

**AGREEMENT BETWEEN CITY OF APACHE JUNCTION AND APACHE JUNCTION  
FOOD BANK FOR HEALTH AND HUMAN SERVICES  
FOR FISCAL YEAR 2019-2020**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation ("City"), and APACHE JUNCTION FOOD BANK, a health and human services provider ("Services Provider"), under the City's human services program, collectively referred to as the "Parties" or individually as a "Party".

**RECITALS**

- A. Pursuant to Apache Junction City Code, ("A.J.C.C.") Volume I, Chapter 2: Mayor, Council, and Appointed Boards and Commissions Article 2-11: Health and Human Services Commission, and Article 2-14: Requests for Financial Assistance, the City may provide financial assistance to non-profit agencies which provide city residents, elderly, handicapped, developmentally disabled care and other public health needs.
- B. The Health and Human Services Commission ("the Commission") has reviewed requests for city funding as submitted by health and human services providers for fiscal year 2019-2020.
- C. The Commission has submitted its recommendations to the council.
- D. On June 17, 2019, at a special meeting, the council passed and adopted the 2019-2020 fiscal year budget, which included funding for health and human services for specific health and human services providers.
- E. Pursuant to A.J.C.C., Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial Assistance, § 2-14-1, Requests for Financial Assistance, subsection (C)(1), all city funds allocated or granted to any non-profit agency shall be by means of a written contract based on services and/or a program (the "Program") to be provided for the City in compliance with the provisions of state law relating to the use of public funds.
- F. Pursuant to A.J.C.C., Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial Assistance, § 2-14-1, Requests for Financial Assistance, subsection (C)(2), all city funds allocated by the council shall only be released to the Services Provider in equal quarterly installments or quarterly payments based on a schedule of anticipated expenses, and no subsequent quarterly allocation shall be released to the Services Provider until such time the receiving agency has provided all required documentation for the previous quarter along with satisfactory evidence of compliance with the work scope ("WS") pursuant to this agreement.

- G. Pursuant to A.J.C.C., Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial Assistance, § 2-14-1, Requests for Financial Assistance, subsection (B), the Services Provider must submit on a quarterly basis a detailed accounting of the performance and accomplishments within the WS.

### AGREEMENT

NOW, THEREFORE, in consideration of payment of public funds in exchange for health and human services to city residents, both Parties agree to the terms and conditions set forth below as well as the Recitals set forth above:

1. SERVICES PROVIDER'S DUTIES: Services Provider agrees to perform the following WS in connection with the Program:

- A. Provide to city residents, individuals and families, emergency and supplemental food, nutritionally verified, from donated sources as well as from the United Food Bank. In order to protect the privacy interest of recipients, Services Provider shall not report the identity of such recipients to City but shall incorporate within its quarterly reports statistical information required in the form prescribed in Attachment A.
- B. Provide such programs and activities to only city residents of the City and only as documented by Services Provider.
- C. Comply with all provisions of A.J.C.C., Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial Assistance, attached hereto as Attachment B, and all other applicable city ordinances; submit contract proposal for fiscal year 2019-2020 to City on or before January 31, 2020.
- D. File with City all documentation for the previous quarter no later than ten (10) City working days following the end of the quarter. City offices are open Monday through Thursday 7:00 a.m. to 6:00p.m. City offices are closed Fridays, weekends and legal holidays.
- E. All reports shall be delivered in person or sent via first class mail. Reports sent by fax, email or other electronic means shall not be accepted. The City Clerk will prescribe the format in which such reports shall be prepared and submitted. Any reports not prepared in accordance with this section shall be deemed rejected and shall constitute a breach of contract.
- F. Any funds received from city not disbursed by Services Provider shall be reimbursed to City. Any funds disbursed by Services Provider in violation of A.J.C.C. Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial

Assistance or this agreement shall be reimbursed to City.

- G. File the quarterly report and required documentation by the deadline set forth in § D above or risk disqualification for health and human services funding for fiscal year 2019-2020. Failure to file the quarterly report and required documentation by the deadlines set forth in § E above shall result in the immediate termination of this agreement.
  - H. Maintain a listing with the community information and referral service that supports Pinal County and the Apache Junction area during the term of this agreement, and provide proof of such listing with every quarterly submittal.
  - I. Service Provider's failure to meet the requirements of A.J.C.C. Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial Assistance or the terms of this agreement shall result in automatic termination of this Agreement.
  - J. Any Services Provider staff responsible for the preparation of the required reports or requests for reimbursement shall be familiar with the terms and requirements of this agreement in order to avoid processing errors.
2. **COMPENSATION:** In accordance with the terms and conditions of this Agreement, City shall compensate Services Provider for its services as follows:
- A. A total of \$24,500 for fiscal year 2019-2020 for (WS) performance.
  - B. Compensation shall be in equal quarterly payments of \$6,125 per quarter. No quarterly payment shall be released until Services Provider has provided all of the required documentation for the previous quarter and has provided satisfactory evidence of compliance with the terms and conditions of this agreement. The deadline for receipt of such documentation is set forth in §1(D) above, and failure to comply with this deadline shall result in forfeiture of claim to the funds and will result in automatic termination of the Agreement.
  - C. In accordance with the recommendations of the Health and Human Services Commission and its subsequent acceptance by the Apache Junction city council, should any of the agencies receiving fiscal year 2019-2020 human services funding be unable to meet the requirements of A.J.C.C. Vol. I, Chapter 2: Mayor, Council and Appointed Boards and Commissions, Article 2-14: Requests for Financial Assistance or the terms of their respective agreement, any unused funds shall be retained in City's general fund.

- D. In accordance with the recommendations of the Commission, representatives of the Services Provider shall attend a mandatory training meeting at a time, date and location to be scheduled by the City Clerk or her designee in order to review terms and reporting requirements of this agreement. The Services Provider representatives shall be those individuals who are responsible for compiling the information and filing the required quarterly reports. Failure of attendance by these critical representatives shall result in automatic termination of this Agreement.
3. **TERM:** This Agreement shall be effective beginning July 2, 2019 through June 30, 2020.
4. **SERVICES PROVIDER BILLING:** Services Provider shall bill City in the manner specified in § 2 above.
5. **CITY'S STANDARD OF PERFORMANCE:** City shall furnish the Services Provider with all data, information and other supporting services as may be required.
6. **SERVICES PROVIDER'S STANDARD OF PERFORMANCE:** While performing the services, Services Provider shall exercise the reasonable professional care and skill customarily exercised by reputable members of Services Provider's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. Services Provider shall be responsible for all errors and omissions Services Provider commits in the performance of this Agreement.
7. **NOTICES:** All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City: Kathleen Connelly  
City Clerk  
City of Apache Junction  
300 E. Superstition Boulevard  
Apache Junction, AZ 85119

If to Services Provider: Robert Mohle,  
President, Board of Directors  
Apache Junction Food Bank  
575 N. Idaho Rd., Ste 701  
Apache Junction, AZ 85119

8. **TERMINATION:** This Agreement may be terminated by either Party for any reason upon fifteen (15) calendar days written notice. In the event this Agreement is terminated for any reason prior to the completion of the full period of performance as stated herein, City shall be liable to Services Provider for those reasonable costs incurred by Services Provider which are in accordance with the original proposal, only up to the date of such termination and not thereafter.
9. **SUBCONTRACTORS:** Services Provider shall not be compensated for proportional work performed. Service Providers shall perform all services set forth in the WS as per section 1 above and shall not use subcontractors.
10. **RECORDS:** Records of Services Provider's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Services Provider shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.
11. **RIGHT OF CITY TO CONTRACT WITH OTHERS:** Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Services Provider.
12. **INDEMNIFICATION:** To the fullest extent permitted by law, Services Provider shall defend, indemnify, and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Services Provider, its agents, and employees.

Services Provider's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by a Services Provider's acts, errors, mistakes, omissions, work Program or services in the performance of this Agreement including any employee of Services Provider.

13. **WAIVER OF TERMS AND CONDITIONS:** The failure of City to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

14. **INDEPENDENT CONTRACTOR:** Services Provider shall at all times during Services Provider's performance of the services retain Services Provider's status as independent contractor.

Services Provider's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Services Provider.

15. **APPLICABLE LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.
16. **OWNERSHIP OF RECORDS AND REPORTS:** All of the files, reports, documents, information and data prepared or assembled by Services Provider under this Agreement shall be and remain the property of City and shall be forwarded to City at any time City requires such papers, but is subject to two (2) year retention schedule set forth in section 10 above.
17. **CITY LICENSE REQUIRED:** Services Provider represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Services Provider understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Services Provider agrees to obtain a non-profit license pursuant to Chapter 8 of the Apache Junction City Code, Vol. I, and keep such license current during the Term of this Agreement. Services Provider also acknowledges that the tax provisions of the City of Apache Junction Tax Code may apply and, if so, shall obtain a tax privilege license through the Arizona Department of Revenue.
18. **ASSIGNMENT & DELEGATION:** This Agreement has been entered into based upon the reputation, expertise and qualifications of Services Provider. Neither Party to this Agreement shall assign its rights or interest in the Agreement, either in whole or in part nor any monies due to or become due to it. In addition, all duties set forth herein are non-delegable.

19. **ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Services Provider and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
20. **SEVERABILITY:** City and Services Provider each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.
21. **CONFLICTS OF INTEREST:** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.
22. **POLITICAL ACTIVITIES:** As a community service-based organization, Services Provider is a non-political organization. Its employees are prohibited from engaging in any partisan political activity with respect to candidates for political office beyond the private expression of personal opinion, registering as a member of a political party, signing nomination petitions and voting in any special, primary or general election. No board member, officer or employee of Services Provider shall solicit any contribution in cash or services from any Services Provider employee to support any candidate for public office. No board member or officer shall use the name of Services Provider, or use their affiliation with Services Provider, to engage in any partisan political activity or form of lobbying, of any kind or to solicit any contribution in cash or services to support any candidate for public office. If a board member or officer should engage in said political candidate activities, they shall make it clear that they are doing so in their personal and private capacity, and are not associated with Services Provider in any way, while engaging in said activity.

The functions and activities of Services Provider are non- political with respect to candidates for political office. Therefore, all board members, officers and employees will refrain from engaging in any partisan political activity or any form of lobbying, of whatsoever type or nature, while attending or participating in Services Provider function or event. This includes the circulation or signing of nomination petitions or soliciting any contributions in cash or services from anyone to support any candidate for public office. The above-prohibition on lobbying includes communicating with Commission members and councilmembers for the purpose of gaining an advantage in receiving health and human services funding.

23. **COMPLIANCE WITH FEDERAL AND STATE LAWS:** Services Provider understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the WS. As required by A.R.S. § 41-4401, Services Provider hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Services Provider further warrants that after hiring an employee, Services Provider will verify the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Services Provider is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Services Provider shall not be deemed in material breach of this Agreement if the Services Provider establish compliance with the employment verification provisions of §§ 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Services Provider who works under this Agreement to ensure that the Services Provider is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.
24. **TIME OF ESSENCE:** Time is of the essence of this Agreement and each provision hereof.
25. **CONDITIONAL APPROVAL:** The Parties understand and acknowledge this Agreement is approved on a conditional basis pending Services Provider's timely filing of complete and correct reports for the 4th quarter of the previous fiscal year (if prior year's funding was provided by City). The 4th quarter reports shall be filed within the deadlines established by the prior agreement and must contain the required information as set forth in the prior agreement.



26. **PROHIBITION TO CONTRACT WITH SERVICES PROVIDER WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL:** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with a contractor or organization who engage in boycotts of the State of Israel. Should Services Provider under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Services Provider to monetary damages, including but not limited to, consequential and liquidated damages.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representative as of the day and year first above written.

**SERVICES PROVIDER:**

APACHE JUNCTION FOOD BANK, a 501(c)3  
non-profit organization

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By: Robert Mohle,  
President, Board of Directors

**CITY:**

CITY OF APACHE JUNCTION, an Arizona  
municipal corporation

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By: Jeff Serdy  
Mayor

**ATTEST:**

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Kathleen Connelly  
City Clerk

**APPROVED AS TO FORM:**

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Richard J. Stern  
City Attorney

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_ as \_\_\_\_\_ of Apache  
Junction Food Bank, a 501(c)3 non-profit organization.

My Commission Expires:

\_\_\_\_\_  
Notary Public

STATE OF ARIZONA       )  
  ) ss.  
COUNTY OF PINAL       )

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
2019, by Jeff Serdy, as Mayor of the City of Apache Junction, Arizona, an Arizona  
municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_