

AGREEMENT

This Agreement (“Agreement”) is effective the 1st day of July, 2018, and made between the City of San Luis, a municipal corporation organized under the laws of Arizona, having its administrative offices at 1090 East Union Street, P.O. Box 1170, San Luis, Arizona (“City”), and Yuma Community Food Bank, a non-profit charitable corporation organized under the laws of Arizona, having its administrative offices at 2404 E. 24th Street, Yuma, AZ 85365 (“Food Bank”). The Food Bank and the City may be referred to singularly as the “Party” and collectively as the “Parties.”

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. The City agrees to pay to the Food Bank the sum of \$25,000.00 (TWENTY-FIVE THOUSAND DOLLARS) for food services to needy persons in the City limits of the City of San Luis.
2. Between July 1, 2018 and June 30, 2019, the 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. The Food Bank agrees to defend, indemnify and hold the 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 the Food Bank. The 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 the 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.

- C. **Attorney's Fees.** In the event either Party finds it necessary to bring any action at law or other proceeding, including arbitration, against the other 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.
- D. **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.
- E. **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.
- F. **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 Agreement.
- G. **Time of the Essence.** Time is of the essence of this Agreement.
- H. **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 the City and the 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.
- I. **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.
- J. **Amendment.** No change or additions are to be made to this Agreement except by written amendment executed by the Parties.
- K. **Governing Law.** This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

K. Arizona Required Provisions.

1. Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. §38-511.
2. Employment Eligibility. The Food Bank hereby warrants that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of this Agreement. City retains the legal right to inspect the papers of the Food Bank to ensure that the Food Bank complies with this warranty.
3. Boycott. The Food Bank certifies that it does not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel under A.R.S. § 35-393.01. The undersigned understands this certification will become public record under A.A.C. R2-7-C317.

L. 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.

M. 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. 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.

M. No Personal Liability. No member, official or employee of the City shall be personally liable to the 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 Food Bank or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this contract.

- N. Compliance with Law. The Food Bank 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.
- P. 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.
- Q. Notices. All notices to be given under this Agreement, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:
- deposit in the United States Postal Service by certified mail, return receipt requested, and postage prepaid,
 - personal delivery by process server or
 - sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

If to the City -

City Manager
City of San Luis
P.O. Box 1170 (by United States Postal Service)
1090 East Union Street (by personal process or courier)
San Luis, Arizona 85349

Copy to

San Luis City Attorney
City of San Luis
P.O. Box 1170
San Luis, Arizona 85349

If to the Food Bank

Executive Director
Yuma Community Food Bank
2404 E. 24th Street, Yuma, AZ 85365
Yuma, Arizona 85365

or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

R. Ratification. Acts, taken pursuant to this contract, but prior to its execution are hereby ratified and confirmed.

S. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in Yuma County, Arizona

City of San Luis, Arizona

Gerardo Sanchez, Mayor
Date: _____

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Kay Marion Macuil, City Attorney

Yuma Community Food Bank

Signature
Print Name: _____
Title: _____
Date: _____