

AGREEMENT

Agreement made this ____ day of _____, 2017, between the City of San Luis, Arizona, 1090 E. Union Street, P.O. Box 1170, San Luis, Arizona ("City"), and Yuma Community Food Bank, 2404 E. 24th Street, Yuma, AZ 85365.

In consideration of the mutual promises contained in this agreement, the parties agree as follows:

1. The City agrees to pay to Yuma Community Food Bank the sum of \$15,000.00 (FIFTEEN THOUSAND DOLLARS) for food services to needy persons in the City limits of the City of San Luis.
2. Between July 1, 2017 and June 30, 2018, Yuma Community Food Bank promises to deliver food to needy persons within the City limits of City of San Luis at least twice per month and to do so free of charge to said needy persons.
3. Food shall be distributed to all qualified persons regardless of religious faith. Monies provided herein shall not be used to promote religious faith or beliefs.
4. Distribution of food shall at all times conform to all federal, state and local legal requirements, including, but not limited to all rules and regulations of the Yuma County Health Department.
5. Indemnification. Yuma Community Food Bank agrees to defend, indemnify and hold City, their respective affiliates, officers, directors, employees and agents harmless from and against any and all losses, claims demands, suits, actions, judgments, fines or payments for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of food distribution by Yuma Community Food Bank. Yuma Community Food Bank obligations under this paragraph shall survive expiration or termination of this agreement.
6. General Provisions.
 - A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Yuma Community Food Bank of the breach of any covenant of this agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this contract.
 - B. Attorney's Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorney's fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorney's fees shall be included therein, such fees to be set by the court and not by jury.

- C. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.
- D. Headings. The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- E. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this contract.
- F. Time of the Essence. Time is of the essence of this contract.
- G. No Partnership and Third Parties. It is not intended by this agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other similar arrangement between City and Yuma Community Food Bank. No term or provision of this agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- H. Entire Agreement. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.
- I. Amendment. No change or additions are to be made to this agreement except by written amendment executed by the parties hereto.

Governing Law. This agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this agreement is subject to the provisions of A.R.S. § 35-511.

- K. Reformation. Should any term, provision, covenant or condition of the agreement be held to be void or invalid, the parties shall reform this agreement to conform as closely as possible to the original intent thereof.
- L. Venue. Any legal action relating to this agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the district of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

- M. Severability. Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

- N. No Personal Liability. No member, official or employee of the City shall be personally liable to Yuma Community Food Bank, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Yuma Community Food Bank or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this contract.

- O. Employment Eligibility. Yuma Community Food Bank hereby warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that related to its employees and with A.R.S. 523-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the agreement and is subject penalties up to and including termination of this agreement. City retains the legal right to inspect the papers of Yuma Community Food Bank and any contractor or subcontractor employee of Yuma Community Food Bank to ensure that Yuma Community Food Bank and any of its contractors or subcontractors are compliant with this warranty.

- P. Compliance with Law. Licensee agrees that in the distribution of food it will comply with all federal, state, and local statutes, laws, ordinances, rules and regulations, including, but not limited to, all rules and regulations of the Yuma County Health Department.

- Q. Assignment. The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Each party to this agreement has caused it to be executed on the day and year first above written.

Yuma Community Food Bank

City of San Luis

By: _____

By: _____

Tadeo A. De La Hoya,
City Manager