

AGREEMENT  
BETWEEN  
COUNTY OF ORANGE  
AND  
COMMUNITY ACTION PARTNERSHIP OF ORANGE COUNTY  
AND  
SECOND HARVEST FOOD BANK OF ORANGE COUNTY, INC.  
FOR THE PROVISION OF  
SUPPLEMENTAL FINANCIAL SUPPORT  
FOR EMERGENCY FOOD DISTRIBUTION SERVICES

This AGREEMENT, entered into May 19, 2020 which date is particularized for purpose of reference only, is by and between the COUNTY OF ORANGE, hereinafter referred to as “COUNTY,” and Community Action Partnership of Orange County a California non-profit corporation and Second Harvest Food Bank of Orange County, Inc. a California non-profit corporation hereinafter referred to individually as “FOOD BANK,” or collectively as “FOOD BANKS.” This Agreement shall be administered by the County of Orange Social Services Agency Director or designee, hereinafter referred to as “ADMINISTRATOR.”

W I T N E S S E T H:

WHEREAS, COUNTY and FOOD BANKS recognize that Orange County residents requiring emergency food assistance has significantly increased due to the COVID-19 pandemic, and;

WHEREAS, FOOD BANKS serve residents in all thirty-four cities of Orange County by providing fresh and wholesome food directly to residents, hosting mass drive-through food

distribution events, and supporting more than five-hundred Orange County organizations in their efforts to provide food for the food-insecure communities they serve, and;

WHEREAS, FOOD BANKS, due to the COVID-19 pandemic and the unprecedented scale of needed emergency food assistance, are incurring unplanned expenses related to food sourcing, transportation, delivery, and operating costs that could exceed funding that is normally acquired through grants, donations, and private support for these services; and

WHEREAS, COUNTY desires to provide supplemental funding to FOOD BANKS should existing grants, donations, and private support be insufficient to meet the needs of Orange County residents under the terms and conditions of this AGREEMENT; and

WHEREAS, FOOD BANKS agrees to render such services on the terms and conditions hereinafter set forth;

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

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1. TERM

The term of this Agreement shall begin on May 19, 2020 and end on October 31, 2020, unless earlier terminated pursuant to the provisions of Paragraph 16 of this Agreement; however, FOOD BANKS shall be obligated to perform such duties as would normally extend beyond this term, including, but not limited to, obligations with respect to indemnification, audits, reporting, and accounting.

2. DEFINITIONS

2.1 Emergency Food Assistance Services means providing food, packaged in a manner for easy transport, either directly or indirectly through local community based organizations who serve food-insecure communities.

2.2 Food includes, but is not limited to, shelf-stable items (e.g., canned meats, rice, beans, pasta, pasta sauce, peanut butter, soups, cereal, etc.), fresh produce, bread, and/or dairy products.

3. FOOD BANK RESPONSIBILITIES

3.1 Provide emergency food assistance services to residents of Orange County.

3.2 Package and distribute food.

3.3 Provide staffing and transportation to ensure timely delivery of food items.

3.4 Provide facilities with sufficient space to accommodate storage, packaging, and distribution of food items.

3.5 Maintain accurate written food distribution and administrative cost records for reimbursement by COUNTY including but not limited to Federal Emergency Management Agency (FEMA) and/or Coronavirus Aid, Relief, and Economic Security (CARES) Act. All claimed costs must be necessary and reasonable and in accordance with FEMA Policy FP 104-010-03.

3.6 FOOD BANKS will collaborate with each other to determine how to best meet the needs of Orange County residents, and shall determine, amongst themselves, when and what portion of available funding will be requested from COUNTY by each FOOD BANK.

3.7 FOOD BANKS shall only request supplemental funding from the COUNTY, and shall only seek reimbursement from COUNTY for the purchase of grocery items and other commodities necessary for the packaging of food, and other administrative costs not to exceed ten (10) percent of this Agreement's maximum obligation, stated in Subparagraph 9.1, when other funding sources such as grants, donations, and private support are exhausted and the emergency food assistance needs of Orange County residents cannot be met without supplemental funding from the COUNTY.

4. COUNTY RESPONSIBILITIES

4.1 Provide available funding including but not limited to FEMA and/or CARES Act funding to support the emergency food assistance services provided to Orange County residents when those services cannot be entirely funded by the FOOD BANK'S traditional funding sources. At no time shall funding under this Agreement be an obligation of COUNTY's General Fund.

4.2 Receive FOOD BANK'S cash advance requests through a form attached hereto as Exhibit "1" and/or invoices and submit to Auditor-Controller within three (3) business days of receiving a properly completed and signed Exhibit "1."

4.3 Keep FOOD BANKS informed regarding approval of cash advance requests and/or invoices.

5. NOTICES

5.1 All notices, requests, claims, correspondence, reports, statements authorized or required by this Agreement, and/or other communications shall be in writing and sent by email or certified mail addressed as follows:

COUNTY: County of Orange Social Services Agency  
Contracts and Procurement Services  
500 N. State College Blvd, Suite 100  
Orange, CA 92868  
Contract: Dianne Breault, Senior Contract Administrator

Email: [Dianne.Breault@ssa.ocgov.com](mailto:Dianne.Breault@ssa.ocgov.com)  
FOOD BANKS: Community Action Partnership of Orange County  
11870 Monarch Street  
Garden Grove, CA 92841  
Contact: President & CEO Gregory Scott  
Email: [gscott@capoc.org](mailto:gscott@capoc.org)

Second Harvest Food Bank of Orange County  
8014 Marine Way  
Irvine, CA 92618  
Contact: Harald Herrmann, Chief Executive Officer  
Email: [Harald@FeedOC.org](mailto:Harald@FeedOC.org)

5.2 All notices shall be deemed effective when in writing and deposited in the United States mail, first class, postage prepaid and addressed as above. Any communications, including notices, requests, claims, correspondence, reports, and/or statements authorized or required by this Agreement addressed in any other fashion shall be deemed not given. The parties each may designate by written notice from time to time, in the manner aforesaid, any change in the address or email address to which notices must be sent.

6. INDEMNIFICATION

6.1 FOOD BANKS agree to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands, liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products, misuse of funds, or other performance provided by the FOOD BANKS, its agents, affiliates, contractors and subcontractors pursuant to this AGREEMENT.

6.2 If judgment is entered against the FOOD BANKS and the COUNTY by a court of competent jurisdiction because of the negligence of the COUNTY or the County Indemnitees, the FOOD BANKS and the COUNTY agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

6.3 No alteration or variation of the terms of this Memorandum shall be valid unless made in writing and signed by the COUNTY and FOOD BANKS; no oral understanding or agreement not incorporated herein shall be binding on COUNTY or FOOD BANKS.

6.4 FOOD BANKS warrant, represent, and covenant that responsibilities required of the FOOD BANKS individually and collectively under this AGREEMENT as set out in AGREEMENT at Section I shall fully comply, at each of the FOOD BANK'S expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to each of the FOOD BANK'S performance at the time of the said performance. The FOOD BANKS acknowledge that the COUNTY is relying on the FOOD BANKS to ensure such compliance, and pursuant to the requirements of Subparagraph 6.1 above, each FOOD BANK agrees that it shall defend, indemnify and hold the County and the County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

## 7. INSURANCE

7.1 Prior to the provision of services under this Agreement, FOOD BANKS each agree to purchase all required insurance at FOOD BANK'S expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with. FOOD BANKS agree to keep such insurance coverage, Certificates of Insurance and endorsements on deposit with ADMINISTRATOR during the entire term of this Agreement.

7.2 All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of fifty thousand dollars

(\$50,000) shall specifically be approved by the COUNTY's Risk Manager, or designee, upon review of FOOD BANKS' current audited financial reports. If FOOD BANKS' SIR is approved, FOOD BANK, in addition to, and without limitation of, any other indemnity provision(s) in the Agreement, agrees to all of the following:

7.2.1 In addition to the duty to indemnify and hold COUNTY harmless against any and all liability, claim, demand or suit resulting from FOOD BANKS', its agent's, employee's or subcontractor's performance of this Agreement within the scope of their employment or agency, FOOD BANKS shall defend COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

7.2.2 FOOD BANKS' duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

7.2.3 The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and FOOD BANKS' SIR provisions shall be interpreted as though FOOD BANKS were an insurer and COUNTY was the insured.

7.3 If FOOD BANKS fail to maintain insurance acceptable to COUNTY for the full term of this Agreement, COUNTY may terminate this Agreement.

7.4 Qualified Insurer

7.4.1 The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

7.5 If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

7.6 The policy or policies of insurance maintained by each FOOD BANK shall



provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence
Employee Dishonesty (Client Coverage)	\$1,000,000

#### 7.7 Required Coverage Forms

7.7.1 Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01 or a substitute form providing liability coverage at least as broad.

7.7.2 Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20 or a substitute form providing coverage at least as broad.

#### 7.8 Required Endorsements

7.8.1 Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

7.8.1.1 An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad, naming the County of Orange, its elected and appointed officials, officers, agents and employees, as Additional Insureds or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

7.8.1.2 A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that FOOD BANK's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and

non-contributing.

7.9 All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment

7.10 The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing the County of Orange as a Loss Payee shall accompany the Certificate of Insurance.

7.11 FOOD BANK shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the COUNTY may suspend or terminate this Agreement.

7.12 The Commercial General Liability policy shall contain a severability of interests clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

7.13 Insurance certificates should be mailed to COUNTY at the address indicated in Paragraph 5 of this Agreement.

7.14 COUNTY expressly retains the right to require FOOD BANK to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

7.15 COUNTY shall notify FOOD BANK in writing of changes in the insurance requirements. If FOOD BANK does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to FOOD BANK, and COUNTY shall be entitled to all legal remedies.

7.16 The procuring of such required policy or policies of insurance shall not be construed to limit FOOD BANK’s liability hereunder nor to fulfill the indemnification

provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

## 8. BREACH SANCTIONS

8.1 Failure by FOOD BANK to comply with any of the provisions, covenants, or conditions of this Agreement shall be a material breach of this Agreement. In such event, ADMINISTRATOR may, terminate this agreement as outlined in 8.1.1 below seek any other remedies available at law, in equity, or otherwise specified in this Agreement:

8.1.1 Afford FOOD BANK a time period of twenty (20) days to cure the breach. If the breach is not cured within twenty (20) days, ADMINISTRATOR may immediately terminate this Agreement, and/or

8.1.2 Discontinue reimbursement to FOOD BANK for and during the period in which FOOD BANK is in breach, which reimbursement shall not be entitled to later recovery; and/or

8.1.3 Offset against any monies billed by FOOD BANK but yet unpaid by COUNTY those monies disallowed pursuant to Subparagraph 8.1.2 above.

8.2 ADMINISTRATOR will give FOOD BANK written notice of any action pursuant to this Paragraph, which notice shall be deemed served on the date of email or mailing.

## 9. PAYMENTS

9.1 The maximum obligation of the COUNTY under this Agreement shall not exceed the amount of \$3,000,000 or actual allowable costs, whichever is less. This amount shall be shared by both FOOD BANKS.

9.2 FOOD BANKS shall apply for all available funding opportunities and contributions (e.g., federal stimulus grants, State programs, donations, private grants) and shall request supplemental funding from the COUNTY only when other resources have been exhausted.

9.3 Claimable costs under this AGREEMENT are limited to the purchase of grocery items and other commodities necessary for the packaging of food and other administrative costs

not to exceed ten (10) percent of this Agreement's maximum obligation stated in Subparagraph 9.1.

9.4 The COUNTY will provide a combined initial cash advance sufficient to allow for the purchase of food and other commodities necessary for the packaging of food, not to exceed \$1,000,000, (33.33% of maximum obligation stated in Subparagraph 9.1).

9.5 Expenses incurred in the final two (2) months of this AGREEMENT shall be used to offset the initial cash advance. Expenses incurred after October 31, 2020 are not reimbursable by the COUNTY. If, at the conclusion of this AGREEMENT, there is a balance owing the COUNTY, FOOD BANKS shall refund said monies to the COUNTY within ten (10) business day of written request from COUNTY and no later than December 30, 2020.

9.6 Claims shall be submitted by each FOOD Bank to the COUNTY by the tenth (10<sup>th</sup>) calendar day of the month for expenses incurred in the preceding month. Claims must be submitted on a form approved by COUNTY and with required specifications to ensure reimbursement including but not limited to FEMA and/or CARES Act. COUNTY may require FOOD BANKS to submit support source documents with the monthly claim.

#### 9.7 Final Claims

9.7.1 FOOD BANK shall submit a final claim by no later than November 30, 2020. Claims received after November 30, 2020, may, at ADMINISTRATOR's sole discretion, not be reimbursed. ADMINISTRATOR may modify the date upon which the final claim must be received, upon written notice of thirty (30) days to FOOD BANK.

#### 10. OVERPAYMENTS

Any payment(s) made by COUNTY to FOOD BANK in excess of that to which FOOD BANK is entitled under this Agreement shall be repaid to COUNTY, in accordance with any applicable regulations and/or policies in effect during the term of this Agreement, or as established by COUNTY procedure. Any overpayments made by COUNTY which result from a payment by any other funding source shall be repaid, at the discretion of ADMINISTRATOR, to COUNTY or the funding source. Unless earlier repaid, FOOD BANK shall make repayment

within thirty (30) days after the date of the final audit findings report and prior to any administrative appeal process. In the event an overpayment owing by FOOD BANK is collected from COUNTY by the funding source, then FOOD BANK shall reimburse COUNTY within thirty (30) days thereafter and prior to any administrative appeal process. FOOD BANK agrees to pay all costs incurred by COUNTY necessary to enforce the provisions set forth in this Paragraph.

## 11. RECORDS, INSPECTIONS, AND AUDITS

### 11.1 Financial Records

11.1.1 FOOD BANK shall prepare and maintain accurate and complete financial records. Financial records shall be retained by FOOD BANK for a minimum of five (5) years from the date of final payment under this Agreement, or until all pending COUNTY, State, and federal audits are completed, whichever is later.

11.1.2 FOOD BANK shall establish and maintain reasonable accounting, internal control, and financial reporting standards in conformity with generally accepted accounting principles established by the American Institute of Certified Public Accountants and to the satisfaction of ADMINISTRATOR.

11.1.3 COUNTY may refuse payment for a claim if client records are determined by COUNTY to be incomplete or inaccurate. In the event client records are determined to be incomplete or inaccurate after payment has been made, COUNTY may treat such payment as an overpayment within the provisions of this Agreement.

### 11.2 Public Records

To the extent permissible under the law, all records, including, but not limited to, reports, audits, notices, claims, statements, and correspondence, required by this Agreement, may be subject to public disclosure. COUNTY will not be liable for any such disclosure.

### 11.3 Inspections and Audits

11.3.1 The U.S. Department of Health and Human Services, U.S. Department of Homeland Security, Comptroller General of the United States, Director of CDSS, State Auditor-

General, ADMINISTRATOR, COUNTY's Auditor-Controller and Internal Audit Department, or any of their authorized representatives, shall have access to any books, documents, papers, and records, including medical records, of FOOD BANK which any of them may determine to be pertinent to this Agreement. Further, all the above mentioned persons have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement and the premises in which it is being performed.

11.3.2 FOOD BANK shall make its books and records available within the borders of Orange County within ten (10) days of receipt of written demand by ADMINISTRATOR.

11.3.3 In the event FOOD BANK does not make available its books and financial records within the borders of Orange County, FOOD BANK agrees to pay all necessary and reasonable expenses incurred by COUNTY, or COUNTY's designee, necessary to obtain FOOD BANK's books and records.

11.3.4 FOOD BANK shall pay to COUNTY the full amount of COUNTY's liability to the State or Federal Government or any agency thereof resulting from any disallowances or other audit exceptions to the extent that such liability is attributable to FOOD BANK's failure to perform under this Agreement.

## 12. REPORTS

12.1 FOOD BANK shall provide information deemed necessary by ADMINISTRATOR to complete any State-required reports related to the services provided under this Agreement.

12.2 FOOD BANK shall maintain records and submit reports containing such data and information regarding the performance of FOOD BANK's services, costs, or other data relating to this Agreement, as may be requested by ADMINISTRATOR, upon a form approved by ADMINISTRATOR. ADMINISTRATOR may modify the provisions of this Paragraph upon written notice to FOOD BANK.

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13. ENVIRONMENTAL PROTECTION STANDARDS

FOOD BANK shall be in compliance with the Clean Air Act [Title 42 USC Section 7401 et seq.], the Clean Water Act (Title 33 USC Section 1251 et seq.), Executive Order 11738 and Environmental Protection Agency, hereinafter referred to as “EPA,” regulations (Title 40 CFR), as any may now exist or be hereafter amended. Under these laws and regulations, FOOD BANK assures that:

13.1 No facility to be utilized in the performance of the proposed grant has been listed on the EPA List of Violating Facilities;

13.2 It will notify COUNTY prior to award of the receipt of any communication from the Director, Office of Federal Activities, U.S. EPA, indicating that a facility to be utilized for the grant is under consideration to be listed on the EPA List of Violating Facilities; and

13.3 It will notify COUNTY and EPA about any known violation of the above laws and regulations.

14. CERTIFICATION REGARDING LOBBYING

14.1 Pursuant to Appendix A, 44 C.F.R. Part 18, Certification Regarding Lobbying, FOOD BANK shall sign and submit to ADMINISTRATOR the following certification.

The undersigned certifies to the best of his or her knowledge and belief that:

14.2 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 any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

14.3 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 an agency a Member of Congress, an officer or employee of Congress, or an employee of a Member of

Congress in connection with this Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL “Disclosure Form to Report Lobbying,” in accordance with its instructions.

14.4 The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

14.5 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 section 1352 U.S. Code. 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.

14.6 FOOD BANK, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, FOOD BANK understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

## 15. FEDERAL EMERGENCY MANAGEMENT AGENCY

### 15.1 Access to Records

15.1.1 FOOD BANKS agree to provide COUNTY, the Federal Emergency Management Agency (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 FOOD BANK which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

15.1.2 FOOD BANKS agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions reasonably needed.

15.1.3 In compliance with the Disaster Recovery Act of 2018, COUNTY and FOOD BANKS acknowledge and agree that no language in this Agreement is intended to



prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

15.2 Department of Homeland Security Seal, Logo, and Flag

FOOD BANKS shall not use the Department of Homeland Security (DHS) Seals(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

15.3 Compliance with Federal Law, Regulations, and Executive Orders

FOOD BANKS acknowledge that FEMA financial assistance will be used to fund all or a portion of this Agreement. FOOD BANKS will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

15.4 No Obligation by Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to COUNTY, FOOD BANKS, or any other party pertaining to any matter resulting from this Agreement.

15.5 Program Fraud and False or Fraudulent Statements or Related Acts

FOOD BANKS acknowledge that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the FOOD BANK's actions pertaining to this Agreement.

16. TERMINATION PROVISIONS

16.1 ADMINISTRATOR may terminate this Agreement without penalty, with cause after providing written notice of the reasons for the grounds for termination with a twenty (20) calendar day response period for the FOOD BANK to cure or after thirty (30) days written notice without cause, unless otherwise specified. Notice shall be deemed served on the date of mailing. Cause shall include, but not be limited, to any breach of contract, any partial misrepresentation whether negligent or willful, fraud on the part of FOOD BANK, discontinuance of the services for reasons within FOOD BANK's reasonable control, and repeated or continued violations of COUNTY ordinances unrelated to performance under this Agreement that, in the reasonable

opinion of COUNTY, indicate a willful or reckless disregard for COUNTY laws and regulations. Exercise by ADMINISTRATOR of the right to terminate this Agreement shall relieve COUNTY of all further obligations under this Agreement.

16.2 For ninety (90) calendar days prior to the expiration date of this Agreement, or upon notice of termination of this Agreement (“Transition Period”), FOOD BANK agrees to cooperate with ADMINISTRATOR in the orderly transfer of service responsibilities, case records, and pertinent documents. The Transition Period may be modified as agreed upon in writing by the parties. During the Transition Period, service and data access shall continue to be made available to COUNTY without alteration. FOOD BANK also shall assist COUNTY in extracting and/or transitioning all data in the format determined by COUNTY.

16.3 In the event of termination of this Agreement, cessation of business by FOOD BANK, or any other event preventing FOOD BANK from continuing to provide services, FOOD BANK shall not withhold the COUNTY data or refuse for any reason, to promptly provide to COUNTY the COUNTY data if requested to do so on such media as reasonably requested by COUNTY, even if COUNTY is then or is alleged to be in breach of this Agreement.

16.4 The obligations of COUNTY under this Agreement are contingent upon the availability of federal and/or State funds, as applicable, for the reimbursement of FOOD BANK’s expenditures, and inclusion of sufficient funds for the services hereunder in the budget approved by the Orange County Board of Supervisors each fiscal year this Agreement remains in effect or operation. In the event that such funding is terminated or reduced, ADMINISTRATOR may immediately terminate this Agreement, reduce COUNTY’s maximum obligation, or modify this Agreement, without penalty. The decision of ADMINISTRATOR shall be binding on FOOD BANK. ADMINISTRATOR will provide FOOD BANK with written notification of such determination. FOOD BANK shall immediately comply with ADMINISTRATOR’s decision.

## 17. MISCELLANEOUS

17.1 If any term, covenant, condition, or provision of this Agreement or the application thereof is held invalid, void, or unenforceable, the remainder of the provisions in this Agreement

shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

17.2 This Agreement shall be construed and interpreted under and shall be governed by California law.

17.3 This Agreement supersedes any and all agreements, either oral or written, between the parties and contains all of the representations, covenants, and agreements between the parties with respect to Emergency Food Assistance Services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. Any modification of this Agreement will be effective only if it is in a writing signed by an authorized agent of the parties.

17.4 The titles given are for ease of reference only and shall not be relied upon or cited for any other purpose.

**18. SIGNATURE IN COUNTERPARTS**

18.1 The parties agree that separate copies of this Agreement may be signed by each of the parties, and this Agreement will have the same force and effect as if the original had been signed by all the parties.

18.2 FOOD BANK represents and warrants that the person executing this Agreement on behalf of and for FOOD BANK is an authorized agent who has actual authority to bind FOOD BANK to each and every term, condition and obligation of this Agreement and that all requirements of FOOD BANK have been fulfilled to provide such actual authority.

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WHEREFORE, the parties hereto have executed this Agreement in the County of Orange, California.

By: \_\_\_\_\_  
HARALD HERRMANN  
CHIEF EXECUTIVE OFFICER  
SECOND HARVEST  
FOOD BANK OF ORANGE COUNTY

By: \_\_\_\_\_  
CHAIRWOMAN  
OF THE BOARD OF SUPERVISORS  
COUNTY OF ORANGE, CALIFORNIA

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
GREGORY C. SCOTT  
PRESIDENT/CHIEF EXECUTIVE OFFICER  
COMMUNITY ACTION PARTNERSHIP  
OF ORANGE COUNTY

Dated: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD PER G.C. SEC. 25103, RESO 79-1535  
ATTEST:

\_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board  
Orange County, California

APPROVED AS TO FORM  
COUNTY COUNSEL  
COUNTY OF ORANGE, CALIFORNIA

By: Carolyn S. Frost  
DEPUTY

Dated: 05/14/20

Exhibit "1"

Agreement between County of Orange and Community Action Partnership of Orange County and Second Harvest Food Bank, Inc. for the Provision of Supplemental Financial Support for Emergency Food Distribution Services, Agreement #MPY0419

Date:

TO: County of Orange  
Social Services Agency  
Contracts and Procurement Services  
ATTN: Contract Administrator  
500 N. State College, Suite 100  
Orange, CA 92868

FROM: Food Bank Name  
Street  
City, CA Zip Code

RE: Contract #: MPY0419  
Supplemental Financial Support for Emergency Food Distribution Services

Advance Payment Request: < select >  
Invoice for Food Purchased < select >

Service Month and Year: May 2020

Amount Requested:  
Advance Repayment (if applicable)  
Total Amount Requested: \$0.00

I hereby certify that the amount claimed herein is for service provided which has not been previously claimed or paid from the County of Orange or any other source.

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Authorized Signature and Date

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Print Name and Title