

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and effective on **February 1, 2023** (“Effective Date”) by and between the **CITY OF MENIFEE**, a California municipal corporation, (“City”) and Menifee Valley Community Cupboard, a food recovery agency (“MVCC”). City and MVCC may sometimes herein be referred to individually as a “Party” and collectively as the “Parties.”

### **Section 1. Term and Termination**

- A. Term. The term of this MOU shall begin on execution date and shall end on **April 01, 2025** unless the term of this MOU is otherwise terminated or extended as provided in this MOU.
- B. Termination. Either Party may terminate this MOU upon ninety (90) days’ written notice to the other Party. Upon termination each Party shall deliver to the other Party all documents and materials, if any, prepared for that other Party up to the date of termination.

### **Section 2. Rights and Obligations of the Parties**

- A. Special Provisions. The Parties may agree to additional, supplementary, or modified terms and conditions to those contained in the body of this MOU which shall be set forth in Exhibit A attached hereto and incorporated herein by this reference. In the event of a conflict between Exhibit A and the body of this MOU, Exhibit A shall control.
- B. Rights and Obligations. The rights and obligations of the Parties are set forth in Exhibit B attached hereto and incorporated herein by this reference. Each Party shall dedicate the time to performance of its obligations as may be reasonably necessary to perform such obligations to the standards observed by a competent practitioner in the geographic area where that Party is located, and to the reasonable satisfaction of the other Party.
- C. Cooperation and Noninterference. The Parties shall use best efforts to cooperate to accomplish the purposes of this MOU. Neither Party shall unreasonably interfere with the other Party’s rights or obligations under this MOU. To the extent the rights and obligations hereunder involve performance of a specific or specialized activity or program, neither Party shall conduct competitive activities or programs at a time, in a location, or in a manner which may reasonably be expected to discourage participation in or otherwise detract from the activity or program conducted pursuant to the rights and obligations of the other Party.
- D. Personnel. If the rights and obligations hereunder involve the provision of personnel from one Party to another Party, the providing Party shall reasonably cooperate with requests from the other Party to reassign or replace such personnel as the same may be requested in that Party’s discretion.

- E. Materials and Equipment. Except as otherwise stated in this MOU or in any exhibit hereto, each Party shall provide all materials, facilities, and equipment for that Party's performance hereunder, at that Party's sole cost and expense.
- F. Access to Facilities. Where the rights and obligations hereunder include one Party's use of or entry into any facility, real property, or other building granted by the other Party such right of use or entry shall be subject to and conditioned on the terms of this MOU only. Unless otherwise stated, the rights of use or access granted pursuant to this MOU shall apply to the officers, employees, subcontractors, agents, and volunteers of the applicable Party provided that such persons shall be subject to the terms and conditions of this MOU. If MVCC enters City property or meets in person with City employees during the performance of this MOU, MVCC shall comply with all applicable regulatory and City security and safety procedures, protocols, and practices. If City enters MVCC property or meets in person with MVCC employees during the performance of this MOU, City shall comply with all applicable security and safety procedures, protocols, and practices, if any, included in Exhibit B.
- G. Compliance with Law. Each Party shall, at its sole expense, comply with all local, state, and federal laws and regulations applicable to the performance of this MOU, including obtaining and maintaining any required approval or permit necessary therefor. Section 4 shall specifically apply to Claims (defined therein) arising from a Party's noncompliance with any applicable law, including specifically Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law. Each Party is independently responsible for reviewing and complying with all applicable laws, including but not limited to the payment or nonpayment of prevailing wages required under California law.
- H. Documents and Records. Any plans, specifications, studies, drawings, estimates, test data, survey results, models, renderings, materials and other documents or works of authorship fixed in any tangible medium of expression (collectively "documents"), in electronic or any other form prepared by one Party for the other Party pursuant to this MOU shall be the property of the other Party upon termination or expiration of this MOU. These documents shall be subject to the reasonable acceptance of the receiving Party. Any documents prepared hereunder shall not be released to third parties unless mutually agreed by both Parties or required by law. Each Party shall maintain all documents prepared hereunder for the period required by law, or for three (3) years from the Effective Date, whichever is longer. Any documents hereunder shall be made available for inspection, audit, or copying during regular business hours upon request of the other Party. This MOU creates a non-exclusive and perpetual license for the receiving Party to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the documents provided hereunder. The providing Party shall require all subcontractors preparing documents under this MOU to agree to this provision in writing. The providing Party represents and warrants that it has the legal right to grant the license required by this Paragraph. These documents are not necessarily suitable for any future or

other use, and such future or other use shall be without liability to the providing Party.

- I. Contract Administrators. All matters under this MOU shall be handled for MVCC by Dawn Smith Executive Director (“MVCC Contract Administrator”), and for City by Jonathan Nicks, Community Services Director (“City Contract Administrator”). Except as specified otherwise in this MOU, all correspondence shall be directed through the contract administrators established in this Paragraph, and neither Party shall take direction or orders for the performance of this MOU from any person other than such contract administrators.

### **Section 3. Independent Contractor Status**

This MOU is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association. Neither Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of such other Party. Neither Party shall be an employee of the other Party. Except as expressly provided herein, the means by which the Parties perform the rights and obligations set forth herein is within the exclusive direction and control of the performing Party. Neither Party shall ever represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of the other Party or have the power to incur any debt, obligation, or liability whatever against the other Party, or bind the other Party in any manner. Except as otherwise expressly provided by this MOU, neither Party shall pay salaries, wages, or any compensation to the other Party for performing the rights and obligations hereunder.

### **Section 4. Indemnification**

Each Party shall indemnify, protect, defend (with counsel acceptable to the Indemnified Party), and hold harmless the other Party, and any and all of its officers, employees, officials, volunteers, and agents from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort, contract, under statute, at law, in equity, or otherwise) charges, awards, assessments, fines, or penalties of any kind (including reasonable consultant and expert fees and expenses of investigation, costs of whatever kind and nature and, if the indemnifying Party fails to provide a defense for the indemnified Party, the legal costs of counsel retained by the indemnified Party) and any judgment (collectively, “Claims”), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this MOU by the indemnifying Party or by any individual or entity for which the Indemnifying Party is legally liable, including but not limited to officers, agents, employees or subcontractors of the Indemnifying Party. The provisions of this Section do not apply to Claims occurring as a result of the indemnified Party’s gross negligence or willful acts or omissions. The costs of counsel referred to herein shall not exceed the hourly rate paid by the City for legal services multiplied by the reasonable number of hours spent.

## **Section 5. MVCC Insurance**

Prior to performing any right or obligation under this MOU, MVCC, at its sole cost and expense, shall maintain in full force and effect at all times during the term of this MOU insurance as required by this Section.

- A. Comprehensive Liability Insurance. Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage, and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits of such coverage shall be at a minimum: (1) bodily injury including death, \$1,000,000 for each person and each occurrence and \$2,000,000 in the aggregate; and (2) property damage, \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from the performance of this MOU, including the use of hired, owned, and non-owned automobiles. Comprehensive general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 2, 8, and 9. No endorsement shall be attached limiting the coverage. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- B. Equipment and Property Insurance. Insurance on all equipment, property, and facilities, including fixtures, funded in whole or in part under this MOU to full replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire, vandalism, malicious mischief, or natural catastrophe.
- C. Workers' Compensation and Employer's Liability. The minimum limit of Workers' Compensation Insurance shall comply with the limits required by California law. The limit of Employer's Liability coverage shall be \$1,000,000 per accident, \$1,000,000 per disease per employee, and \$1,000,000 disease per policy.
- D. Quality of Insurance. All insurance required by this Section is to be placed with insurers with a Bests' rating of no less than A:VII and admitted in California.
- E. Additional Insured. City, including its officers, employees, agents, and authorized volunteers, shall be named as an additional insured on the aforementioned insurance policies of MVCC with respect to liability arising out of the MVCC's performance of this MOU.
- F. Proof of Insurance. MVCC shall furnish the City with certificates of insurance, additional insured endorsements, or policy language granting the additional insured status required hereunder and completed certified copies of all policies and endorsements. The certificate of insurance must specifically reference this MOU, and must contain the signature of the person authorized to bind coverage on behalf

of the MVCC. The coverage shall contain no special limitations on the scope of protection afforded to the additional insured or its officers, employees, agents, or authorized volunteers. The insurance provided to City as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City. Additional insured status shall continue for one (1) year after the expiration or termination of this MOU or completion of full performance hereunder, whichever is later. A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees, and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage.

- G. Notice of Changes. MVCC shall provide written notice to City within ten (10) working days if (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced, or (3) the deductible or self-insured retention on any of the required insurance policies is increased.
- H. Self-Insured Retentions and Deductible. MVCC shall obtain the written approval of City for self-insured retentions and deductibles for the insurance required herein. Changes to the same require the written consent of City, which may be conditioned on the procurement of a bond guaranteeing the payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each Party.
- I. Subcontractors. If any subcontractor is performing the rights and obligations of MVCC hereunder, MVCC shall include such subcontractor as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor, subject to all of the requirements in this Section 5.

## **Section 6. City Insurance**

City shall comply with the insurance obligations, if any, included in Exhibit B hereto.

## **Section 7. Variations to Insurance**

Each Party may but is not required to approve in writing a variation to the insurance requirements in Sections 5 and 6 as-applied to the other Party upon a determination that the coverage, scope, limits, and forms of insurance set forth above are either not commercially available or that the approving Party's interests are otherwise fully protected.

## **Section 8. Notices**

All notices and other communications to be given by either Party must be in writing and may be effective by personal delivery, overnight courier, or first class or certified mail, return receipt requested and addressed to the appropriate Party as follows:

To City:	To MVCC:
City of Menifee, Community Services 29995 Evans Rd Menifee, CA 92586 Attn: Jonathan Nicks, Director  With a Copy to: City Clerk City of Menifee 29844 Haun Road Menifee, CA 92586	Menifee Valley Community Cupboard 26808 Cherry Hills Blvd Menifee, CA 92586 Attn: Dawn Smith, Executive Director

Notice shall be deemed received on the date personally delivered or, if mailed, three (3) days after deposit in the mail. Notice provided by overnight delivery shall be deemed received on the next business day after delivery by the overnight delivery service. A Party may change its addressee by written notice to the other party at any time.

## **Section 9. Remedies and Breach**

- A. Cure Period. In the event of a default of the terms of this MOU by either Party, the non-defaulting Party shall give thirty (30) days written notice and opportunity to cure (the "Cure Period") to the defaulting Party, and, if the default remains uncured at the end of the Cure Period, may terminate this MOU and shall have any and all rights and remedies available at law or in equity to recover for the uncured default. The Parties may agree in writing to a longer or shorter Cure Period. If a default cannot reasonably be cured in the Cure Period or presents a substantial risk to the health and safety of either Party or the public, the non defaulting Party may immediately terminate this MOU and seek any and all rights and remedies available at law or in equity.
- B. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

## **Section 10. Subcontract and Assignment**

Neither Party may assign or subcontract any portion of this MOU without the prior written consent of the other Party. Any attempted assignment in violation of this Section shall be void.

## **Section 11. Survival**

All obligations arising prior to the expiration or termination of this MOU and all provisions of this MOU allocating liability between the Parties shall survive the expiration or termination of this MOU.

## **Section 12. Time**

Time is of the essence in this Agreement and for the performance of this MOU.

## **Section 13. Applicable Law and Venue**

This MOU shall be interpreted and enforced under the laws of the State of California. In the event that either Party brings any action against the other under this MOU, the Parties agree that trial of such action shall be vested exclusively in Riverside County.

## **Section 14. Attorneys' Fees**

If any legal action is commenced between the Parties to this MOU, each Party shall bear its own costs of suit, including attorneys' fees.

## **Section 15. Severability**

If any term, provision, covenant, or condition of this MOU shall be determined to be invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this MOU shall not be affected to the extent the remaining provisions are not rendered impractical to perform taking into consideration the purposes of this MOU.

## **Section 16. Waiver**

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

## **Section 17. Successors and Assigns**

This MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successor, and assigns.

## **Section 18. Captions**

The captions, subtitles, and headings contained in this MOU are for convenience only and shall not in any way affect the meaning or interpretation hereof or serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

## **Section 19. Entire Agreement, Amendment, and Construction**

This MOU including the exhibits is the entire agreement of the Parties and supersedes all prior negotiations and agreements whether written or oral.

## **Section 20. Construction**

The terms of this MOU shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this MOU or any other rule of construction which might otherwise apply.

## **Section 21. Incorporation of Exhibits**

Each exhibit attached hereto is hereby incorporated herein by reference. Except for Section 2 A, references to this MOU shall include the exhibits.

## **Section 22. Amendments**

This MOU may be amended only by written agreement and no purported oral amendment to this MOU shall be valid. The City Manager or his or her designee may execute and approve amendments to this MOU on behalf of the City which in the City Manager's reasonable discretion do not substantially modify the terms and conditions of this MOU, provided, however, that the City Manager may instead require City Council for approval for any proposed amendment.

## **Section 23. No Third-Party Beneficiaries**

There are no intended third-party beneficiaries under this MOU and no such third parties shall have any rights or obligations hereunder.

## **Section 24. Nondiscrimination**

Each Party covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this MOU there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry

## **Section 25. Nonliability of Employees**

No officer, official, employee, agent, representative, or volunteer of either Party shall be personally liable to the other Party, or any successor in interest, in the event of any default or breach by the first Party or for any amount which may become due to the other Party or to its successor, or for breach of any obligation of the terms of this MOU.

## **Section 26. No Undue Influence**

Each Party declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the other Party in connection with the award, terms or implementation of this MOU, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of either Party shall receive compensation, directly or indirectly, from the other Party, or from any officer, employee, or agent of said other Party, in connection with this MOU.

## **Section 27. No Benefit to Arise to Employees**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to this MOU during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-



agreement, or the proceeds thereof, for the rights and obligations performed hereunder. This Section shall apply to MVCC if MVCC is a public entity.

#### **Section 28. Authority to Execute**

The persons executing this MOU on behalf of each of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this MOU on behalf of said Party, (iii) by so executing this MOU, such Party is formally bound to the provisions of this MOU, and (iv) that entering into this MOU does not violate any provision of any other agreement to which said Party is bound

#### **Section 29. Counterparts**

This MOU and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

IN WITNESS WHEREOF, the Parties have executed this MOU as the Effective Date.

**CITY OF MENIFEE**

**MVCC**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
[John Greenberg, President]

Attest:

\_\_\_\_\_  
Acting City Clerk

\_\_\_\_\_  
[Bobbi Fisher, Secretary]

Approved as to Form:

[Note: 2 officer's signatures required if MVCC is a corporation, unless provided with a certificate of secretary in-lieu]

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**SPECIAL PROVISIONS**

The first Paragraph of Section 5 of this MOU is hereby amended to read as follows. The remainder of Section 5 remains in full force and effect:

“Where required by the City in its execution of grant activities, MVCC shall, at its sole cost and expense, obtain and maintain for the duration required, the MOU insurance required by this Section. The insurance required by this Section shall be obtained and/or maintained prior to performing any right or obligation under this MOU for which the City requires such insurance.”

**EXHIBIT B**  
**RIGHTS AND OBLIGATIONS OF THE PARTIES**

**Menifee Valley Community Cupboard Responsibilities**

- Adhere to all grantee requirements of the CalRecycle Edible Food Recovery Grant (referred to herein as “grant”)
- Provide monthly reporting detailing collection and donation including but not limited to donor information, pounds of food collected, pounds of food distributed, pounds of food not distributed. Where possible please indicate the food type being collected from the vendor.
- Keep accurate records of collection agreements, applicable staff time, and any other supporting documents needed to comply with reporting requirements of grant
- Recruit, hire, and train driver and provide accurate payroll records as required for reimbursement on a biweekly or monthly basis
- Recruit, hire, train any additional staff required to carry out approved grant activities
- Receive packaged donations as stated purpose for sink and prep space installation
- Receive, operate, insure, and maintain refrigerated box truck and cargo van to operate expanded collection and distribution program upon receipt of vehicles and transfer of title
- Establish and maintain satellite food distribution centers at Romoland and Quail Valley with:
  - Each location offering food distribution to the community, at a minimum, once per month at set interval date. Example: 1<sup>st</sup> Tuesday of Each Month
  - Should designated sites become unavailable, MVCC has discretion to establish alternate site(s) within areas approved under the EFR Grant.
  - To encourage public participation in program, ID and Proof of residency will not be required for participation in distribution event
- Partner and participate in community outreach for donation programs and satellite distribution including but not limited to direct marketing and outreach to stakeholders via community partnerships, organizations, and outreach materials; participate in city directed outreach of grant programs such as webinars, social media, and filmed content
- Timely furnish invoices and records required under the grant
- Attend monthly project meetings with City
- Create helpful tips and/or best practices guide for food donors

- Continue to offer free collection services for food donors

### **City Responsibilities**

- Administer grant in accordance with grantee requirements and source equipment and services as indicated under grant tasks