

San Diego Food Bank

Agency and Indemnity Agreement

This Agency and Indemnity Agreement ("Agreement") is made effective this ____ day of _____, 2007, (the "Effective Date") by _____ and between Neighborhood House Association (NHA"), a California not for profit corporation dba the San Diego Food Bank ("SDFB") and ("Agency") with reference to the following recitals.

- A. Whereas, SDFB has adopted certain procedures relating to the participation of community based organizations and other agencies as beneficiaries of its programs;
- B. Whereas, Agency has made application to become a member agency of SDFB; and
- C. In accordance with the requirements of becoming a member agency of SDFB, Agency agrees that it will abide by the following terms and conditions:

Required Fees, Records, Participation & Communication

1. Agency will supply SDFB with proof of its IRS section 501(c)(3) status. Faith-based organizations may supply written proof of mainline denominational affiliation in lieu of an IRS section 501(c)(3) status.
2. Prior to July 1 of each year, Agency will provide SDFB with a current list of its Board of Directors, including names, addresses, and phone numbers.
3. The Agency will pay SDFB an application-processing fee of fifty dollars (\$50.00). This fee will help cover the cost of SDFB application processing, record keeping, and monitoring. Please note: If you became a member agency prior to 5/2005, you do NOT have to pay the \$50.00 processing fee.
4. Agency will have all shoppers attend an annual orientation/training at SDFB's facility.
5. All fees payable to SDFB shall be payable by check on Agency's account.
6. Agency agrees to pay a shared maintenance fee to cover a portion of SDFB's distribution and operation costs. This is not a charge for food. The fee is subject to change without notice. SDFB will attempt to update agencies if/when fee changes occur. Updates can be shared via SDFB web site, newsletter, shopping area information, and conversations with your SDFB agency representative.
7. Agency agrees to pay a restocking fee of \$25.00 if an order is not picked up within two (2) days of being pulled by SDFB staff
8. Agency agrees to turn in Monthly Service Reports by the 10th of the month.
9. Agency must provide physical address, an active phone number, fax, and email. It is the Agency's obligation to keep information current and to proactively inform SDFB of critical changes as soon as they occur (e.g., address, phone, web, email, hours of operation, etc.)

Agency Status

10. Bills/invoices generated by SDFB to Agency must be paid in full within 30 days. Failure to maintain current status with bills/invoices will result in inactivation of this Agreement and of marketplace (a.k.a. 'shopping area') privileges.
11. Privileges can be placed on hold, inactivated or terminated at anytime per SDFB's determination and sole discretion. Reasons for hold/inactivation/termination may include, but are not limited to: insufficient payments, delinquent monitoring reports, poor communication, suspect activity, etc.
 - a. "Hold" – Privileges are suspended until criteria for reinstatement is met in the given time period, at that time the agency will resume privileges.
 - b. "Inactivated" – If the criteria for reinstatement is not met in the given time period the agency is inactivated. Once inactivated an agency must reapply for membership.
 - c. "Termination" – Privileges cease permanently. An agency may not reapply if

terminated.

12. If any agency wishes to contest a change in status, they must put their request in writing and forward to the SDFB Agency Relations (AR) Manager. The AR Manager will inform the Agency of the appeal process.

SDFB Monitoring

13. Agency will permit SDFB to monitor its operations. SDFB may periodically conduct unannounced monitoring visits to provide assurance of ethical behavior and transparency of appropriate conduct to our entire community. At minimum a monitoring visit will be conducted every two years. When applicable, SDFB will honor the confidentiality of clients and/or site location(s).

14. SDFB will review issues related to food storage, methods of distribution, promotion, record-keeping, food transport, use, and other issues that SDFB determines warrant review.

15. Agency will provide SDFB with timely service statistics per SDFB requirements, and maintain adequate distribution/usage records to reflect the use of SDFB products. These records and reporting expectations shall include, without limitation, the following:

a. Copies of all SDFB invoices for the current 12-month period - signed by director (or authorized representative).

b. Food distribution records must be maintained by Agency for at least 3 years. Such records will include: dates of distribution and/or number of meals served, number of persons and/or households served.

c. Required forms for USDA product distribution and usage, if applicable.

d. Record of eligibility, distribution and usage of CDFP product, if applicable.

Food & Product – Transport/Usage/Storage/Dissemination

16. Agency shall not, under any circumstances, sell any of the SDFB Products. SDFB Products may not be traded, bartered or exchanged for cash, goods or services.

17. Agency shall at all times store and maintain all SDFB Products in accordance with safe food handling procedures, including, without limitation, the following:

a. Dry food products must be stored 6 inches off the floor and 18 inches from the ceiling; and,

b. Non-food items (e.g., household cleaners, pet food) must be 4 to 6 feet away from food items.

18. Agency shall at all times maintain appliances and other equipment with sufficient capacity to store frozen and refrigerated food at the proper temperature. These appliances must be located at the site of storage and/or distribution and contain thermometers to ensure proper storage temperatures.

19. Agency shall at all times maintain adequate and proper storage space and refrigeration to insure the safety and integrity of all SDFB Products.

20. When applicable, the agency shall at all times maintain all licenses and permits required by State of California and any other governmental authorities, including, without limitation, local and municipal governmental authorities, to operate a food establishment in accordance with the services provided by Agency. Agency shall not violate the terms of any such license or permit.

21. Agency shall not, under any circumstances, distribute SDFB Product outside of San Diego County.

22. Agency acknowledges and agrees that all SDFB Products are offered “as is.”

23. Agency shall at all times provide suitable transportation and equipment to transport SDFB Products from the SDFB warehouse, including, without limitation, coolers and other appropriate containers.

Policies / Regulations / Disclosure

24. Agency shall not, under any circumstances, engage in conduct related to SDFB Product that may compromise or call into question the integrity or mission of SDFB. Agency shall at all times be completely trustworthy and transparent in its operations, services, communication, and record-keeping with respect to the community's perception of Agency. Agency acknowledges and agrees, that SDFB may terminate this Agreement at any time and in SDFB's sole discretion following any breach or default by Agency under this Agreement.

25. Agency shall maintain hours of operation that are published to the community.

26. Agency shall promptly disclose any business interest or actual or potential conflict of interest that could compromise public trust or cause the perception of a conflict of interest (e.g., operating a store, or having a family member that operates a store.)

27. Agency shall distribute SDFB Product only to low-income persons, the ill, the needy, or infants.

28. Agency shall not, under any circumstances, deny any of its services on the basis of race, age, religion, sex, politics, or sexual orientation.

29. Agency hereby represents and warrants to SDFB that Agency does not charge any fees of any kind (real or in-kind) to any recipient, individual or family and that no donation is requested from any such individuals for SDFB Product. Agency represents and warrants to SDFB that it is familiar with the position of the Internal Revenue Service that: "No fee for administrative costs or otherwise may be charged in connection with a transfer of donated property directly from an organization to the ill, needy individuals or minors."

30. SDFB retains the right to notify the public about disciplinary action related to an agency.

General Terms And Conditions

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Further Assurances. Each party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.

Venue and Jurisdiction. For purposes of venue and jurisdiction, this Agreement shall be deemed made and to be performed in the City of San Diego, State of California.

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document. The facsimile signatures of the parties shall be deemed to constitute original signatures, and facsimile copies hereof shall be deemed to constitute duplicate original counterparts.

Interpretation. Whenever the context so requires in this Agreement, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate, or any other entity.

Partial Invalidity. The provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or the application of such provision is essential to the Agreement.

Expenses. The prevailing party as to any disputes relating to this Agreement shall be entitled to recover from the unsuccessful party to this Agreement all costs, expenses and actual attorneys' fees relating to the enforcement or interpretation of, or any litigation or arbitration relating to, this Agreement. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) post judgment motions and appeals; (2) contempt proceedings; (3) garnishment, levee, and debtor and third party examinations; (4) discovery; and (5) bankruptcy proceedings, including, without limitation, all motions, adversary proceedings and contested and uncontested matters in a case under Title 11 of the U.S. Code, where a party has appeared through counsel to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

Modification in Writing. This Agreement may be modified only by an Agreement in writing executed by the parties to this Agreement against whom enforcement of such modification is sought.

Effectiveness. This Agreement shall become effective when it has been executed by all of the parties to this Agreement.

Successors-in-Interest and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of each party to this Agreement. Nothing in this paragraph shall create any rights enforceable by any person not a party to this Agreement, except for the rights of the successors-in-interest and assigns of each party to this Agreement, unless such rights are expressly granted in this Agreement to other specifically identified persons.

Time of Essence. Time and strict and punctual performance are of the essence with respect to each provision of this Agreement.

Prior Understandings. This Agreement contains the entire Agreement between the parties to this Agreement with respect to the subject matter herein and supersedes all prior understandings, agreements, representations and warranties, if any, whether oral or written, express or implied, with respect to said subject matter.

Waiver. Any waiver of a default under this Agreement must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any rights or remedies shall impair its right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

Indemnification. Agency ("Indemnitor") shall indemnify and defend SDFB, NHA, and their respective Boards of Directors (collectively "Indemnitee") against all Claims (as defined below) and all costs, expenses and attorneys' fees incurred in the defense of any of such Claims or any action or proceeding brought on any of such Claims. For purposes of this Paragraph, "Claims" shall mean all liabilities, costs, expenses, attorneys' fees and claims, except to the extent caused by Indemnitee's negligent act, willful misconduct or breach under this Agreement, arising from (a) any breach or default in the performance of any obligation to be performed by Indemnitor under this Agreement, (b) any breach of any representation or warranty of Indemnitor set forth in this Agreement, or (c) any negligence of Indemnitor or any of Indemnitor's agents, employees, representatives, invitees, guests, licensees or contractors. If any action or proceeding is brought against Indemnitee by reason of any such Claims, Indemnitor upon notice from Indemnitee shall defend such action or proceeding at Indemnitor's sole cost by counsel satisfactory to Indemnitee. The foregoing indemnity shall be a payment obligation and not merely a

