

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
SECOND HARVEST FOOD BANK**

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";

W I T N E S S E T H:

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;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing the Brown Bag Program:

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

1. Exhibits.

The following exhibits are attached hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I—§504 Compliance

2. Services to be performed by Contractor.

In consideration of the payments set forth herein and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments.

In consideration of the services provided by contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this contract exceed TWENTY-FOUR THOUSAND THREE HUNDRED SIXTY-NINE DOLLARS (\$24,369).

4. Term and Termination.

Subject to compliance with all terms and conditions, the term of this agreement shall be from July 1, 2005 through June 30, 2006.

This Agreement may be terminated by Contractor, the Health Department Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds.

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. Relationship of Parties.

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.

7. 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 forth, 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, (C) 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 (D) 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.

8. Assignability and Subcontracting.

Contractor shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party to provide services required by contractor under this agreement without the prior written consent of County. Any such assignment or subcontract without the county's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance.

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by the County Manager, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the County Manager with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the 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 County Manager of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's 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.
- (2) **Liability Insurance.** The 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/her 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/herself or by any sub-contractor 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 be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000

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 the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the 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.

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, the County of San Mateo 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.

10. Compliance with laws; payment of Permits/Licenses.

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, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, 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.

In the event of a conflict between the terms of this agreement and state, federal, county or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination.

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract (this paragraph needed only if services provided to members of the public).
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$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 section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to 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 30 days of such filing, provided that within such 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 their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* 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.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Retention of Records.

Contractor shall maintain and preserve all required records relating to this Agreement for four (4) years after the County makes final payment or until audit findings are resolved, whichever is greater.

Contractor agrees to provide upon reasonable notice from the County, a Federal grantor agency, or the State of California access to and the right to examine and/or audit all records and documents necessary to determine compliance and evaluate services performed relating to this Agreement.

13. Merger Clause.

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. 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.

15. Notices.

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

In the case of County, to:

Jacqueline Toliver
Aging and Adult Services
225 37th Avenue
San Mateo, CA 94403

In the case of Contractor, to:

Susan Takalo, Director
Second Harvest Food Bank
1050 Bing Street
San Carlos, CA 94070-5320

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

COUNTY OF SAN MATEO

By: _____
Richard Gordon, President, Board of
Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

SECOND HARVEST FOOD BANK



Contractor's Signature

David A. Sandretto, Executive Director
Date: 6/7/05

Long Form Agreement/Non Business Associate

SCHEDULE A

SECOND HARVEST FOOD BANK

FY 2005-2006 DESCRIPTION OF SERVICES

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): a Brown Bag Program. Services described in this Schedule A reflect program performance requirements (units of service) during fiscal year July 1, 2005 through June 30, 2006. These programs 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. A monitoring will be conducted annually and onsite, in accordance with the Area Agency on Aging Contract Monitoring Procedures Manual.

I. BROWN BAG PROGRAM

1. Units of Service

Contractor agrees to provide 2,500 unduplicated clients with the following services: 102,000 bags of food.

2. Unit Definitions

To distribute bags of purchased, 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

FY 2005-2006 FISCAL SUMMARY

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): a Brown Bag Program. Services described in this Schedule B reflect program funding and payment methods during fiscal year July 1, 2005 through June 30, 2006. These programs 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

Aging and Adult Services will pay the contractor in consideration of services rendered through OAA funds, the rate of one-twelfth per month of the total reimbursement for this program.

The maximum reimbursement for the Brown Bag Program during the contract term July 1, 2005 through June 30, 2006 shall not exceed TWENTY-THREE THOUSAND FOUR HUNDRED TWENTY-FIVE DOLLARS (\$23,425).

Contractor is responsible for covering the cost of all components of each program outlined above and shall be reimbursed for actual expenditures on the approved budget for each program.

A mid-year review, scheduled for January, will require a reconciliation of year-to-date outcomes. Based on these outcomes, a budget revision may be required.

In addition, Contractor agrees to:

- a. Submit client intake forms as appropriate, monthly program reports and invoices by the tenth (10th) of each month. (Invoices submitted more than two months past the month of service may not be reimbursed. Statistical reports submitted more than one month past the month of service may result in withholding of payments until reports are brought current.);
- b. Offer services throughout the twelve-month contract period, unless prior written approval is received from Aging and Adult Services; and
- c. Submit a closing report by July 31, 2006.

The maximum reimbursement for contracted services between San Mateo County Aging and Second Harvest Food Bank is \$23,425 in Older Americans Act funds, and \$944 in County General Funds for general program support for a total amount of TWENTY-FOUR THOUSAND THREE HUNDRED SIXTY-NINE DOLLARS (\$24,369) for the contract term July 1, 2005 through June 30, 2006.

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)

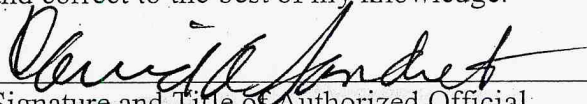
- a. employs fewer than 15 persons.
- b. employs 15 or more persons and, pursuant to Section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Cynthia McCown, Sr. Director of Operations, Programs, and Services
Name of 504 Person - Type or Print

<u>Second Harvest Food Bank</u>	<u>750 Curtner Avenue</u>	
Name of Contractor(s) - Type or Print	Street Address or PO Box	
<u>San Jose</u>	<u>CA</u>	<u>95125-2118</u>
City	State	Zip Code

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

6/7/05
Date


 Signature and Title of Authorized Official
 David A. Sandretto
 Executive Director

*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."

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Second Harvest Food Bank of Santa Clara and San Mateo Counties
Contact Person: David A. Sandretto, Executive Director
Address: 750 Curtner Avenue, San Jose, CA 95125-2118
Phone Number: 408-266-8866
Fax Number: 408-266-9042

II Employees

Does the Contractor have any employees? [X] Yes [] No
Does the Contractor provide benefits to spouses of employees? [X] Yes [] No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- [x] Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
[] Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
[] No, the Contractor does not comply.
[] The Contractor is under a collective bargaining agreement which began on (date) and expires on (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature: David A. Sandretto

Name (Please Print): David A. Sandretto

Title: Executive Director

Date: 6/8/05

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/01/2004

PRODUCER (650)341-4484 FAX (650)341-4465
Business Professional Ins. Assoc. Inc.
 1700 South B Street
 San Mateo, CA 94402

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED **Second Harvest Food Bank**
of Santa Clara and San Mateo Counties
 750 Curtner Avenue
 San Jose, CA 95125

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Federal Insurance Company/Chubb	
INSURER B: Federal Insurance Company/Chubb	
INSURER C: State Compensation Insurance Fund	
INSURER D:	
INSURER E:	

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR Host Liquor Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	3533-71-83-PLE	12/01/2004	12/01/2005	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000				
	MED EXP (Any one person) \$ 10,000				
	PERSONAL & ADV INJURY \$ 1,000,000				
	GENERAL AGGREGATE \$ 2,000,000				
	PRODUCTS - COMP/OP AGG \$ 2,000,000				
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	7322-92-49	12/01/2004	12/01/2005	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$				
	BODILY INJURY (Per accident) \$				
	PROPERTY DAMAGE (Per accident) \$				
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
	OTHER THAN AUTO ONLY: EA ACC \$				
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	7972-51-15	12/01/2004	12/01/2005	EACH OCCURRENCE \$ 3,000,000
	AGGREGATE \$ 3,000,000				
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	747-03-0649	01/01/2005	01/01/2006	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	E.L. EACH ACCIDENT \$ 1,000,000				
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
B	OTHER Hired Physical Damage	7322-92-49	12/01/2004	12/01/2005	\$50,000 Limit \$500 Comp. Ded. \$500 Collision Ded.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Certificate holder is named as Additional Insured in respects to amended Grant per Agreement Number: 5000-02-C178 Change Order No. 02
 Additional Insured applies to General Liability policy only, per form CG 2026 11/85
 Ten [10] day notice of cancellation for non-payment of premium shall apply.

CERTIFICATE HOLDER
 County of San Mateo
 Health Services Administration
 Management Analyst
 Attn: Heather Ledesma
 235 37th Avenue
 San Mateo, CA 94403

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
 Virginia Fontana/SANDEE *Virginia Fontana*