

AGREEMENT SECOND HARVEST FOOD BANK FOR THE BROWN BAG PROGRAM

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SECOND HARVEST FOOD BANK, hereinafter called "Contractor";

WITNESSETH:

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing the professional services hereinafter described for the Health Services Agency, Aging and Adult Services Division; and

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Services to be Performed by Contractor

In consideration of the payments hereinafter set forth, Contractor, under the general direction of the Director of Health Services, or her designee, with respect to the product or result of Contractor's services, shall provide services known as the Brown Bag Program as described in Schedule A, attached hereto and incorporated by reference herein. Such services shall be provided in a professional and diligent manner.

2. Payments

A. Maximum Amount. In full consideration of Contractor's performance of the services described in Schedule A, the amount that County shall be obligated to pay for services rendered under this Agreement shall not exceed TWENTY-THREE THOUSAND FOUR HUNDRED TWENTY-FOUR DOLLARS (\$23,424) for the contract term.

B. Rate of Payment. The rate and terms of payment shall be as specified in Schedule B, attached hereto and incorporated herein. Any rate increase is subject to the approval of the Director of Health Services or her designee, and shall not be binding on County unless so approved in writing. In no event may the rates established in Schedule B be increased to the extent that the maximum County obligation shall exceed the total specified in paragraph 2A above. Each payment shall be conditioned on the performance of the services described in Schedule A to the full satisfaction of the Director of Health Services or her designee.

C. Time Limit for Submitting Invoices. Contractor shall submit an invoice for services to County for payment in accordance with the provisions of Schedule B. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date Contractor renders the services, or more than ninety (90) days after this Agreement terminates, whichever is earlier.

3. Relationship of Parties

It is expressly understood that this is an agreement between two (2) independent contractors and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement. The intent by both County and Contractor is to create an independent contractor relationship. Contractor expressly acknowledges and accepts his/her tax status and the tax consequences of an independent contractor. Further, as an independent contractor, Contractor expressly acknowledges and accepts that he/she has no rights, benefits, privileges and/or claims in any form whatsoever under, from, through and/or pursuant to the San Mateo County Civil Service Rules.

4. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any failure to withhold and/or pay to the government income and/or employment taxes from earnings

under this Agreement, or (D) any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (E) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

5. Insurance

Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the Director of Health Services. Contractor shall furnish the Health Services Agency with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Health Services Agency of any pending change in the limits of liability or of any cancellation or modification of the policy.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

A. Workers' Compensation and Employer Liability Insurance. Contractor shall have in effect during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, County makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

B. Liability Insurance. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below.

Such insurance shall include:

- 1) Comprehensive General Liability ..... \$1,000,000
- 2) Motor Vehicle Liability Insurance ..... \$1,000,000
- 3) Professional Liability ..... Waived
- 4) Worker's Compensation. .... \$1,000,000

If this Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days' notice to Contractor.

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and

employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. Said certificate(s) of insurance is (are) attached hereto and incorporated by reference herein as Attachment II (and III).

6. Non-Discrimination

Contractor shall comply with the non-discrimination requirements described in Schedule C, which is attached hereto, and incorporated herein.

Contractor shall comply with County admission and treatment policies which shall provide that patients are accepted for care without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties, to be determined by the County Manager, including, but not limited to:

- i. termination of this Agreement;
- ii. disqualification of Contractor from bidding on or being awarded a County contract for a period of up to three (3) years;
- iii. liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation;
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to:

- i. examine Contractor's employment records with respect to compliance with this paragraph;
- ii. set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the

Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed.

With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

7. Assignments and Subcontracts

A. Without the written consent of the Director of Health Services or her designee, this Agreement is not assignable in whole or in part. Any assignment by Contractor without the written consent of the Director of Health Services or her designee is a breach of this Agreement and shall automatically terminate this Agreement.

B. Contractor shall not employ subcontractors or consultants to carry out the responsibilities undertaken pursuant to this contract without the written consent of the Director of Health Services or her designee.

C. All assignees, subcontractors, or consultants approved by the Director of Health Services or her designee shall be subject to the same terms and conditions applicable to Contractor under this Agreement, and Contractor shall be liable for the assignee's, subcontractor's or consultant's acts and/or omissions.

D. All agreements between Contractor and subcontractor and/or assignee for services pursuant to this Agreement shall be in writing and shall be provided to County.

8. Amendment of Agreement

This Agreement is complete and contains all the terms and conditions agreed upon by the parties. No amendment shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

9. Records

A. Contractor agrees to provide to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

B. Contractor shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

10. Compliance with Applicable Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county, and municipal laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Schedule D, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

11. Interpretation and Enforcement

A. Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

1) In the case of County, to:

San Mateo County  
Aging and Adult Services Division  
225 37th Avenue  
San Mateo, CA 94403

or to such person or address as County may, from time to time furnish to Contractor.

2) In the case of Contractor, to:

Second Harvest Food Bank  
Mari Ellen Reynolds, Contract Manager  
750 Curner Avenue  
San Jose, CA 95125-2118

B. Controlling Law. The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California.

12. Term of the Agreement

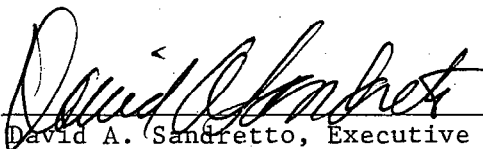
Subject to compliance with the terms and conditions of this Agreement, the term of this Agreement shall be from February 1, 2003 through June 30, 2003. This Agreement may be terminated by Contractor, Director of Health Services or her designee at any time upon thirty (30) days' written notice to the other party.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

SECOND HARVEST FOOD BANK

By: \_\_\_\_\_  
Rose Jacobs Gibson, President  
Board of Supervisors, San Mateo County

By:  \_\_\_\_\_  
David A. Sandretto, Executive Director

Date: \_\_\_\_\_

Date: March 17, 2003

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

Date: \_\_\_\_\_



## SCHEDULE A

### SECOND HARVEST FOOD BANK 2002-2003

#### DESCRIPTION OF SERVICES

During the contract period February 1, 2003 through June 30, 2003, Contractor shall operate the following Older Americans Act (OAA), Community-Based Services (CBSP) and/or Community Support funded program(s): Brown Bag Program. This program shall operate in accordance with the California Department of Aging and/or state licensing regulations and the standards and requirements established by Aging and Adult Services of San Mateo County.

#### I. BROWN BAG PROGRAM

##### Part A: Scope of Work

##### 1. Units of Service

Contractor agrees to provide TWO THOUSAND FIVE HUNDRED (2,500) unduplicated clients with the following services: FORTY-FIVE THOUSAND (45,000) bags of food. (Annual expectation of 108,000 meals prorated to 45,000 for five-month contract.)

##### 2. Unit Definitions

To distribute bags of surplus and donated edible fruits, vegetables and other unsold food products on a weekly basis to supplement the nutritional needs of low-income older individuals.

**Unit of Service:** One bag, average weight seventeen pounds.

##### 3. Program Requirements

Contractor agrees to:

- a. Provide the program in accordance with the Brown Bag Program Manual as incorporated in the Community-Based Services Program Contract and Chapter 7.5 Programs Contract for the administration and operation of the Brown Bag Program. It establishes the basic requirements for Brown Bag Program organization, facilities, fiscal and program reporting, food standards, participation, volunteer utilization and other procedures that affect the composition and quality of the program.
- b. Coordinate and track annual distribution of Senior Farmers Market Nutrition Program coupons to Brown Bag Program participants.

## **SCHEDULE B**

### **SECOND HARVEST FOOD BANK 2002-2003**

#### **Program Amount and Payment Method**

Aging and Adult Services will pay the contractor in consideration of services rendered at the rate of one-fifth per month of the total reimbursement for this program.

The maximum reimbursement for the Brown Bag Program shall not exceed TWENTY-THREE THOUSAND FOUR HUNDRED TWENTY-FOUR DOLLARS (\$23,424).

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Contractor is responsible for covering the cost of all components of each program outlined here above and shall be reimbursed for actual expenditures on the approved budget for each program. Individual payments to Contractor shall not exceed the amount of Contractor's fidelity bond.

In addition, Contractor agrees to submit:

- a. Client intake forms as appropriate, monthly program reports and invoices by the tenth (10<sup>th</sup>) of each month; and
- b. A closing report by July 31, 2003.

The total maximum reimbursement for contracted services between San Mateo County Aging and Adult Services and Second Harvest Food Bank is TWENTY-THREE THOUSAND FOUR HUNDRED TWENTY-FOUR DOLLARS (\$23,424).

## SCHEDULE C

Contract between County of San Mateo and Second Harvest Food Bank, hereinafter called "Contractor."

- a. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty (40)), disability, medical condition (including but not limited to AIDS, HIV positive diagnosis, or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement.
- b. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this contract. Contractor's personnel policies shall be made available to County upon request.
- c. Contractor shall assure compliance with Section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance (Attachment I) of compliance. Contractor shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

**Schedule D**  
**Health Insurance Portability and Accountability Act (HIPAA)**

**Business Associate Requirements**

**Definitions**

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- (a) *Designated Record Set*. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- (b) *Individual*. "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a person representative in accordance with Section 164.502(g).
- (c) *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- (d) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Contractor from or on behalf of County.
- (e) *Required By Law*. "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- (f) *Secretary*. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

**Obligations and Activities of Contractor**

- (a) Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- (b) Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- (d) Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.

- (f) If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- (g) If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- (h) Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County, or at the request of the County to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- (i) Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- (j) Contractor agrees to provide to County or an Individual in the time and manner designed by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

#### Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by County.

#### Obligations of County

- (a) County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- (b) County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.

- (c) County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

#### Permissible Requests by County

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

#### Duties Upon Termination of Agreement

- (a) Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- (b) In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

#### Miscellaneous

- (a) *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- (d) *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.

Attachment I

(Required only from Contractors who provide services directly to the Public on County's behalf.)

Assurance of Compliance with Section 504 of the  
Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of and for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a.  employs fewer than 15 persons.
- b.  employs 15 or more persons and, pursuant to Section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Dan Couture, Human Resources Director

\_\_\_\_\_  
Name of 504 Person - Type or Print

Second Harvest Food Bank of  
Sanata Clara and San Mateo Counties

750 Curtner Avenue

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

\_\_\_\_\_  
Street Address or PO Box

San Jose

CA

95125-2118

\_\_\_\_\_  
City

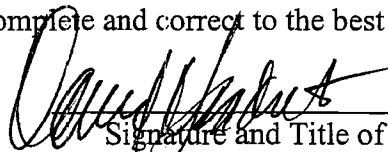
\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

March 17, 2003

\_\_\_\_\_  
Date

 , Executive Director  
\_\_\_\_\_  
Signature and Title of Authorized Official

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with (the facility accessibility regulations)...other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."