

**FUNDING AGREEMENT
BETWEEN
THE COUNTY OF SANTA BARBARA
AND
FOODBANK OF SANTA BARBARA COUNTY**

THIS FUNDING AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and the Foodbank of Santa Barbara County, with an address at 1525 State St., Santa Barbara, CA 93101 (hereafter Foodbank) wherein Foodbank agrees to provide and County agrees to accept the services specified herein.

WHEREAS, the County is an agency of the State of California and has the responsibility to deliver exceptional services so Santa Barbara County's communities can enjoy a safe, healthy and prosperous life; and

WHEREAS, the Foodbank is a 501(c)(3) private nonprofit corporation involved in the promotion and aid of local member food banks; and

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by COVID-19; and on March 4, 2020 the State Health Officer ordered all individuals, except essential workers, in the State to stay home until further notice; and

WHEREAS, on March 12, 2020, the County Director of Emergency Services (DES) proclaimed a Local Emergency as a result of the COVID-19; and

WHEREAS, on March 12, 2020, the Health Officer of the County declared a Local Health Emergency, due to the imminent and proximate threat to public health from the introduction of COVID-19 in the County; and

WHEREAS, on March 13, 2020, a Proclamation Declaring a National Emergency was issued by the President of the United States due to the national impacts of COVID-19; and

WHEREAS, on March 17, 2020, the County Board of Supervisors ratified the Proclamation of a Local Emergency, and the Declaration of a Local Health Emergency; and

WHEREAS, on March 22, 2020, the President of the United States approved a Major Disaster Declaration for California beginning January 20, 2020, which made federal emergency aid available for California, including the County of Santa Barbara, through disaster assistance under Federal Emergency Management Agency (FEMA) Incident DR-4482-CA; and

WHEREAS, the COVID-19 emergency has impacted food security in the County, and emergency food purchase and distribution is necessary to protect the public health and safety; and

WHEREAS, the County has the duty to obtain resources needed for the protection of life and property, including in response to the COVID-19 Public Health Emergency, through the purchase and distribution of food; and

WHEREAS, due to COVID-19, there currently exists a critical decrease of in-kind food donations that are typically available during a non-emergency, and a concurrent increase in the demand for food resources. As such, the Foodbank is unable to provide assorted food and grocery items to individuals and families who are in need of emergency food; and

WHEREAS, as a result of the Governor's Stay-at-Home orders in response to the Public Health Emergency, a number of vulnerable residents who have contracted or been exposed to COVID-19 and/or with significant underlying medical conditions are unable to safely access sufficient food, requiring substantial direct services and support from the Foodbank; and

WHEREAS, despite the efforts of the State of California, there is a need for county and local governments to provide emergency food to impacted populations; and

WHEREAS, FEMA Policy FP 104-010-03 provides that the purchase and distribution of food constitutes emergency protective measures necessary to save lives and protect public health and safety that may be reimbursed under the public assistance program under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"); and

WHEREAS, FEMA Policy FP 104-010-03 provides that local governments may enter into formal agreements with private organizations, including private nonprofit (PNP) organizations such as food banks, to purchase and distribute food when necessary as an emergency protective measure in response to the COVID-19 Public Health Emergency. In these cases, public assistance funding is provided to the County which is the legally responsible government entity, which then reimburses the private organization for the cost of providing those services under the agreement; and

WHEREAS, the Director of Emergency Services (DES) for the County requires the mutual assistance of Foodbank to implement an emergency feeding program in order to purchase and distribute food in connection with the COVID-19 Santa Barbara County incident; and

WHEREAS, Foodbank is providing private nonprofit mutual assistance consisting of emergency personnel, equipment, goods, materials, food, or water, or a combination thereof, during the period March 16, 2020 through September 30, 2020 to assist with the COVID-19 Santa Barbara County incident; and

WHEREAS, a PNP must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities (19 CCR § 2994); and

WHEREAS, the purpose of this Agreement is to set forth the responsibilities between the County and Foodbank for an emergency feeding program to assist impacted populations.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Yaneris Muñiz at phone number 805-335-0083 is the representative of County and will administer this Agreement for and on behalf of County. Erik Talkin at phone number 805-280-2500 is the authorized representative for Foodbank. Changes in designated representatives shall be made only after advance written notice to the other party.
2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: Yaneris Muñiz
Santa Barbara County Office of Emergency Management
4408 Cathedral Oaks Road
Santa Barbara, CA 93110
Fax: 805-681-5592

To Foodbank: Erik Talkin
Foodbank of Santa Barbara County
1525 State Street
Santa Barbara, CA 93101
Fax: 805-683-4951

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. **PRIOR AGREEMENT FOR COVID-19 RESPONSE.** The Memorandum of Agreement (MOA) executed on April 3, 2020 between the County and Foodbank is hereby replaced in its entirety by this Agreement. Costs incurred during the previous MOA are now subject to this Agreement, and any reimbursement of costs incurred shall be supported by required documentation listed in section 4(E) of this Agreement.

4. **FOODBANK RESPONSIBILITIES.**

- A. **Scope of Services.** The Foodbank shall aid County's response to the COVID-19 emergency by implementing an emergency food program in response to the COVID-19 pandemic for impacted populations, including:
 - i. Purchasing, packaging, and/or preparing food, including food commodities, fresh foods, shelf-stable food products, and prepared meals;

- ii. Delivering food, including hot and cold meals if necessary, to distribution points and/or individuals, when conditions constitute a level of severity that food is not easily accessible for purchase; and
 - iii. Leasing distribution and storage space, vehicles, and necessary equipment.
- B. **Emergency Feeding Program.** The Foodbank provides nutritional assistance to approximately 6,500 individuals per week during non-emergency conditions (“Normal Operations”). This Agreement only authorizes reimbursement for the provision of services under an emergency feeding program in response to the COVID-19 pandemic for impacted populations, and not for the Foodbank’s Normal Operations.
- C. **Multi Agency Disaster Feeding Plan.** In accordance with the Multi Agency Disaster Feeding Plan for Santa Barbara County, the Foodbank serves as the primary source of emergency food for county residents and coordinates emergency feeding operations with various stakeholders through the Feeding Task Force.
- D. **Eligibility Verification.** The Foodbank shall screen individuals to determine if they are part of a population affected by the COVID-19 pandemic. Screening will include documenting the individual’s name, address/zip code, and number of persons in their household. The population served shall be individuals who meet the following criteria:
 - i. Those who contracted or were exposed to COVID-19 or have been deemed high-risk according to the Centers for Disease Control and Prevention (CDC).
 - ii. Individuals who are not receiving food assistance through other state and federal programs (e.g., CalFresh/SNAP, WIC).
- E. **Documentation.** The Foodbank shall provide documentation to substantiate expenditures as qualifying for FEMA reimbursement, specifically:
 - i. Eligibility screening documentation listed in section 4(D) of this agreement;
 - ii. Population numbers of those impacted by COVID-19;
 - iii. The percent increase in demand for food assistance due to the COVID-19 emergency;
 - iv. State and local funding sources received for food assistance;
 - v. Number of individuals served;
 - vi. Length of time the services are provided and needed;

- vii. Costs per individual for service delivery; and
 - viii. Overhead costs, such as transportation.
- F. **Volunteer Staff Time.** The Foodbank shall document all volunteer staff time dedicated to the emergency feeding program for the COVID-19 pandemic, including volunteer name, affiliation/organization (if applicable), type of work done, number of hours worked, and sign-in and sign-out documentation with a supervisor's signature. The monetary value of total volunteer hours in support of the emergency feeding program will be counted towards the County's 25% reimbursement cost-share.
- G. **Data Requests.** The Foodbank shall reasonably comply with any and all requests from County seeking information and data including, but not limited to, types and sources of food and the expenditures related to the acquisition of food at the Foodbank.
- H. **Compliance.** Acquisition and distribution of food to impacted populations shall comply with all applicable federal, state, and local laws, regulations, policies and directives.

5. **COUNTY RESPONSIBILITIES.** The County shall:

- A. Submit all Foodbank invoices to California Governor's Office of Emergency Services (Cal OES) within 7 days of the expiration of the initial term of this Agreement, and at intervals of no less than 30 days with respect to any period for which this Agreement is extended, along with the number of the total clients served by the Foodbank and such other documentation as CalOES shall reasonably require. This documentation shall be submitted electronically to Cal OES at the following email address: COVID-19.TaskForce@soc.caloes.ca.gov.
- B. Retain all copies of all invoices for submission in the final report which the County shall submit to Cal OES.
- C. Reasonably comply with any and all requests from Cal OES seeking information and data including, but not limited to, types and sources of food and the expenditures related to the acquisition of food at the Foodbank. The Foodbank shall cooperate with the County in providing the requested information and data.
- D. Retain a copy of all invoices and cost-supporting documentation from the Foodbank for a period of four (4) years from the date of the execution of this Agreement.
- E. Submit a final report to CalOES no more than thirty (30) days following the expiration of this Agreement and shall account for final expenditure of the Foodbank of Santa Barbara County by submitting:

- i. copies of proper documentation of expenditures not previously submitted;
 - ii. any and all other documents requested by CalOES and related to the expenditures of the Foodbank of Santa Barbara County under this Agreement; and
 - iii. any unspent funds advanced to it under this Agreement.
 - F. Administer and distribute funds to reimburse the Foodbank for eligible costs of acquiring and distributing food to impacted populations. Such acquisition and distribution shall comply with all applicable federal, state, and local laws, regulations, policies and directives.
 - G. The County shall comply with the Federal Funding Accountability and Transparency Act. This form shall be completed by the County prior to the execution of this Agreement and is hereby incorporated as part of this Agreement.
6. **TERM.** Foodbank shall commence performance on March 16, 2020 and end performance upon completion, but no later than September 30, 2020 unless otherwise directed by County or unless earlier terminated.

7. **FUNDING ARRANGEMENT.**

- A. Payment for services and/or reimbursement of costs shall be made upon Foodbank's satisfactory performance of services, based upon the scope and methodology described herein as determined by County.
- B. At least every 30 days, Foodbank shall submit to the County Designated Representative an invoice or certified claim on the County Treasury for the service performed over the period specified. Invoices shall provide detailed, itemized invoices to the County of Santa Barbara to verify eligible food acquisition and distribution costs. These invoices or certified claims must cite the assigned Board Contract Number. County Designated Representative shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. County shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from Foodbank.
- C. County's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County's right to require Foodbank to correct such work or billings or seek any other legal remedy.
- D. At any time, the County reserves the right to offset, withhold, deobligate, or recoup funds or future payments from the Foodbank if the County determines that there has been a violation of this Agreement by the Foodbank or if the County determines that Foodbank's expenditures pursuant to this Agreement are or were not eligible, proper, or allowable.

8. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that Foodbank (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Foodbank shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Foodbank is performing its obligations in accordance with the terms and conditions hereof. Foodbank understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Foodbank shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Foodbank shall be solely responsible and save the County harmless from all matters relating to payment of Foodbank's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Foodbank may be providing services to others unrelated to the County or to this Agreement.

9. **CONFLICT OF INTEREST.** Foodbank covenants that Foodbank presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Foodbank further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Foodbank. Foodbank must promptly disclose to County, in writing, any potential conflict of interest. County retains the right to waive a conflict of interest disclosed by Foodbank if County determines it to be immaterial, and such waiver is only effective if provided by County to Foodbank in writing.

10. **NO PUBLICITY OR ENDORSEMENT.** Foodbank shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Foodbank shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Foodbank. Foodbank shall not in any way contract on behalf of or in the name of County. Foodbank shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

11. **RECORDS, AUDIT, AND REVIEW.**
 - A. Each party shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of a similar profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during Foodbank's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Foodbank shall be subject to the

examination and audit of the California State Auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Foodbank shall participate in any audits and reviews, whether by County or the State, at no charge to the County.

- B. If federal, state or County audit exceptions are made relating to this Agreement, Foodbank shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from the County, Foodbank shall reimburse the amount of the audit exceptions and any other related costs directly to the County as specified by the County in the notification.
- C. The County of Santa Barbara shall comply with the Single Audit Act requirements incorporated herein.

12. **INDEMNIFICATION AND INSURANCE.** In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

13. **NONDISCRIMINATION.** County hereby notifies Foodbank that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Foodbank agrees to comply with said ordinance.

14. **NONEXCLUSIVE AGREEMENT.** Foodbank understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Foodbank as the County desires.

15. **NON-ASSIGNMENT.** Foodbank shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

16. **TERMINATION.**

A. **By COUNTY.** County may, by written notice to Foodbank, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Foodbank to fulfill the obligations herein.

i. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Foodbank shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.

ii. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Foodbank of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term.

iii. **For Cause.** Should Foodbank default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Foodbank shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Foodbank, unless the notice directs otherwise.

B. **By Foodbank.** Should County fail to pay Foodbank all or any part of the payment set forth in Section 6, Funding Arrangement, Foodbank may, at Foodbank's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.

C. **Upon termination,** Foodbank shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Foodbank in performing this Agreement, whether completed or in process, except such items as County

may, by written permission, permit Foodbank to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Foodbank for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Foodbank be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Foodbank shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Foodbank. In the event of a dispute as to the reasonable value of the services rendered by Foodbank, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

17. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.
18. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
19. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.
20. **NO WAIVER OF DEFAULT.** No delay or omission of either party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.
21. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

22. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.
23. **COMPLIANCE WITH LAW.** Each party shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The parties will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
24. **CALIFORNIA LAW AND JURISDICTION.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.
25. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
26. **AUTHORITY.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.
27. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.
28. **CLEAN AIR ACT.**
- A. Foodbank agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et. Seq.
 - B. Foodbank agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Office of Emergency Services, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - C. Foodbank agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal Emergency Management Agency.

29. FEDERAL WATER POLLUTION CONTROL ACT.

- A. Foodbank agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et. Seq.
- B. Foodbank agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the California Office of Emergency Services, Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.
- C. Foodbank agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal Emergency Management Agency.

30. SUSPENSION AND DISBARMENT.

- A. This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such the Foodbank is required to verify that none of the Foodbank, its principals (defined at 2 CFR §180.995), or its affiliates (defined at 2 CFR §180.905) are excluded (defined at 2 CFR §180.940) or disqualified (defined at 2 CFR §180.935).
- B. Foodbank must comply with 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the County. If it is later determined that the Foodbank did not comply with 2 CFR Part 180, Subpart C and 2 CFR Part 3000, Subpart C, in addition to remedies available to California Office of Emergency Services, and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or disbarment.
- D. Foodbank agrees to comply with the requirements of 2 CFR Part 180, Subpart C and 2 CFR Part 3000 Subpart C throughout the period of this contract. Foodbank further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- 31. BYRD ANTI-LOBBYING AMENDMENT.** Foodbank shall file the required certification attached as Exhibit A, *Certification for Contracts, Grants, Loans, and Cooperative Agreement (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended)*, which is incorporated herein by this reference. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with

obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

32. PROCUREMENT OF RECOVERED MATERIALS.

- A. In performance of this contract, Foodbank shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

33. ACCESS TO RECORDS.

- A. Foodbank agrees to provide CalOES, County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the Foodbank which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. Foodbank agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Foodbank agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under this contract.

34. DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, AND FLAGS.

Foodbank shall not use the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

35. NO OBLIGATION BY THE FEDERAL GOVERNMENT. The Federal Government is not a party to this contract and is not subject to any obligations or liability to the County, Foodbank, or any other party pertaining to any matter resulting from this contract.

36. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. Foodbank acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Foodbank's actions pertaining to this contract.

37. REMEDIES FOR NONCOMPLIANCE. In the event County determines, in its sole discretion, that Foodbank is not in compliance with the terms and conditions set forth herein, County may:

- A. Require additional, more detailed financial reports;
- B. Require additional project monitoring;
- C. Require Foodbank to obtain technical or management assistance; or
- D. Establish additional prior approvals.

38. CHANGES.

A. **Notice.** The primary purpose of this clause is to obtain prompt reporting of County conduct that Foodbank considers to constitute a change to this Agreement. Except for changes identified as such in writing and signed by County, Foodbank shall notify the County in writing, within five (5) calendar days from the date that Foodbank identifies any Government conduct (including actions, inactions, and written or oral communications) that Foodbank regards as a change to the Agreement. On the basis of the most accurate information available to Foodbank, the notice shall state:

- i. The date, nature, and circumstances of the conduct regarded as a change;
- ii. The name, function, and activity of each Government individual and Foodbank official or employee involved in or knowledgeable about such conduct;
- iii. The identification of any documents and the substance of any oral communication involved in such conduct;
- iv. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- v. The particular elements of contract performance for which Foodbank may seek an equitable adjustment under this clause, including:
 - What line items have been or may be affected by the alleged change;
 - What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

- vi. Foodbank's estimate of the time by which County must respond to Foodbank's notice to minimize cost, delay or disruption of performance.
- B. **Continued Performance.** Following submission of the required notice, Foodbank shall diligently continue performance of this Agreement to the maximum extent possible in accordance with its terms and conditions as construed by the Foodbank.
- C. **County Response.** County shall promptly, within ten (10) calendar days after receipt of notice, respond to the notice in writing. In responding, the County shall either:
- i. Confirm that the conduct of which Foodbank gave notice constitutes a change and when necessary direct the mode of further performance;
 - ii. Countermand any communication regarded as a change;
 - iii. Deny that the conduct of which Foodbank gave notice constitutes a change and when necessary direct the mode of further performance; or
 - iv. In the event Foodbank's notice information is inadequate to make a decision, advise Foodbank what additional information is required, and establish the date by which it should be furnished and the date thereafter by which County will respond.

B. Equitable Adjustments.

- i. If the County confirms that County conduct effected a change as alleged by Foodbank, and the conduct causes an increase or decrease in Foodbank's cost of, or the time required for, performance of any part of the work under this Agreement, whether changed or not changed by such conduct, an equitable adjustment shall be made:
 - In the contract price or delivery schedule or both; and
 - In such other provisions of the Agreement as may be affected.
- ii. The Agreement shall be modified in writing accordingly. The equitable adjustment shall not include increased costs or time extensions for delay resulting from Foodbank's failure to provide notice or to continue performance as provided herein.

39. **MANDATORY DISCLOSURE.** Foodbank must disclose, in a timely manner, in writing to the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award. Foodbank is required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM) located at www.sam.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321.)

(Signatures on following page.)

Funding Agreement for between the **County of Santa Barbara** and Foodbank of Santa Barbara County.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
CEO

Date: _____

**REQUIRING JURISDICTION,
COUNTY OF SANTA BARBARA:**

By: _____
Chair, Board of Supervisors

Date: _____

**RECOMMENDED FOR
APPROVAL:**

Office of Emergency
Management

By: _____
Department Head

Date: _____

**PNP ORGANIZATION, FOODBANK
OF SANTA BARBARA COUNTY:**

By: _____
Erik Talkin
Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

Date: _____

**APPROVED AS TO
ACCOUNTING FORM:**

Betsy M. Schaffer, CPA
Auditor-Controller

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:

Risk Management

By: _____

Date: _____

EXHIBIT A

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS
(Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (As Amended))**

Foodbank of Santa Barbara County certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Foodbank of Santa Barbara County certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Foodbank of Santa Barbara County understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date