  
 Yes  No

h. Texas Health and Human Services 1-800-252-5400 abuse and neglect poster  
 Yes  No

i. Texas Health and Human Services funding poster  Yes  No

j. Ark-Tex AAA 1-800-372-4464 poster  Yes  No

19. Special containers and utensils are available upon request and with physician's order, for blind persons, disabled persons and those with limited mobility.  
 Yes  No

**FILES**

1. Are participant records kept locked to assure confidentiality?  
 Yes  No

2. Obtain a copy of the contribution statement given each participant. (If the contribution policy is posted on the wall lists it's content.

**NUTRITION PROGRAM CONTRIBUTIONS**

Contributions for Nutrition Services are not required, however, Federal Law states that program participants must be given an opportunity to donate for services provided. Participants may donate within their means. These funds are used to supplement Federal, State, and Local funds in providing this service to any person sixty (60) years of age or older and their spouse regardless of income, religion, race or national origin.

Any donation amount is appreciated.  
(Donations are used to purchase raw foods)

**Vendor's Initials**





**MONITORING WORKBOOK**

Vendor Name:		Site:	
Completed by:		Dates of monitoring Period:	
First Name:		Begin:	
Last Name:		End:	

**HOME DELIVERED MEALS**

- Staff and volunteers are trained to report to the service provider when a participant cannot be found and suspension of services has not been authorized.  
 Yes  No
- The service provider will investigate and carry out appropriate action the same day of awareness when a participant cannot be found or a meal is uneaten.  
 Yes  No
- Staff and volunteers report significant changes in the participants physical or mental condition or environment.  
 Yes  No
- Reports of suspected cases of abuse, neglect or exploitation are made within 24 hours of awareness to the Texas Department of Human Services hotline.  
 Yes  No
- Staff or volunteers hand the meal directly to the participant or, with permission, enter the home and place as directed by participant.  
 Yes  No
- Supplies and carriers are used that assure that hot foods are packaged and transported in separate carriers from cold food.  
 Yes  No
- Meals carriers are cleaned and sanitized daily.  
 Yes  No
- Meals are delivered in sealed containers to prevent spillage and contamination.  
 Yes  No
- Holding time for hot food does not exceed four (4) hours from the time the food is taken from the equipment in which cooking or reheating is completed until it is delivered.  
 Yes  No
- The service provider and participants are able to provide safe conditions for storage, thawing and reheating.  
 Yes  No
- Does the vendor send out customer satisfaction surveys?  
 How often?  
 Can vendor provide a copy of the most recently completed survey?  
 Were any actions taken as a result of the surveys?

Reference: Title III/OAA: 26 TAC §213.203 Nutrition Services

- Does vendor monitor meal delivery routes at least once every 365 days?  
 Yes  
 No. If not how often? When was the last time monitored?  
 Which routes have been monitored and when?

Reference: 40 TAC §55.27 Service Requirements; 26 TAC §213.203 Nutrition Services; 40 TAC §49.31 Record Requirements