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COMMONWEALTH OF KENTUCKY
KENTUCKY DEPARTMENT OF AGRICULTURE
Division of Food Distribution

PROGRAM ADMINISTRATION AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of July _____, by and between the Commonwealth of Kentucky, Department of Agriculture, Division of Food Distribution, hereinafter referred to as the Department, and

(Name of Recipient Agency)

hereinafter referred to as the Second Party. This Agreement shall remain in effect in perpetuity and amended by the Department as necessary. It will be the responsibility of the Second Party to Notify the Department of any changes of Administrator within fifteen (15) days of the effective date of the new administrator assuming office via The Change of Administrator form (KY-FD-41). The Second Party shall maintain this agreement with amendments and/or attachments for the term of this agreement.

WITNESSETH, THAT:

Whereas, the Department, in the exercise of its lawful duties, has determined that the above-named Second Party meets the requirements of 7 CFR Part 250.11 and is approved to receive USDA Donated Foods under Section 416, Section 32, Section 4(a), Section 6, Section 14 and Section 709 of P.L. 100-237;

Whereas, the Second Party is available, willing and qualified to perform this function, and the Department desires that the Second Party perform this function;

Now therefore, it is hereby and herewith mutually agreed by and between the parties hereto as follows:

1. The Second Party agrees to perform the services as herein described with particularity as follows:

A. Use of Foods:

USDA Foods may be utilized in the preparation and sale of foods for any function. Products may be utilized for banquets and conferences other than school lunch. Funds derived from the sale of these commodities must accrue to the nonprofit school food service account to operate or improve the nonprofit school food service program.

B. Quantities Requested:

Commodities are to be requested in such quantities as can be fully utilized without waste.

C. Allocations:

All foods shall be allocated by the Second Party to schools in their system based on the average number of reimbursable lunches served that meet the meal type requirements prescribed in the regulations for the National School Lunch Program 7 CFR, 210.10. Any exceptions to this policy shall be stated on the Notice of Delivery of Donated Foods to Schools, KY-FD-3 Form.

D. Facilities:

Standards for Storage Facilities:

In accordance with 7 CFR 250.14(b) the Second Party shall provide facilities adequate in the opinion of the Department for the handling, storage, and preparation of donated food that:

1. Are sanitary and free from rodent, bird, insect and other animal infestation;
2. Safeguard foods against theft, spoilage and other loss;
3. Maintain foods at the following proper storage temperatures:
 - a. Dry Storage 50°F to 70°F
 - b. Cooler Storage 34°F to 45°F
 - c. Frozen Storage 0°F to -10°F

It is recommended that temperatures of all cooler and freezer storage areas be checked and recorded daily, including holidays and weekends.

4. Permit donated food to be stored off the floor in a manner to allow for adequate ventilation. The Second Party shall take any other protective measures as may be necessary and ensure that storage facilities have obtained all required Federal/State and/or local health inspection and/or approval and that such inspection/approvals are current.

E. Re-donation:

If upon notification of Availability of Donated Foods, KY-FD-1, of a Group A Food the Second Party cannot use the amount allocated, the Department must be informed immediately. The Department will transfer the food to another agency if possible, and the Second Party will not have transfer charges placed against them. If, upon receipt of a KY-FD-1 Form on a Group B food requested, via the KY-FD-15-E, the Second Party cannot use the food due to excessive inventory, the Department must be notified immediately. The Department will make every effort to transfer the food to another agency; however, the Second Party will be responsible for all delivery or transfer charges.

In instances in which the President or Governor has declared a major disaster or emergency, relief organizations may be eligible to receive donated foods for congregate meal service. The Second Party agrees to release any or all Commodities to the Department if requested for such emergencies

F. Improper Use, Loss or Damage of USDA Foods:

Donated foods that are found to be damaged or out of condition and are declared unfit for human consumption by Federal, State, or local health officials or by other inspection services shall be disposed of in accordance with instructions of the Department.

Whoever embezzles, willfully misapplies, steals or obtains by fraud donated foods, processed donated foods, or any funds, assets or property derived from donated foods; or whoever receives, conceals or retains such donated foods, funds, assets or property for his/her own use or gain, knowing such donated foods, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall be subject to Federal criminal prosecution under Section 12 (g) of the National School Lunch Act as amended (42 U.S.C. 1760 (g)) or Section 4 (c) of the Agriculture and Consumer Protection Act of 1973 as amended (7 U.S.C 612c note).

G. Availability for Demonstration and Test:

Upon approval of the Department, any food provided for use to the Second Party may be transferred to a bonafide experimental or testing agency, or used in workshops for demonstration or tests relating to the utilization of USDA Donated Food, or used by the Second Party for the purpose of teaching students in Home Economics courses.

H. Processing:

If the end products are to be delivered to the Second Party via their commodity distributor:

1. The Second Party shall request no more than three (3) items be returned to the distributor's warehouse at any one time, unless agreed upon by the processor and the distributor.
2. Within 48 hours of receipt of notification from the Processor of the date of arrival of end products at the distributor's warehouse, the Second Party shall submit a KY-FD-3 form to the distributor.
3. The Second Party shall take delivery of all processed items within 30 days of delivery at distributor's warehouse, or the contracted storage charge may be assessed.

I. Buy American:

When purchasing food products with Federal funds, the Second Party shall, whenever possible, purchase only food products that are produced in the United States as defined in 7 CFR 250.23.

J. Records:

Amended July 1, 2002

The Second Party shall be responsible for the completion and/or maintenance of the following records:

1. Notice of Delivery Forms, KY-FD-3 on Commodity Foods.
2. All signed invoices showing the receipt of commodity foods.
3. Temperature Recording Charts, Form KY-FD-8, of dry, freezer, and cooler storage areas.
4. A current Health Inspection Report by the local Health Department of all storage facilities and food preparation areas.
5. A record of and an accurate accounting of all funds derived from the sale of containers.
6. An approved Agreement for Donated Foods, KY-FD-12-S, between the Department and the Second Party, with a record of all food preparation sites and participation data, Form KY-FD-12-B, Supplement to Agreement; a Designated Personnel for Food Alert /Emergency Feeding, Form KY-FD-22, with updates as needed; a completed Food Requisition, KY-FD-15-E; and a Certification Regarding Lobbying, KY-FD-16, (if the Second Party receives more than \$100,000 in donated foods). Both of the original signed Agreements must be returned. All original forms must be returned to the Department; and, when

approved, an original Agreement will be returned to the Second Party. The approved Agreement with amendments must be kept on file in the Food Service Office.

7. Records of extermination treatment performed by the Second Party or a contracted agency to prevent insect, rodent or other animal infestation.
8. A record of all USDA foods used or transferred during a declared emergency for a mass feeding operation, using Emergency Mass Feeding Report, KY-FD-50.
9. Other records are to be completed and submitted relative to the distribution operations in such form as may be required by the Department.

All books/records pertaining to commodities will be kept for a minimum period of three (3) years prior to the current year. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings. All reports will be furnished to the Department as required. Failure by the Second Party to maintain records required by the Department shall be considered prima facie evidence of improper use or loss of donated foods

K. Delivery and Receipt of USDA Foods:

The Second Party shall be responsible for the receipt of commodity foods from authorized distributors in accordance with the following requirements:

1. Delivery Schedule:

The Second Party will notify the Distributor of the amount(s) and date(s) of delivery of donated foods via the Notice of Delivery of Donated Food to Schools, KY-FD-3 form within 24 hours of receipt of the KY-FD-2 form. The Second Party shall order a minimum of three (3) cases per item, per drop (except where less is allocated). However, less than three (3) cases per item may be ordered if the total number of donated cases per delivery drop is at least ten (10) cases.

The Second Party must fill out and mail or FAX the KY-FD-3 form to the Distributor of food at the Distributor's Warehouse. Second Parties having only one delivery drop who do not mail a KY-FD-3 Form within the 24 hour timeframe, may receive each delivery order of commodities in full on their next scheduled delivery day, within ten working days after receipt of the commodities by the distributor. Under no circumstances shall a Distributor deliver donated foods to a Second Party having more than one delivery drop without prior receipt of a KY-FD-3 form. Any foods delivered by a Distributor to a multi-drop Second Party without receipt, of a KY-FD-3 form may be rejected at no cost to the Second Party.

Upon notification of a Fresh Fruit/Vegetable Allocation, via a KY-FD-1 form, the Second Party must **immediately** notify the Distributor, via the KY-FD-3 form, of their delivery request. The distributor is required to make delivery on next scheduled delivery date upon receipt of the fresh fruit/vegetable.

2. Receiving Requirements:

The Second Party must provide a qualified person to receive foods between the hours of 6:30 a.m. and 3:30 p.m. unless special arrangements are made in advance with the Distributor. Deliveries shall be made Monday through Friday, except school holidays or snow closing days. In districts where there is no one on duty in the school district, the Second Party will notify the Distributor by 6:00 A.M. on the morning schools are closed.

Second Party official must ensure a qualified person will be on duty the days when donated foods are scheduled for delivery after cafeteria hours (but prior to 3:30 p.m). Deliveries past 3:30 p.m. must be scheduled in advance by the Distributor with the school food authority only in emergency situations. Delivery schedules, once established, may not be changed unless a qualified emergency exists, and a new schedule can be negotiated with the Distributor.

The Second Party shall require their designated official to verify, upon receipt, the accuracy of items, quantities of each item, and condition of merchandise. **Each delivery ticket must be signed by the designated Second Party official. Variations from the norm, i.e., shortages, damages, etc., must be noted on each delivery ticket by the designated official and initialed by both the truck driver of the Distributor and the Second Party official.**

The Second Party agrees to accept only amounts ordered via the KY-FD-3 form. If the Second Party accepts and uses any food that was not allocated to them via, the Second Party must reimburse the Distributor the dollar value of the foods used. Any cost incurred by the Distributor to redistribute any unallocated foods accepted by the Second Party will be paid by the Second Party.

Shortages or overages identified upon receipt of foods from a Distributor are to be reported to the Distributor immediately and appropriate action taken to resolve the discrepancy.

L. Delivery Drop Areas:

The Second Party will be responsible for designating staging areas at each delivery site. Recognized areas are inside: a dry storage area, or the door of a walk-in freezer or cooler. Drivers or helpers shall not be required to stow merchandise on shelves nor stack in reach-in coolers, freezers or other cabinets, but are required to deliver merchandise to staging areas.

M. Special Deliveries:

Special or intermediate deliveries may be required only if the Distributor fails to deliver a requested product; in which case, the Distributor shall make delivery within 24 hours if so requested by the Second Party. No extra charge will be assessed.

Second Party may request, within 10 days of the arrival of foods at the Distributor's Warehouse, a lump sum delivery to a school-operated facility. Distributor shall state a charge to be assessed to the Second Party.

Second Party may request and pay for more frequent deliveries if the Distributor is able and willing to provide the service.

N. Back Haul:

Second Party may authorize Processors to pick up allocations from the Distributor. The Distributor may charge the Second Party up to 90 percent of bid price per case for pickup of their donated food by a processor.

O. Complaints:

(strikeout on whole section)

P. Second Party Training Requirements:

The Second Party will provide and/or secure appropriate orientation and in-service training for staff responsible for the services delivered under this contract.

Q. Deficiencies and Corrective Measures:

The Second Party agrees that all corrective measures identified by the Department will be taken within the specified time frame. The Department retains the right to withhold delivery or allocation of USDA foods if the Second Party fails to take all corrective measures identified by the Department within the time frame specified.

R. Second Party Review Requirements:

By February 1 of each year the Second Party must complete an annual review of each local food preparation and storage facility using the Food Distribution Compliance Review; (N6 and N6.1 of Food Distribution Manual). The findings of each review must be discussed with the cafeteria manager and school principal, corrective action taken immediately on all deficiencies identified in the review, and a copy of the review must be kept on file in the central office for inspection by the Food Distribution Field Review Staff.

S. Audit Exceptions:

Any Second Party who receives \$25,000 or more in USDA commodities, must have an outside audit which complies with OMB Circular Number A-133, and/or OMB Circular Number A-128, pursuant

to the Single Audit Act of 1984, P.L. 98-502; and must submit a copy of the audit report, separately identifying CFDA 10.550, to the Division of Food Distribution.

The Second Party agrees to assume responsibility for any and all audit exceptions resulting from its failure to comply with the terms of this Agreement or Federal Laws and Regulations governing this program.

3. RIGHTS OF INSPECTION AND AUDIT:

The United States Department of Agriculture, the Kentucky Department of Agriculture, or any of their duly authorized representatives shall have unrestricted access to inspect donated foods in storage or the facilities used in handling or storage of such donated foods, to inspect and audit all records including financial records and reports pertaining to the use of donated foods, and to review or audit the procedures and methods used in carrying out the requirements of this Agreement at any reasonable time.

4. SANCTIONS AND TERMINATION OR CANCELLATION:

Either the Department or the Second Party may terminate this agreement for cause by giving thirty (30) days' notice in writing to the other party by certified or registered mail with return receipt requested, except that the Department may cancel this Agreement immediately upon receipt of evidence that any terms or conditions herein have been violated and except that any termination of Agreement for non-compliance with Title VI of the Civil Rights Act of 1964 shall be in accordance with applicable laws and regulations. Subject to such notice of termination or cancellation of this Agreement, the Second Party agrees to comply with the instructions of the

Department.

5. CIVIL RIGHTS COMPLIANCE:

The Second Party hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), The Civil Rights Act of 1991, Title IX of the Education Amendments of 1972, (P.L. 92-318), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), Age Discrimination Act of 1975 (P.L. 94-135), The Americans with Disabilities Act of 1990, and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), Department of Justice (28 CFR Parts 42 and 50), and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, age, sex, religion, age, disability, political beliefs, and marital or familial status be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the program applicant receives federal financial assistance from the Department; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all federal financial assistance, grants or donation of federal property and interests 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 which is reduced for 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 the Department. This includes any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance such as food, and cash assistance for purchased or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the Second Party agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of Title VI and permit authorized USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with Title VI. If there are any violations of this assurance, the U.S. Department of Agriculture, Food and Nutrition Service, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the distributing agency or, where applicable, Second Party, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear on this agreement are authorized to sign this assurance on the behalf of the program applicant.

6. DISCRIMINATION (BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE OR DISABILITY) PROHIBITED:

During the performance of this contract, the Second Party agrees as follows:

- A. The Second Party will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age (40-70), or disability (as defined in the American Disabilities Act of 1990). The Second Party will take affirmative action to ensure that applicants are employed and that employees are treated during Employment without regard to their race, religion, color, national origin, sex, or age (40-70). Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Second Party will, in all solicitations or advertisements for employees placed by or on behalf of the Second Party, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex or age (40-70).

- C. The Second Party will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
- D. The Second Party will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- E. The Second Party will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Second Party's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the Second Party may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Second Party will include the provisions of paragraphs 1 through 7 of Section 202 of Executive Order No. 11246 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Second Party will take such action with respect to any subcontractor or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a subcontractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the agency, the Second Party may request the United States to enter into such litigation to protect the interests of the United States.
- H. The Second Party agrees to comply with all applicable federal and state laws and regulations pertaining to the recognition and protection of the civil rights of persons to whom services are rendered and to applicants for such services during the performance of this contract.

7. **DISCRIMINATION (BECAUSE OF HANDICAP\DISABILITY) PROHIBITED:**

The Second Party agrees to comply with the provisions of P.L. 93-112 Section 504, of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified handicapped individuals under any program or activity receiving federal financial assistance.

8. **LICENSING REQUIREMENTS:**

The Second Party shall comply with all state and federal licensing requirements and standards for all contract services and advise the Department when such compliance is not met.

9. FULFILLMENT OF CONTRACT:

The Second Party is responsible for fulfillment of the terms of this contract with the Department, whether or not subcontractors are used, and the terms of this contract are binding upon all subcontractors.

Whenever any provision of this agreement requires approval of or by, or notice to, the Kentucky Department of Agriculture or the Kentucky Department of Agriculture's Division of Food Distribution, said notice or request for approval shall be in writing with written approval signed by an authorized representative of the Kentucky Department of Agriculture.

10. DISCLAIMER:

The Second Party agrees to hold the Department harmless from any and all losses, claims, expenses, causes of action, costs, damages, and obligations, final or otherwise, arising from any and all acts of the Second Party, its agents, subcontractors, employees, licensees, participants hereunder, or invitees that result in injury to persons, damage to property, or loss arising from performance of this contract as those injuries, damages, or losses relate to any person, corporation, partnership, or any other entity. Furthermore, the Second Party agrees to indemnify the Department for any and all cost, direct or indirect, including legal defense that shall arise in relation to performance of this contract.

11. FINANCIAL MANAGEMENT

The Second Party agrees to establish and/or maintain a financial system, which shall establish that:

- A. Funds accruing from the sale of containers or packing materials in which donated foods are received, salvage of donated foods, or insurance shall be returned to the Department or used only for the payment of expenses of the program which will improve program operations including, but not limited to, transportation, storage, and handling of donated foods, salaries of persons directly connected with the program, and other program related expenses.
- B. The Second Party will pay all in-state distribution charges as established by the Department. The charges shall be paid monthly, in accordance with established Department policy, at the approved rate charged by the Distributor in the bid proposal award. The Department retains the right to withhold delivery or allocation of USDA foods if the Second Party fails to comply with the terms of this contract or if the Second Party falls more than sixty days in arrears in payment.
- C. Funds accruing from the operation of the program shall not be used for those costs which are not allowable under the cost principles in the U.S. Department of Agriculture Uniform Federal Assistance Regulations, 7 CFR Part 3015 Subpart T.
- D. The parties to this Agreement are cognizant that the Department of Agriculture is not liable for Social Security contributions pursuant to 420S Code, relative to the compensation of the Second Party during the period of this Agreement.

12. LOBBYING RESTRICTIONS, CERTIFICATION AND DISCLOSURE:

In accordance with 7 CFR 3018, no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement, including agreements covering donated commodities, with a dollar value exceeding \$100,000, to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress

in connection with any of the following covered Federal Actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

A. Exceptions:

The prohibition on using appropriated funds does not apply to activities by employees of the Second Party with respect to:

Liaison activities with Federal agencies and Congress not directly related to a covered Federal action.

Providing any information specifically requested by an agency or Congress.

Discussion and/or demonstration of products or services if not related to a specific solicitation for a covered action.

Professional and technical services in preparing, submitting or negotiating any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement or for meeting legal requirements conditional to receipt of any Federal contract, grant, loan or cooperative agreement. (The prohibition also does not apply to such services provided by others for the same purposes.)

B. Certification:

In addition to the above prohibition against using appropriated funds for lobbying for specific awards, Section 1352, Title 31, U.S. Code, requires each recipient of a Federal contract, grant, loan or cooperative agreement, including recipients of USDA Commodities, in excess of \$100,000 in Federal funds to sign a Certification Regarding Lobbying, stating that no payment has been made or will be made for the above described activities. The signed certification statement must be returned with this agreement.

C. Disclosure:

If non-federal funds are used by the Second Party to pay persons external to the Second Party's organization for activities which would have been prohibited if federal funds had been used, a Disclosure Form to Report Lobbying, Federal Form LLL, must be completed by the Second Party and submitted to the Department. The Second Party shall amend the Disclosure Form LLL at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Second Party.

If the cost paid, or to be paid, to attempt to influence a particular federal transaction increased by more than \$25,000 from what was reported in the initial disclosure statement, a new report is required at the end of the quarter in which the action occurred.

D. Penalties:

Use of appropriated funds for lobbying activities shall subject the Second Party to a Civil Penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. Failure to file or amend a disclosure report shall subject the Second Party to the same penalty for each such failure.

13. FOOD SERVICE MANAGEMENT COMPANIES

The Second Party may employ Food Service Management Companies to conduct food service operations in accordance with 7CFR 250.12 (d) and shall enter into a written contract with the Food Service Management

Company which shall expressly provide that:

- A. Any donated foods received by the Second Party and made available to the Food Service Management Company shall be utilized solely for the purpose of providing benefits for the employing agency's food service operation and the Second Party shall demonstrate that the full value of all donated foods is used solely for the benefit of the Second Party.
- B. The books and records of the Food Service Management Company pertaining to the food service operation of the agency shall be available for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings.
- C. All Food Service Management contracts shall be in effect for no longer than one year and shall provide that it may be extended at the option of both parties for four (4) additional one year periods and be subject to review by the Department for compliance with the requirements of 7 CFR 250.12 (c). The review procedures will encompass eligibility, food ordering procedures, storage practices, inventory controls, reporting and record keeping requirements, and compliance with nondiscrimination provisions.
- D. The Food Service Management Contract must contain lobbying restrictions outlined in Item 11 of this Agreement.
- E. Contracts may be terminated for cause by either party upon 30 days' written notice. At the time the contract is extended, the Food Service Management Agency must update all pertinent information and must demonstrate that all donated foods received during the previous contract period have been accounted for.
- F. When contracting for storage facilities, the Food Service Management Agency shall enter into a written contract for lease of storage facilities to be effective for no longer than one year. The contract may be extended at the option of both parties for four additional one-year periods. At the time the contract is extended, the storage facility must update all pertinent information and demonstrate that all donated foods received during the previous contract period have been accounted for.
- G. **A copy of the Food Service Management Company contract must be forwarded to this office for review, prior to the effective date of the contract.**

14. DEPARTMENT OF DEFENSE (DOD) PROGRAM:

Any Second Party participating in the USDA Food and Consumer Service Fresh Fruit and Vegetable Project administered by the Department shall ensure the following:

The Second Party is required to:

- 1. Ordering:
 - A. Place orders for fresh product directly with the Defense Subsistence Office (DSO);
 - B. When ordering fresh product, the Second Party shall include the five digit item code, quantity, requisition number and requested delivery date (consistent with established lead times);
 - C. When ordering fresh product, the Second Party shall identify any unique ordering requirements (e.g., count, size or grade) for DSO to ensure that accurate quality and quantity of fresh product are purchased; and

- D. Notwithstanding normal ordering schedules and lead times, the Second Party may contact the DSO to order from available DSO stocks on hand of fresh product in cases of an emergency.
2. Shipment and Delivery:
- A. When the fresh product is shipped to the Second Party (rather than picked up by the Second Party at a DSO warehouse), the Second Party shall be responsible for off loading the fresh product from the tailgate in an expeditious manner; if the Second Party is delinquent in off loading and detention charges accrue, the Second Party will be responsible for the detention and other charges caused by the delay.
 - B. Unless otherwise directed by DSO, the Second Party shall exchange any pallets received from prior shipments or from pallets on hand.
 - C. The Second Party shall notify DSO if the shipment has not arrived within one hour of the scheduled delivery time and take any corrective action requested by DSO;
 - D. Prior to accepting any shipment, the Second Party shall count and verify the shipment and annotate any overages or shortages on the vendor's ticket or government bill of lading;
 - E. Prior to accepting any shipment, the Second Party shall inspect the fresh product and call the DSO if there is any nonconformance, such as product quality or product damaged during shipment, to determine disposition of the product. DSO shall evaluate any nonconforming fresh product, utilizing field buyers, DSO Produce Specialists or Food and Consumer Services (FCS) or Agricultural Marketing Service (AMS) representatives, and advise the Second Party as to whether to accept or reject the product and what actions to take if the fresh produce that has been accepted is later determined to be nonconforming.
 - F. Acceptance of a shipment shall be made by signing the delivery ticket or government bill of lading;
 - G. The Second Party shall transmit the vendor's delivery ticket to DSO by mail or facsimile on a weekly basis; and
 - H. Within 24 hours of delivery, the Second Party shall notify DSO of any quality or condition defect of the fresh product discovered after acceptance of the fresh product.
3. The DSO shall purchase and arrange delivery of the fresh product to the Second Party and shall perform the following:
- A. In consultation with the Second Party, establish a regular ordering schedule and the necessary lead times for orders, taking into account the needs of the Second Party. If requested by the Second Party, the ordering schedule shall permit orders as frequently as daily if economically feasible, provided that orders for volume buys must be placed at least ten (10) days before the requested delivery date.
 - B. Not later than the 25th day of each month, provide the Second Party with DPSC Form 1931 listing the fresh products expected to be available for the subsequent month and the item codes for each of these fresh products;
 - C. Provide the Second Party with a monthly news flash containing any new or updated information on fresh product availability, fresh product and market conditions, best buys,

expected price fluctuations, new items, and any other market information of interest;

- D. Repeat all order information received telephonically from a Second Party to verify the accuracy of the order;
- E. If DSO does not receive an order from a Second Party in accordance with the established ordering schedule contact the Second Party to determine if orders will be made;
- F. At the time of ordering, notify the Second Party of any fresh product available at an economic price due to market conditions of which the Second Party was not previously notified;
- G. Make any item not available when ordered, available to be ordered by the Second Party as soon as it becomes available.
- H. In cases of emergency, fill orders from stock on hand or arrange delivery directly from a vendor to a Second Party; and
- I. Before filling any order, check to ensure that the order will not cause the dollar allocation for the Second Party to be exceeded.

15. DEPARTMENT RESPONSIBILITIES:

In order to ensure compliance by the Second Party with the requirements of this Agreement, the Department agrees to perform the following functions:

A. INFORMATION DISSEMINATION:

The Department will provide the Second Party with all information needed for informed participation in the program relative to: State and Federal Regulations; procedures for ordering and handling commodities; results of test evaluations and surveys; and any other available pertinent information as requested or needed by the Second Party.

B. TRAINING

The Department Field Review Staff will train food service personnel on an annual or as needed basis, depending on changes in policies and procedures.

C. REVIEWS

Amended July 1, 2002

An on-site review of each recipient agency shall be conducted by the Department at least once every three years. These reviews will include, but are not limited to, commodity ordering procedures, pro-rata share allocating, storage and warehousing practices, and compliance with reporting and record keeping requirements.

Any discrepancy discovered by a Department Field Reviewer during a review that does not require a follow-up review will be specified in writing in the Administrative Review Report, along with corrective measures to be taken and the prescribed time frame. Each discrepancy will be discussed with appropriate Second Party staff and a copy of the Administrative Review Report will be mailed to the appropriate Second Party official. Upon completion of the corrective measures by the appropriate food service official, written verification, in the same format as the Administrative Review Report explaining in detail the corrective measures taken and the date of completion must be returned to the

Department on or before the date indicated.

The Food Service Management contract implemented by the Second Party shall be subject to review by the Department for compliance with requirements of this contract.

16. PURCHASING AND SPECIFICATIONS:

The Second Party certifies by his signature hereinafter that he will not attempt in any manner to influence any specifications, to be restrictive in any way or respect, nor will he attempt in any way to influence any purchasing of services or commodities by the Commonwealth of Kentucky. For the purpose of this agreement, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

17. CONFLICT-OF-INTEREST LAWS AND PRINCIPLES:

The Second Party hereby certifies by his signature hereinafter that he is legally entitled to enter into the subject contract with the Commonwealth of Kentucky and certifies that he is not and will not be violating either

directly or indirectly any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390, 210.110, 210.990 (1), or any other applicable statute) or principle by the performance of this contract.

18. CHOICE OF LAW AND FORUM PROVISION:

All questions as to the execution, validity, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action, which is brought on the basis of this Agreement, shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

SECOND PARTY: (School District)

DEPARTMENT OF AGRICULTURE
Division of Food Distribution
100 Fair Oaks Lane Suite 502
Frankfort, KY 40601-1136

Name of Second Party

Address

City State Zip Code

Area Code and Telephone Number

Superintendent (Type or Print)

Signature of Superintendent/Administrator

Date

Director
Division of Food Distribution

Date

Approved as to Form and Legality:

GENERAL COUNSEL

/ / 99
Date

Region 1 – KC Provision
Case Price: \$2.68
Phone: 859-234-4044
Fax: 859-234-0227
Contact Person: Jenny Tapp

Contact Person: Jenny Tapp

Contact Person: Holly Hysong

Contact Person: Carolyn Nipper

Contact Person: Billie Jean Butler

Contact Person: Holly Hysong

Contact Person: Holly Hysong

Contact Person: Paula Peterson

NOTICE OF DELIVERY OF DONATED FOODS
TO SCHOOLS

1. Recipient Agency:
5. Account Number:
2. Donated Food:
6. Pack Size:
7. No. Cases:
3. USDA Delivery Order (D/O) Number:
8. Arrival Date:
4. Price Per Case:
9. Expiration Date:
- CHECK ONE: 10. Original Allocation:
11. Change Order (Number):

12. Sub-Outlets	13. Total Cases Alloc	14. Delivery Dates						16. Total Cases Requested for Delivery
		15. Delivery Breakdown						
</								

18. Signature:

19. Date:

**INSTRUCTIONS FOR COMPLETING NOTICE OF DELIVERY OF DONATED FOODS
(KY-FD-3 FORM)**

PURPOSE: The KY-FD-3 Form is used by Recipient Agencies to request delivery of donated food from distributors and to notify recipient agencies within a system of requested delivery dates and amount of food ordered for each sub-outlet.

INSTRUCTIONS: Prior to the beginning of each Fiscal Year the KDA will provide each recipient agency with a blank KY-FD-3 Form. Items 1,2,4 and 13 should be completed by the R/A, and the form reproduced in an amount sufficient to order all foods for the year. A separate sheet must be completed for each arrival.

This form is to be completed by R/A within 24 hours of receipt of the Notice of Arrival, KY-FD-2 Form, except when food is fresh produce. In this instance, the KY-FD-3 Form is completed immediately upon receipt of the Notice of Allocation, KY-FD-1 Form.

The KY-FD-3 Form must be reviewed within 24 hours of receipt by a agency within the system. No further action is required on the R/A's part unless a change in delivery schedule or foods allocated is changed. The R/A must immediately revise the original KY-FD-3 Form and forward a copy to the Distributor.

STEP-BY-STEP INSTRUCTIONS FOR COMPLETING THE KY-FD-3 FORM:

1. Enter Name of Recipient Agency (R/A).
2. Enter Name of Donated Food ordered.
3. Enter USDA Delivery Order (D/O) Number listed in Item 5 of KY-FD-2 Form.
4. Enter Price Per Case as listed in Item 11 on KY-FD-2 Form.
5. Enter Account Number - provided by distributor.
6. Enter Pack Size.
7. Enter Total Number of cases ordered.
8. Enter Arrival Date as listed in item 8 on KY-FD-2 Form, which is date product arrived at distributor's warehouse.
9. Enter Expiration Date as listed in Item 9 on KY-FD-2 Form, which is 60 days from the date of arrival.
10. Place a check mark if this is the first delivery request submitted.
11. Enter the number of the change, i.e., number 1, if this is the first change, number 2 if this is the second change, etc., if you are making any changes on the original KY-FD-3 Form that would involve the delivery dates or quantities.
12. Enter Name of Sub-outlets to which food is allocated.
13. Enter Total Cases Allocated for sub-outlets.
14. List Date food is to be delivered to each sub-outlet (as previously arranged with distributor. At least one week lead time may be required.
15. Enter Amount Requested for each delivery date.
16. Enter Total Case(s) Requested for each delivery stop. Make sure total cases equals amount listed in Item 7.
17. Enter calculated totals for each column in Item 15, the totals should be the same totals as Item 13 and Item 16.
18. Person completing this form must sign here.
19. Enter date mailed to distributor.

KENTUCKY FOOD DISTRIBUTION COMPLIANCE REVIEW FORM

Site reviews must be completed for each school/site **prior to February 1** of each school year.

SFA/AGENCY NAME: _____

SCHOOL/SITE NAME: _____

MANAGER NAME: _____

REVIEWED BY: _____

DATE: _____

I. STORAGE FACILITIES

- A. Does this facility have adequate storage available for the amount of food received?
If no, please explain the most reasonable solution to resolve this problem.

- B. Are there sufficient pallets and shelving on hand to safely store foods off the floor?
If no, please identify the type, size and number needed to meet requirement.

II. STORAGE PRACTICES

- A. Are all food items stored at least 6" off the floor and away from walls to allow for proper ventilation and air circulation and to avoid rodents, pest or other types of contaminates? YES ☐ NO ☐

- B. Are all areas of the Food Service establishment free of insects, rodents and other, pest infestations?
If no, please explain the procedures or steps you will put into place to rid the facility of the problem.

- C. If you will be using an outside extermination company who will be providing the services _____ **How Often?** _____

- a. If using a self-applied treatment is the person applying the chemical certified? YES ☐ NO ☐

(This certification does not apply if using to bait boxes and/ or adhesive strips!)

- b. Is a copy of the certification on file? YES ☐ NO ☐

- D. Are bi-annual Health Inspections for this facility being conducted in a timely manner? YES ☐ NO ☐

If no, please contact your local Health Department to have this inspection completed.

What's the date the last inspection was conducted? _____

- E. Are **chemicals**, **hazardous** materials and other non-food items being stored separate from food? YES ☐ NO ☐

F. Is this facility utilizing the **First-in, First-out**, by **pack date** method to ensure all older commodity products are used first? YES ☐ NO ☐

G. Are all areas of this Food Service establishment and equipment sanitary, neat and orderly? YES ☐ NO ☐

If no, please explain what steps will be taken to ensure this problem is resolved?

Are areas of the Food Service facility secured and safeguarded against theft?

YES ☐ NO ☐

III. TEMPERATURE RECORDING SYSTEM

A. Do the **Freezer**, **Cooler** and **Dry Storage** areas contain accurate thermometers?

YES ☐ NO ☐

If no, please indicate which area(s) require a replacement thermometer _____

What date was the thermometer replaced? _____

B. Do all **Freezer** and **Cooler** storage areas have internal thermometers?

YES ☐ NO ☐

If no, what actions will be taken by you or someone in your staff to correct this problem; please explain?

C. Indicate the temperatures for each storage area date of this review;

Freezer _____°; **Cooler** _____°; **Dry Goods** _____°.

D. Are recording charts maintained for all the storage areas? YES ☐ NO ☐

If yes, indicate which days of the week these are recorded; **Freezer** _____;

Cooler _____; **Dry Storage** _____.

E. Are the recorded temperatures within the recommended ranges; **Freezer** 0° to -10°; **Cooler** 34° to 40°; **Dry Storage** 50° to 70°? YES ☐ NO ☐

If any of these storage areas are not within the USDA recommended guidelines outlined above what actions and/ or procedures will you take to correct the problem; please explain?

IV. RECEIPT OF DONATED FOODS

A. Is the manager of the school receiving a copy of the D'3 (or a substitute) prior to delivery? YES ☐ NO ☐

Identify what method is used to notify; **Mail** ☐ **Fax** ☐ **E-mail** ☐ **Other** ☐

B. Are copies of the D'3 form or substitute on file? YES ☐ NO ☐

C. Are all commodity invoices signed and submitted to the Food Service Director in a timely manner? YES ☐ NO ☐

- D. Are shortages and/ or overages of deliveries noted on the invoice, was the Food Service Director contacted? YES ☐ NO ☐

If overages and shortages were noted was the commodity product accepted?

YES ☐ NO ☐

If yes, list the commodity type, quantity and what procedures were taken to resolve this discrepancy, please explain?

NOTE:

Please make sure Managers understand the proper procedures for handling damaged or out-of-condition commodities and never to accept more or less than is noted or allocated on the D-3!

V. RECORD KEEPING

- A. Are records maintained 3 years plus the current year? YES ☐ NO ☐

Manager Signature _____ **Date** _____

Food Service Director _____ **Date** _____

Immediate Supervisor _____ **Date** _____

FOR ALL"

Para presentar una queja sobre discriminación, escriba a USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410, o llame al (202) 720-5964 (voz y TDD). USDA es un proveedor y empleador que ofrece oportunidad igual a todos.

Contact Person	Area	School/Company	Email
Victor Steffen	CAC Chair	Campbell Co Schools	victor.steffen@campbell.kyschools.us
Vacant	Region 1		
Martha Dysart	Region 2	Jefferson County Schools	mdysart1@jefferson.kyschools.us
Jo Williams	Region 3	Ashland Ind Schools	jo.williams@ashland.kyschools.us
Helen Ritchie	Region 4	Knott Co Schools	helen.ritchie@knott.kyschools.us
Janice Leavell	Region 5	Kentucky School for the Deaf	janice.leavell@ksd.kyschools.us
Jerry Levenson	Region 6	Ft Knox Schools	jerry.leverson@am.dodea.edu
Chris Brockman	Region 7	Union County Schools	chris.brockman@union.kyschools.us
Chris Russell	Region 8	Hart County Schools	chris.russell@hart.kyschools.us
Sandra McIntosh	Region 9	Christian County Schools	sandra.mcintosh@christian.kyschools.us
Gina Rose	RCCI	KY Corrections	gina.rose@ky.gov
Anna Pontoni	Processor	McCain Foods	anna.pontoni@mccain.com
Chuck Robison	Broker	Dennerly	crobison@dennerly.com
Carolyn Nipper	Distributor	Clem's	clemsusda@cs.com

**USDA FOOD
EMERGENCY FEEDING REPORT**

R/A NAME: _____ SIGNATURE: _____ COUNTY: _____

DATE: _____ TITLE: _____ PHONE NO: _____

LOCATION OF FEEDING SITE: _____

USDA FOOD	D/O #	NAME OF AGENCY TRANSFERED TO	UNITS USED/ TRANSFERRED	UNIT PRICE	UNIT SIZE (Smallest Unit)	TOTAL \$ VALUE

GRAND TOTAL VALUE:

DATE(S) SHELTER OPERATED: _____

ESTIMATED NUMBER OF PERSONS SERVED: _____

ESTIMATED NUMBER OF MEALS SERVED: _____

INSTRUCTIONS FOR COMPLETING EMERGENCY FEEDING REPORT
(KY-FD-50)

PURPOSE: This form is to be completed to account for any foods used or transferred during a declared emergency. Please complete one form for each emergency-feeding site.

NAME OF R/A: Enter name of recipient agency.

SIGNATURE: Signature of person completing this form.

COUNTY: Name of the county R/A is located.

DATE: Enter date this form was completed.

TITLE: Enter title of person completing this form.

**TELEPHONE
NUMBER:** Enter telephone number of recipient agency.

USDA FOOD: Enter foods used or transferred out during the emergency.

D/O#: Enter the delivery order number (121 -) for each food used or transferred.

**NAME OF AGENCY
TRANSFERRED
TO:** Enter the Name of the Agency that USDA commodities were transferred to during the emergency.

**UNITS USED OR
TRANSFERRED:** Enter number of units used or transferred during the Emergency. (Can not be greater than the total received to date)

UNIT PRICE: Determined by using the price reported on most recent Notice of Arrival (KY-FD-2) of each food used, plus the delivery cost. Divide the case price including the delivery cost by the number of units per case to get the unit price.

UNIT SIZE: Enter the smallest pack size of the commodity.

TOTAL VALUE: Determined by multiplying the units used or transferred by the unit price.

GRAND TOTAL: Add Total Value Column.

DATES SHELTER

OPERATED: Enter the dates of operation of the shelter.

ESTMIATED

NUMBER OF

PERSONS SERVED: Enter the estimated number of people served during the operation of the shelter.

ESTIMATED

NUMBER OF

MEALS SERVED: Enter the estimated number of meals served during the operation of the shelter.