

# STATE OF OREGON GRANT AGREEMENT

Grant No. [XXXXXX]

This Grant Agreement (“Grant”) is between the State of Oregon acting by and through its Department of Education (“Agency”) and [Grantee Name] (“Grantee”), each a “Party” and, together, the “Parties”.

## SECTION 1: AUTHORITY

Pursuant to ORS 336.431, as amended by House Bill 2579 (2019), Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

## SECTION 2: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of July 1, 2019 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on June 30, 2021.

## SECTION 3: GRANT MANAGERS

### 3.1 Agency’s Grant Manager is:

Rick Sherman, Farm to School Program Analyst  
Office of Child Nutrition, Research, Accountability, Fingerprinting & Transportation  
255 Capitol St NE  
Salem OR 97310  
Phone: 503-947-5863  
Email: Rick.Sherman@ode.state.or.us

### 3.2 Grantee’s Grant Manager is:

[NAME]  
[ADDRESS]  
[CITY/STATE/ZIP CODE]  
Phone: [###-###-####]  
[EMAIL]

### 3.3 A Party may designate a new Grant Manager by written notice to the other Party.

## SECTION 4: PROJECT ACTIVITIES

Grantee must perform the project activities set forth in Exhibit A (the “Project”), attached hereto and incorporated in this Grant by this reference, for the period beginning on the Effective Date and ending on the expiration date set forth in Section 2 (the “Performance Period”).

## SECTION 5: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to \$ [XXXXXX] (“Grant Funds”) for the Project. Agency will pay the Grant Funds from monies available through its Farm to School Grant Program General Funds (“Funding Source”).

## SECTION 6: DISBURSEMENT GENERALLY

### 6.1 Disbursement.

6.1.1 Subject to the availability of sufficient moneys in and from the Funding Source based on Agency’s reasonable projections of moneys accruing to the Funding Source, Agency will disburse Grant Funds to Grantee for the allowable Project activities described in Exhibit A that are undertaken during the Performance Period.

6.1.2 Grantee must provide to Agency any information or detail regarding the expenditure of Grant Funds required under Exhibit A prior to disbursement or as Agency may request.

6.2 **Conditions Precedent to Disbursement.** Agency’s obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:

6.2.1 Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;

6.2.2 No default as described in Section 11 has occurred; and

6.2.3 Grantee’s representations and warranties set forth in Section 7 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

6.3 **No Duplicate Payment.** Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, the Grantee may not credit or pay any Grant Funds for Project costs that are paid for with other funds and would result in duplicate funding.

## SECTION 7: REPRESENTATIONS AND WARRANTIES

7.1 **Organization/Authority.** Grantee represents and warrants to Agency that:

7.1.1 Grantee is a [insert type of entity: school district, education service district, non-profit entity,

[university, unit of local government, etc.] duly organized and validly existing;

- 7.1.2 Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Grant, (ii) incur and perform its obligations under this Grant, and (iii) receive financing, including the Grant Funds, for the Project;
- 7.1.3 This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms; and
- 7.1.4 If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.

## **SECTION 8: INDEMNITY/LIABILITY**

Grantee must defend (subject to the approval of the Attorney General and ORS chapter 180), save, hold harmless, and indemnify the State of Oregon and 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 Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this Section). If legal limitations apply to the indemnification ability of Grantee, this indemnification must be for the maximum amount of funds available for expenditure, including any available contingency funds, insurance, funds available under ORS 30.260 to 30.300 or other non-appropriated funds available for payment of an indemnity obligation.

## **SECTION 9: GOVERNING LAW, JURISDICTION**

This Grant 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 Agency or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Grant must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon.

## **SECTION 10: ALTERNATIVE DISPUTE RESOLUTION**

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. 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

- 11.1 Grantee.** Grantee will be in default under this Grant upon the occurrence of any of the following events:
- 11.1.1** Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;
  - 11.1.2** Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made; or
  - 11.1.3** A petition, proceeding or case is filed by or against Grantee 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 Grantee, Grantee 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 Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.
- 11.2 Agency.** Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.

## SECTION 12: REMEDIES

- 12.1 Agency Remedies.** In the event Grantee is in default under Section 11.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (i) termination of this Grant under Section 14.2, (ii) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (iii) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (iv) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (v) exercise of its right of recovery of overpayments under Section 13 of this Grant or setoff, or both, or (vi) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 12.2 Grantee Remedies.** In the event Agency is in default under Section 11.2 and whether or not Grantee elects to terminate this Grant, Grantee's sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

## SECTION 13: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency’s written demand:

- 13.1 Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 13.2 Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 13.3 Any Grant Funds determined by Agency to be spent for purposes other than allowable Project activities; or
- 13.4 Any Grant Funds requested by Grantee as payment for deficient activities or materials.

## SECTION 14: TERMINATION

- 14.1 **Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 14.2 **By Agency.** Agency may terminate this Grant as follows:
  - 14.2.1 At Agency’s discretion, upon 30 days advance written notice to Grantee;
  - 14.2.2 Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency’s reasonable administrative discretion, to perform its obligations under this Grant;
  - 14.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency’s performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or
  - 14.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.
- 14.3 **By Grantee.** Grantee may terminate this Grant as follows:
  - 14.3.1 If Grantee is a governmental entity, immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.
  - 14.3.2 If Grantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or
  - 14.3.3 Immediately upon written notice to Agency, if Agency is in default under this Grant and such

default remains uncured 15 days after written notice thereof to Agency.

- 14.4 Cease Activities.** Upon receiving a notice of termination of this Grant, Grantee must immediately cease all activities under this Grant, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee must deliver to Agency all materials or other property that are or would be required to be provided to Agency under this Grant or that are needed to complete the Project activities that would have been performed by Grantee.

## SECTION 15: MISCELLANEOUS

- 15.1 Nonappropriation.** Agency’s obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant. Nothing in this Grant 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 Agency.
- 15.2 Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 15.3 Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party’s Grant Manager at the physical address or email address set forth in this Grant, 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.
- 15.4 Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations that by their express terms are intended to survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 15.5 Severability.** The Parties agree if any term or provision of this Grant 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 Grant did not contain the particular term or provision held to be invalid.
- 15.6 Counterparts.** This Grant 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 Grant so executed constitutes an original.
- 15.7 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.

- 15.8 Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant 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 Grant.
- 15.9 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency’s consent to Grantee’s assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 15.10 Contracts and Subgrants.** Grantee may not, without Agency’s prior written consent, enter into any contracts or subgrants for any of the Project activities required of Grantee under this Grant. Agency’s consent to any contract or subgrant will not relieve Grantee of any of its duties or obligations under this Grant.
- 15.11 Time of the Essence.** Time is of the essence in Grantee’s performance of the Project activities under this Grant.
- 15.12 Records Maintenance and Access.** Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee’s performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as “Records.” Grantee acknowledges and agrees 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. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.
- 15.13 Merger, Waiver.** This Grant 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 Grant. No waiver or consent under this Grant 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 GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Grant 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 Grant, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

**STATE OF OREGON acting by and through its Department of Education**

By: \_\_\_\_\_  
Procurement and Contract Specialist

\_\_\_\_\_  
Date

**[Grantee Name]**

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID Number

**Approved for Legal Sufficiency in accordance with ORS 291.047**

By: \_\_\_\_\_

\_\_\_\_\_  
Date



## **EXHIBIT A THE PROJECT**

### **SECTION I. PROJECT ACTIVITIES, SCHEDULE, AND BUDGET**

Grantee must use the Grant Funds to purchase food produced or processed in Oregon or to pay for costs incurred to identify sources of those foods for students enrolled in Oregon schools, and children participating in a center-based in the Child and Adult Care Food Program or a Summer Food Service Program in accordance with ORS 336.431, as amended by House Bill 2579 (2019).

Grant Funds may be used to purchase food from a variety of Oregon producers including, but not limited to:

- Producers who identify as minority-owned, women-owned, Tribal members/family members/descendants;
- Producers with fair labor practices;
- Producers with environmentally sound practices; and
- Producers of culturally relevant foods for the students being served.

The purchase of certain foods produced or processed in the State of Oregon may not be supplanted with Grant Funds. Agency has developed and published a list of those foods.

Grant Funds may be used to supplant purchases of food produced or processed in the State of Oregon that the eligible entity had regularly purchased prior to the date it first received a Noncompetitive Procurement Grant if either the food produced or processed, or the food components of that food, were:

- (1) Produced in the State of Oregon; or
- (2) More than minimally processed in the State of Oregon; or
- (3) Both produced and processed in the State of Oregon.

Grantee may reserve up to twenty-five percent of the total amount awarded for all reasonable costs incurred for:

- Growing, harvesting, processing, packaging, sourcing, or transporting food produced or processed in the State of Oregon, including but not limited to purchasing supplies, labor costs, and mileage; and
- Developing or sustaining successful efforts to purchase or promote foods produced or processed in the State of Oregon.

Grantee shall be prepared to provide alternative delivery options to ensure that students and children receive the foods procured with Grant Funds.

Grantee must spend all Grant Funds no later than June 30, 2021 and claims must be submitted to Agency for review and approval within 45 days from this date (no later than August 14, 2021).

**Direct Project Costs.** Agency will disburse Grant Funds only for the costs of Project activities that occur, including expenses incurred, during the Performance Period.

**Indirect and Administrative Costs.** Grantee will not be reimbursed for any indirect costs with Grant Funds. Grantee may not use more than ten percent (10%) of total Grant Funds for any direct administrative costs, including administrative labor and supplies. The information described in this paragraph overrides any other verbal or written rate(s) or information provided by Agency, including in any notice of award provided by Agency’s Electronic Grants Management System (“EGMS”).

## **SECTION II. PROJECT EVALUATION/REPORTING REQUIREMENTS**

Grantee will submit to Agency an Interim Report using the Agency provided report templates.

Grantee will submit to Agency a Final Report using the Agency provided report template no later than September 30, 2021.

If the Performance Period begins prior to the Executed Date, any reports for Project activities shown in this Exhibit A as due prior to the Executed Date must be provided to Agency within 30 days of the Executed Date, if not already provided to Agency despite the lack of an executed Grant. Grantee will not be in default for failure to perform any reporting requirements prior to the Executed Date.

## **SECTION III. DISBURSEMENT PROVISIONS**

Agency will disburse the Grant Funds using EGMS, on a cost incurred basis upon receipt of Grantee’s request(s) for disbursement.

With each request for disbursement, Grantee must submit an expenditure report via email to farmtoCNP@ode.state.or.us. Grantee shall use Agency’s expenditure report template when submitting a disbursement request.

Grantee must deposit the Grant Funds they receive in an account that is separate from their nonprofit food service account, if they have one, or assign those funds a separate account or index number.