



## Alameda Recreation and Park Department

2226 Santa Clara Avenue, Alameda, CA 94501  
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ARPD@alamedaca.gov  
www.alamedacaca.gov/recreation

### AGREEMENT BETWEEN THE CITY OF ALAMEDA AND ALAMEDA FOOD BANK FOR SITE EXPANSION

This Agreement, entered into this 28<sup>th</sup> day of January, 2016, by and between the **CITY OF ALAMEDA**, a municipal corporation ("City") and **ALAMEDA FOOD BANK**, a California nonprofit public benefit corporation, whose address is 1900 Thau Way, Alameda, CA 94501 ("Food Bank"), is made with reference to the following:

#### RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The Alameda Food Bank provides nutritious food to the low-income residents of the City of Alameda on a non-discriminating basis. The Food Bank serves over 5,100 individuals six days each week.
- C. Approximately 7% of the residents of The City of Alameda are facing food insecurity and obtain food from the Food Bank. Of those, 32% are children and 10% are seniors. As the cost of living continues to rise, the Food Bank must be ready to help additional clients.
- D. The Food Bank desires to expand its facilities in order to provide better service to its constituents, create larger and more comfortable waiting areas, and increase capacity for food storage and distribution.
- E. The Food Bank intends to conduct a capital campaign to fund a new, permanent facility and requires additional space to do so.
- F. The Jean Sweeney Open Space Park (Sweeney Park) is directly adjacent to the existing Food Bank. The community garden, urban orchard and demonstration gardens will be located on the most western portion of the park next to the Food Bank. The City intends to collaborate with the Food Bank on the community garden programming in order to provide fresh produce, gardening space and educational classes.
- G. The required space for the Food Bank expansion is available at Sweeney Park.
- H. The Food Bank possesses the skill, experience, ability, background, certification and knowledge to undertake the work described in this Agreement on the terms and conditions described herein.
- I. City and Food Bank desire to enter into an agreement for the City to commit to the Food Bank's use of approximately 5,000 square feet ("the expansion site") to expand the footprint of the Food Bank facilities, as generally depicted on Exhibit A, attached hereto.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM**

The term of this agreement shall commence on January XX, 2016 and shall terminate on December 31, 2018 unless terminated earlier as set forth herein. The agreement may be terminated by either party by providing a 30-day written notice to the non-terminating party.

**2. TERMINATION**

Either party may terminate this Agreement immediately for cause. Cause shall include, without limitation to material violation of this Agreement, including any act by one party exposing the other party to liability to others for personal injury or property damage. These provisions are in addition to and not a limitation of any other rights or remedies available under this Agreement.

**3. CONDITIONS**

**A. FEES**

The City will provide the expanded site to the Food Bank at no cost to the Food Bank.

**B. SITE DEVELOPMENT**

The Food Bank intends to raise funds to build a new facility on the expanded site for food distribution. The Food Bank will be responsible for all expenses for design, site improvements, construction, and infrastructure of the new facility.

The facility design will be reviewed by the Recreation and Parks Commission and Planning Board and will comply with all state, federal and City rules and regulations. The Food Bank facility design shall match color schemes and design style for the improvements to Sweeney Park to ensure consistency of design.

Once completed, the Food Bank will be responsible for all operations, security, and maintenance of the facility and expanded site.

Food Bank may not make any additional improvements to the expanded site without the prior written consent of the City.

**4. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Food Bank assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Food Bank shall indemnify and hold City

harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Food Bank.

**5. NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Food Bank agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Food Bank or Food Bank's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Food Bank agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**6. HOLD HARMLESS/INDEMNIFICATION:**

Food Bank shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Food Bank's negligent act or omission whether alleged or actual, regarding the work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Food Bank, Food Bank shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Food Bank. However, Food Bank shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

**7. ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**A. COVERAGE:**

Food Bank shall maintain the following insurance coverage:

- (1) **Workers' Compensation:**  
Statutory coverage as required by the State of California.
- (2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$500,000  
each occurrence  
\$1,000,000  
aggregate - all other  
Property Damage: \$100,000 each occurrence  
\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

**B. SUBROGATION WAIVER:**

Food Bank agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general liability insurance, Food Bank shall look solely to it's insurance for recovery. Food Bank hereby grants to City, on behalf of any insurer providing comprehensive general liability insurance to either Food Bank or City with respect to the services of Food Bank herein, a waiver of any right to subrogation which any such insurer of said Food Bank may acquire against City by virtue of the payment of any loss under such insurance.

**8. PROHIBITION AGAINST TRANSFERS:**

Food Bank shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**9. NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Food Bank to City shall be addressed to:

City of Alameda Recreation and Parks Department  
2226 Santa Clara Avenue  
Alameda CA 94501  
Attention: Recreation and Parks Director

All notices, demands, requests, or approvals from City to Food Bank shall be addressed to:

Alameda Food Bank  
1900 Thau Way  
Alameda, CA 94501  
Attention: Executive Director

**10. COMPLIANCES:**

Food Bank shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

**11. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**12. ADVERTISEMENT**

Food Bank shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the work performed under this Agreement unless prior written approval has been secured from City to do otherwise.

**13. NO THIRD PARTY BENEFICIARY**

This Agreement is by and between the parties named herein and no third party is intended either by expression or implication to be benefited by this Agreement.

**14. ATTORNEYS' FEES**

In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement or the breach, interpretation or enforcement of same, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' free and costs.

**15. MODIFICATION**

This Agreement may only be modified in writing by mutual agreement of the parties.

**16. INVALID TERM**

In the event that any provision of this Agreement shall in any respect be declared invalid, illegal, or unenforceable, such invalidity, legality or unenforceability shall not affect any other term or condition of this Agreement, and this Agreement shall be interpreted as though such illegal, unenforceable or invalid term or condition was not part hereof.

**17. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, representations, or warranties, express or implied not specified in this Agreement.

**18. AUTHORIZATION**

Each person executing this Agreement represents that the party on whose behalf the person is executing the Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such party.

*Signatures on Following Page*

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

ALAMEDA FOOD BANK  
A Non-profit Corporation

By Chidy Hanks

Title Executive Director

By William W. [Signature]

Title PRESIDENT of BOARD

CITY OF ALAMEDA  
A Municipal Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

By [Signature]

Title Interim Assistant City Manager

APPROVED AS TO FORM:

City Attorney

Title [Signature]

Farimah Brown  
Senior Assistant City Attorney

**EXHIBIT A**



**Legend**



**Expansion Site**



**Existing Food Bank Site**