

DEPARTMENT OF EDUCATION
STATE OF SOUTH DAKOTA
GRANT AGREEMENT
BETWEEN

Feeding South Dakota
3511 N First Ave
Sioux Falls, SD 57104
Matt Gassen

Division of Educational Services & Support
SD Department of Education
800 Governors Drive
Pierre, SD 57501

Hereinafter referred to as Grantee

Hereinafter referred to as State

The State hereby enters into a Grant Agreement with the Grantee

1. The Grantee represents that it is duly qualified and will perform all duties described in this agreement to the satisfaction of the State.
2. Purpose of the Grant: In order to affect the purpose of Commodity Supplemental Food Program and resulting regulations and amendments issued thereto, the State and the Grantee, making application for United States Department of Agriculture (USDA) foods donated to the State of South Dakota for distribution to eligible program outlets.

State Responsibilities:

- o Provide USDA foods to the Grantee, as they are made available to the State by USDA.
- o To the extent of federal funds available, the State will make payment of a set amount per box to the Grantee based on the local agency caseload assignment. Or the actual expenses to distribute the boxes to subsequent local agencies.
- o Monitor and provide technical assistance, including nutrition education requirements, to the Grantee for the purpose of furthering the efficient and effective operation of the Commodity Supplemental Food Program.
- o Provide copies of pertinent records, forms, communications, audit findings, and similar materials for the effective administration of Commodity Supplemental Food Program (CSFP). In addition, the State shall share reports regarding unexplained losses, shortages, or disappearances of USDA Foods under the control of the Grantee involving persons within the criminal jurisdiction of the State of South Dakota. The State also agrees to cooperate in investigating criminal complaints regarding illegal possession of USDA Foods under the control of the Grantee and to assist in the prosecution of any person suspected of criminal acts as a result of such investigation.
- o Provide schedules of tasks to be accomplished by the Grantee to ensure the effective administration of Commodity Supplemental Food Program within guidelines and other requirements of the federal government.
- o Serving as the liaison for all communication between the Grantee and USDA Child and Adult Nutrition Services.

Grantee Responsibilities:

- Administer the Commodity Supplemental Food Program for the benefit of eligible participants, pursuant to existing agreements between the State and USDA, and in accordance with all applicable federal regulations as set forth by 7CFR Part 247 and 250.
- Distribute USDA foods in accordance with federal regulations, State guidance and USDA Food and Nutrition Service food package instructions.
- Grantee will check for dual participation at the time of certification or re-certification and/or at any time during the certification period if the Grantee has reason to suspect dual participation may be occurring. The Grantee shall provide a listing of potential dual participants to the State Commodity Supplemental Food Program contact representative.
- With the assistance and guidance of the State and in accordance with federal regulations, provide nutrition education to participants, advise participants of the importance of health care and as well information on other health, nutrition and public assistance programs, and make referrals as appropriate.
- Adhere to all instructions, recommendations and requests for program information issued by the State.
- Promptly respond to corrective action measures to be taken in the event program deficiencies are noted in order to achieve compliance with applicable federal regulations and State policy.
- Ensure program compliance of all Grantee food assistance sites through administrative oversight and technical assistance as needed.
- Implement and maintain inventory and record keeping procedure as required for effective program management and to ensure compliance with federal regulations and State policies. All program records shall be retained complete and accurate for a minimum of three years from the close of the fiscal year to which they pertain. In instances when claim actions and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such actions or findings.
- Permit State, USDA Food and Nutrition Services, General Accounting Office, and Office of Audit personnel to inspect, audit, and copy such records and accounts at any reasonable time. In addition, the Grantee shall permit the State and the United States Department of Agriculture to inventory all USDA foods and property subject to this Agreement at any reasonable time.
- Promptly inform the State of any irregularity that may come to the attention of the Grantee in connection with program responsibilities.
- Provide and insure a commitment to investigate in conjunction with the State, and the South Dakota Attorney General any unexplained losses, shortages, or disappearances of USDA foods stored or distributed, to submit a written report concerning the results of the investigation and to assist in the prosecution.
- Ensure that adequate protection and storage is provided at all Grantee food assistance sites where USDA products will be stored or distributed. Storage facilities and procedures will conform and comply with applicable federal, state and local regulations.
- Hold the State harmless for any violation of the federal regulations by the Grantee. The Grantee agrees to be responsible to the State for any loss of, or damage to donated

USDA Foods caused by the fault or negligence of the Grantee. The Grantee agrees to be financially responsible to the federal government for all claims which may arise as a result of the administration of the program by the Grantee. The Grantee further holds the State harmless for any liability, loss or damage which may be suffered, directly or indirectly by any third party as the result of any claims, demands or action arising from the performance of this Agreement by the Grantee.

- Assure that activities unrelated to the distribution of USDA foods be conducted in a manner that does not disrupt the distribution of USDA foods and the person(s) conducting the activity makes clear that cooperation is not a condition to the receipt of USDA foods.
- The program applicant hereby agrees that it will comply with the requirements of 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 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). State and Grantee must also comply with the Department's regulations on nondiscrimination (parts 15, 15a, and 15b of this title), and with the provisions of FNS Instruction 113-2, including the collection of racial/ethnic participation data and public notification of nondiscrimination policy. State and Grantee must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program.
 - The statement below concerning the availability of the program to all eligible participants will be included in forms and materials developed for the Program:
 - Non-discrimination Statement: This explains what to do if you believe you have been treated unfairly.
 - The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)
 - If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.
 - Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

- Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).
 - USDA is an equal opportunity provider and employer.
- Expend program funds solely for the purpose of operating the Commodity Supplemental Food program and, in no event, use funds to pay any portion of any expenses if reimbursement or payment thereof is claimed or made available from any other federal sources, nor shall such funds be used to reduce the amounts of funds derived from state or local government sources in distributing USDA Foods to households.
 - The Grantee shall remain responsible to the State for any program losses caused by the subcontracting agency or other agencies that have entered into agreements with the Grantee. In the event the Grantee subcontracts with another agency for any program operation or function the agreement shall be submitted to the State for prior approval.
 - Grantee will comply with all the fiscal and operational requirements prescribed by the State and in accordance with federal regulations and is responsible for any misuse of program funds received.
 - The Grantee is responsible to the State for any loss resulting from improper or negligent issuance by them of prescriptions for supplemental foods. Each agency receiving USDA Foods for distribution is responsible for any loss resulting from improper storage, care or handling of USDA Foods.

3. TERM OF AGREEMENT

The term of this Agreement shall commence on October 1, 2016 and end on September 30, 2017 unless the period is extended by notification or by modification of this Agreement, through mutual agreement of the parties. The Grantee must not begin work until this Agreement is fully executed and the State has notified the Grantee that work may commence.

The Grantee must comply with all the time requirements described in this Agreement. In the performance of this Agreement, time is of the essence, and failure to meet a deadline may be a basis for a determination by the State that the Grantee has not complied with the terms of the Agreement.

The Grantee is required to perform all of the duties recited in this Agreement within the grant period. The State is not obligated to extend the Agreement period.

4. TERMS OF PAYMENT

- a. Invoices: The State will pay the Grantee after the Grantee presents an itemized invoice for the services actually performed and the State accepts the invoiced services. Each invoice must reference the Agreement number. Payment will be made consistent with SDCL Ch. 5-26. Grantee acknowledges that it would be difficult or impracticable for the State to provide the notice disagreement provided for by SDCL 5-26-5 within the ten days provided by that section. Accordingly, Grantee hereby waives the application of that section to this Agreement.

Upon submitting each invoice, pursuant to 2 CFR 200.415 of the Uniform Grant Guidance, the Grantee is required to certify the following:

"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

- b. The payment of any invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The Grantee shall promptly, but in all cases within thirty days of notification, pay to the State the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which Grantee is not entitled. If Grantee fails to make such a timely refund, the State shall charge Grantee one percent (1%) per month on the amount due until paid in full.
- c. Claims for payment must be submitted on an invoice within forty-five (45) days of the date upon which the Grantee knew or should have known of the claim or forty-five (45) days after the termination or expiration of this Agreement, whichever is earlier. If an invoice cannot be submitted within forty-five (45) days, then written notice and explanation of need must be provided to the State for consideration of an extension, which shall be in the sole discretion of the State. Failure of the Grantee to abide by this paragraph shall relieve the State of any obligation to pay for such claim.

5. STANDARDS OF WORK

Grantee agrees to implement the subaward and perform pursuant to the requirements of the Agreement in a manner consistent with that level of care and skill ordinarily exercised by subrecipients currently practicing under similar conditions, particularly in reference to restricted or sponsored programs.

6. ADMINISTRATIVE CONSIDERATIONS

Where policies of Grantee differ from those of the State, such as travel reimbursement, fringe benefits, indirect costs, etc., the policies of the Grantee shall be applicable to cost incurrences under the Agreement provided such policies comply with awarding agency regulations.

7. DISCLOSURE OF INFORMATION

Any confidential information or personally identifiable information (PII) acquired by subrecipient during the course of the subaward shall not be disclosed by subrecipient to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever without the prior written consent of the State, either during the term of the Agreement or in the event of termination of the Agreement for any reasons whatsoever. Subrecipient agrees to abide by applicable federal regulations regarding confidential information and research standards, as appropriate, for federally supported projects.

8. MONITORING PLAN AND REPORTING

The State will monitor Grantee to ensure compliance with program requirements and identify any failures in the administration and performance of the award. The monitoring plan will also serve to identify whether the Grantee needs technical assistance. In addition to program performance, the State will monitor financial performance. Monitoring will be used to document allowable and unallowable costs, time and effort reporting and travel. Monitoring also will be used to follow up on findings identified in an earlier monitoring visit, from document reviews or after an audit to ensure that subrecipient took corrective action. As appropriate, the cooperative

audit resolution process may be applied. The monitor plan may include on-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. For reporting, the uniform guidance requires the State and Grantee use OMB-approved government-wide standard information collections when providing performance and data in reports.

9. AUDIT AND COMPLIANCE

A local government and non profit organization must comply with all federal audit requirements, including: 2 CFR Part 200 Subpart F – Audit Requirements; and any other application law or regulation,

- *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

After completion of the audit, the State requires that Grantee to send a copy of the audit to the State with 30 calendar days.

The Grantee shall be responsible for payment of any and all audit exceptions related to the work performed under this Agreement which are identified by the State.

The State may conduct an agreed upon procedures engagement as an audit strategy.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Grantee must be made available if needed and upon request, at the Grantee's regular place of business, for audit by personnel authorized by the State.

The State and/or federal agency has the right to return to audit the program after close-out at any during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

10. RECORDS ACCESS AND RETENTION

The State, its auditors, and if necessary, the federal agency, will be provided access to the Grantee's programmatic and financial records.

The Grantee will maintain all programmatic and financial records, including but not limited to:

- Records providing a full description of each activity undertaken
- Records demonstrating that each activity undertaken meets the national objectives of the federally-connected program;
- Records required to determine the eligibility of activities;
- Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with the award assistance;
- Records documenting compliance with federal and local laws; and
- Financial records required by program regulations and (OMB).

The Grantee shall retain all records pertinent to program activities and financial expenditures incurred under this Agreement for a period of three years after the date of submission of the final expenditure and program report under this agreement. Notwithstanding the above, if there are litigation, claims, audits, negotiations, written notification from the federal program, cognizant agencies, or the State, or other actions that involve any the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolutions of all issues, or the expiration of the three-year period, whichever occurs later.

11. CLOSEOUT

- a. For purposes of this Agreement, "Date of Completion" shall mean the date when the Agreement expires pursuant to its terms or is terminated in accordance with paragraph 21.
- b. The Grantee shall submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments on the basis of the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.
- c. The Grantee, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.
- d. All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.
- e. Whether or not audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three years after the Agreement completion date beginning with the date the Grantee submits the final reports.
- f. If either the final financial report or the final audit discloses an overpayment to the Grantee, the State may, at its option, either require the Grantee to repay the overpayment by the State or deduct the amount of overpayment from monies due the Grantee under this Grant Agreement or under any other Agreement between the Grantee and the State. Any overpayments will be paid back in accordance with paragraph 5.e.
- g. The Grantee shall provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.

12. LIABILITY

Grantee agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the Grantee to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

13. INDEPENDENT CONTRACTOR/GRANTEE

While performing services hereunder, the Grantee is an independent and not an officer, agent or employee of the State of South Dakota. The Grantee will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number; DUNS Number; and SAM registration upon execution of this Agreement.

14. SUBCONTRACTING/SUBAWARD

The Grantee may not use subcontractors/subaward to perform the services described herein without the express prior written consent of the State. The Grantee is solely responsible for the performance of any subcontractor/subaward. The Grantee will include provisions in its subcontracts/subaward requiring its subcontractors/subawards to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Grantee will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. OWNERSHIP RIGHTS

The Grantee hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain any software program, and all information contained therein provided to the State by the Grantee in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Grantee without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

16. COMPLIANCE WITH LAW

The Grantee will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

17. ASSIGNMENT, AMENDMENTS, AND WAIVER

- a. Assignment: The Grantee shall neither assign nor transfer any rights or obligations under this agreement without the prior written consent of the State.
- b. Amendments: If there are any amendments to this agreement, they must be in writing. Amendments will not be effective until they have been executed and approved by the State and Grantee.
- c. Waiver: All other prior discussions, communications, and representations concerning the subject matter of the Agreement are superseded by the terms of this Agreement, and except

as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

18. DEBARMENT OR SUSPENSION

The Grantee certifies that neither Grantee nor its principals, nor its subgrantees or consultants are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. The Grantee further agrees that it will immediately notify the State if during the term of this Agreement Grantee or its principals, or its subgrantee or consultants become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency. The Grantee further certifies that neither it nor its principals, nor its subgrantees or consultants have, within a three (3) year period preceding the awarding of this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local transaction or contract or been convicted of a violation of federal or state antitrust statutes, embezzlement, theft, forgery, bribery, falsifications, destruction of records, making false statements, or receiving stolen property. Grantee further certifies that neither it nor its principals, nor its subgrantees or consultants, have within a three (3) year period preceding this Agreement, had a federal, state, or local transaction terminated for cause or default.

19. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

20. PUBLICITY

The Grantee shall without the written consent of the State advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the State's name in any format for any promotion, publicity, marketing or advertising purpose.

The Grantee with written consent of the State when issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded, pursuant to this Agreement, in who or in part with federal funds, the Grantee shall, state:

- a. the percentage of the total cost of the program or project which is financed with federal funds;
- b. the dollar amount of federal funds for the project or program; and
- c. the percentage and dollar amount of the total costs of the project or program that will be funded by nongovernment sources.

21. TERMINATION PROVISION

- a. **TERMINATION FOR CONVENIENCE:** This Agreement may be terminated by either party hereto upon Thirty (30) days written notice. The Grantee shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Grantee be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be

terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

- c. TERMINATION FOR CAUSE: This Agreement may be terminated by the State in the event the Grantee breaches any of the terms or conditions hereof at any time with or without notice. If termination for such a default is effected by the State, any payments due to the Grantee at the time of termination may be adjusted to cover any additional costs to the State because of Grantee's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Grantee it is determined that Grantee was not at fault, then the Grantee shall be paid for eligible services rendered and expenses incurred up to the date of termination.

22. SURVIVAL OF TERMS

The following clauses survive the expiration or cancellation of this grant agreement: 9. Audit and Compliance; 7. Disclosure of Information; 11. Closeout; 12. Liability; 15. Ownership Rights; 19. Governing Law and Venue; and 20. Publicity.

23. CONTACT INFORMATION

State: Mark Moen

Grantee: Matt Gassen

This Agreement is intended to govern only the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

In witness hereto the parties signify their agreement by signature affixed below:

Grantee Signature (Date)

Authorized State Representative (Date)
Department of Education

State Agency Coding: (Center/Company/Account)
State Agency contact who can provide additional
information regarding this contract:

1232850015A0/2024/520607007

Mark Moen 605-280-7617