

**A SERVICES AND FUNDING AGREEMENT  
BY AND BETWEEN  
THE TEXAS DIVISION OF EMERGENCY MANAGEMENT  
AND SOUTH PLAINS FOOD BANK**

**THIS AGREEMENT** is entered into by and between the Texas Division of Emergency Management (hereinafter referred to as TDEM), a member of The Texas A&M University System, an agency of the state of Texas, and the South Plains Food Bank (hereinafter referred to as SPFB) by and through its Chief Executive Officer, both of which may be collectively referred to as the “Parties.”

**WHEREAS**, TDEM is responsible for coordinating efforts with the federal government and other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management. TDEM is authorized by Texas Government Code, Chapter 418, to prepare for, respond to, recover from and mitigate against disasters including the provision of resources to local areas affected by the disaster. TDEM is responsible for protecting the lives, and public health and safety of its residents and wishes to provide support to SPFB to address food security and distribution concerns and needs for persons that have been adversely affected by the COVID-19 pandemic and its resulting economic impact; and

**WHEREAS**, it has been well-documented that there is an increased need and demand for food resources within the state of Texas that are normally addressed by the network of food banks across the state; and

**WHEREAS**, monetary and in-kind contributions to the network have been unable to keep up with the increased demand; and

**WHEREAS**, the supply and distribution of food throughout the country, state and city have been disrupted by the increased demand for food; and

**WHEREAS**, the State of Texas is currently under a State Disaster Declaration issued by Governor Greg Abbott and a Public Health Disaster issued by the Commissioner for the Texas Department of State Health Services, as well as Executive Order GA-16 issued by the governor, that requires all residents to stay home unless engaged in essential services or an essential activity; and

**WHEREAS**, the Governor of the State of Texas has suspended any state statute or administrative rule regarding contracting or procurement that would impede any state agency’s emergency response that is necessary to cope with the COVID-19 pandemic for the duration of the disaster declaration for this limited purpose; and

**NOW THEREFORE**, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

## I. TERM

- 1.1 This AGREEMENT shall commence on May 8, 2020 (Effective Date) and shall terminate on June 7, 2020, unless mutually extended by written AGREEMENT amendment, or terminated earlier pursuant to any provision hereof.

## II. SCOPE OF SERVICES

- 2.1 SPFB agrees to continue to provide all services necessary to purchase and distribute food in their area of responsibility as necessary as an emergency protective measure in response to the COVID-19 Public Health Emergency to vulnerable persons that have been affected by the COVID-19 pandemic, including those who have tested positive for COVID-19 or have been exposed but do not require hospitalization, high-risk individuals, such as people over 65 or with certain underlying health conditions, and other populations that have been placed at risk by the COVID-19 pandemic. SPFB continues to provide food to residents and must replenish that food stock in order to meet the continued high level of need and demand in the community, as set out within the detailed Payment Rate Schedule attached hereto and incorporated herein as **Exhibit A**.

## III. COMPENSATION TO SPFB

- 3.1 Funding for this AGREEMENT is appropriated under, but not contingent upon, the Coronavirus Aid, Relief, and Economic Security Act, 2020 (Public Law 116-136) enacted on March 27, 2020, as amended, to facilitate protective measures for and recovery from the public health emergency in areas affected by COVID-19, which are Presidentially-declared major disaster areas under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). All expenditures under this AGREEMENT must be made in accordance with this AGREEMENT, the rules and regulations promulgated under the FEMA Public Assistance Program, and any other applicable laws, including but not limited to those listed in Exhibit B. Further, SPFB acknowledges that all funds are subject to recapture and repayment for non-compliance pursuant to Section 3.6 below.
- 3.2 SPFB shall provide the services outlined in Article II during the term of this AGREEMENT at a fixed price not to exceed \$455,961 THOUSAND DOLLARS (\$455,961). The fixed fee and cost reimbursable expenses shall be invoiced and documented as provided in the AGREEMENT.
- 3.3 SPFB can invoice TDEM as needed for the Scope of Services identified in Article II. Payment will be made to SPFB upon approval of such invoice by TDEM. In general, TDEM will, unless a discount has been granted for immediate payment, make payment on a properly prepared and submitted invoice within thirty (30) days of the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law.

- 3.4 All payments shall be made by electronic direct deposit. SPFB is required to complete and submit to TDEM a Vendor Direct Deposit Authorization form prior to the first payment request.
- 3.5 All invoices must reference TDEM's [purchase order] number (which will be provided to SPFB after execution of this AGREEMENT) and description of services provided.
- 3.6 Recapture of Funds. SPFB shall conduct, in a good and workmanlike manner, the Scope of Services as set forth in the AGREEMENT. The discretionary right of the TDEM to terminate for convenience under Article XII notwithstanding, TDEM shall have the right to terminate the AGREEMENT and to recapture, and be reimbursed for any payments made by the TDEM: (i) that exceed the maximum allowable FEMA/DHS rate; (ii) that are not allowed under applicable laws, rules, and regulations, including but not limited to those listed in Exhibit B; or (iii) that are otherwise inconsistent with this AGREEMENT, including any unapproved expenditures.
- 3.7 Overpayment. SPFB shall be liable to TDEM for any costs determined to have been overpaid under this AGREEMENT pursuant to financial and/or compliance audit(s) of funds received hereunder. SPFB further understands and agrees that reimbursement of such overpaid funds shall be paid by SPFB from funds which were not provided or otherwise made available to SPFB under this AGREEMENT.
- 3.8 No fees or expenses of SPFB shall be charged by SPFB nor be payable by TDEM, without prior approval and written agreement of the Parties. SPFB must provide proof of expenses and supporting documentation for reimbursement in the form of Purchase Orders, signed packing slips (receipts), invoices and cancelled checks as proof of payment to vendors, and/or proof of distributed food.
- 3.9 The Parties acknowledge that TDEM will seek reimbursement from the Federal Emergency Management Agency (FEMA) for a substantial portion of funding provided by TDEM to SPFB under this AGREEMENT. SPFB agrees to cooperate with TDEM in providing supporting documentation.

#### **IV. INDEPENDENT CONTRACTOR**

- 4.1 SPFB understands and agrees that SPFB is an independent contractor, and not an officer, agent, servant, or employee of TDEM, and that SPFB is responsible for the acts or omissions of its officers, agents, employees, contractors, subcontractors, and consultants, and that the TDEM shall in no way be responsible therefor. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto. SPFB understands and agrees that TDEM shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the SPFB under this AGREEMENT and that the SPFB has no authority to bind the TDEM. As an independent contractor, SPFB is solely responsible for all taxes, withholdings, and other statutory or contractual

obligations of any sort, including but not limited to workers' compensation insurance.

- 4.2 No Obligation by Federal Government. The Parties acknowledge and agree that the federal government is not a party to this AGREEMENT and is not subject to any obligations or liabilities to either Party, third party or subcontractor pertaining to any matter resulting from this AGREEMENT.

## V. CONFIDENTIALITY

- 5.1 No reports, information, designs, data nor any other documentation developed by, given to, prepared by, or assembled by SPFB under this AGREEMENT shall be disclosed or made available to any individual or organization by SPFB without the express prior written approval of TDEM. In the event SPFB receives a request to disclose or produce documents, SPFB shall inform TDEM immediately for the purpose of receiving direction regarding the manner of processing.
- 5.2 SPFB shall comply with laws, regulations, and rules pertaining to confidentiality and shall establish a method to secure the confidentiality of documents and information that SPFB may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting TDEM's right of access to records or other information under this AGREEMENT.
- 5.3 Public Information Act. (a) SPFB acknowledges that TDEM is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this AGREEMENT, as well as any other disclosure of information required by applicable Texas law.
- (b) Upon TDEM's written request, SPFB will provide specified public information exchanged or created under this AGREEMENT that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to TDEM in a non-proprietary format acceptable to TDEM. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TDEM has a right of access.
- (c) SPFB acknowledges that TDEM may be required to post a copy of the fully executed agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- (d) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this AGREEMENT and SPFB agrees that the AGREEMENT can be terminated if SPFB knowingly or intentionally fails to comply with a requirement of that subchapter.

## VI. OWNERSHIP OF DOCUMENTS

- 6.1 SPFB shall deliver, at SPFB's sole cost and expense, all AGREEMENT-related documents and reports to the TDEM in accordance with the dates established under this

AGREEMENT, and in a timely and expeditious manner, and if a delivery date is not specified, then upon termination of the AGREEMENT.

- 6.2 SPFB shall notify TDEM immediately of any requests for information from third parties other than those entities described in Section 5.1 above which pertain to documents obtained and/or generated pursuant to this AGREEMENT. SPFB understands and agrees that TDEM will process and handle all such requests.

## **VII. RIGHT OF REVIEW AND RECORDS RETENTION**

- 7.1 SPFB and its subcontractors, if any, shall properly, accurately and completely maintain all books, documents, papers and records of SPFB's that are directly pertinent to this AGREEMENT and shall make such materials available to TDEM, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives at their respective offices, at all reasonable times and as often as the aforementioned may deem necessary during the AGREEMENT period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by TDEM and any of its authorized representatives.
- 7.2 SPFB agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 7.3 **SPFB SHALL ENSURE THAT ALL SUBCONTRACTS AWARDED REFLECT THE REQUIREMENTS OF THIS SECTION, AND THE REQUIREMENT TO COOPERATE.**
- 7.4 SPFB will be deemed to have read and have knowledge of all applicable federal, state, and local laws, regulations, and rules including, but not limited to those identified in Exhibit B, governing audit requirements pertaining to work performed under this AGREEMENT.
- 7.5 SPFB agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than seven (7) years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case SPFB agrees to maintain same until TDEM, the FEMA Administrator, the Comptroller General of the United States or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims or other such questions.
- 7.6 Books and Records. SPFB shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to TDEM the Texas State Auditor's Office, the United States Government, and/or their authorized representatives, sufficient information to determine compliance with the terms and conditions of this AGREEMENT and all state and federal rules, regulations, and statutes including, but not limited to, the applicable laws and regulations provided in Exhibit B

- 7.7 Access to Records. SPFB acknowledges and agrees that TDEM shall have access to any and all such documents at any and all times, as deemed necessary by TDEM, during said retention period. Additionally, SPFB agrees to provide TDEM, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any book, documents, papers, and records of SPFB which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts and transcriptions. TDEM and SPFB acknowledge and agree that no language in this AGREEMENT is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States. TDEM may, at its election, require SPFB to return the documents to TDEM at SPFB's expense prior to or at the conclusion of the retention period. In such event, SPFB may retain a copy of the documents.

### **VIII. LICENSES AND CERTIFICATIONS**

- 8.1 SPFB warrants and certifies that SPFB and any other person or entity designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and that SPFB meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein. At SPFB's sole expense, SPFB will procure and maintain for the duration of this AGREEMENT any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by SPFB to provide the goods or services required by this AGREEMENT. SPFB will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. SPFB agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this AGREEMENT.

### **IX. COMPLIANCE**

- 9.1 SPFB shall provide and perform all services under this AGREEMENT in compliance with all applicable federal, state, local laws, rules and regulations, including but not limited to those listed in Exhibit B. Failure to comply with applicable laws and regulations could subject the SPFB to suspension of payments, termination of AGREEMENT, and debarment and suspension actions. In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this AGREEMENT or its governing rules, regulations, laws, codes or ordinances, TDEM, as the Party ultimately responsible for all matters of compliance and applicable grant rules and regulations, shall have the final authority to render or secure an interpretation.
- 9.2 SPFB certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991.

### **X. INDEMNITY**

- 10.1 **SPFB covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, TDEM and the elected officials, employees, officers, directors, volunteers and representatives of the TDEM, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon TDEM directly or indirectly arising out of, resulting from or related to SPFB's activities under this AGREEMENT including any employment discrimination, any performance, any breach or violation of a statute, ordinance, governmental regulation, standard, rule or breach of contract, any acts or omissions of SPFB, any agent, officer, director, representative, employee, consultant or subcontractor of SPFB, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of TDEM, its officers or employees, in instances where such negligence causes personal injury, death, or property damage.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SPFB shall advise TDEM in writing within 24 hours of any claim or demand against TDEM or SPFB known to SPFB related to or arising out of SPFB's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at SPFB's cost. SPFB will coordinate its defense with TDEM and its counsel. TDEM shall have the right, at its option and at its own expense, to participate in such defense without relieving SPFB of any of its obligations under this paragraph.
- 10.3 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of SPFB, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for SPFB or any subcontractor under worker's compensation or other employee benefit acts.

## **XI. NON-DISCRIMINATION**

- 11.1 As a condition of entering into this AGREEMENT, SPFB represents and warrants that it will not unlawfully discriminate in the solicitation, selection, hiring or treatment of subcontractors, vendors, suppliers, or customers, nor shall SPFB retaliate against any person for reporting instances of such discrimination. SPFB shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities.

## **XII. TERMINATION**

- 12.1 For purposes of this AGREEMENT, “termination” of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.
- 12.2 TERMINATION FOR CONVENIENCE TDEM reserves the right to terminate this AGREEMENT, or any part hereof, for its sole convenience upon seven (7) days prior written notice to SPFB. In the event of such termination, SPFB shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work and will incur no further expense. SPFB shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Upon termination and upon request, SPFB shall deliver copies of all relevant files to the TDEM at no cost to TDEM or its designated recipient at the effective date of termination.
- 12.3 TERMINATION FOR CAUSE: TDEM may terminate this AGREEMENT, or any part hereof, for cause in the event of any default by SPFB, or if SPFB fails to comply with any contract terms and conditions, or fails to provide TDEM, upon request, with adequate assurances of future performance, which, in each case, is not remedied by SPFB within five (5) days after receiving written notice from TDEM. In the event of termination for cause, TDEM shall not be liable to SPFB for any amount for supplies or services not furnished in accordance with the terms of this AGREEMENT, and SPFB shall be liable to TDEM for any and all rights and remedies provided by law. If it is determined that TDEM improperly terminated this AGREEMENT for default, such termination shall be deemed a termination for convenience.
- 12.4 TERMINATION BY LAW: If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, and the AGREEMENT may not be continued by severance of the prohibited duties, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 12.5 SPFB may terminate this AGREEMENT for cause if TDEM fails to comply with any terms and conditions of this AGREEMENT and does not remedy such failure within five (5) days after receiving written notice from SPFB
- 12.6 EFFECT OF TERMINATION: Upon the effective date of expiration or termination of this AGREEMENT SPFB shall cease all operations of work being performed by SPFB or any of its approved subcontractors pursuant to this AGREEMENT. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and documents and funds, if any, from the SPFB to the TDEM or to such person(s) as the TDEM may designate, if so requested by TDEM; otherwise, the documents shall be retained by SPFB in accordance with Article VII, Right of Review and Records Retention. Any records or documents transfer shall be completed within fifteen (15) days of the termination date. Any such transfer of records or funds shall be completed at SPFB’s sole cost and expense.



- 12.7 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by TDEM), the SPFB shall submit to the TDEM, its claim, in detail, for the monies owed by the TDEM for services performed under this AGREEMENT through the effective date of termination. SPFB must show eligible expenditures by SPFB and provide proof of expenses and supporting documentation for reimbursement in the form of Purchase Orders, signed packing slips (receipts), invoices and cancelled checks as proof of payment to vendors, and/or proof of distributed food. Failure by SPFB to submit its claims within said thirty (30) days shall negate any liability on the part of TDEM and constitute a waiver by SPFB of any and all right or claims to collect funds that SPFB may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.
- 12.8 During the term, or upon termination of this AGREEMENT, TDEM may immediately commence an audit of SPFB's books, accounts, and records. If the audit or examination determines that SPFB has expended funds or incurred costs which may be inconsistent with this AGREEMENT, then SPFB shall be notified and provided an opportunity to address the issues. If the issues cannot be satisfactorily resolved, TDEM, in its sole discretion, may elect to either (1) deduct the disallowed amounts from subsequent payments and reimbursements, or (2) require SPFB to fully refund the disallowed amounts by cashier's check or money order within ten days after receipt of written notification. Additionally, SPFB shall pay TDEM any amount shown by said audit to be owed to TDEM.
- 12.9 Termination not sole remedy. Upon the occurrence of any such Event of Default, TDEM shall be entitled to avail itself of any equitable or legal remedy, including those remedies listed at 2 C.F.R. 200.207 and 2 C.F.R. 200.338 – 200.342. A right or remedy conferred by this AGREEMENT upon either Party is not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this AGREEMENT, or hereafter legally existing, upon the occurrence of an Event of Default..

### **XIII. AMENDMENT**

- 13.1 Except where the terms of this AGREEMENT expressly provide otherwise, any amendment to this AGREEMENT shall not be binding on the Parties unless such amendment be in writing, executed by both TDEM and SPFB and dated subsequent to the date hereof.
- 13.2 It is understood and agreed by Parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

### **XIV. NOTICE**

- 14.1 Any notice required or permitted under this AGREEMENT must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the

United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TDEM and SPFB can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

**TDEM**

Texas Division of Emergency  
Management  
Attn: Mamie Gates  
1033 La Posada Drive, Suite 300  
Austin, Texas 78752

**SPFB**

South Plains Food Bank  
Attn:  
Street  
City, Texas Zip

**XV. LEGAL AUTHORITY**

- 15.1 The person signing on behalf of SPFB represents and warrants and certifies that he has full legal authority to execute this AGREEMENT on behalf of SPFB and has authority to bind SPFB to all the terms, conditions, provisions and obligations contained herein.

**XVI. SUBCONTRACTING AND ASSIGNING INTEREST**

- 16.1 SPFB shall perform all necessary work or shall supply qualified personnel as maybe necessary to complete the work to be performed under this AGREEMENT. SPFB shall obtain prior written approval from TDEM before assigning or subcontracting any responsibilities under this AGREEMENT. The violation of this provision by SPFB shall not release SPFB from any obligation under the terms of this AGREEMENT, nor shall it relieve or release FR from the payment of any damages to TDEM which TDEM sustains as a result of such violation.
- 16.2 Any services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the TDEM, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractors with this AGREEMENT shall be the responsibility of SPFB. TDEM shall in no event be obligated to any third party, including any subcontractor of SPFB, for performance of services or payment of fees.

**XVII. PARTIES BOUND**

- 17.1 This AGREEMENT shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, SPFB may not assign this AGREEMENT without prior written consent of TDEM in accordance with Article XVI, Subcontracting and Assigning Interest.

## XVIII. MISCELLANEOUS

- 18.1 Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: “Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this AGREEMENT, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this AGREEMENT may be terminated and payment may be withheld if this certification is inaccurate.”
- 18.2 Payment of Debt or Delinquency to the State. Pursuant to Section 2252.903, Texas Government Code, SPFB agrees that any payments owing to SPFB under this AGREEMENT may be applied directly toward certain debts or delinquencies that SPFB owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- 18.3 Previous Employment. SPFB acknowledges and understands that Section 2252.901, Texas Government Code, prohibits TDEM from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If SPFB is an individual, by signing this AGREEMENT, SPFB certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- 18.4 Franchise Tax Certification. If SPFB is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then SPFB certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that SPFB is exempt from the payment of franchise (margin) taxes.
- 18.5 State Auditor’s Office. SPFB understands that acceptance of funds under this AGREEMENT constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. SPFB agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. SPFB will include this provision in all contracts with permitted subcontractors.
- 18.6 Severability. If any provisions of this AGREEMENT are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this AGREEMENT, as modified, enforceable, and the remainder of this AGREEMENT and the application of such provision to other persons or

circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

- 18.7 Headings. Headings appear solely for convenience of reference. Such headings are not part of this AGREEMENT and shall not be used to construe it.
- 18.8 Force Majeure. Neither Party is required to perform any term, condition, or covenant of this AGREEMENT, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such Party and which by due diligence it is unable to prevent or overcome.
- 18.9 Loss of Funding. Performance by TDEM under this AGREEMENT may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, TDEM will issue written notice to SPFB and TDEM may terminate this AGREEMENT without further duty or obligation hereunder. SPFB acknowledges that appropriation of funds is beyond the control of TDEM.
- 18.10 Non-Waiver. SPFB expressly acknowledges that TDEM is an agency of the State of Texas and nothing in this AGREEMENT will be construed as a waiver or relinquishment by TDEM of its right to claim such exemptions, privileges, and immunities as may be provided by law. .
- 18.11 Venue and Governing Law. The substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this AGREEMENT and all of the transactions it contemplates. Pursuant to Section 85.18 (b), Texas Education Code, venue for a state court suit filed against The Texas A&M University System, any member of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or member, as applicable, is located. At execution of this AGREEMENT, such county is Travis County, Texas. Venue for any suit brought against TDEM in federal court must be in the Houston Division of the Southern District of Texas.**
- 18.12 Certification Regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, SPFB certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. SPFB acknowledges this AGREEMENT may be terminated if this certification is inaccurate.
- 18.13 Prohibition on Contracts Related to Persons Involved in Human Trafficking. Under Section 2155.0061, Government Code, SPFB certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

- 18.14 Prohibition on Companies Boycotting Israel. To the extent Texas Government Code, Chapter 2271 applies to this AGREEMENT, SPFB certifies it does not and will not, during the performance of this contract, boycott Israel. SPFB acknowledges this AGREEMENT may be terminated if this certification is inaccurate. To the extent Texas Government Code, Chapter 2271 applies to this AGREEMENT, SPFB certifies it does not and will not, during the performance of this contract, boycott Israel. SPFB acknowledges this AGREEMENT may be terminated if this certification is inaccurate.
- 18.15 Technical Guidance Letters. In the sole discretion of TDEM, and in conformance with federal and state law, TDEM may issue instructions, clarifications, or interpretations as may be required during work performance in the form of a Technical Guidance Letter (TGL). A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by TDEM, in consultation with SPFB, will be incorporated into the AGREEMENT by reference herein for all purposes when it is issued.
- 18.16 E-Verify. By entering into this AGREEMENT, SPFB 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 to determine the eligibility of (a) all persons employed during the contract term to perform duties within Texas; and (b) all persons (including subcontractors) assigned by the SPFB to perform scope of work pursuant to the AGREEMENT.
- 18.17 DHS Seal, Logo, and Flags. SPFB shall not use the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 18.18 Compliance with Federal Law, Regulations, and Executive Orders. SPFB acknowledges that FEMA financial assistance funds will be used to fund the AGREEMENT. SPFB will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 18.19 Program Fraud and False or Fraudulent Statements or Related Acts. SPFB acknowledges that 31. U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to SPFB's actions pertaining to this AGREEMENT.
- 18.20 Conflict of Interest. By executing this AGREEMENT, SPFB and each person signing on behalf of SPFB certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by a member of The A&M System, has direct or indirect financial interest in the award of this AGREEMENT, or in the services to which this AGREEMENT relates, or in any of the profits, real or potential, thereof.
- 18.21 Insurance. This process is described in Exhibit C, attached hereto.

## **XIX. DISPUTE RESOLUTION**

- 19.1 The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TDEM and SPFB to attempt to resolve any claim for breach of contract made by SPFB that cannot be resolved in the ordinary course of business. SPFB shall submit written notice of a claim of breach of contract under this Chapter to the Chief of TDEM, who shall examine SPFB's claim and any counterclaim and negotiate with SPFB in an effort to resolve the claim.

## **XX. OTHER REQUIRED FEDERAL PROVISIONS**

- 20.1 Clean Air Act. The following is only applicable if the amount of the contract exceeds \$150,000.

- a. SPFB agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. SPFB agrees to report each violation to TDEM and understands and agrees that TDEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. SPFB agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- 20.2 Federal Water Pollution Control Act.

- a. SPFB agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. SPFB agrees to report each violation to TDEM and understands and agrees that TDEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. SPFB agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- 20.3 Suspension and Debarment.

- a. This AGREEMENT is a covered transaction for purposes of 2 C.F.R. pt 180 and 2 C.F.R. pt. 3000. SPFB certifies that SPFB, SPFB's principals (defined at 2 C.F.R. Sec. 180.995), or its affiliates (defined at 2 C.F.R. Sec. 180.905) are excluded (defined at 2 C.F.R. Sec. 180.940) or disqualified (defined at 2 C.F.R. Sec. 180.935).
- b. (2) SPFB must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement comply with these regulations in any lower tier covered transaction it enters into.

- c. This certification is a material representation of fact relied upon by TDEM. If it is later determined that SPFB did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, in addition to remedies available to TDEM, the Federal Government may pursue available remedies, including but limited to suspension and/or debarment.
- d. SPFB agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000 during the term of this AGREEMENT. SPFB further agrees to include a provision requiring such compliance in its lower tier covered transactions.

20.4 Byrd Anti-Lobbying Amendment, 31 U.S.C. Sec. 1352 (as amended). SPFB shall file the required certification attached hereto as Exhibit D. Each contracting tier certifies to the tier above that it will not 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. Sec. 1352. Each contracting tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

20.5 Procurement of Recovered Materials.

- a. In the performance of this AGREEMENT, SPFB shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
  - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - (ii) Meeting contract performance requirements; or
  - (iii) At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

20.6 Civil Rights.

- a. SPFB agrees to comply with state and federal anti-discrimination laws, including:
  - (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
  - (ii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - (iii) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
  - (iv) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
  - (iv) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
  - (v) Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
  - (vii) The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this AGREEMENT.

SPFB agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin,

sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

- b. SPFB agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. SPFB agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- c. In particular, SPFB will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. SPFB will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SPFB agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- d. SPFB will, in all solicitations or advertisements for employees placed by or on behalf of SPFB, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- e. SPFB will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- f. SPFB will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- g. SPFB will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.



- h. In the event of SPFB's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- i. SPFB will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. SPFB will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

20.7 Energy Conservation. If applicable, SPFB agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

20.8 Federal Assurances. SPFB further certifies that the Federal Assurances set forth in Exhibit E of this AGREEMENT, which is attached and incorporated by reference, have been reviewed and that SPFB is in compliance with each of the requirements reflected therein.

20.9 Federal Certifications. SPFB further certifies that the Federal Certification set forth in Exhibit D of this AGREEMENT, which is attached and incorporated by reference, has been reviewed and that SPFB is in compliance with each of the requirements reflected therein. In addition, SPFB certifies that it is in compliance with all applicable federal laws, rules, or regulations, including but not limited to those listed in Exhibit B as they may pertain to this AGREEMENT.

20.10 Compliance with the Contract Work Hours and Safety Standards Act.

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek..

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph ( 1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section..

- c. Withholding for unpaid wages and liquidated damages. SPFB shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section..
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section."

21.11 Fraud and False or Fraudulent or Related Acts. SPFB acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

## **XXI. ENTIRE AGREEMENT**

21.1 This AGREEMENT constitutes the sole agreement of the Parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this AGREEMENT. The "AGREEMENT" means this entire document, along with any Attachments and Exhibits, both physical and incorporated by reference; and any Amendments, Revisions or Technical Guidance Letters to be incorporated by reference herein for all purposes as they are issued, if any. Each of the Exhibits listed below is an essential part of the AGREEMENT, which governs the rights and duties of the Parties. This AGREEMENT may not be amended or otherwise altered except upon the written agreement of both Parties.

**THE FOLLOWING ATTACHMENTS TO THIS AGREEMENT ARE HEREBY ATTACHED AND INCORPORATED BY REFERENCE:**

**EXHIBIT A – PAYMENT RATE SCHEDULE  
EXHIBIT B – NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES AND  
REGULATIONS**

**EXHIBIT C – INSURANCE  
EXHIBIT D – FEDERAL CERTIFICATION REGARDING LOBBYING  
EXHIBIT E – FEDERAL ASSURANCES**

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this AGREEMENT as of the Effective Date.

**TDEM**

**Texas Division of Emergency  
Management**

\_\_\_\_\_

\_\_\_\_\_  
Nim Kidd  
Chief

Date: \_\_\_\_\_

**SPFB**

**South Plains Food Bank**

\_\_\_\_\_

\_\_\_\_\_  
TBC  
Title

Date: \_\_\_\_\_

## **EXHIBIT A – PAYMENT RATE SCHEDULE**

1. **Background.** During the last four weeks of the COVID-19 pandemic, SPFB has seen an increase in need and demand for food. During this same time, donations of food to the food bank have decreased. Because donated food is not being received, SPFB must rely on more direct purchase of food.
  
2. **Reimbursement.** TDEM will provide up to \$455,961 dollars in reimbursement for food supplies from May 8, 2020 through June 7, 2020. The reimbursement does not involve any federal commodities that have been distributed in this time period. Reimbursement will allow re-stocking of the SPFB food supply and continued distribution as necessary during the COVID-19 pandemic.

## EXHIBIT B – NONEXCLUSIVE LIST OF LAWS, RULES AND REGULATIONS

If applicable to the Agreement or any Scope of Services thereunder, SPFB must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Agreement, and SPFB acknowledges that this list may not include all such applicable laws, rules, and regulations.

**SPFB is deemed to have read and understands the requirements of each of the following, as amended and if applicable to any Scope of Work under this Agreement:**

### Generally

The Acts and Regulations specified in this Agreement.

**Guidance Documents:** FEMA Public Assistance Program and Policy Guide (FP 104-009-2 / April 2017); FEMA Public Assistance Guides; FEMA Public Assistance Applicant Handbooks; FEMA PDAT Field Manual for Public Assistance Grantee and Subgrantee Procurement Requirements; FEMA PDAT Field Manual for Procurement Requirements Supplement; FEMA PDAT Required Contract Clauses (2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II); FEMA PDAT Cost and Pricing Guide; Texas Emergency Management Executive Guide – FY 2017 Edition

### Federal Authorities

Public Law 93-288, as amended (Stafford Act)

Disaster Mitigation Act of 2000

FEMA Regulations, 44 CFR, Emergency Management and Assistance, 44 CFR Parts 204, Fire Management Assistance Grant Program, - 206 Federal Disaster Assistance & 207 Management Costs

Executive Order 11988, Floodplain Management

Executive Order 11990, Protection of Wetlands

Executive Order 12372, Intergovernmental Review of Programs and Activities

Executive Order 12549, Debarment and Suspension

Executive Order 12612, Federalism

Executive Order 12699, Seismic Design

Executive Order 12898, Environmental Justice

Executive Order 13278, Equal Protection of the Laws for Faith-Based and Community Organizations

Executive Order 11246 – Equal Employment Opportunity

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 – 1688)

Coastal Barrier Resources Act, Public Law 97-348

Single Audit Act, Public Law 98-502

Cash Management Improvement Act regulations (31 C.F.R. Part 205)

2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Sandy Recovery Improvement Act publications

National Historic Preservation Act, 16 U.S.C. § 470

Endangered Species Act References, 16 U.S.C. § 1531

National Environmental Policy Act of 1969, (42 U.S.C. §§ 4321-4347)

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508)

Coastal Zone Management Act of 1972, (16 U.S.C. 1451 *et seq.*)

FEMA program publications, guidance and policies

FEMA-State Agreements

DHS Standard Terms and Conditions 2017

Grant Terms and Conditions – FEMA-4332-DR-TX, including all required assurances and certifications and additional grant conditions

**State Authorities**

Texas Disaster Act of 1975, as amended

Executive Orders of the Governor

Uniform Grant and Contract Management Act (Texas Government Code, Chapter 783) and the Uniform Grant Management Standards maintained by the Comptroller of Public Accounts, including the Texas Single Audit Circular

State of Texas Administrative Plan for Public Assistance

Addendum to the State of Texas Administrative Plan for Public Assistance for DR-4332-TX Hurricane Harvey

**EXHIBIT C – INSURANCE**

SPFB shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TDEM. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to SPFB under this Agreement. SPFB shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. SPFB is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TDEM at least ten (10) days before the effective date of the cancellation.

**Insurance:**

<b><u>Coverage</u></b>	<b><u>Limit</u></b>
<b>A. <u>Worker’s Compensation</u></b>	
<b>Statutory Benefits (Coverage A)</b>	<b>Statutory</b>
<b>Employers Liability (Coverage B)</b>	<b>\$1,000,000 Each Accident</b>
	<b>\$1,000,000 Disease/Employee</b>
	<b>\$1,000,000 Disease/Policy Limit</b>

**Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for TDEM. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted**

**B. Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

**Additional Endorsements**

The Auto and Commercial General Liability Policies shall name the TDEM as additional insured’s, but only to the extent of the liabilities assumed by SPFB under this Agreement.

**C. Commercial General Liability**

<b>Each Occurrence Limit</b>	<b>\$1,000,000</b>
<b>General Aggregate Limit</b>	<b>\$2,000,000</b>
<b>Products / Completed Operations</b>	<b>\$1,000,000</b>
<b>Personal / Advertising Injury</b>	<b>\$1,000,000</b>
<b>Damage to rented Premises</b>	<b>\$300,000</b>
<b>Medical Payments</b>	<b>\$5,000</b>

The required commercial general liability policy will be issued on a form that insures SPFB’s or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

**D. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of SPFB and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, SPFB agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.**

E. SPFB will deliver to TDEM:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this AGREEMENT and prior to the performance of any services by SPFB under this AGREEMENT. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name the Texas Division of Emergency Management as Additional Insureds up to the actual liability limits of the policies maintained by SPFB, but only to the extent of the liabilities assumed by SPFB under this AGREEMENT. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of TDEM, but only to the extent of the liabilities assumed by SPFB under this AGREEMENT. No policy will be canceled without unconditional written notice to TDEM at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to TDEM ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Exhibit C.

SPFB is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this AGREEMENT will be mailed, faxed, or emailed to the following TDEM contact in Section 14Q.

The insurance coverage required by this AGREEMENT will be kept in force until all services have been fully performed and accepted by TDEM in writing, except as may be noted.



**EXHIBIT D – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned, \_\_\_\_\_, certifies, to the best of his or her knowledge that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

1. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Sec. 1352 (as amended by the Lobbying Disclosure Act of 119). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, SPFB understands and agrees that the provisions of 31 U.S.C. Sec. 3801 *et seq.* apply to his certification and disclosure, if any.

\_\_\_\_\_  
Signature of SPFB’s Authorized Official

\_\_\_\_\_  
Name and Title of SPFB’s Authorized Official

\_\_\_\_\_  
Date

## **EXHIBIT E – FEDERAL ASSURANCES – (SF-424B)**

SPFB certifies that SPFB:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this contract.
2. Will give TDEM, FEMA, and the Comptroller General of the United States, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of TDEM and FEMA.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis- Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or sub-awards under the award.