

STATE OF OREGON AGREEMENT

Agreement No. 37324

This agreement is between the State of Oregon acting by and through its Department of Education (“State Agency”) and County of Yamhill (“Sponsor”), each a “Party” and, together, the “Parties”, for the operations of federal Child Nutrition Programs (“Programs”).

SECTION 1:AUTHORITY

This agreement is entered into under the authority granted by the laws of the State of Oregon and any applicable federal laws, specifically the following provisions:

United States Code: [Title 42 Chapter 13](#);

Code of Federal Regulations: [7CFR 15](#), [210](#), [215](#), [220](#), [225](#), [226](#), [240](#), [245](#), [250](#), [2CFR 200](#);Oregon Revised Statutes: [ORS 327](#); and

Oregon Administrative Rules: [Chapter 581 Division 51](#).

SECTION 2:PURPOSE

This Agreement sets out the requirements and terms of Sponsor’s participation in federal Child Nutrition Programs.

SECTION 3:EFFEKTIVE DATE AND DURATION

When all Parties have executed this Agreement, and all necessary approvals have been obtained (“Executed Date”), this Agreement is effective. This Agreement may continue each year thereafter upon State Agency’s written notice to the Sponsor based on federal and state funding timelines for each program, unless Congress has not yet appropriated funds for carrying out the purposes of the National School Lunch Act and of the Child Nutrition Act of 1966. Continuation of the Agreement shall be contingent on an acknowledgment by the Sponsor, in writing, of its intention to continue program participation, through annual program renewal processes, in accordance with the provisions set forth in Exhibit A. The Sponsor shall notify the State Agency whenever significant changes occur in the operation of their Programs.

3.1 State Agency’s Authorized Representative is:

ODE Agreement #37324

Dustin Melton, Director
ODE, Child Nutrition Programs
255 Capitol Street NE
Salem, OR 97310
Dustin.Melton@oregon.ode.gov

3.2 Sponsor's Authorized Representative is:

Aaron Stotler
County of Yamhill
535 NE 5th Street
McMinnville, OR 97128
stotlera@yamhillcounty.gov

3.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 4: PROGRAM ACTIVITIES

- 4.1** The Sponsor agrees to receive Federal and State Assistance in accordance with all applicable Program regulations, State statute, and any amendments thereto, and to comply with all the provisions thereof, and with all administrative rules, policy manuals, memorandums, guidance and instructions and any instruction or procedures issued by the United States Department of Agriculture (USDA) or the State Agency in connection therewith.
- 4.2** In accordance with the terms and conditions of this Agreement, State Agency agrees, to the extent that funds are available as appropriated by Congress and the Oregon State Legislature, to reimburse the Sponsor for the operation of the Programs, in accordance with applicable regulations governing such Programs.
- 4.3** In accordance with the terms and conditions of this Grant and Oregon Revised Statute 327.545, Eligible Public School and Public Charter School Sponsors of the National School Lunch Program and School Breakfast Program may request supplemental reimbursement from the Hunger Free Schools Account ("Account") established under Oregon Revised Statute ("ORS") 327.548 for eligible meals served in accordance with United States Department of Agriculture meal pattern regulations per 7CFR 210.10 and 7CFR 220.80. Eligible meals as defined in Oregon Administrative Rule ("OAR") 581-051-0610 and OAR 581-051-0615 include meals served to students at no charge under the Community Eligibility Provision Incentive or Expanded Income Guideline Incentive programs as allowed under the respective rules for those programs.
- 4.4** Sponsor's entitlement to reimbursement requested under this Grant is contingent on the availability of funds in the Account.
- 4.5** The State Agency agrees to make payments, as applicable, in accordance with ORS 327.545

ODE Agreement #37324

to the extent that funds are available in the Account as appropriated by Legislature to reimburse Sponsor for allowable Program activities described in Exhibit A-1.

- 4.6** The State Agency will provide notice of available funds in accordance with OAR 581-051-0610 and OAR 581-051-0615.
- 4.7** By submitting a request for reimbursement, Sponsor certifies that meals served meet all program regulations and requirements. Sponsor is not automatically entitled to payment. Even if payment has been made, the State Agency may review any and all claims by Sponsor. Agency may withhold payment of meals, require repayment of funds by Sponsor, or disallow ineligible meals in accordance with the requirements of state or federal law.

SECTION 5: CONFIDENTIAL INFORMATION

- 5.1 Confidential Information Definition.** Sponsor acknowledges it and its employees or agents may, in the course of performing its responsibilities, be exposed to or acquire information that is: (i) confidential to State Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal information, as that term is used in ORS 646A.602(12), (b) social security numbers, and (c) information protected by the federal Family Educational Rights and Privacy Act under 20 USC § 1232g (items (i) and (ii) separately and collectively “Confidential Information”).
- 5.2 Nondisclosure.** Sponsor agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Sponsor uses in maintaining the confidentiality of its own confidential information. Sponsor may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Program activities and Sponsor must advise each of its employees and agents of these restrictions. Sponsor must assist State Agency in identifying and preventing any unauthorized use or disclosure of Confidential Information. Sponsor must advise State Agency immediately if Sponsor learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. Sponsor must, at its expense, cooperate with State Agency in seeking injunctive or other equitable relief, in the name of State Agency or Sponsor, to stop or prevent any use or disclosure of Confidential Information. At State Agency’s request, Sponsor must return or destroy any Confidential Information. If State Agency requests Sponsor to destroy any Confidential Information, Sponsor must provide State Agency with written assurance indicating how, when and what information was destroyed.
- 5.3 Background Check.** If requested by State Agency and permitted by law, Sponsor’s employees, agents, contractors, subcontractors, and volunteers that perform Program activities must agree to submit to a criminal background check prior to performance of any Program activities or receipt of Confidential Information. Background checks will be performed at Sponsor’s expense. Based on the results of the background check, Sponsor or State Agency may refuse or limit (i) the participation of any Sponsor employee, agent,

ODE Agreement #37324

contractor, or volunteer, in Program activities or (ii) access to State Agency Personal Information or Sponsor premises.

SECTION 6: CIVIL RIGHTS COMPLIANCE

6.1 Compliance. The Sponsor shall comply with:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- All provisions required by the implementing regulations of USDA (7 CFR Part 15 et seq.);
- Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and
- The USDA non-discrimination statement that in accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

6.2 Purpose. This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for

ODE Agreement #37324

the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

- 6.3 Recordkeeping.** By accepting this assurance, the Sponsor agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Sponsor, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Sponsor.

SECTION 7:INDEMNITY/LIABILITY

- 7.1 Indemnity.** Sponsor must defend, save, hold harmless, and indemnify the State of Oregon and State Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Sponsor or its officers, employees, contractors, subcontractors, or agents under this Agreement (each of the foregoing individually or collectively a "Claim" for purposes of this Section).
- 7.2 Defense.** Sponsor may have control of the defense and settlement of any Claim subject to this Section. But neither Sponsor nor any attorney engaged by Sponsor may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Sponsor settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Sponsor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Sponsor may not use any Agreement Funds to reimburse itself for the defense of or settlement of any Claim.
- 7.3 Limitation.** Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Agreement,

ODE Agreement #37324

regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither Party will be liable for any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

SECTION 8:RESERVED

SECTION 9:GOVERNING LAW, JURISDICTION

This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between State Agency or any other agency or department of the State of Oregon, or both, and Sponsor that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. SPONSOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

SECTION 10:ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

SECTION 11:DEFAULT

Sponsor will be in default under this Agreement upon the occurrence of any of the following events:

- 11.1** Sponsor fails to use the Agreement Funds for the intended purpose described in regulation and Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 11.2** Any representation, warranty or statement made by Sponsor in this Agreement or in any documents or reports relied upon by State Agency to measure the Program, the expenditure of Agreement Funds or the performance by Sponsor is untrue in any material respect when

ODE Agreement #37324

made; or

- 11.3** A petition, proceeding or case is filed by or against Sponsor under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Sponsor, Sponsor acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Sponsor becomes insolvent or admits its inability to pay its debts as they become due, or Sponsor makes an assignment for the benefit of its creditors.

SECTION 12:REMEDIES

- 12.1** The remedies for violation of terms of the agreement by sponsor will be in accordance with federal regulations of the programs operated by the sponsor.

SECTION 13:WITHHOLDING FUNDS, RECOVERY

State Agency may withhold from disbursements of Agreement Funds due to Sponsor, or Sponsor must return to State Agency within 30 days of State Agency's written demand:

- 13.1** Any Agreement Funds paid to Sponsor under this Agreement, or payments made under any other agreement between State Agency and Sponsor, that exceed the amount to which Sponsor is entitled;
- 13.2** Any Agreement Funds determined by State Agency to be spent for purposes other than allowable Program activities; or
- 13.3** Any Agreement Funds requested by Sponsor as payment for deficient activities or materials.

SECTION 14:TERMINATION

- 14.1** The Sponsor's participation in any Program covered in this Agreement may be terminated in accordance with the procedures required by each program operated by the Sponsor and with the grant close-out procedures found in 2 CFR 200, as applicable. Either party hereto may, by giving at least 60 days written notice, terminate this Agreement. Upon termination or expiration of this Agreement, as provided herein, the State Agency shall make no further disbursement of funds paid to the Sponsor in accordance with this Agreement, except to reimburse the Sponsor for eligible Program Meals served on or prior to the termination of this Agreement. The obligations of the State Agency under the cited regulations shall continue until the requirements thereof have been fully performed.
- 14.2** Appeals brought forth by Sponsor due to adverse fiscal action, suspension or termination of an agreement will follow regulation as listed in Title 7 CFR Parts 210.18(p), 225.13(a), 226.6(k).

ODE Agreement #37324

- 14.3** Determinations made by the State hearing official are the final administrative determination to be afforded to the appellant. No further or additional appeals may be brought forth on the issue.
- 14.4** No termination or expiration of this agreement shall affect the obligation of the Sponsor to maintain and retain records as specified herein and to make such records available for audit or investigation.

SECTION 15: MISCELLANEOUS

- 15.1 Reviews.** The State Agency, USDA, and other State or Federal officials may at their sole discretion make announced or unannounced reviews of Sponsor operations during the institution's normal hours of program operations. Staff making such reviews will show photo identification that demonstrates that they are employees of one of these entities.
- 15.2 Conflict of Interest.** Sponsor by signature to this Agreement declares and certifies the award of this Agreement and the Program activities to be funded by this Agreement, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Sponsor.
- 15.3 Nonappropriation.** State Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon State Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow State Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of State Agency.
- 15.4 Amendments.** The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 15.5 Notice.** Except as otherwise expressly provided in this Agreement, any notices to be given under this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Agreement Manager at the physical address or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 15.6 Survival.** All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 11, 13, 14, 16, 17 and subsection 19.5 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this

ODE Agreement #37324

Agreement prior to termination.

- 15.7 Severability.** The Parties agree if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 15.8 Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.
- 15.9 Compliance with Law.** In connection with their activities under this Agreement, the Parties must comply with all applicable federal, state and local laws.
- 15.10 Intended Beneficiaries.** State Agency and Sponsor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
- 15.11 Assignment and Successors.** Sponsor may not assign or transfer its interest in this Agreement without the prior written consent of State Agency and any attempt by Sponsor to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. State Agency's consent to Sponsor's assignment or transfer of its interest in this Agreement will not relieve Sponsor of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 15.12 Contracts and Subagreements.** Sponsor may not, without State Agency's prior written consent, enter into any contracts or subagreements for any of the Program activities required of Sponsor under this Agreement. State Agency's consent to any contract or subagreement will not relieve Sponsor of any of its duties or obligations under this Agreement.
- 15.13 Time of the Essence.** Time is of the essence in Sponsor's performance of the Program activities under this Agreement.
- 15.14 Non-Discrimination Recordkeeping.** Sponsor shall compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this requirement, State Agency and FNS shall have the right to seek judicial enforcement of this assurance. This requirement binds the Sponsor, its successors, transferees and assignees as long as it receives assistance or retains possession

ODE Agreement #37324

of any assistance from USDA.

- 15.15 Records Maintenance and Access.** Sponsor must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Sponsor must maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Sponsor's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Sponsor acknowledges and agrees State Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Sponsor must retain and keep accessible all Records for a minimum of four (4) years, or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- 15.16 Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.
- 15.17 Agreement Documents.** This Agreement consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:
- This Agreement less all exhibits
 - Exhibit A (the "Program") including Exhibits A-1, A-2, and A-3, as applicable
 - Exhibit B ("Payment Procedures")
 - Exhibit C ("Federal Terms and Conditions")
- 15.18 Merger, Waiver.** This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

SECTION 16:SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Agreement electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Agreement, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

ODE Agreement #37324

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its Department of Education

By: Philip Hofmann
Philip Hofmann, Deputy Director of Procurement

December 20, 2024
Date

County of Yamhill

By: Kit Johnston
Authorized Signature

9/25/2025
Date

Kit Johnston
Printed Name

Chair, Board of Commissioners
Title

93-6002318
Federal Tax ID Number

Approved for Legal Sufficiency in accordance with ORS 291.047

By: per email on file at Agency
Jake Hogue, Assistant Attorney General

10/07/2024
Date

Approved by the BOC on: 09/25/2025
via Board Order No.: 25-309

EXHIBIT A THE PROGRAM

SECTION I – DEFINITIONS

Adult Day Care Center: any public or private nonprofit organization or any for-profit center (as defined in this section) that:

(a) is licensed or approved by Federal, State or local authorities to provide nonresidential adult day care services to functionally impaired adults (as defined in this section) or persons 60 years of age or older in a group setting outside their homes or a group living arrangement on a less than 24-hour basis and

(b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social and related support services to enrolled adult participants through an individual plan of care.

At-Risk Afterschool Care Center: a public or private nonprofit organization that is participating or is eligible to participate in the CACFP as an institution or as a sponsored facility and that provides nonresidential child care to children after school through an approved afterschool care program located in an eligible area. However, an Emergency shelter, as defined in this section, may participate as an At-Risk Afterschool Care Center without regard to location.

Authorized Representative: Person with authority to enter into a legal agreement or contract on behalf of the organization.

Child Care Center: any public or private nonprofit institution or facility (except day care homes), or any for-profit center, as defined in this section, that is licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for children with disabilities. Child Care Centers may participate in the Program as independent centers or under the auspices of a Sponsoring Organization.

Child Nutrition Programs: Federally funded nutrition programs administered by USDA according to the National School Lunch Act of 1946 (P.L. 79-396), as amended, and the Child Nutrition Act of 1966 (P.L. 89-642), as amended. Specifically, for the purpose of this agreement herein referred to as Programs:

Child and Adult Care Food Program (CACFP);

Fresh Fruit and Vegetable Program (FFVP);

National School Lunch Program (NSLP) and its subsequent programs - Seamless Summer Option (SSO) and NSLP Afterschool Snack Service (NSLP Snack);

School Breakfast Program (SBP);

Special Milk Program (SMP);
Summer Food Service Program (SFSP); and
USDA Foods Program

Institution: A Sponsoring Organization, Child Care Center, Outside-School-Hours Care Center or Adult Day Care Center which enters into an agreement with the State Agency to assume final administrative and financial responsibility for Program operations.

Local Educational Agency: a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

Outside-school-hours care center: a public or private nonprofit institution or facility (except day care homes), or a For-profit center as defined in this section, that is licensed or approved in accordance with § 226.6(d)(1) to provide organized nonresidential child care services to children during hours outside of school. Outside-school-hours care centers may participate in the Program as independent centers or under the auspices of a sponsoring organization.

Point of Service: means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced price or paid lunch has been served to an eligible child.

Program Meal: Any Program meal, milk, or supplemental nutrition service (snack) that will be claimed for reimbursement from the State Agency.

Recipient Agency: Any agencies or organizations that receive donated foods for distribution to eligible persons or for use in meals provided to eligible persons under 7 CFR 250, USDA Foods.

School: An educational unit as defined in 7 CFR 210, 215 and 220.

School Food Authority or SFA: The legal governing body responsible for the administration of one or more schools and which has the legal authority to enter into an agreement with the State Agency to operate any of the Programs.

School Nutrition Programs: Nutrition programs operated by School Food Authorities including FFVP, NSLP, SBP, and SMP;

Sponsor: A tribal, public, or private organization that is either nonprofit or for-profit, which is approved to operate any of the Programs. The SFA, Institution or organization who is party to this contract.

Sponsoring Organization: a public or nonprofit private organization that is entirely responsible for the administration of the food program in one or more day care homes.

SECTION II – PROGRAM REQUIREMENTS

1. Sponsor shall not participate in, or receive reimbursement under, the FFVP, NSLP, SBP, SMP, CACFP, or SFSP without Agency’s express, written authorization in accordance with applicable federal regulations and requirements for the respective nutrition Program(s). If approved to operate the FFVP, NSLP, SBP, SMP, CACFP, or SFSP,
2. Sponsor shall comply with the requirements described in Exhibits A-1, A-2, and A-3, as applicable.
3. For all programs, Sponsor shall:
 - a. Adhere to the regulations, requirements and rules related to each program for which the organization chooses and is approved to participate.
 - b. Comply with all instructions, handbooks and other materials to clarify or explain existing regulations, and all regulations, instructions and handbooks issued by the State Agency that are consistent with the provisions established in regulations.
 - c. Comply with the requirements of the USDA regulations regarding financial management found in 2 CFR Part 200;
 - d. Maintain a non-profit food service pursuant to 7 CFR 210.14(a), 7 CFR 215.7(d)(1), 7 CFR 220.7(e)(1)(i), 7 CFR 226.2, 7 CFR 225.15(a)(4);
 - e. Procure goods and services in compliance with applicable Federal or local laws and the standards set forth in 2 CFR 200, and USDA implementing regulations 2 CFR Parts 400 and 415
 - f. Comply with Federal audit requirements of 2 CFR Part 200. The audit must be submitted within 30 days of the institution’s receipt of the audit report from the independent auditor, or nine months after the end of the audit period, whichever is sooner.
 - g. Submit a management plan upon application for program participation, as prescribed by State Agency, and provide updates upon plan modifications;
 - h. Provide to State Agency, on a timely basis, any changed information, including, but not limited to, any changes resulting from amendments to Federal regulatory requirements or policy and any changes in site locations, and number of meals or participant eligibility;
 - i. Submit claims for reimbursement in accordance with federal and state regulations;
 - j. Ensure that all meal procurements with food service management companies are in conformance with the bid and contractual requirements of 7CFR 210.16, 7CFR 225.15, 7CFR 226.21, 7 CFR 250.53.
4. When receiving USDA Foods under this Program agreement:

- a. Sponsor shall adhere to the regulations, rules and requirements set forth in 7 CFR 250.
- b. Sponsor is responsible for any improper distribution or use of donated USDA foods or for any loss of, or damage to donated USDA foods caused by the Sponsor's fault or negligence.
- c. Sponsor shall pay all costs associated with storage and distribution charges of USDA Foods, as referenced in 7 CFR 250.13(b), through automatic deduction from expected meal reimbursement funds.

Exhibit A-1

Requirements for Participation in FFVP, NSLP, SBP, or SMP

In addition to all other requirements of this Agreement, the terms of this Exhibit A-1 apply if the Sponsor agrees under this Agreement to operate FFVP, NSLP, SBP, or SMP.

The Sponsor shall comply with all of the following requirements as required by each program specifically:

1. Observe as described in 7 CFR 210.14, and 7 CFR 220.13(i) the limitations on the use of Program revenues, revenues from nonprogram foods 7 CFR 210.14(f), and the limitation on any competitive foods revenue as set forth in 7 CFR 10.14(e)(5)(ii).
2. Limit its net cash resources to an amount that does not exceed three months average expenditures for its nonprofit school food service or such other amount as may be approved by the State Agency.
3. Serve Program Meals which meet all requirements of 7 CFR 210.10, 7 CFR 220.8, 7 CFR 215.7
4. Comply with food and beverage standards set forth in ORS 336.423.
5. For pricing programs, price meals and supplements as a unit 7 CFR 210.10(a)(2).
6. Serve Program meals free or at a reduced price to all children who are determined by the Sponsor or SFA to be eligible for such meals under 7 CFR Part 245.
7. If charging for meals or supplements (snacks), as defined in 7 CFR 245.2, the charge to reduced price eligible children shall not exceed federal guidelines.
8. Claim reimbursement at the assigned rates only for reimbursable meals served to eligible children. Agree that the Sponsor or SFA authority official signing the claim shall be responsible for reviewing and analyzing meal and milk counts to ensure accuracy.
9. Count the number of free, reduced price and paid reimbursable Program meals at the point of service, as approved by the State Agency.
10. Not discriminate against any child because of his or her eligibility for free or reduced price Program Meals in accordance with the Free and Reduced Price Policy Statement.
11. Accept and use donated USDA Foods, in as large quantities as may be efficiently utilized, as offered under provisions of 7 CFR Part 250.
12. Ensure the storage, preparation and service of food and milk in accordance with proper sanitation and health standards that meet or exceed all applicable State and local laws and regulations.
13. Maintain necessary facilities to store, prepare and serve Program Meals.
14. Request each serving location participating in the program receive a minimum of two food safety inspections during operations conducted by the State or local governmental agency responsible for Food safety inspections and publicly post inspection results.
15. Develop and maintain for each serving location, as defined in 7 CFR 210.13(b), a food safety program complying with hazard analysis critical control points in conformance with all applicable State and local laws and regulations.
16. Establish a local wellness policy in compliance with current federal regulations 7 CFR 210.31.
17. Upon request by Agency or USDA FNS, make all accounts and records pertaining to Programs available to the State Agency and to USDA FNS, for audit or review, at a reasonable time and place.
18. Maintain files of currently approved and denied free and reduced price applications and direct certification documentation. If the applications and direct certification documentation are maintained at the Sponsor or SFA level, they shall be readily retrievable by school or site.
19. Retain all base year, 7 CFR 245.9(b)(6), information for Provision meal programs, 7 CFR 245.9(b)(6), for as long as the Sponsor operates the provision program and for a period of three (3) years after the end of the provision meal program fiscal year except that if audit findings have

not been resolved, the records shall be retained beyond the three (3) year period as long as required for the resolution of the issues raised by the audit; or a period of 6 years pursuant to State regulations, whichever is greater.

20. Cooperate in studies and evaluations conducted by or on behalf of the United States Department of Agriculture (USDA), related to programs authorized under the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.
21. Comply with all federal and state reporting requirements as listed in statute, regulation and written guidance. (7 CFR 245.9(b)(6), 7 CFR 245.9(b)(6), 7 CFR 245.9(b)(6) ORS 327, OAR 581-051)
22. School Districts and Educational Service Districts comply with applicable requirements of the most current Program Budgeting and Accounting Manual (PBAM).
23. Comply with school nutrition program professional standards 7 CFR 210.30.
24. Not participate in the Special Milk program and Child and Adult Care Food Program at the same time.

Requirements for Participation in Community Eligibility Provision Incentive, Expanded Eligibility Incentive

1. Community Eligibility Provision
 - a. A school or school district that meets the eligibility requirements of the special provisions of the United States Department of Agriculture’s National School Lunch Program or School Breakfast Program may offer reimbursable breakfasts, lunches or both at no charge and without consideration of individual eligibility by applying to the State Agency.
 - b. If the school or school district is approved under paragraph (a) of this subsection, the school or school district must offer breakfasts, lunches or both to all students of the school or school district at no charge to the student.
 - c. For each breakfast or lunch that a school or school district provides at no charge as described in this subsection, the State Agency will provide reimbursement pursuant to ORS 327.545 (Reimbursement amounts for school districts that provide reimbursable meals) (2).
2. If a school or school district does not offer reimbursable breakfasts or lunches as described in subsection (1) of this section, the school district must ensure that each school of the school district:
 - a. Offers lunch at no charge to students from households with incomes that do not exceed 300 percent of the federal poverty guidelines.
 - b. Offers breakfast at no charge to students from households with incomes that do not exceed 300 percent of the federal poverty guidelines, if breakfast must be offered pursuant to ORS 327.535 (Participation in school breakfast program).
 - c. For each breakfast or lunch that a school or school district provides at no charge as described in this subsection, the Department of Education shall provide reimbursement pursuant to ORS 327.545 (Reimbursement amounts for school districts that provide reimbursable meals) (3).
3. Notwithstanding subsections (1) and (2) of this section, a school or school district is not required to provide breakfast or lunch at no charge to students if the State Agency has insufficient funds to provide reimbursement pursuant to ORS 327.545 (Reimbursement amounts for school districts that provide reimbursable meals) (2) or (3).

Exhibit A-2

Requirements for Participation in CACFP

In addition to all other requirements of this Agreement, the terms of this Exhibit A-2 apply if the Sponsor agrees under this Agreement to operate the CACFP.

The Sponsor shall comply with all of the following requirements:

1. Accept final financial and administrative responsibility for management of a proper, efficient, and effective food service, and comply with all requirements under this part.
2. Accept final administrative and financial responsibility for Program operations at all centers and homes.
3. Remain responsible for all aspects of management of the program.
4. Provide adequate supervisory and operational personnel for effective management and monitoring of sites/homes.
5. Establish and maintain procedures to collect and maintain all program records required under the federal regulations and by the State Agency.
6. For Sponsors of Family Day Care Homes, accurately classify day care home tiering status, pursuant to 7 CFR 226.6(f)(1)(viii).
7. For At-Risk Afterschool centers, provide information to the State Agency to determine area eligibility of each center.
8. For Sponsoring Organizations of family day care homes, adhere to 7 CFR 226.15(h) in making payments to employees.
9. Maintain proper utilization of all USDA foods received.
10. Do not participate in the CACFP and the Special Milk Program at the same time.
11. If charging for meals or supplements (snacks), as defined in 7 CFR 245.2, the charge to reduced price eligible children shall not exceed federal guidelines.
12. Ensure that parents of enrolled children in Child Care Centers, Head Start Programs, and Family Day Care Homes are provided with current information on the benefits and importance of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the eligibility requirements for WIC participation.
13. Restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest 7 CFR 226.6(b)(1)(xvi);
14. Accept final administrative and financial responsibility for food service operations in all child care and Adult Day Care Centers under its jurisdiction;
15. Ensure that Child Care Centers, Outside-School Hours Care Centers, Adult Day Care Centers, At-Risk Afterschool Care Centers, Homeless Shelters, Head Start Centers and day care homes, defined in 7 CFR 226.1, meet licensing and/or approval criteria as set forth in 7 CFR 226.6(d) and 226.6(e), excepting license-exempt institutions that may participate in the Program if they provide documentation to verify compliance with health and safety standards;
16. Submit an administrative and operating budget upon application; Sponsors may update and submit for approval for budget revisions, Sponsors must submit no less than annually as well as for budget revisions throughout the year.
17. Serve meals and supplements (snacks) which meet the minimum requirements prescribed in 7 CFR 226.20;
18. Provide adequate and regular training to program staff, center staff, and/or day care home providers in accordance with 7 CFR 226.16(e) and 226.16(d)(2) and (d)(3);
19. Claim reimbursement at the assigned rates only for reimbursable meals and supplements (snacks) served to eligible participants according to provisions set forth in 7 CFR part 226.

20. For operations with separate meal charges, ensure that free and reduced-price meals are served to participants unable to pay the full price and to accept responsibility for ensuring that eligibility of participants for free and reduced-price meals are made according to the current USDA income standards;
21. For Day Care Home Sponsors or Sponsoring Organizations of unaffiliated centers, to reimburse day care homes or unaffiliated centers under their jurisdiction for eligible meals based on 7 CFR 226 and the organization and facility agreement within 5 days of receipt;
22. In the event of termination of this agreement, repay State Agency, within 30 days, any outstanding advances that Sponsor cannot reclaim through the monthly claim for reimbursement;
23. Sponsoring Organizations of centers must provide each center with written notification of the right of the Sponsoring organization, the State agency, the Department, and other State and Federal officials to make announced or unannounced reviews of its operations during the center's normal hours of operation, and must also notify Sponsored centers that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities.
24. Sponsoring Organizations of centers and/or family day care homes shall accept unannounced visits by State Agency or USDA personnel and other State and Federal officials to make unannounced reviews of its operations in the completion of their Program monitoring duties, to make all accounts and records pertaining to Program(s) available to the State Agency and to FNS, for audit or review, at any reasonable time and place in accordance with 7CFR 226 and to allow any publications related to Program operations to be freely copied in the performance of Program duties;
25. Retain the individual applications for free and reduced price meals and supplements (snacks) submitted by families and all other required Program records for a period of 3 years after the end of the fiscal year to which they pertain except that, if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for the resolution of the issues raised by the audit;
26. Provide an annual list of institution principals certifying program eligibility and compliance with the National Disqualified List requirements in 7 CFR 226.6;
27. Meet performance standards in 7 CFR 226.6 demonstrating financial viability and financial management, administrative capability, and program accountability;
28. As applicable, to have an independent governing board of directors that has adequate oversight of the program and provide current documentation of board composition; and

Upon State Agency's written authorization, a Family Day Care Home Sponsor may start up and/or expand program operations pursuant to 7 CFR 226.12, including completion of the state agency application for these funds, compliance with allowable costs, provision of documentation to the State Agency, and return of unallowable costs.

Exhibit A-3

Requirements for Sponsor Participation in SFSP

In addition to all other requirements of this Agreement, the terms of this Exhibit A-3 apply if the Sponsor agrees under this Agreement to operate the SFSP.

The Sponsor shall comply with all of the following requirements:

1. Demonstrate financial and administrative capability for Program operations.
2. Retain and accept final financial and administrative responsibility for total Program operations at all sites which it proposes to conduct a food service.
3. Maintain adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in 7 CFR 225.15(d)(2),(3) and (4).
4. Exercise management control over Program operations at sites throughout the period of Program participation by performing the functions specified in 7 CFR 225.15.
5. Certifies all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served.
6. For Sponsors which administer sites that are camps, collect information on participants' eligibility to support each claim for reimbursement.
7. For Sponsors which administer the Program at sites that provide summer school sessions, ensure that these sites are open to children enrolled in summer school and to all children residing in the area served by the site.
8. For Sponsors that are units of local, municipal, county, or State government, and Sponsors that are private non-profit organizations, only administer sites where they have administrative oversight pursuant to 7 CFR 225.14.
9. For Sponsors that administer National Youth Sports Program (NYSP) sites, ensure that all children at NYSP sites are enrolled participants in the NYSP.
10. Serve meals that meet the requirements and provisions set forth in 7 CFR 225.16 during times designated as meal service periods by the Sponsor.
11. Serve the same meals to all children.
12. Serve meals without cost to all children; provided, however, that camps as defined in 7 CFR 225.2 may charge for meals served to children who are not served meals under the Program.
13. Issue a free meal policy statement in accordance with 7 CFR 225.6(f).
14. Meet the training requirement for its administrative and site personnel as required under 7 CFR 225.15(d)(1) and 7 CFR 225.7(a).
15. Claim reimbursement for meals served per 7 CFR 225.6(i)(7)
16. Obtain and maintain access to facilities necessary for storing, preparing and serving food.
17. Ensure the storage, preparation and service of food, to maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations.
18. Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered under 7 CFR Part 250 (USDA Foods).
19. Maintain a financial management system as prescribed by the State Agency and submit an annual administrative and operating budget.
20. Upon request, make all Program accounts and records available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place.
21. Maintain documentation of site visits and reviews in accordance with 7 CFR 225.15(d)(2),(3) and (4).
22. In the event of termination of this Agreement, repay State Agency, within 30 days, any outstanding advances which the Sponsor cannot reclaim through the monthly claim for reimbursement.

Sponsor shall identify all sites and meal types for which it will claim reimbursement. Agency's signature of this Agreement constitutes approval of those sites and meal types for which reimbursement may be claimed, per 7 CFR 225.6(d)(2). Any changes made to serving site, meal type and/or serving time must be approved by the State Agency prior to the Sponsor making the change.

EXHIBIT B

PAYMENT PROCEDURES

1. MEAL PROGRAM PAYMENTS

The following payment terms apply to reimbursements for all programs **other than** the FFVP:

- 1.1. Agency will disburse Grant Funds on a monthly basis upon receipt of Grantee's submission of meal counts through the Agency's online system following federal child nutrition program regulations and timelines for meal claim submission.
- 1.2. Grantee must deposit any payments it receives through this program in its nonprofit school food service account.
- 1.3. By submitting a request for reimbursement, Sponsor certifies that meals served meet all program regulations and requirements. Sponsor is not automatically entitled to payment. Even if payment has been made, the State Agency may review any and all claims by Sponsor. Agency may withhold payment of meals, require repayment of funds by Sponsor, or disallow ineligible meals in accordance with the requirements of state or federal law.

2. FRESH FRUIT AND VEGETABLE PROGRAM PAYMENTS

For FFVP program reimbursements, the following payment terms apply:

- 2.1. Agency will disburse Grant Funds only for the costs of Project activities that occur, including expenses incurred, during the Performance Period.
- 2.2. Agency will disburse the Grant Funds using Agency's Electronic Grant Management System, on a cost incurred monthly basis upon receipt of Grantee's request(s) for disbursement approval by Agency of supporting documents that evidence eligible expenses. Requests for reimbursement that are not submitted within 60 days after the last day of the month will only be reimbursed after a one-time exception request is approved by Agency. A one-time exception is available only once per three (3) years and applies to each Child Nutrition Program.
- 2.3. Grantee must deposit any reimbursements it receives through this program into its nonprofit school food service account.
- 2.4. Grantee will administer this Grant pursuant to the rules and regulations of the National School Lunch Act, 42 U.S.C. 1769a.
- 2.5. Direct Project Costs. Agency will disburse Grant Funds only for eligible costs associated with administration of the grant and eligible expenses associated with the cost of providing fresh fruit and vegetables to students during the Performance Period.
- 2.6. Sponsor must use Grant Funds only for allowable expenses associated with the cost of providing fresh fruit and vegetables to eligible schools.

EXHIBIT C

ADDITIONAL FEDERAL TERMS

1. FEDERAL FUNDS

1.1. If specified below, Agency’s payments to Grantee under this Grant will be paid in whole or in part by funds received by Agency from the United States Federal Government. If so specified then Grantee, by signing this Grant, certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

Payments will be made in whole or in part with federal funds.

1.2. In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.102, Agency has determined:

Grantee is a subrecipient Grantee is a contractor Not applicable

2. FEDERAL PROVISIONS

2.1. The use of all federal funds paid under this Grant are subject to all applicable federal regulations, including the provisions described below.

2.2. Grantee must ensure that any further distribution or payment of the federal funds paid under this Grant by means of any contract, subgrant, or other agreement between Grantee and another party for the performance of any of the activities of this Grant, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Grant.

2.3. Grantee must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Grant.

2.4. Grantee must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

2.5 In accordance with Appendix II to 2 CFR Part 200 – Grantee is subject to the following provisions, as applicable.

For purposes of these provisions, the following definitions apply:

“**Contract**” means this Grant or any contract or subgrant funded by this Grant.

“**Contractor**” and “**Subrecipient**” and “**Non-Federal entity**” mean Grantee or Grantee’s contractors or subgrantees, if any.

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and

penalties as appropriate.

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each 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. 1352. Each tier must 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 non-Federal award.
- (J) See §200.322 Procurement of recovered materials: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=92b159d8a4db712007ed9d36214ee0ec&mc=true&n=pt2.1.200&r=PART&ty=HT ML#se2.1.200_1322.
- (K) Audits.
- i. Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 - ii. If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.

iii. Contractor must save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and State.

(L) System for Award Management. Grantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. The Grantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.