

COPY

**DEEP EAST TEXAS COUNCIL OF GOVERNMENTS  
CONTRACT FOR  
OLDER AMERICANS ACT PROGRAM**

**STATE OF TEXAS  
COUNTY OF JASPER**

**I. AUTHORITY TO CONTRACT**

The authority on which this contract is based derives from the Older Americans Act (OAA), as amended, and its regulations; HHS regulations on Administration of Grants; Title 45 CFR, Part 74; Title 45 CFR, Part 92; Title 45 CFR, Part 1321, et seq.; Title 45 CFR, Part 91; the Uniform Grant Management Standards (UGMS), Governor's Office of Budget and Planning, January 2001; and all Texas Department on Aging Policies and Rules as published in the Texas Administrative Code (TAC) under Chapters 80, 81, 82, 83 and 84 et seq. (Title 40 Part I, Texas Administrative Code); and, all state and local laws as pertains to this contract and its attachments.

**II. CONTRACTING PARTIES**

This contract is between the **Deep East Texas Council of Governments**, hereinafter referred to as **AGENCY**, and **Polk County Aging** hereinafter referred to as **CONTRACTOR**. Whereas the State of Texas, acting through the Texas Department of Aging and Disability Services (DADS), has designated the Deep East Texas Council of Governments to act as the area agency on aging (AAA), to be known as the Deep East Texas Area Agency on Aging; and whereas the AAA is the designated authority under the OAA to administer OAA funds, the **AGENCY** and the **CONTRACTOR** hereto have severally and collectively agreed and by execution hereof are bound to the mutual obligations set forth herein and to performance and accomplishment of the tasks hereinafter described.

**III. CONTRACT PERIOD**

This agreement will become binding on the date of the signature by both parties. Notwithstanding this date, the term of the contract will begin on **October 1, 2008, and end on September 30, 2010.**

**IV. CONTRACT EXTENSIONS**

The parties to this contract may, by mutual agreement, extend this contract for a specified period. Any extension shall be in writing, with specific reference to this contract, and shall be subject to all of the terms and conditions of this contract and made a part thereof for all purposes.

**V. AMENDMENTS TO THE CONTRACT**

This agreement may be amended in writing upon mutual agreement by both parties or when dictated by implementation of laws and rules becoming effective within the contract period as pertains to the scope of this contract and its attachments. Amendment to this contract is also made upon submission to and approval by the **AGENCY** of an amended budget.

## VI. SCOPE OF SERVICES

The CONTRACTOR agrees to provide the services and activities set out in CONTRACTOR'S approved Budget and Service Delivery/Operational Plan, incorporated by reference into this Agreement as set forth fully herein. (See ATTACHMENT A – SCOPE OF SERVICES)

The CONTRACTOR shall meet all key performance measures contained in the last approved budget, whether original or amended. The CONTRACTOR agrees to serve the number of persons and units and substantially meet all of the goals and outcomes described in CONTRACTOR Service Delivery/Operational Plan submitted to the Agency.

Allocations to specific service areas will be identified and approved by the AGENCY. The last approved budget, whether original or amended, shall be deemed applicable to this contract from the date of approval. Upon approval of any subsequent budget, a copy shall be attached hereto and made a part hereof for all purposes.

All Texas Administrative Code standards may be accessed at the Texas Secretary of State website: [www.sos.state.tx.us](http://www.sos.state.tx.us)

All Older Americans Act and other required rules and regulations may be accessed at [http://www.aoa.gov/about/legbudg/oaallegbudg\\_oaa.asp](http://www.aoa.gov/about/legbudg/oaallegbudg_oaa.asp)

**Targeting:** Services are designed to identify eligible clients, with an emphasis on high-risk clients and serving older individuals with greatest economic and social need, low-income minorities and those residing in rural areas, as identified in the Older Americans Act.

## VII. FUNDING OBLIGATIONS

The CONTRACTOR acknowledges that the AGENCY'S obligation hereunder for payment, in consideration of full and satisfactory performance of activities described in this contract, is limited to monies received from the Texas Department of Aging and Disability Services (DADS), the State of Texas, and any other originating funding source.

The AGENCY shall not be liable to the CONTRACTOR for costs incurred or performance rendered unless such costs and performances are strictly in accordance with the terms of this contract, including but not limited to, terms governing the CONTRACTOR'S promised performance and unit rates and/or reimbursement capitations specified.

The AGENCY shall not be liable to the CONTRACTOR for any expenditures which are not allowable costs as defined in the Code of Federal Regulations, Title 45, Part 74, as amended, or which expenditures have not been made in accordance with the fiscal guidelines and requirements outlined by the AGENCY.

The AGENCY shall not be liable to the CONTRACTOR for expenditures made in violation of regulations promulgated under the OAA, as amended, or in violation of the AGENCY rules, Uniform Grant Management Standards, or this contract.

## VIII. COMPENSATION

The AGENCY agrees to make payment to the CONTRACTOR in the amounts and upon the terms and provisions as set forth in the CONTRACTOR's budget, and all attachments to this contract, and the CONTRACTOR agrees to accept such payments as full compensation for services performed hereunder. All payments shall be based on the performance information reported in the approved budget, reimbursement requests and quarterly fiscal and programmatic reports.

The AGENCY will pay the CONTRACTOR on a reimbursement basis for services rendered. The CONTRACTOR may subcontract or may purchase services under an "at risk" unit rate or reimbursement methodology, in accordance with the rules and program instructions of the AGENCY. Reimbursement, using OAA and other DADS funds, for services provided. Whether directly or through a subcontractor or vendor agreement, shall not exceed the available OAA and other DADS funds awarded by the DADS and shown in the approved budget.

## IX. PAYMENT METHODOLOGY

The AGENCY has no obligation to remit funds under the terms of this contract for services provided on a reimbursement basis, as defined in Section VIII, COMPENSATION, until the CONTRACTOR has provided or secured the provision of the service and reported such provision in a reimbursement request. In the absence of written agreement to the contrary, the AGENCY will remit funds to the CONTRACTOR subject to the appropriate administrative procedures and contingent upon receipt of funds by the DADS from the AoA, State of Texas and/or other funding sources.

The CONTRACTOR shall report eligible units of service and actual allowable expenses to the AGENCY in the frequency and in such manner, using any and all prescribed forms, as may be prescribed by the AGENCY.

Final payment shall be based on the information contained in the reimbursement system 60 days following termination of this contract. This payment provision shall apply to final payment whether at completion of the contract period or in the event of early contract termination

## X. REPORTING REQUIREMENTS

The CONTRACTOR agrees to submit all required fiscal and programmatic reports in accordance with the report due dates established by the AGENCY. The CONTRACTOR agrees to maintain fiscal records to support reimbursement in conformity with the procedures established by the AGENCY. All fiscal and program reports shall continue to be due throughout the entire contract period even though no additional services may be reimbursable under this contract.

The CONTRACTOR shall complete and submit to the AGENCY, all requests for funds on an AGENCY-prescribed form in accordance with the rules and policies of the AGENCY. **A final program report shall be submitted to the AGENCY on or before the date established by the AGENCY with not less than 45 days advance notice to the CONTRACTOR.** The total of all program reports including the final program report shall support and be reconciled to all funds received during the contract period. Under no circumstances shall requests for funds be submitted later than October 31, for the previous fiscal year, or after the final program report is submitted.

## **XI. MATCH REQUIREMENTS**

The CONTRACTOR shall provide a minimum match for the project, as required by the OAA, as amended, and shall assure total match for services is sufficient to meet the requirements of the OAA, as amended, and the DADS rules.

Match shall be in the form of cash except where specific in-kind and/or third party contributions have been approved by the AGENCY. All match contributions shall be expended for goods and services necessary for and specifically identifiable to the CONTRACTOR'S Service Delivery/Operational Plan.

Match shall conform to the OAA regulations, Administration of Grants, Title 45, Part 74 and the DADS rules regarding match requirements.

## **XII. PROGRAM INCOME**

Program income contributions shall be administered in accordance with 40 TAC §83.2(l), UGMS Subpart C \_\_\_\_ 25 and all applicable DADS Rules. The CONTRACTOR shall use all program income and participant contributions collected to further eligible program outcomes. All program income and participant contributions collected and expended shall be documented and managed according to the DADS Rules and Regulations.

Program income received as contributions will be accounted for and deposited in accordance with the written policies and procedures established by the CONTRACTOR in accordance with the DADS Rules and Regulations.

Program income collected by service vendors shall be handled in accordance with the DADS Rules and Regulations.

Program income collected by service vendors shall consist only of those funds specifically provided by, or on behalf of, a program participant and directly attributable to the service provided.

## **XIII. CONTRIBUTION POLICY**

The CONTRACTOR shall provide a voluntary opportunity for each eligible participant to contribute to the cost of services while protecting the individual's privacy. The CONTRACTOR shall safeguard and account for such contributions, and use such contributions to expand services.

## **XIV. MAINTENANCE OF RECORDS**

The CONTRACTOR shall retain all financial records, supporting documents, statistical records, and all other records relating to its performance of this contract. The CONTRACTOR shall use any and all standard forms promulgated by the AGENCY, as applicable. Use of said forms shall not be required less than 30 days following issuance of the form, but earlier use is encouraged. The CONTRACTOR shall require the use of all such forms for all subcontractors and/or vendors, as applicable.

All of the aforesaid records shall be made available, with reasonable notice, at the CONTRACTOR'S office, and shall be maintained for at least five (5) years after the termination of this agreement, or five years after any audit findings and other disputes or litigation relating to this agreement, if any, have been resolved. Multi-site CONTRACTORS may maintain all records at a designated central location (i.e., administrative headquarters) for purposes of this section.

#### **XV. ACCESSIBILITY OF RECORDS**

The CONTRACTOR shall give the AGENCY, the DADS, the AoA, the Comptroller General of the United States, and the State of Texas, through any authorized representatives, the access to and right to examine all records, books, papers, contracts, or other documents related to this contract. Such right of access shall continue as long as such records, or any of them, are in existence, but shall not be less than five (5) years following the end of this contract term or the resolution of any disputes relating to this contract, whichever is later. The CONTRACTOR shall include the substance of this provision in all subcontracts.

The CONTRACTOR understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The CONTRACTOR further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested.

#### **XVI. MONITORING**

The CONTRACTOR shall conduct both program and financial on-site monitoring of subcontractors, if applicable, to ensure compliance with established policies and regulations in accordance with the DADS rules.

#### **XVII. PAYMENT SUSPENSION, PENALTIES AND CONTRACT TERMINATION**

In the event monitoring/evaluation activities by the AGENCY or its agents disclose deficiencies in the operation of the CONTRACTOR or its subcontractors supported under provisions of this contract, the AGENCY shall take appropriate remedial steps that may include the issuance of sanctions and/or penalties in accordance with 40 TAC §81.13.

The AGENCY or CONTRACTOR may elect to terminate this contract upon ten (10) days written notice from the terminating party to the other party. The CONTRACTOR, upon notification of termination, shall have the right to appeal such termination following procedures outlined in DADS rules.

This contract also may be terminated upon the occurrence of any of the following events:

- a. Discontinuance of funding to the AGENCY from the DADS and/or AOA or the State of Texas;
- b. Failure of the CONTRACTOR to comply with any or all of the terms and conditions of this contract and any attachments thereto; or
- c. Mutual agreement between the AGENCY and the CONTRACTOR.

In the event of termination, the CONTRACTOR shall submit final billings for units of service

delivered pursuant to the contract. Final billings will be submitted to the AGENCY within fifteen calendar days after date of termination. The AGENCY shall reimburse those units of service, delivered in accordance with the contract, prior to termination.

At the date of termination, the AGENCY may require the CONTRACTOR to transfer title and deliver to the AGENCY or to another authorized contractor any property acquired by Federal or state funds or assigned to the CONTRACTOR by the AGENCY for the purposes of this contract.

The CONTRACTOR may dispose of property having a current value, at the time of termination, of less than \$500, in any manner, and the AGENCY shall make no recovery. The AGENCY shall provide instructions to the CONTRACTOR regarding disposition of all property having a current value, at the time of termination, of \$500 or more, within fifteen (15) days following notice of termination.

### **XVIII. RECAPTURE OF PAYMENTS**

If the CONTRACTOR has failed to comply with the terms of this contract that govern the use of monies pursuant to this contract, or if the CONTRACTOR has received funds in excess of those actually earned, the AGENCY may take appropriate action including the recapture of payment and/or withholding of funds.

### **XIX. ASSURANCES (Attachment A)**

The CONTRACTOR hereby provides all assurances required by law as set forth in Attachment A of this contract. All assurances contained in Attachment A are hereby incorporated by reference into this contract for all purposes as if set forth fully herein.

The CONTRACTOR shall use due diligence to ensure reasonable steps have been taken to meet the criteria or standards stated within each assurance. Failure to comply with an assurance shall subject the CONTRACTOR to penalties, disallowance of funds, and other action, up to and including termination.

### **XX. LIABILITY TO THIRD PARTIES**

The AGENCY does not assume any liability to third persons, nor will the AGENCY reimburse the CONTRACTOR for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder.

The CONTRACTOR shall give the AGENCY or its representative immediate notice of any suit or action filed, or prompt notice of any claim made against the CONTRACTOR arising out of the performance of this contract.

The CONTRACTOR shall furnish immediately to the AGENCY copies of all pertinent papers received by the CONTRACTOR in connection with any such suit, action or claim. The AGENCY shall have the option to intervene in such actions to represent the AGENCY's interest.

### **XXI. CODE OF CONDUCT**

The CONTRACTOR shall maintain a written code or standards of conduct, which shall govern the performance of its officers, employees or agents engaged in the award and administration of

this contract supported by Federal funds if a conflict of interest, real or apparent, arises. Such a conflict would arise when: the employee, officer or agent; any member of his immediate family; his/her partner; or an organization which employs, or is about to employ any of the above, has a financial or other interest in the entity selected for award.

The CONTRACTOR's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value for any purpose that is or gives appearance of being motivated by a desire for private gain or favorable treatment for themselves or others, particularly those with whom they have family, business, or other personal ties.

No officer or member of the CONTRACTOR and no other public official or officer or member of the Board of the CONTRACTOR who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal or pecuniary interest, direct or indirect, in the Contract or the proceeds thereof.

## **XXII. GOVERNANCE**

### **A. CRITERION**

The CONTRACTOR shall be an eligible organization and shall be governed by a board, which represents the planning and service area (PSA) served. The board, if not otherwise covered in Statutes, law or regulations, shall consist of members pursuant to rules established by the DADS regarding such matters. The board shall function fully and effectively in its fiduciary role.

### **B. REQUIREMENTS**

#### **1. ELIGIBILITY**

The CONTRACTOR will be designated by the AGENCY in accordance with the requirements of the OAA, as amended. If the CONTRACTOR is a private nonprofit entity, it shall apply for and maintain 501(C)(3) or 501(C)(4) tax status.

#### **2. GOVERNING BODY**

a. **FUNCTIONS AND RESPONSIBILITIES** - The CONTRACTOR's board shall describe its functions in bylaws and carry them out as indicated so as to respond to the overall environment, the planning and service area, and intervention for problems.

- **MEETINGS, RECORDS AND ACTIVITY** - The board shall hold regular meetings and keep adequate records that indicate active participation by all or most members in the full range of functions and a fair and equitable decision making process.

- **GENERAL POLICIES** - The board shall establish general policies, including personnel and fiscal policies, for the conduct of the CONTRACTOR.

- **COMMITTEE STRUCTURE** - The board shall establish an advisory council and describe its functions in bylaws to carry out the responsibilities stated in the OAA, as amended.

- **PLANNING AND PRIORITY SETTING** - The CONTRACTOR's advisory council shall review the needs assessment, determine the priority of needs to be met and recommend approval of the annual budget and the annual application for federal funds to the CONTRACTOR's board. The CONTRACTOR's board shall take action on the advisory council's recommendation and thus have final authority for the activities of the area plan of the CONTRACTOR.

- **FINANCIAL VIABILITY** - The board or its appropriate committee shall control major resource decisions and monitor financial viability by requiring regularly submitted financial reports that also indicate whether there exists a variance from revenue and expenditure projections.

- **RETENTION, RECRUITMENT AND PLAN UPDATE** - The board shall establish a long-term plan to ensure a high quality CONTRACTOR staff. The Board shall also ensure that there exists a process for monitoring and updating the plan.

**b. SELECTION OF MEMBERSHIP**

The CONTRACTOR's bylaws shall specify, and the CONTRACTOR's advisory council and board shall carry out, a process for council and board member appointments and a process that provides for turnover among members, yet maintains sufficient continuity to ensure familiarity with issues and effective participation. The bylaws shall also provide for regular changes in leadership positions.

**c. CONFLICT OF INTEREST**

The bylaws or written corporate policies shall implement provisions that prohibit conflict of interest or the appearance of conflict of interest by personnel, advisory council members, board members, consultants and those who provide services or furnish goods to the CONTRACTOR. No board member or advisory council member shall be an employee of the CONTRACTOR or a subcontractor or be an immediate family member of an employee.

**d. FISCAL MANAGEMENT**

The CONTRACTOR shall have appropriate leadership and management structure to enable it to operate efficiently and effectively. The CONTRACTOR shall also have financial systems to maintain internal controls, ensure proper management of federal funds, maximize non-federal resources and maintain solvency.

The CONTRACTOR shall have accounting and internal control systems appropriate to the size of the organization. The accounting system should consist of source documents, a chart of accounts, journals, ledgers and routine financial reports. The internal controls system shall safeguard the CONTRACTOR's assets, produce accurate accounting data, promote efficient operations and encourage adherence to prescribed accounting policies and procedures. Effective internal control shall involve a division of responsibility among different employees for a sequence of related functions, clear establishment of each employee's responsibilities and duties, and use of standards such as procurement policies, proofs, checks and other security measures.



### **C. MANAGEMENT PROCESS**

The CONTRACTOR shall have procedures in place to ensure communication internally between the Executive Director, other key staff, and the governing Board and externally with local, regional and state leaders and public officials. Management shall establish and implement a process for decision-making and priority setting, efficient and effective oversight of operations and evaluation of staff and programs administered and correction of deficiencies in both areas.

### **D. DATA SYSTEMS**

The CONTRACTOR shall be supported by data systems that provide adequate information for operational efficiency and decision-making. The CONTRACTOR shall have financial data systems of producing expenditure reports, cost center analyses, budget formats and providing reports as required by, and without additional support from, the AGENCY. The data system shall be able to provide program performance and financial information to reflect the operation and status of the organization to assist the CONTRACTOR in conducting regular data assessment and analysis to determine if the CONTRACTOR is meeting its performance as required under this contract. The CONTRACTOR shall have in place adequate electronic back-up systems, back-up schedules, back-up procedures, and continually updated virus protection software to prevent the loss or corruption of any and all client, program, and financial data. The CONTRACTOR shall implement the security features of all existing software.

The CONTRACTOR shall develop and implement security systems and procedures to safeguard any individually identifiable health information and privacy of all clients. The CONTRACTOR shall provide the necessary computer hardware and/or software to carry out the provisions of this contract. The CONTRACTOR shall have the Department's written approval prior to the acquisition of any computer software program or hardware in excess of \$1,000 for which the CONTRACTOR will request reimbursement from the AGENCY funding.

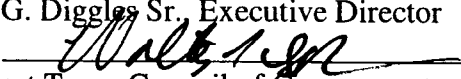
## **XXIII. FORCE MAJEURE**

To the extent that either party to this contract shall be wholly or partially prevented from the performance within the terms of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, invasion, insurrection, accident, order of court, judge, or civil authority, an act of God, or any cause reasonably beyond the party's control and not attributable to its neglect, that in such event the time for the performance of such obligations or duty shall be suspended until such disability to perform is removed.


## **XXIV. CONTRACT NOTICES**

Any notice required to be given pursuant to the provisions of this contract shall be sent by certified mail, postage prepaid, to the addresses of the parties hereto as set out below until due notice has been given of a change of address.

For AGENCY:

Walter G. Diggles Sr. Executive Director  
  
 Deep East Texas Council of Governments  
 210 Premier Drive  
 Jasper, Texas 75951

For CONTRACTOR:

  
 Name Polk County Judge  
 101 W. Church St., Ste 300  
 Address  
 Livingston, Texas 77351  
 City, State, Zip

**XXV. POLITICAL ACTIVITY**

No funds provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators. The CONTRACTOR, if a recipient of Federal assistance exceeding \$100,000 through the AGENCY, will comply with section 319, Public Law 101-121 (31 U.S.C. 1352).

**XXVI. SECTARIAN INVOLVEMENT**

The CONTRACTOR shall ensure that no funds under this contract are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

**XXVII. RIGHT TO APPEAL**

Any applicant to provide services whose application is denied or whose contract is terminated or not renewed (except as provided in 45 CFR Part 74, Subpart M) has a right to appeal such action. The applicant shall give notice of appeal to the AGENCY within 10 days after it receives the AGENCY's action letter. Appeals Procedures adopted by the DADS and codified at 40 TAC §81.15 will be used as the appeals process.

**XXVIII. INDEPENDENT CONTRACTOR**

In performance of obligations under this contract, the CONTRACTOR shall act as an independent contractor and not as an agent, representative or employee of the AGENCY. No employee, agent, or representative of the CONTRACTOR shall be considered an employee of the AGENCY nor be eligible for any benefits, rights or privileges afforded to the AGENCY employees.

**XXIX. ORAL AND WRITTEN AGREEMENT**

All oral or written agreements made prior to this contract have been reduced to writing and are contained herein by the execution of this contract including any proposals submitted by the CONTRACTOR. The CONTRACTOR evidences its understanding and agrees that any prior agreement is terminated as of the effective date of this contract. Both parties agree that the AGENCY shall not be liable for any costs incurred by the CONTRACTOR except to the extent provided in this contract. When 45 CFR, or its appendices, provide that a cost is allowable only when authorized in writing, the cost will not be allowable unless written approval from the AGENCY is obtained prior to the

expenditure.

### **XXX. SEVERABILITY**

The invalidity or unenforceability of any provision of this contract will not affect the validity or enforceability of any other provision of this contract.

### **XXXI. ALTERNATIVE DISPUTE RESOLUTION**

A. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the AGENCY and the CONTRACTOR to attempt to resolve any claim for breach of contract made by the CONTRACTOR.

The CONTRACTOR's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code. To initiate the process, the CONTRACTOR shall submit written notice, as required by Subchapter B, to Walter G. Diggles, Sr., Executive Director, Deep East Texas of Governments, 210 Premier Drive, Jasper, Texas 75951.

The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the CONTRACTOR's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the AGENCY if the parties are unable to resolve their disputes under subparagraph.

Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the AGENCY nor any other conduct of any representative of the AGENCY relating to the contract shall be considered a waiver of sovereign immunity to suit.

- B. The submission, processing and resolution of the CONTRACTOR's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereinafter enacted or subsequently amended.
- C. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the CONTRACTOR, in whole or in part.

### **XXXII. APPLICATION OF LAW & VENUE**

This contract is governed by and shall be construed in accordance with the laws of the State of Texas. All claims against the AGENCY by the CONTRACTOR seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to the contract shall be filed in Jasper County, Texas.

### **XXXIII. TARGETING**

The CONTRACTOR shall, in accordance with the OAA, as amended, Section 306(a)(4)(B), and as addressed in the Service Delivery/Operational Plan and approved Budget, assure it will use reasonable outreach efforts to identify individuals eligible for assistance under this contract, with

special emphasis on:

- (1) Older individuals residing in rural areas;
- (2) Older individuals with greatest economic need (with particular attention to low-income minority individuals);
- (3) Older individuals who have greatest social need (with particular attention to low-income minority individuals);
- (4) Older individuals with severe disabilities;
- (5) Older individuals with limited English-speaking ability; and,
- (6) Older individuals with Alzheimer's Disease or related disorders with neurological and organic brain dysfunction and the caretakers of such individuals.

**XXXIV. SURVIVAL OF TERMS**

The following portions of this Agreement shall survive termination: IX, X, XIV, XV, XVII, XIX, XX, XXII, XXVI, XXXI to XXXIV, and XXXVI.

**XXXV. ACCEPTANCE OF CONTRACT**

I, the undersigned, certify that I have read and understand the terms of this contract and that this agency will abide by them. I further certify that I am authorized to sign for the CONTRACTOR agency.

**FOR CONTRACTOR:**

*John P. Thompson*  
John P. Thompson, Co. Judge      Typed Name and Title of  
 Signature of Official  
 Authorized Official

1/7/089  
 Date

**FOR THE DEEP EAST TEXAS COUNCIL OF GOVERNMENTS:**

Walter G. Diggles, Sr., Executive Director  
 Typed Name and Title of  
 AGENCY Representative

*Walter G. Diggles, Sr.*  
 Signature of AGENCY Representative

1/09/09  
 Date

DEEP EAST TEXAS COUNCIL OF GOVERNMENTS

CONTRACT FOR

OLDER AMERICANS ACT PROGRAM

Attachment A:

CONTRACTOR SCOPE OF SERVICES:

CFDA #'s 93.045, 93.053 Congregate Meals

7,933 Meals@\$5.87 per meal= \$46,566.71 Total per contract Year

**SERVICE DEFINITION:**

A hot or other appropriate meal served to an eligible person which meets one-third (1/3) of the recommended dietary allowances (RDA) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and which is served in a **congregate setting**. There are two types of congregate meals:

**Standard Meal** – A regular meal from the standard menu that is served to the majority or all of the participants.

**Therapeutic meal or liquid supplement** – A special meal or liquid supplement that has been prescribed by a physician and is planned specifically for the participant by a dietician (e.g., diabetic diet, renal diet, pureed diet, tube feeding).

**Unit of Service:** One Meal

DEEP EAST TEXAS COUNCIL OF GOVERNMENTS

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OLDER AMERICANS ACT PROGRAM

Attachment A:

CONTRACTOR SCOPE OF SERVICES:

**CFDA #'s 93.045, 93.053 HOME DELIVERED MEALS**

15,184 Meals@\$4.95 per meal= \$75,160.80 Total per contract Year

**SERVICE DEFINITION:**

Hot, cold, frozen, dried, canned, fresh, or supplemental food (with a satisfactory storage life) which provides a minimum of 33½ percent of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the most recent Dietary Guidelines for Americans, published by the Secretary of Agriculture, and is delivered to an eligible participant in their place of residence. The objective is to reduce food insecurity; help the recipient sustain independent living in a safe and healthful environment. There are two types of home delivered meals:

**Standard meal** - A regular meal from the standard menu that is served to the majority or all of the participants.

**Therapeutic meal or liquid supplement** - A special meal or liquid supplement that has been prescribed by a physician and is planned specifically for the participant by a dietician (e.g., diabetic diet, renal diet, pureed diet, tube feeding).

**Unit of Service:** One Meal.

**DEEP EAST TEXAS COUNCIL OF GOVERNMENTS**

**CONTRACT FOR**

**OLDER AMERICANS ACT PROGRAM**

**Attachment A:**

**CONTRACTOR SCOPE OF SERVICES:**

**CFDA # 93.044 SENIOR CENTER OPERATIONS**

12 Months @ \$801.14 rate per month= 9,613.68 Total per contract Year

The operation of community facilities where older individuals meet together to pursue mutual interests, receive services and/or take part in activities which will enhance their quality of life, support their independence, and encourage their continued involvement in and with the community.

Facility must be available to older individuals for a minimum of 5 hours per day, 5 days per week.

**Unit of Service: N/A**

## DEEP EAST TEXAS COUNCIL OF GOVERNMENTS

## CONTRACT FOR

## OLDER AMERICANS ACT PROGRAM

## "ATTACHMENT B"

## ASSURANCES

The CONTRACTOR shall maintain proper documentation to substantiate all of the assurance items set out below. Such documentation will be subject to review for adequacy and completeness. Failure to maintain the appropriate and necessary documentation shall be grounds for sanctions and penalties, in accordance with 40 TAC 81.13.

**I. Compliance with Requirements**

The CONTRACTOR agrees to administer the program in accordance with the Older Americans Act (OAA) and all applicable regulations, policies and procedures established by the AGENCY, the Area Agency on Aging of Deep East Texas, the Texas Department of Aging and Disability Services (TDADS), the Administration on Aging (AoA), and the Secretary of Health and Human Services.

**II. General Administrative and Fiscal Requirements**

The CONTRACTOR shall adhere to uniform administrative requirements and cost principles which are in compliance with relevant provisions of OMB Circulars A-87, A-102, as revised or OMB Circulars A-110, A-122, and A-133, as applicable; 45 CFR, Part 74; 45 CFR, Part 92; and other OMB Circulars, except where these provisions are superseded by statute.

**III. Safeguarding Confidential Information**

The CONTRACTOR shall implement such regulations, standards, and procedures as are necessary to meet the requirements on safeguarding confidential information under the Health Information Portability and Privacy Act (HIPPA) and any other relevant program regulations.

**IV. Standards for Fire, Health, Safety, Sanitation and Other Standards**

The CONTRACTOR providing services under this contract shall operate fully in conformance with all federal, state and local fire, health, safety, sanitation, and other standards prescribed in law or regulations. Such requirement shall also be passed to all subcontractors and sub grantees in the fulfillment of this contract. The VENDOR assures that where the state or local jurisdictions require licensure for the provision of services, agencies providing such services shall be licensed.

**V. Insurance Coverage**

The CONTRACTOR will maintain fire and casualty, worker's compensation, fidelity bond, and general liability insurance in amounts prescribed in statute or regulation, as applicable.



## VI. Participant Grievance Procedures

The CONTRACTOR shall establish written procedures through which participants can communicate aspects of the service which impact negatively upon them. All procedures shall be in accordance with 40 TAC 81.19.

## VII. Equal Employment Opportunity

### a. *Americans with Disabilities Act of 1990 -*

The VENDOR shall comply with the requirements established under the Americans with Disabilities Act in meeting statutory deadlines established under the Act as they pertain to operations for employment, public accommodations, transportation, state and local government operations and telecommunications.

### b. *Section 504 of the Rehabilitation Act of 1973 -*

The VENDOR shall provide that each program activity, when viewed in its entirety is readily accessible to and usable by persons with disabilities in keeping with 45 CFR, Part 84.11, et. seq., and as provided for in Section 504 of the Rehabilitation Act of 1974, as amended. When structural changes are required, these changes shall be in keeping with 45 CFR, Part 74.

### c. *Title VI of the Civil Rights Act of 1964 -*

The CONTRACTOR shall ensure that benefits and services available under this contract are provided in a non-discriminatory manner as required by Title VI of the Civil Rights Act of 1964, as amended.

### d. *Age Discrimination in Employment Act of 1967 -*

The VENDOR shall comply with Age Discrimination in Employment Act of 1967 (29 USC 621, et. seq.).

## VIII. Drug Free Workplace

The CONTRACTOR shall comply with the Drug-Free Workplace Act of 1988, and Texas Senate Bill 1 - 1991, as applicable.

## IX. Outreach

The CONTRACTOR shall ensure that outreach efforts identify individuals eligible for assistance and inform them of available services under the Older Americans Act, with special emphasis on rural elderly, older individuals who have greatest economic need (with particular attention to low-income minority individuals), older individuals who have greatest social need (with particular attention to low income minority individuals), and older individuals with severe disabilities, and inform such individuals of the availability of such assistance.

## X. Grant Purchased Equipment

The CONTRACTOR shall ensure that all equipment purchases made utilizing grant funds complies with applicable laws and regulations with special attention to 45 CFR 92.

Equipment may be assigned to CONTRACTOR for use in connection with this contract. Title to

the real and personal property shall vest in the CONTRACTOR subject to the condition that the CONTRACTOR shall use the property for the authorized purpose of the original contract for the entire term of the contract. It is further agreed that the CONTRACTOR shall maintain adequate property control records, perform regular inventories, document adequate maintenance and repair, and establish adequate safeguards to prevent loss, damage, or theft to any such property in accordance with sound industrial practice. Personal property shall include all tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000.00 or more.

Unless otherwise provided in the contract, the CONTRACTOR, upon delivery or acquisition of any such property, shall assume the risk of and be responsible for, any loss thereof or damage thereto, except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

The CONTRACTOR shall, upon completion of this contract or where there is otherwise no longer a need for such property, give written notice to the AGENCY within ten (10) calendar days to such effect. It is further agreed that upon receipt by the AGENCY of such written notice, the AGENCY shall issue instructions as to the continued use or disposition of such property to the CONTRACTOR pursuant to applicable federal regulations as outlined in OMB Circular A-102.

#### **XI. Maintenance of Non-Federal Support for Services**

The CONTRACTOR shall not replace funds from non-federal sources with federal funds. The CONTRACTOR agrees to continue to initiate efforts to obtain support from other sources for services funded under this contract.

#### **XII. Training Requirements**

The CONTRACTOR shall provide in-service training to all personnel relative to the performance of this contract. The CONTRACTOR shall secure appropriate training and certification for all personnel delegated duties that require such specialized training and/or certification.

#### **XIII. Coordination Requirements**

The CONTRACTOR agrees that the AGENCY may establish procedures and mechanisms necessary to assure effective coordination between the various activities and programs operating pursuant to the Older Americans Act of 1965, as amended, and other local, state or federal programs operating on behalf of older persons.

#### **XIV. Coordination of Service Delivery**

CONTRACTOR who operates focal points in the community must assure collocation of services, where feasible.

#### **XV. Emergency Management**

In the event of a disaster, whether man-made, natural, or of a civil defense nature, the CONTRACTOR will provide and coordinate appropriate resources to federal disaster relief

agencies and may provide equipment and resources for the following activities: temporary shelter; nutrition services; food preparation; transportation and volunteers.

#### **XVI. Taxes**

The CONTRACTOR will comply with all state, federal and local tax requirements with respect to property and personnel.

#### **XVII. Debarment and Suspension**

The CONTRACTOR shall not knowingly, using reasonably prudent judgment, deal with any person, business, or other entity which has been suspended or debarred from receiving federal funds under 45 CFR 76.200 (non-procurement) or 48 CFR 9.4.

#### **XVIII. Personnel**

The CONTRACTOR shall furnish all necessary personnel and shall appoint personnel of adequate qualifications, skill and expertise as are required to perform the services to be rendered in accordance and compliance with the terms of this contract. The CONTRACTOR shall be responsible for completion of the services to be rendered in accordance with this agreement and all applicable service standards. The CONTRACTOR shall provide all necessary supervision and coordination of activities that is required to complete the services and fulfill all contractual obligations.

#### **XIX. Provision of Services**

The CONTRACTOR assures compliance with the following provisions relating to the services covered by this contract.

##### **a. *Eligibility -***

The services covered by this contract serve only those individuals and groups eligible under the provisions of the Older Americans Act of 1965, as amended.

##### **b. *Residency -***

No requirements as to duration of residence or citizenship as a condition of participation in the provision of services will be imposed on persons requesting services.

##### **c. *Coordination and Maximum Utilization of Services -***

The CONTRACTOR, to the maximum extent, shall coordinate and utilize the services and resources of other appropriate public and private agencies and organizations. Efforts shall be demonstrated to coordinate with local state agencies to ensure non-duplication of administrative activities and service delivery to the maximum extent possible. Coordination activities shall reduce administrative burden on service providers and provide better service delivery to program participants.

##### **d. *Prohibition of Means Test for Services -***

The CONTRACTOR shall provide all services funded by the Older Americans Act of 1965, as amended, without the use of any means test to determine eligibility for services.

*Legal Assistance Services Attorney-Client Privilege –*

The CONTRACTOR shall not divulge any information that is protected by the attorney-client privilege.

**XX. Historically Underutilized Businesses (HUBs)**

In accordance with Texas Government Code Chapter 2161, and Texas Administrative Code (TAC) §111.11 through §111.28 Health and Human Service (HHS) agencies shall make a good faith effort to encourage utilization of HUBs in client services subcontracts. Therefore, HHS contractors are required to make a good faith effort to ensure that HUBs receive their respective share of the total value of all subcontract awards each fiscal year. "Subcontract" means a written third party contract between a prime contractor and another contractor for the performance of all or part of a contract.

**DEEP EAST TEXAS COUNCIL OF GOVERNMENTS****CONTRACT FOR****OLDER AMERICANS ACT PROGRAM****"ATTACHMENT C"****SANCTIONS AND PENALTIES FOR TITLE III FUNDED PROGRAMS****DEFINITIONS**

Definitions for words and terms specific to this document shall have the following meanings, unless the context clearly indicates otherwise.

**Level One Sanction** – The sanction that the Area Agency on Aging of Deep East Texas (AAADET or agency) may impose as a response to a contractual breach and/or failure to comply with agency rules and specific state and federal requirements.

**Level Two Sanction** – The sanction that the Area Agency on Aging of Deep East Texas (AAADET or agency) may impose as a response to a severe problem and the potential negative impact such a problem may have on a sub grantee's service area.

**Level Three Sanction** – The sanction that the Area Agency on Aging of Deep East Texas (AAADET or agency) may impose where a severe and/or continued failure to comply with contractual requirements, agency rules, and/or state and/or federal laws continues to go uncorrected.

**Level Four Sanction** – The sanction that the Area Agency on Aging of Deep East Texas (AAADET or agency) may impose where a severe and/or continued failure to comply with contractual requirements, agency rules, and/or state and/or federal laws continues to go uncorrected.

**Acceptable Corrective Action Plan** – Identification of actions to be taken, including a time line that is acceptable to the agency to correct an identified issue of contractual or legal non-compliance.

**Certified** – When used in conjunction with performance measure testing it describes having obtained acceptable results, within tolerances allowed by the State Auditor's Office, for data tested.

**Discretionary Funds** – Any funds issued by the Texas Department of Aging and Disabilities that are not awarded to the area agency or not awarded based on a general funding formula or not awarded by action of the Health and Human Services Commission.

**Extension** – An approved request, which is submitted to the agency on or before the original due date, to submit required reports or other required information later than the established original due date. No more than two extensions shall be granted in any one federal fiscal year.

## SANCTIONS

**Level One Sanction.** Level one sanction may result in one or more of the following actions:

Require the development, submission, and implementation of an acceptable corrective action plan to address identified weaknesses and/or non-compliance;  
 Submission of additional and/or more detailed financial and/or performance reports;  
 Designation as a high-risk sub grantee requiring additional monitoring visits; and  
 Repayment of disallowed costs.

**Level Two Sanctions.** Level two sanctions may result in one or more of the following actions:

Imposition of one or more level one sanction;  
 Prohibit participation in discretionary funds application or carryover pool redistribution; and  
 Provision of appropriate technical assistance.

**Level Three Sanctions.** Level three sanctions may result in one or more of the following actions:

Imposition of one or more level one sanction;  
 Imposition of one or more level two sanctions;  
 Prohibit or limit provision of direct service by sub grantee;  
 Imposition of the requirement that reimbursement payments made to sub grantee for the remainder of the fiscal year shall be made only following submission of bills paid or other documentation to show that bills for which reimbursement is sought have been paid.

**I. Level Four Sanctions.** Level four sanctions may result in one or more of the following actions:

Imposition of one or more level one sanction;  
 Imposition of one or more level two sanctions;  
 Imposition of one or more level three sanctions;  
 Require directed amendment to current operational plan; and  
 Recommend deobligation and/or cancellation of the contract with the sub grantee to the Deep East Texas Council of Governments Executive Board.

## ADMINISTRATIVE VIOLATIONS

Administrative violations shall result in disciplinary actions as specified in this section, unless the violation was due to an act of God or action by the Deep East Texas Council of Governments / Area Agency on Aging of Deep East Texas. Violations will be documented and greater levels of administrative sanctions will be applied for non-compliance issues deemed most serious and for continued non-compliance of less serious offenses.

**Violations Subject to Level One Sanctions.** Violations which may result in the imposition of level one sanction include the following:

Failure to submit a required report by the due date or approved extension. For purposes of this violation, a Request for Reimbursement and CIS/MIS/AIM submission for a single month shall be considered one report submission.

Failure to submit required reports accurately and completely, if identified by the Agency (not to exceed two instances in one fiscal year), and not corrected within five workdays following notification;

Failure, on the third occurrence, to submit required reports accurately and completely, if identified by the Agency, whether or not a violation notice was previously issued;

Failure to submit an acceptable corrective action plan for findings of program and fiscal monitoring within 45 days.

**Violations Subject to Level Two Sanctions.** Violations which may result in the imposition of level two sanctions include the following:

Failure to rectify any level one sanction with the timeframe established for corrective action;

Failure to complete corrective actions provided in any corrective action plan;

Failure to submit a Single Audit, in accordance with OMB Circular A-133, to the Agency.

Failure to be certified as having had accurate data following performance measure testing;

Failure to assure resolution of deficiencies found during monitoring/quality assurance review within the timeframes established in the corrective action plan.

**Violations Subject to Level Three Sanctions.** Violations which may result in the imposition of level three sanctions include the following:

Failure to rectify any level one sanction within 90 days following the timeframe established for corrective action;

Failure to rectify a level two sanction with the timeframe established for corrective action;

Failure to appropriately act upon reported or identified threats to the health and safety of program participants within 72 hours of notice/identification;

Failure to appropriately report and respond to allegations of abuse, neglect, and/or exploitation, and or allegations of fraud or ethics code violations;

Failure to have performance measure tested data certified as accurate two times out of any four consecutive performance measure tests; and

Commits four or more level one violations or three or more level two violations within the same fiscal year.

**Violations Subject to Level Four Sanctions.** Violations which may result in the imposition of level four sanctions include the following:

Failure to rectify any level one sanction within 180 days following the timeframe established for corrective action;

Failure to rectify any level two sanction within 90 days following the timeframe established for corrective action; and

Failure to rectify any level three sanctions within the timeframe established for corrective action.