

## **FULL RELEASE AND INDEMNITY AGREEMENT**

THIS AGREEMENT made on the \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and Merced County Food Bank, a California Non-Profit Corporation, whose address of record is 2000 West Olive Avenue, Merced, California, 95348, hereinafter called "County."

### **RECITALS**

WHEREAS, County acquires, stores and distributes nutritious food and other products to Merced County residents affected by hunger, among other services; and,

WHEREAS, County has requested the City donate a used surplus trailer for use as a mobile food bank to outlying communities within the county; and,

WHEREAS, the City does have a surplus trailer that would be suitable for the needs of the County, and the City Council has determined that the County provides substantial service and benefit to the City that clearly outweighs the value of the surplus trailer;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein recited, hereby agree as follows:

1. **CITY RESPONSIBILITIES:** City agrees to donate to County the 2003 Scott Trailer, VIN #1SSTT35T2311SS744, without warranty, and transfers all title and interest in the 12003 Scott Trailer to the County.

2. **COUNTY'S RESPONSIBILITIES:**

A. The County accepts the 2003 Scott Trailer in "as is" condition, without warranty, from the City.

B. County hereby releases and forever discharges City, and shall protect, indemnify, defend, save, keep, and hold harmless, the City and all officers, employees, and agents thereof from all damages, costs, or expenses, in law or in equity, that may at any time arise or be set up because of

personal injury (including the death of any person or persons) or damage to property sustained by any person or persons resulting from the operation of the trailer.

C. County shall, within seven (7) days of possession of title to the 2003 Scott Trailer, notify the California Department of Motor Vehicles of the transfer of title and pay all required transfer and documentation fees, and secure automobile insurance protection, all at its own expense.

It is understood that the duty of the County to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. The provisions of the preceding sentence shall not impose any liability upon the City and are for the express benefit of the general public.

This obligation to indemnify, protect, defend, and hold harmless City, its officers, employees, and agents as set forth herein is binding on the successors, assigns, transferees, or heirs of the County.

4. **GOVERNING LAW.** The City and the County understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement without regard to any applicable conflicts of law, including all matters of construction, validity, and performance.

5. **JURISDICTION AND VENUE.** The parties agree that jurisdiction and venue for any legal challenge to the provisions of this Agreement or the enforcement of the rights or obligations hereunder shall be brought in the Superior Court serving the County of Merced.

6. **PRIOR REVIEW OF AGREEMENT.** This Agreement has been carefully read by each of the parties and the contents hereto are known to and understood by each of the parties. It is signed freely by each party executing this Agreement.

7. **NO AGENCY CREATED.** Each party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other parties in any respect. Nothing contained herein or in any document executed in

connection herewith shall be construed as creating the relationship of partners, joint ventures, or any other association of any kind or nature between City and the Club, jointly or severally.

8. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

9. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

10. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

11. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kylous 10/2/18  
City Attorney Date

300776  
ACCOUNT DATA:

BY: [Signature]  
Verified by Finance Officer

No funds to encumber. MS 10/19/18  
FL 10/23/18

*[Signatures continued on next page]*

MERCED COUNTY FOOD  
BANK, A California Non-Profit  
Corporation

BY:   
Signature

WILLIAM GIBBS  
Print Name

Its: \_\_\_\_\_

ADDRESS: 2000 W. Olive Ave.  
Merced, CA 95348

TELEPHONE: (209) 726-3663  
FAX: \_\_\_\_\_