

**CONTRACT FROM THE MONTANA  
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

**CONTRACT NUMBER: 16027273100**

**SECTION 1. PARTIES**

THIS CONTRACT, is entered into between the Department of Public Health and Human Services, by its Human and Community Services Division, (the "Department"), State of Montana ("State"), 1400 Carter Drive, P.O. Box 202956, Helena, Montana 59620-2956, (406) 447-4262, and Youth Transition Center ("Contractor") whose nine (9) digit Federal ID Number is 81-0302402, and whose address and phone number are 4212 3<sup>rd</sup> Avenue South, Great Falls, MT 59405, Phone: 406-452-1792.

**THE PARTIES AGREE AS FOLLOWS:**

**SECTION 2. PURPOSE**

The purpose of this contract is to provide for the distribution of United States Department of Agriculture (hereinafter referred to as "USDA") purchased commodities to EFO's (Emergency Feeding Operations) for use in their congregate meal programs through the Emergency Food Assistance Program (TEFAP), CFDA #10.568 and #10.569.

**SECTION 3. TERM OF CONTRACT**

- A. The term of this Contract is from April 1, 2016 through March 31, 2023 unless terminated in accordance with the Contract.
- B. After completion or termination of the Contract, Contractor remains obligated to comply with all continuing legal and contractual obligations, duties and responsibilities including but not limited to obligations related to state and federal reporting, record retention, provision of access and information for audits, indemnification, insurance, protection of confidential information, recipient grievances and appeals, and property ownership and use.

**SECTION 4. SERVICES TO BE PROVIDED**

- A. The Contractor agrees to:
  - 1. receive commodities and properly store in accordance with the PHHS-FD-60 Storage Guide for use in congregate meal preparation and consumption in the Contractor's facility without waste and at sole cost to the Contractor in accordance with 7 CFR, Part 250 and Part 251, as applicable, and to store the commodities in compliance with 7 CFR 250.14;
  - 2. serve meals without regard to the individual's ability to pay; whoever shows up for the meal shall be served.
  - 3. not redistribute Commodities to any other agency without the written consent of the Department;
  - 4. be liable to the Department for any improper redistribution or use, loss or damage of Commodities caused by their fault or negligence, to include:

- a. the Contractor's right to assert claims against other persons to whom donated foods are delivered for care, handling or distribution in accordance with 7 CFR 250.12(b)(3), and;
    - b. assurance the Contractor will take action to obtain restitution in connection with claims for improper distribution, use or loss of, or damage to donated foods in accordance with 7 CFR 250.12(b)(4).
  5. report to the Department, immediately upon discovery, either by phone or in writing, any loss, theft or damage to Commodities. In the event of spoilage or infestation of the Commodities, notify the Department immediately by phone for instructions;
  6. not destroy Commodities without the verbal or written approval of the Department;
  7. maintain records verifying receipt, use, current inventory and disposal of Commodities for a four (4) year period dating from the close of the current fiscal year; and
  8. maintain a copy of the current application, showing the method of determining caseload and a copy of the current contract with this Department to use Commodities.
- B. The Contractor shall annually conduct a self-evaluation of its Storage Facilities and document it on a form provided by the Department. Any deficiencies identified by the Department must be followed with a written corrective action plan by the Contractor within thirty (30) days of the finding.
- C. The Contractor shall:
1. annually complete and return an agency self-evaluation form within 90 days of the date sent by the Department to include proof of insurance to continue to receive quarterly TEFAP commodity orders;
  2. take a physical inventory at the time of preparing a quarterly order and reconcile it to the last received order and previous inventory. The physical inventory shall be reported on the quarterly order forms provided by the Department;
  3. explain in writing any discrepancy between the documents in Part 2 of this Section C.;
  4. report to the Department any out-of-condition or excess Commodities not being used in by the Best if used by Date (BIUB);
  5. allow access by the Department or its assigned agents during reasonable business hours to conduct the management evaluation and/or food safety inspection as deemed necessary by the Department;
  6. take the necessary corrective actions required by the Department and notify the Department in writing on the corrective action plan and returning it to the Department within 30 days of corrective action notification; and,
  7. maintain the "And Justice for All" Poster as required in the "Civil Rights" Section of this Contract.

- D. The Department agrees to:
1. requisition and receive Commodities from USDA;
  2. provide quarterly order forms and deliver Commodities in the amounts agreed upon by the parties to this contract, at no cost to the Contractor;
  3. provide all principal forms and agreements;
  4. upon request of the Contractor provide information regarding the nutritional makeup and functional uses of Commodities; and
  5. conduct a management evaluation of the Contractor's facility(ies) to ensure the proper use and storage of TEFAP commodities as required by federal regulations and to provide a copy of the evaluation and corrective actions plan to the Contractor.
- E. Time is of the essence under this Contract. Uninterrupted and continuous delivery of the contracted goods and services is required.
- F. All persons and entities the Contractor engages under this contract, including its employees and approved subcontractors, must be appropriately trained, licensed, certified and credentialed as required by law.
- G. The Department and the Contractor, their employees, agents, approved contractors and subcontractors will cooperate with those of the other party, and with other state or federal administrative agency employees and subcontractors at no charge for purposes relating to the administration of the services to be delivered under this Contract.

## **SECTION 5. CONSIDERATION AND PAYMENTS**

- A. In consideration of the services provided through this contract, the Department is to provide Commodities in the amounts agreed upon by the parties to this contract on no less than quarterly basis as available from USDA.
- B. Adjustments to Consideration

The Department may adjust the consideration provided to the Contractor under this Contract based on any reductions of funding, governing budget, erroneous or improper payments, audit findings, or failings in the Contractor's delivery of services.

## **SECTION 6. REPORTS**

The Contractor agrees to complete and submit:

1. the annual self-evaluation form provided by the Department within 90 days of receipt to include proof of insurance. Failure to do so can result of withholding Commodities to the Contractor; and
2. quarterly order forms and other reports as may be required.

## **SECTION 7. CONFLICTS OF INTEREST AND ANTITRUST VIOLATIONS**

- A. The Contractor must:

1. comply with applicable state and federal laws, rules and regulations regarding conflicts of interest in the performance of its duties under this Contract;
  2. operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Contract;
  3. establish safeguards to prohibit its board members, officers and employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain; and
  4. have no interest nor acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this Contract.
- B. This contract is subject to immediate termination if the Contractor engages in any violation of state or federal law relating to:
1. mail fraud, wire fraud, making false statements, price fixing and collusion to fix prices under the Sherman Act, 15 U.S.C. §§ 1-7 and engagement in kickback schemes in violation of the Anti-Kickback Act, 41 U.S.C. §§ 51-58; and
  2. colluding with other contractors in a noncompetitive manner to gain unfair advantage in providing services at a noncompetitive price in violation of 18-4-141, MCA.

## **SECTION 8. REPORTING OF FALSE CLAIMS, FRAUD, AND OTHER CRIMINAL MATTERS**

- A. The Contractor, its employees, agents and subcontractors must immediately report any credible evidence of misconduct involving federal funds under this Contract, including any false claim under the federal False Claims Act (31 U.S.C. §§ 3729-3733), to the Office of Inspector General for the federal Department of Health & Human Services, the federal Department of Education or the federal Department of Agriculture, as applicable.
- B. The Contractor must report to the Department or other state authority any credible evidence that a violation of the Montana False Claims Act, at Title 17, Chapter 8, Part 4, MCA, has been committed.

## **SECTION 9. CREATION AND RETENTION OF RECORDS**

- A. The Contractor must maintain all records, (written, electronic or otherwise) documenting compliance with the requirements of the Contract and its attachments, and with state and federal law, relating to performance, monetary expenditures and finances during the term of this Contract and for four (4) years after its completion date.
- B. The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this Contract. The Contractor must make the records available at all reasonable times at the Contractor's general offices or other location as agreed to by the parties.

## **SECTION 10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor may not agree to assign, transfer, delegate or subcontract this contract in whole or in part, or any right or duty arising under this contract.

## **SECTION 11. LIMITATIONS OF STATE LIABILITY**

Any liabilities of the State of Montana and its officials, employees and agents are governed and limited by the provisions of Title 2, Chapter 9, MCA, for all acts, omissions, negligence, or alleged acts or omissions, negligent conduct, and alleged negligent conduct related to this Contract.

## **SECTION 12. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **SECTION 13. COMPLIANCE WITH BUSINESS, TAX, LABOR, AND OTHER LEGAL AUTHORITIES**

- A. The Contractor assures the Department that the Contractor is legally authorized under state and federal business and tax legal authorities to conduct business in accordance with this Contract.
- B. The Contractor and its employees, agents and subcontractors are not employees of the State and the Contractor may not in any manner represent or maintain the appearance that they are employees.

## **SECTION 14. CIVIL RIGHTS AND NON-DISCRIMINATION**

### **A. Discrimination Prohibited Under State Authorities**

The Contractor may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin in the performance of this Contract or in the delivery of state services or funding on behalf of the State. The Contractor may not receive funds from the State if the Contractor engages in discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

### **B. Compliance with Federal and State Authorities**

The Contractor must comply, as applicable, with the provisions of:

1. The Montana Human Rights Act (49-2-101, *et seq.*, MCA);
2. The Montana Governmental Code of Fair Practices (49-3-101, *et seq.*, MCA);
3. The federal Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), prohibiting discrimination based on race, color, or national origin;
4. The federal Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), prohibiting discrimination based on age;
5. The Education Amendments of 1972 (20 U.S.C. 1681), prohibiting discrimination based upon gender;

6. Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794), prohibiting discrimination based upon disability;
7. The federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*), prohibiting discrimination based upon disability;
8. The Vietnam-Era Veterans Readjustment Assistance Act (38 U.S.C. 4212);
9. The federal Executive Orders 11246 and 11375 and 41 CFR Part 60, requiring equal employment opportunities in employment practices; and
10. The federal executive Order 13166 requiring facilitation of access for persons with limited English proficiency to federally funded services.

C. Civil Rights Violations

The Department may undertake any and all actions, including contract termination, necessary to remedy any prohibited discriminatory action by the Contractor or to remedy any failure by the Contractor to carry out an affirmative action as required in federal or state legal authorities.

D. Federal Non-Discrimination Requirements (USDA funded contracts)

In accordance with Federal civil rights law and U.S. Department of Agriculture (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, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

1. mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW Washington, D.C. 20250-9410;
2. fax: (202) 690-7442; or
3. email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

The Contractor shall comply with and include the "Federal Civil Rights" statement, above, in full, on all materials regarding the EFAP program that are produced for public information, public education, or public distribution. If the printed materials are too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text that "This Contractor is an equal opportunity provider."

The Contractor shall post in plain sight the federal "AND JUSTICE FOR ALL" poster.

## **SECTION 15. TEXT MESSAGING WHILE DRIVING PROHIBITED**

The Contractor, its officers, employees, agents and subcontractors are prohibited from engaging in any other form of electronic data retrieval or electronic data communication while driving in vehicles for purposes of the work contracted for through this Contract, including text messaging, reading from or entering data into any handheld or other electronic device, SMS texting, e-mailing, instant messaging, and obtaining navigational information. Driving includes operating a motor vehicle on an active roadway with motor running, including while temporarily stationary due to traffic, a traffic light, stop sign or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary. The Contractor and its subcontractors are responsible for ensuring that owners, officers, employees, agents and subcontractors are aware of and adhere to the requirements of this provision.

## **SECTION 16. COMPLIANCE WITH APPLICABLE LAWS, RULES AND POLICIES**

The Contractor must comply with all applicable federal and state laws, executive orders, regulations and written policies, including those pertaining to licensing.

## **SECTION 17. CONTRACTOR COOPERATION AND DEPARTMENTAL GUIDANCE**

### **A. Cooperation with the Department and Other Governmental Entities**

The Contractor must ensure that Contractor's personnel cooperate with the Department or other state or federal administrative agency personnel at no cost to the Department for purposes relating to the delivery and administration of the contracted for services including but not limited to the following purposes:

1. The investigation and prosecution of fraud, abuse, and waste;
2. Audit, inspection, or other investigative purposes; and
3. Testimony in judicial or quasi-judicial proceedings or other delivery of information to HHSC or other agencies investigators or legal staff.

### **B. Departmental Guidance**

The Contractor may request guidance from the Department in administrative and programmatic matters that are necessary to the Contractor's performance. The Department may provide such guidance as it deems appropriate. The Department will not provide legal services to the Contractor in any matters relating to the Contractor's performance under this Contract.

## **SECTION 18. REGISTRATION OF OUT OF STATE ENTITIES**

- A. If the Contractor is incorporated in a state other than Montana or in a foreign country and is conducting business in Montana, it may be required by 35-1-1026 and 35-8-1001, MCA to register with the Montana Secretary Of State Office. Further information concerning these requirements may be obtained through the Montana Secretary of State's Office at <http://sos.mt.gov/> or by calling 406-444-3665.

- B. A business entity required to register in the State of Montana must show proof of a current certificate of authority to conduct business prior to entry into or continued performance under this Contract.

**SECTION 19. LIAISON AND SERVICE OF NOTICES**

- A. Kane Quenemoen, Phone: 406-447-4267, Fax: 406-447-4287 and Email: [kquenemoen@mt.gov](mailto:kquenemoen@mt.gov) is the liaison for the Department.

Ken McGuire, Phone: 406-452-1792 and Email: [kmcguire@mt.gov](mailto:kmcguire@mt.gov) is the liaison for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this contract.

- B. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this contract.

**SECTION 20. FORCE MAJEURE**

If the Contractor or State is delayed, hindered, or prevented from performing any act required under this Contract by reason of delay beyond the control of the asserting party including, but not limited to, theft, fire, or public enemy, severe and unusual weather conditions, injunction, riot, strikes, lockouts, insurrection, war, or court order, then performance of the act shall be excused for the period of the delay. "Beyond the control" means an unanticipated grave natural disaster or other phenomenon or event of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight. In that event, the period for the performance of the act shall be extended for a period equivalent to the period of the delay. Matters of the Contractor's finances shall not be considered a *force majeure*.

**SECTION 21. CONTRACT TERMINATION**

- A. Either party may terminate this Contract without cause and in-lieu of any or all other remedial measures available through this Contract. A party terminating with or without cause must give written notice of termination to the Contract liaison for the other party at least sixty (60) days prior to the effective date of termination unless the parties agree in writing to a different notice period.
- B. The Department may terminate this agreement after 3 attempts to have the Contractor to respond to completion of the annually required Contractor's Self Evaluation Form.
- C. Upon expiration, termination or cancellation of this Contract, the Contractor must assist the Department, its agents, representatives and designees in closing out the Contract, and shall allow the Department access of the Contractor's facilities, records and materials to fulfill these requirements.

**SECTION 22. CHOICE OF LAW, REMEDIES AND VENUE**

- A. This Contract is governed by the laws of the State of Montana. In accordance with Montana Code Annotated § 18-1-401, the district courts of the State of Montana have exclusive original jurisdiction to entertain claims or disputes arising out of contracts entered into by the Department.
- B. For purposes of litigation concerning this Contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

- C. If there is litigation concerning this Contract, the Contractor must pay its own costs and attorney fees.
- D. If there is a contractual dispute, the Contractor agrees to continue performance under this Contract unless the Department in writing explicitly waives performance.
- E. Any remedies provided by this Court are not exclusive and are in addition to any other remedies provided by law.

### **SECTION 23. SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT**

- A. This Contract consists of numbered pages 1 through 10. This is the entire Contract between the parties.
- B. No statements, promises, or inducements made by either party or their agents are valid or binding if not contained in this Contract and the materials expressly referenced in this Contract as governing the contractual relationship.
- C. The headings to the section of this Contract are convenience of reference and do not modify the terms and language of the sections to which they are headings.
- D. No contractual provisions from a prior Contract of the parties are valid or binding in this contractual relationship.
- E. Except as may be otherwise provided by its terms, this Contract may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.
- F. If there is a dispute as to the duties and responsibilities of the parties under this Contract, the Contract along with any attachments prepared by the Department, including request for proposal, if any, govern over the Contractor's proposal, if any.
- G. If a court of law determines any provision of this Contract is per se or as applied legally invalid, all other provisions of this Contract remain in effect and are valid and binding on the parties.
- H. Any provision of this Contract that is determined to conflict with any federal or state law or regulation, whether per se or as applied, is inoperative to the extent it conflicts with that authority and is to be considered modified to the extent necessary to conform with that authority.
- I. Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of a default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

The parties through their authorized agents have executed this contract on the dates set out below.

**MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

By: *Concepcion for Jamie Palagi* Date 4/19/16  
Jamie Palagi, Administrator

**YOUTH TRANSITION CENTER**

BY: *Cindy McKenzie* Date: 4-18-16  
Cindy McKenzie, Administrator

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(Typed / Printed Name)