

A RESOLUTION OF THE CITY COUNCIL OF ABILENE, TEXAS, APPROVING AN AGREEMENT WITH MEALS ON WHEELS PLUS, INC., FOR DISBURSEMENT OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR THE CONSTRUCTION OF A KITCHEN AND OFFICE FACILITY.

WHEREAS, the City of Abilene has received funds under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended, for the purpose of providing a local Community Development Program; and,

WHEREAS, it is desirable for the City of Abilene to support Meals on Wheels Plus, Inc., through the provision of Community Development Block Grant Funds; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

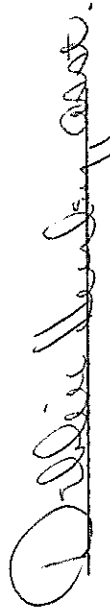
PART 1: That execution of the attached agreement with Meals on Wheels Plus, Inc., for the construction of a kitchen and office facility is hereby authorized and approved. Under the Agreement, the City of Abilene will provide \$102,000 in Community Development Block Grant funds for the construction of a kitchen and office facility.

PART 2: The City Manager of the City of Abilene is hereby authorized to sign said agreement and any and all appurtenant documents on behalf of the City.

PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 23rd day of January, 1986.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:



CITY ATTORNEY



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TO

AGREEMENT FOR DISBURSEMENT OF
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

MEALS ON WHEELS PLUS, INC.

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STATE OF TEXAS X
COUNTY OF TAYLOR X

AGREEMENT FOR DISBURSEMENT OF
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

MEALS ON WHEELS PLUS, INCORPORATED

This Agreement is made this 23rd day of January, 1986, by and between the City of Abilene, Texas, a municipal corporation of Taylor and Jones Counties (hereinafter referred to as "City"), and Meals on Wheels Plus, Incorporated, a nonprofit corporation of the State of Texas (hereinafter referred to as "Meals on Wheels" or "Contractor").

WITNESSETH:

That for and in consideration of the covenants, promises, and agreements set forth herein, it is mutually agreed as follows:

I. GENERAL PROVISIONS

A. Purpose

The City of Abilene (City) has received a grant from the United States Department of Housing and Urban Development (United States Department of Housing and Urban Development Community Development Block Grant Nos. B-84-MC-48-0001 and B-85-MC-48-0001) for use in improving the environment in the City of Abilene principally for the benefit of low and moderate income citizens, pursuant to the Housing and Community Development Act of 1974, as amended. The City and Contractor wish to enter into an agreement whereby fifty-five thousand dollars (\$55,000) from Grant No. B-84-MC-48-001 and forty-seven thousand dollars (\$47,000) from

Grant No. B-85-MC-48-0001, totaling \$102,000, will be used to construct a facility at 917 North Mesquite, Abilene, Texas, on the property of University Church of Christ, Abilene, Texas, for the provision of meals to elderly, homebound persons and/or physically handicapped (hereinafter referred to as "clients"), a majority of whom will be members of low and moderate income households, as defined by Section 8, Guidelines of the U. S. Department of Housing and Urban Development.

The City shall act through its agent, the City Manager, or his duly authorized representative, unless otherwise stated in this Agreement.

B. Duration, Termination

The term of this Agreement as to the City providing the funds, begins on final approval by the City Council of the City of Abilene of this Agreement, and ends on January 31, 1987, inclusive. Provisions for termination of contract relate expressly to the construction of the facility.

In the event Contractor desires to extend the term of this Agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Abilene at least sixty (60) days prior to the current expiration date. (The submission shall include the Contractor's anticipated budget, goals, and objectives for the extended period.) The City is under no duty or obligation to grant the requested extension. Before any such extension becomes effective, it must be in writing and approved by the City Council of the City of Abilene.

This Agreement may be terminated by the City in the event of default, inability, or failure to perform on the part of Contractor, or by mutual agreement between City and Contractor, or whenever such termination is determined by the City to be in the City's best interest.

The Contractor agrees that if it fails to comply with or breaches any of the terms of the Agreement, the City shall have the right to declare this Agreement immediately terminated, and the City shall have no further responsibility or liability hereunder.

Termination will be effected by delivering to the Contractor thirty (30) days advance written notice of termination, specifying to what extent the Agreement is being terminated and the effective date of the termination. After receipt of the notice of termination, the Contractor shall stop work under the Agreement on the date and to the extent specified in the notice of termination.

Within thirty (30) days following the date of termination, the Contractor shall return to the City any Community Development Block Grant funds on hand at the time of termination and any accounts receivable attributable to the use of Community Development Block Grant funds.

C. Status of Contractor as Independent Contractor

The Contractor shall operate hereunder as an Independent Contractor and not as an officer, agent, servant, or employee of City. The Contractor shall have exclusive control of, and the exclusive right to control, the details of the work and services performed hereunder, and all persons performing same. The

Contractor shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees and invitees. The doctrine of respondeat superior shall not apply as between the City and the Contractor, the Contractor's officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, or invitees. Nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Contractor. It is expressly agreed that no officer, member, agent, employee, subcontractor, licensee, or invitee of the Contractor, nor any program participant hereunder, is in the paid service of the City's Housing & Community Development Division. The City does not have the legal right to control the details of the tasks performed hereunder by the Contractor, its officers, members, agents, employees, subcontractors, program participants, volunteers, licensees, or invitees. In no event shall any person participating in the Contractor's program be considered an officer, agent, servant or employee of the City.

D. Venue

Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, attempted performance or nonperformance of this Agreement, venue for said action shall be in the City of Abilene, Taylor County, Texas.

E. Written Instrument is Entire Agreement

This written instrument constitutes the entire Agreement by the parties hereto concerning the work and services to be performed under this Agreement. Any prior or contemporaneous oral or

written agreement which purports to vary the terms of this Agreement shall be void.

F. Paragraph Headings

The paragraph headings contained herein are for convenience in reference to this Agreement and are not intended to define or to limit the scope of any provision of this Agreement.

II. DUTIES AND RESPONSIBILITIES OF CITY

A. Disbursement of Funds

The City will furnish federal grant funds, (United States Department of Housing and Urban Development Community Development Block Grant Nos. B-84-MC-48-0001 and B-85-MC-48-0001) for use as stated herein. The City will monitor the use of such funds to ensure appropriate use of the funds. Funds shall be distributed upon submission of written request by Contractor, but in no event more frequently than one disbursement every thirty days.

B. Amount of Funds

It is agreed that the total distributions of federal grant funds made to the Contractor during the term of this Agreement shall not exceed the total sum of One Hundred Two Thousand and 00/100 Dollars (\$102,000.00). In the event this Agreement is terminated for any reason at any time, the Contractor shall return to the City any unused portion of federal monies distributed hereunder.

III. DUTIES AND RESPONSIBILITIES OF CONTRACTOR

A. Statement of Work and Budget

1. Statement of Work

The Contractor will construct a facility in which meals will be prepared for distribution to the homebound elderly and/or physically handicapped.

2. Budget

The following budget shall be adhered to. Under no circumstances shall the total amount paid by the City exceed \$102,000.00.

<u>Expenditure Categories</u>	<u>Budget</u>
Construction of Facility	\$102,000.00

3. Construction of Facility

The Contractor shall take all steps necessary for the construction of the building, including but not limited to:

- (1) Hiring an architect and supervision thereof.
- (2) Having bidding documents drawn up and obtaining bids for construction. Said bidding documents and the contract will include all labor standards provisions required under the Community Development Block Grant program. Bidding forms and instructions will be furnished to Contractor by the City.
- (3) Selecting a general contractor and if different from the general contractor, selecting a supervising contractor.

Upon the signing of this Agreement, the Contractor will proceed diligently to carry out all actions necessary to construct and operate said facility. These actions are to be carried out according to the following schedule, subsequent to the date of execution of this Agreement:

- (a) start construction: twenty-four (24) calendar weeks;

(b) completion of construction: January 31, 1987.

Adjustments to the schedule may be authorized by the City's agent.

B. Records and Reports

1. The Contractor will obtain and keep on file at least the following information on each client serviced under this program:
 - a. Annual income of the household of which the client is a member.
 - b. Ethnic group of the client using the following five categories: White, not Hispanic; Black; Hispanic; Asian or Pacific Islander; American Indian.
 - c. Whether the head of the client's household is male or female.
2. By October 15 of each year during which the program is supported by Community Development Block Grant funds (to be construed as including the use of real property), the Contractor will supply the City with a report showing:
 - a. Number of clients served by the program.
 - b. Number of clients belonging to low income households as defined by the U. S. Department of Housing and Urban Development.
 - c. Number of clients belonging to moderate income households as defined by the U. S. Department of Housing and Urban Development.
 - d. Number of clients belonging to each ethnic group mentioned in III.B.1.b.
 - e. Number of clients from female headed households.
3. Reports shall be submitted in a format specified by the City.
4. Reports shall be submitted during the time frame specified by the City.
5. Monthly reports shall be submitted during construction.

6. Monthly program utilization reports shall be submitted for one year after the completion of construction.
7. Meals on Wheels shall maintain records for six (6) years after the completion of construction.
8. Meals on Wheels shall retain records for nine (9) years after the completion of construction.

C. Use and Ownership of Building

The building and all improvements on the land described shall be owned by Meals on Wheels, subject to the following provisions. The building shall be used for a Community Development Block Grant eligible purpose (as determined by the City) for its useful life (to be construed as 15 years at a minimum).

The building that is constructed with the funds provided by this Agreement shall depreciate in value at the rate of 1/40 per year, commencing January 31, 1987.

If the use of the building or improvements by Meals on Wheels ever ceases or in the event that Meals on Wheels does not obtain a renewal of the lease Agreement (for the use of this building) from University Church of Christ, the building and any improvements thereto shall revert to the City if such event occurs prior to January 31, 2027. The City may then choose to sell the building and improvements. In such case, the University Church of Christ shall have the right of first refusal to purchase the bulding at its fair market value.

If University Church of Christ chooses not to purchase the building, the building shall be sold at its fair market value and moved from the property within one year from when the building is sold.

Proceeds from the sale of the building and any improvements shall be prorated and distributed to the City and Meals on Wheels according to a ratio equal to the relative contributions of the two organizations, i.e. the City and Meals on Wheels for the construction of the facility.

Beginning on January 31, 2027, the City shall no longer have a right or interest in this building or the improvements erected thereon. Upon the termination of the lease between Meals on Wheels and the University Church of Christ, the leased property will revert to Lessor, University Church of Christ, including all improvements.

Nothing in this agreement shall ever give either City or Contractor any right, title or interest in and to the real estate owned by the University Church or Chirst, except as is expressly stated in this Agreement.

Any and all maintenance, and the costs of the same, and any insuring costs, shall be done and paid for by the entity owning the building and improvements at any particular time.

D. Program Income

All income generated by this program from interest earned on Community Development Block Grant funds shall be used to defray the expenses of the program as outlined in III.A.1. and 2. before requesting disbursement of additional Community Development Block Grant funds.

E. Cost Principles

The Contractor shall comply with the requirements and standards of OMB Circular A-122, "Cost Principles for Nonprofit

Organizations" and with the following Attachments to OMB Circular No. A-110 (and any changes to either circular):

1. Attachment A, "Cash Depositories," except for Paragraph 4 concerning deposit insurance;
2. Attachment B, "Bonding and Insurance";
3. Attachment C, "Retention and Custodial Requirements for Records";
4. Attachment F, "Standards for Financial Management Systems";
5. Attachment H, "Monitoring and Reporting Program Performance," Paragraph 2;
6. Attachment N, "Property Management Standards," except for Paragraph 3 concerning the standards for real property;
7. Attachment O, "Procurement Standards."

The City will supply the Contractor copies of all of the above Attachments, which are hereby incorporated into this Agreement for all purposes. It is the City's responsibility to provide Contractor with any and all pertinent changes to the foregoing.

F. Compliance with All Applicable Laws and Regulations

The Contractor shall carry out each activity in compliance with all Federal laws and regulations described in 24 CFR Part 570 Subpart K, and any changes thereto, except that:

1. the Contractor does not assume the City's environmental responsibilities described at §570.604;
2. the Contractor does not assume the City's responsibility for initiating the review process under Executive Order 12372, as described at §570.613.

The work to be performed under this Agreement is on a project assisted under a program providing direct federal financial

assistance from the Department of Housing and Urban Development. The work is subject to the requirements of the Housing and Urban Development Act of 1974, as amended, particularly the requirements pertaining to contract construction, which are set forth in Exhibit A of this contract.

The Contractor agrees that its officers, members, agents, employees, program participants, and subcontractors, shall abide by and comply with all laws, federal, state and local, including all ordinances, rules and regulations of the City of Abilene, and the Housing and Community Development Act of 1974, as amended, and all regulations pertaining to both and amendments thereto. The Contractor has read, and is familiar with, the terms and conditions of the Community Development Block Grant under which these funds are granted. The Contractor shall fully comply with said terms and conditions. The Contractor shall use said funds strictly for those purposes and goals intended under the terms and conditions of said Community Development Block Grant.

If the City notifies the Contractor of any violation(s) on the part of Contractor or any of its officers, members, agents, employees, program participants, or subcontractors, then Contractor shall immediately desist from and correct such violations.

G. Monitor Effectiveness of Services and Work

The Contractor agrees to fully cooperate with the City in monitoring the effectiveness of the services and work to be performed by Contractor under this Agreement. The City shall have access at all reasonable hours to offices and records of the Contractor, its officers, members, agents, employees, and subcontractors for the purpose of such monitoring.

H. Hiring Practices

The Contractor, in the execution, performance or attempted performance of this Agreement, will not discriminate against any person or persons because of sex, race, religion, color or national origin, nor will the Contractor permit its officers, members, agents, employees, subcontractors, or program participants to engage in such discrimination.

In accordance with the policy of the Executive Branch of the Federal Government, the Contractor covenants that neither it nor any of its officers, members, agents, employees, program participants, volunteers, or subcontractors, while engaged in performing this Agreement, shall, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age, except on the basis of a bona fide occupational qualification, retirement plan or statutory requirement.

The Contractor further covenants that neither it nor its officers, members, agents, employees, subcontractors, program participants, or persons acting on their behalf, shall specify, in solicitations or advertisements for employees to work on this Agreement, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

I. No Financial Interest in Purchases Made With Grant Funds

No officer, employee, or member of the Contractor shall have a financial interest (directly or indirectly) in this Agreement or

the monies transferred hereunder, or have a financial interest (directly or indirectly) in the sale to Contractor of any land, materials, supplies, or services purchased with any funds transferred hereunder, except on behalf of the Contractor as an officer, employee, member, or program participant. Any willful violation of this paragraph with the knowledge, expressed or implied, by the Contractor shall render this Agreement voidable by the City of Abilene.

J. Assignment

The Contractor shall not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the City Council. Any attempted assignment of same without approval shall be void, and shall constitute a breach of this Agreement. It is agreed that the City has the right to inspect and approve in writing any proposed subcontracts between Contractor and any subcontractor engaged in any activity in conjunction with this Community Development Block Grant funded project prior to any changes being incurred.

K. Benefit Plans for Employees

It is agreed by the parties hereto that any benefits provided to persons employed during the term of this Agreement shall be no more liberal than the benefits of employees of Meals on Wheels Plus, Incorporated, as set forth in their personnel policies and procedures. Furthermore, Meals on Wheels shall immediately provide the City with a copy of the former's personnel policies and procedures. The above mentioned provisions do not apply to contractors or subcontractors hired for the construction of the facility.

It is further agreed that benefits extended to construction related employees be no more liberal than the benefits normally extended to other employees of such construction employer.

L. Indemnity and Insurance

1. Indemnity

The Contractor agrees to indemnify and hold harmless and defend the City, its officers, agents and employees from and against all liability for claims, liens, suits, demands and/or actions for damages, injuries to person (including death), property damage (including loss of use), and expenses including court costs and attorneys' fees, and reasonable costs arising out of or resulting from the Contractor's activities under this Agreement and arising out of or resulting from the intentional acts or negligence of the Contractor, its officers, agents, or employees, including all such causes of action based on common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of the Contractor, its officers, employees, agents, or invitees. The Contractor agrees to waive any and all claims it may have against the City by reason of this indemnification agreement and agrees that any insurance carrier shall not be entitled to subrogation under any circumstance against the City, its officers, and employees.

The Contractor further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents,

employees, customers, visitors, and other persons, as well as their property, while performing the tasks required under this Agreement. It is agreed that the City shall not be liable or responsible for the negligence of the Contractor, its agents, servants, employees, customers, and visitors.

In the event it is determined that the Contractor has misused, misapplied, or misappropriated all or any part of the grant funds described herein, the Contractor agrees to indemnify, hold harmless and defend the City and its officers, agents, servants and employees, from and against any and all claims or suits resulting from such misuse, misapplication, or misappropriation of such funds.

The Contractor further agrees that this indemnity provision shall be considered as an additional remedy for the City and not an exclusive remedy.

2. Insurance

The Contractor shall provide and maintain the following types and amounts of insurance for the period January 31, 1987 or until such time as construction of facility is completed.

	<u>Type</u>	<u>Amount</u>
1)	<u>Comprehensive General (Public) Liability - to include (but not limited to) the following:</u>	<u>Bodily Injury:</u> <u>\$100,000 per person</u> <u>\$300,000 per occurrence</u>
A)	Premises/Operations	<u>Property Damage:</u> <u>\$100,000 per occurrence</u>
B)	Products/Completed Operations	or
C)	Contractual Liability (Insuring above Indemnity Provision)	Combined Single Limit for Bodily Injury & Property Damage: <u>\$300,000</u>

With respect to all of the above insurances, the City shall:

- A) Be named as additional insured.
- B) Be provided with a waiver of subrogation, in favor of City.
- C) Be provided with 30 days advance notice, in writing, of cancellation or material change.
- D) Be provided through the office of the City Secretary with Certificates of Insurance evidencing the above required insurance.
- E) Should the State Board of Insurance adopt changes to policies of insurance required herein, the Contractor shall be required, on issuance of the next policy, to comply with the newly adopted insurance standards.

M. Waiver of Immunity

If the Contractor has or claims any immunity or exemption (statutory or otherwise) from and against liability for damages or injury, including death, to persons or property, the Contractor hereby expressly waives its rights to plead defensively such immunity or exemption as against City.

CITY OF ABILENE, TEXAS:
P. O. Box 60
Abilene, TX 79604
(915) 676-6386

MEALS ON WHEELS PLUS, INC.
P. O. Box 903
Abilene, TX 79604
(915) 672-5050

BY: [Signature]
City Manager

[Signature]
(signature)

ATTEST:
[Signature]
City Secretary

BY: Bennett Hutchinson
(typed name)

Title: Chairman of the Board

APPROVED AS TO FORM:
[Signature]
City Attorney

STATE OF TEXAS X
COUNTY OF TAYLOR X

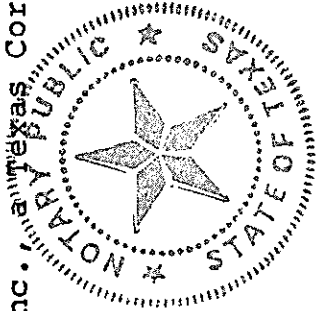
ACKNOWLEDGMENT BY
MEALS ON WHEELS

This instrument was acknowledged before me on this 17th day of

January
Chairman of the Board

, 1986, by Bennett Hutchinson (name),
(title), of Meals on Wheels Plus,

Inc., a Texas Corporation, on behalf of said corporation.



[Handwritten Signature]
(signature)

ROBERTA THOMPSON
Notary Public, State of Texas
My Commission Expires June 10, 1988
(Typed for printed name)

Notary Public, Taylor County, Texas
My Commission Expires: June 10, 1988

STATE OF TEXAS X
COUNTY OF TAYLOR X

ACKNOWLEDGMENT BY CITY

This instrument was acknowledged before me on this 23rd day of

January, 1986, by Jim C. Blagg, City Manager, of the
City of Abilene, Texas, a municipal corporation of Taylor and Jones
Counties, Texas, on behalf of the City.

[Handwritten Signature]
(signature)

[Handwritten Signature]
(Typed or printed name)

Notary Public, Taylor County, Texas
My Commission Expires: 5-18-86

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