

WINE REGIONAL PARTNERSHIP PROGRAM

GRANT AGREEMENT



TEXAS DEPARTMENT OF AGRICULTURE COMMISSIONER TODD STAPLES

I. RECITALS

- 1.1 WHEREAS, Grantor has established the Wine Regional Partnership Program (“Program”) to enhance visibility, awareness and educational opportunities for the Texas wine industry, and to distribute grant funds to eligible organizers, planners, and sponsors of Texas wine events; and
- 1.2 WHEREAS, Grantee has applied for a grant from the Program and meets all requirements for receiving a grant.
- 1.3 NOW, THEREFORE, in consideration of the mutual promises and consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

II. DEFINITIONS

- 2.1 “Agreement” means this Grant Agreement and all attached exhibits.
- 2.2 “Department” means the Texas Department of Agriculture.
- 2.3 “Grant” means the funds awarded to Grantee by Grantor, subject to the requirements of this Agreement, the Program guidelines and other Program requirements, in the amount of \$[GRANT AMOUNT].
- 2.4 “Grantee” means [APPLICANT], [APPLICANT ADDRESS], [CITY], [STATE] [ZIP CODE].
- 2.5 “Grantor” means the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.
- 2.6 “Grant Coordinator” means Grantor’s representative responsible for coordinating the Program.
- 2.7 “GT Certification mark” means the GO TEXAN certification mark owned by Grantor and registered with United States Patent and Trademark Office.
- 2.8 “Program” means Grantor’s Wine Regional Partnership Program.
- 2.9 “Project” means Grantee’s project that has been approved by the Board, described in the attached Exhibit A.
- 2.10 “Term of Agreement” is the date of execution of this Agreement through [END DATE OF AGREEMENT].

III. GRANTOR AND GRANTEE OBLIGATIONS

- 3.1 Award by Grantor. Subject to the provisions of this Agreement and Program guidelines, Grantor hereby awards to Grantee the Grant, which Grantee shall use only in connection with Grantee's Project.
- 3.2 Performance by Grantee. Grantee shall use the Grant in accordance with the terms of this Agreement and Grantor's Program guidelines. Further, Grantee shall perform all the activities provided for in the Grantee's Regional Partnership Proposal and approved Project budget, attached to this Agreement as Exhibit A.
- 3.3 Use of the GT Certification Mark. The Grantor shall have sole authority to approve or deny the design, production or use of any materials (including electronic materials and Web sites) that display the GT certification mark. If Grantee's project includes alteration or creation of a Web site, Grantee, after review and approval by Grantor, shall provide a link on such Web site to the GO TEXAN Web site. Grantee shall have no right to use the GT mark except as specifically authorized by Grantor.
- 3.4 Approval of Promotional Material y TDA Marketing. All promotional materials must be sent to Grantor for approval at least 14 days before the event..
- 3.5 Use of Information in Promotion. Grantor may publicize the Grant and Project and use and disseminate the information, data, conclusions, articles, reports, brochures, audio and videotapes, photographs and other items provided by Grantee. Grantee understands that Grantor is authorized to release any information related to the Project, whether provided to Grantor by Grantee in written or other form, for the purpose of providing information about the GO TEXAN Program and Wine Regional Partnership Program or for any other purpose.
- 3.6 Funding Statement. All information, data, conclusions, articles, and reports prepared by Grantee for reprint, release or dissemination shall include a statement that the work was funded, in whole or in part, by the Wine Regional Partnership Program administered by the Texas Department of Agriculture.
- 3.7 Use of Photographs. Grantor may use any photographic likeness of Grantee's principals, officers, employees or any other person in Grantee's control in its marketing materials and all other media. Grantee releases Grantor and all other persons and associations from any and all claims and causes of action that Grantee, or persons employed by or controlled by Grantee, have or may have in the future relating to the presentation of photographs or likenesses in such marketing materials.
- 3.8 Compliance with TABC Rules and Regulations. Grantee must be compliant with all Texas Alcoholic Beverage Commission ("TABC") rules and regulations. Prior to disbursement of the Grant, Grantee must provide signed documentation from the TABC reflecting that Grantee has obtained all necessary permits from the TABC and is in compliance with applicable rules and regulations.
- 3.9 Invitation to Texas Wineries. All Texas wineries must be invited to participate in the Project. Grantor will provide a current list of Texas wineries to Grantee in electronic or written format. Prior to release of Grant funds, Grantee must provide documentation to Grantor, in a form acceptable to Grantor, that all Texas wineries have been invited to participate in the Project.

IV. GRANTEE'S REPORTING REQUIREMENTS

- 4.1 Final Account and Report on Use of Grant Funds. Grantee shall provide to Grantor a Final Account and Report on Use of Grant Funds, accounting for expenditures of Grant funds, including receipts for all expenditures. The Final Account and Report on Use of Grant Funds is due 30 days after termination of this Agreement or end date of the Project, whichever occurs first. Receipts and invoices attached to the Final Account and Report on Use of Grant Funds must be in English, or must be accompanied by a translation to English. Grantor shall have final authority to determine whether a proof of payment is acceptable.
- 4.2 Failure to Comply with Reporting Requirements. Failure of Grantee to comply with any of the reporting requirements in this Agreement may result in the withholding or revocation of the Grant, the requirement that Grantee refund Grant funds received and/or a determination that Grantee is ineligible to participate in other grant programs.
- 4.3 Survey. Within 30 days of the end of the Project, Grantee agrees to complete a complete Texas wine survey, in a form provided by the TDA, and to submit pictures, articles and any other information showcasing the event.

V. RECORDKEEPING, ACCESS, INSPECTIONS, AUDITS AND INVESTIGATIONS

- 5.1 Access by Grantor and State Auditor's Office. During the Term of Agreement and for at least three years after termination of this Agreement, Grantee shall allow Grantor and/or the State Auditor's Office access to and the right to examine the premises, books, accounts, records, files and other papers or property belonging to or in use by Grantee and pertaining to this Agreement or the use of funds pursuant to this Agreement, in order to ascertain complete compliance with the provisions of this Agreement and with Program guidelines. Such records shall be maintained by Grantee at a location that is readily accessible to Grantor and/or the State Auditor's Office. Grantor further has the right to make a visual inspection of any assets purchased with Grant funds.
- 5.2 Audits or Investigations. Grantee understands that acceptance of Grant funds under this Agreement acts as acceptance of the authority of the Department, the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with such funds. Grantee further agrees to cooperate fully with the Department and the State Auditor's Office, or their successors, in the conduct of any audit or investigation, including providing all records requested. Grantee will ensure that this clause concerning the authority to audit the funds received by Grantee is included in any subcontract it awards.
- 5.3 Disallowance of Grant Funds. Grantee understands and agrees that Grantee shall be liable to the Department for any costs disallowed as a result of any audit or investigation.

VI. USE OF GRANT FUNDS

- 6.1 Allowable Expenditures. Allowable expenditures include the purchase of goods or services described in Exhibit A (the Regional Partnership Proposal and Project budget). Travel expenses must be pre-approved by Grantor and in compliance Texas laws and regulations. GRANTEE MAY NOT USE THE GRANT OR OTHER STATE FUNDS TO PURCHASE TEXAS WINE OR ANY OTHER ALCOHOLIC BEVERAGES. Grant funds shall not be used for capital expenditures (land or any items

over \$5,000) or for expenditures that are not made in compliance with any applicable State purchasing laws and regulations. Grantee shall not, under any circumstances, use grant funds for entertainment and charitable or political contributions. If requested by Grantor, Grantee must be able to produce proof of payment (stamped paid invoices or receipts) of all allowable expenditures.

- 6.2 Disbursement of Grant Funds. Typically, payment is made after TDA receives Grantee's Final Account and Report on Use of Grant Funds, including receipts or invoices for all expenditures. These receipts or invoices must match the funds requested on the grantee's initial budget, unless otherwise approved in writing by the TDA. Grantor will not reimburse Grantee for project expenditures that are not in compliance with state purchasing laws and regulations. Grantor shall not, under any circumstances, pay for alcoholic beverages, entertainment, and charitable or political contributions.
- 6.3 Misuse of Grant Funds. Grantor may require a refund of Grant funds already disbursed to Grantee if: (a) Grant funds are misused, (b) Grant funds are used in an illegal manner, (c) Grant funds are used for non-allowable expenses, (d) Grantee violates the terms or conditions of this Agreement, or (e) Grantee made any misrepresentations to Grantor in obtaining this Grant. This provision is not exclusive of other grounds for withholding or refunding of funds or any other remedy, civil or criminal, which may be available to Grantor.
- 6.4 Availability of State Funds. This Agreement is subject to the availability of state funds. If such funds become unavailable during the Term of Agreement and Grantor is unable to obtain sufficient funds, this Agreement shall be reduced or terminated.
- 6.5 Grantee's Compliance with Franchise Tax, Guaranteed Student Loan and Child Support Requirements. Grantee understands that in order to be eligible for payment from Grantor, vendors must be "in good standing" with the Texas Comptroller's Office, not be delinquent in the repayment of a guaranteed student loan and be in compliance with the child support requirements contained in Chapter 231 of the Texas Family Code. If Grantee becomes "not in good standing" during the Agreement period, the Comptroller shall not approve payments until Grantee returns to "in good standing" status with the Comptroller.

VII. TERM AND TERMINATION OF THE AGREEMENT

- 7.1 Term and Termination. Either party may terminate this Agreement before the end of the Term of Agreement, without cause, by delivering a written notice of termination to the other party. Early termination of this Agreement shall not relieve Grantee from reporting requirements or liability to refund Grant funds in the event of misuse contained in sections IV, V, and VI of this Agreement.
- 7.2 No Reimbursement Upon Termination. In the event of termination of this Agreement, Grantor shall make no further disbursement of Grant funds to Grantee beyond those already approved at the time of termination, and Grantee specifically waives all rights to any such funds. Further, in the event this Agreement is terminated before the end date of the Project, Grantee shall account for use of all Grant funds through the date of termination and refund any unused Grant funds.

VIII. USE AND DISPOSITION OF PROPERTY

- 8.1 Use of Property. During the Term of Agreement, any property acquired with Grant funds shall be used in accordance with this Agreement, to accomplish the purposes of the Program.

- 8.2 Records of Property. Grantee shall maintain appropriate records of goods or property purchased with Grant funds and shall develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of such goods or property.
- 8.3 Intellectual Property. Grantee acknowledges that the GO TEXAN certification mark, along with all of Grantor's intellectual property, including, without limitation, trademarks, proprietary materials, formulas, ideas, business methods, processes, strategies, designs, inventions, patents, creative works, copyrighted materials, and copyrightable materials, along with any improvements, additions, alterations, or modifications to same, are the sole and exclusive property of Grantor (hereinafter referred to as "Grantor's IP"). Grantor's IP may only be used as expressly authorized by Grantor. With the exception of Grantor's IP, Grantee shall own any intellectual property developed in whole or in part with Grant funds under this Agreement.

IX. AGREEMENT MODIFICATIONS

- 8.4 Amending Agreement. Except as provided in paragraph 9.5 below, this Agreement embodies the entire agreement between the parties, and there are no covenants, agreements, representations, warranties or restrictions between the parties other than those specifically set forth herein. Except as provided in paragraph 9.2 below, no modification or amendment to this Agreement is valid unless in writing and signed by the parties.
- 8.5 Notification of Change in Grantee's Address. Grantee must notify Grantor in writing within 30 days if Grantee's address changes during the Term of Agreement. Failure to submit required notice may be grounds for termination of this Agreement.
- 8.6 Grantor Request for Amendment. Grantor may request an amendment to the Agreement by submitting the requested change to Grantee. Continued performance of this Agreement by Grantee after notice has been given pursuant to this section will be deemed to be acceptance of the amended term(s). Grantee shall have 30 days to dispute any notice of Amendment provided by Grantor.
- 8.7 Grantee Request for Amendment. Grantee may request an amendment to the Agreement by submitting the requested change, in writing, to the Grant Coordinator. All requests for an amendment to the Agreement must include a summary of the current status of the Project and a statement explaining the need for the change.
- 8.8 Changes Become Part of Agreement. Changes approved in accordance with this section IX become a part of this Agreement, superseding all inconsistent provisions.

IX. GENERAL TERMS AND CONDITIONS

- 9.1 Assignment. Grantee may not assign this contract without the written consent of Grantor. Grantee is not relieved of its duties and obligations imposed by this Agreement through any attempted delegation by Grantee to a third-party.
- 9.2 Agreement Binding. This Agreement shall be binding on and inure to the benefit of the parties and their officers, administrators, legal representatives, and successors except as otherwise expressly provided herein. The parties intend to be legally bound and have executed this Agreement as evidenced by their signatures on the date indicated below. This Agreement is not effective unless and until it has been signed by both parties.

- 9.3 No Creation of Debt. This Agreement shall not be construed as creating any debt on behalf of the State of Texas, and/or Grantor in violation of Section 49 Article III of the Texas Constitution. In compliance with Section 6 Article VIII of the Texas Constitution, all obligations of the State of Texas or Grantor hereunder are subject to the availability of appropriations and authorization to pay by the Texas Legislature.
- 9.4 Delivery Methods. Unless specifically provided herein, any notice, tender, or delivery to be given hereunder by any party to another party must be affected by personal delivery in writing or by mailing the same by registered or certified mail, return receipt requested. All notices shall be addressed to the parties at the address stated in the Agreement unless a change of address has been given in the manner provided for in this paragraph.
- 9.5 Authorized Representative. Each person signing expressly represents that he or she is duly authorized to do so and to bind the party on whose behalf they are signing. All documents requiring Grantee's signature must be executed by an individual with authority to legally bind Grantee.
- 9.6 Indemnification. Grantee shall indemnify and hold harmless Grantor, its agents and employees, from any and all claims, demands, and causes of action arising from or related to Grantee's performance under this Agreement, including reasonable attorneys' fees incurred in defending or settling any such claims.
- 9.7 No Employer Relationship. Grantee and Grantee's employees and agents have no employer-employee relationship with Grantor.
- 9.8 Representations and Warranties of Grantee. Grantee represents and warrants that it has the full right and authority to enter into this Agreement and that all necessary approvals have been obtained prior to execution of this Agreement. Grantee represents and warrants that it is in good standing in all jurisdictions in which it is required to be so qualified for performance of this Agreement, and all necessary certifications, registrations, approvals and licenses have been obtained, and all necessary fees paid.
- 9.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. If any legal action is necessary to enforce this Agreement, or for any dispute arising out of the operations or actions contemplated herein, exclusive venue shall lie in the District Courts of Travis County, Texas.
- 9.10 Headings. Captions and headings of the sections or paragraphs of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement, nor shall they be employed to interpret or aid in the construction of this Agreement.
- 9.11 Severability. If any part of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining part shall remain in full force and effect, and the parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this Agreement.
- 9.12 Waiver. A waiver by Grantor of any provision hereunder shall not operate as a waiver of any other provision, or as a continuing waiver of the same provision in the future.

9.13 Construction of Agreement. Both parties agree that they participated in the creation of this Agreement, and the terms hereof are a product of the negotiation between the parties. In the event there is a dispute regarding the meaning of any provision of this Agreement, no provision shall be construed in favor of or against any party's position on the grounds that said Party was the drafter of this Agreement.

9.14 Exhibits. The following instruments are incorporated into this Agreement as exhibits:

Exhibit A—Regional Partnership Proposal (containing a Project description and budget)

9.15 Uniform Grant Management Standards (UGMS). In accordance with Texas Government Code §783.007, this Agreement shall comply in all respects with the Uniform Grant Management Standards (UGMS). In the case of any conflicts between UGMS and this Agreement, the UGMS shall control.

X. TEXAS PUBLIC INFORMATION ACT NOTICE

10.1 ALL INFORMATION PROVIDED BY GRANTEE PURSUANT TO THIS AGREEMENT IS SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT, TEX. GOV'T CODE. CHAPTER 552, AND MAY BE SUBJECT TO DISCLOSURE TO THE PUBLIC.

By their signatures below, the parties do hereby agree to the terms of this Agreement.

Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

[APPLICANT]
[APPLICANT ADDRESS]
[CITY], [STATE] [ZIP CODE]

By: _____
Drew DeBerry
Deputy Commissioner

By: _____
[AGENT FOR ORGANIZATION]
[TITLE]

Date: _____

Date: _____