



## Member Agency Contract

The Food Bank for Larimer County, a Colorado nonprofit corporation (Food Bank) and the applicant Agency, \_\_\_\_\_ (referred to as the “Agency” in this document), by signing below shall have entered into this Member Agency Contract (Contract) as of the effective date. The effective date is when the Food Bank’s Member Agency Committee approves the applying agency and the contract is signed by the CEO and Programs Director of the Food Bank for Larimer County.

### **PREAMBLE**

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In the belief that together we can resolve food insecurity issues in Larimer County, and subject to the terms and conditions of this Member Agency Contract, both parties agree to:

1. Collaborate toward the common goal of maximizing the provision of safe and nutritious food resources to people in need and relieving hunger throughout Larimer County.
2. Share resources and provide mutual support to best meet the needs of food insecure residents of Larimer County.
3. Uphold professional standards and a code of conduct based on trust, mutual respect, and support for one another.

Applications for new Agency Membership are accepted throughout the year. The following list of requirements is not exhaustive, and Agency Membership is not guaranteed. Agency Membership decisions will be made within one month of receipt of a completed Program Application, Member Agency Contract, a copy of the applying agency’s 501(c)(3) status, and a copy of a current (within three years) Food Safety training certificate. If an Agency is not onboarded at the time of application, they will be notified and placed on our waiting list. In addition, an initial Agency site visit must be completed prior to Agency Membership approval.

### **ELIGIBILITY**

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By partnering with the Food Bank, the Agency confirms it is located in Larimer County and food distribution takes place within Larimer County. It also confirms it is one of the following organizations:

1. A 501(c)(3) Public Charity, or an organization wholly owned by a Public Charity that either:
  - a. Was organized for and operates for the purpose of the care of and service to the ill, needy, or infants or
  - b. Uses donated product in a manner relating to and consistent with the organization’s exempt purpose through programs that care for and serve the ill, needy or infants.
2. A church that cares for or serves the ill, needy or infants. For eligible churches, the Food Bank must be provided with one of the following documentations:

- a. A copy of the church's 501(c)(3) letter. If the letter is for a denomination, please send the denomination's letter as well as a letter connecting the church with this denomination.
  - b. If the church is not affiliated with a denomination that has a 501(c)(3) letter, the church may still be eligible. Please email the Programs Manager for a copy of the 14-point eligibility form the IRS uses to determine church eligibility. The Food Bank for Larimer County requires a church meet at least 10 of the 14 points to be considered eligible for partnership.
3. The Agency may be an unincorporated program designated as the "fiscally sponsored agency" of a Federal tax-exempt 501(c)(3) organization, in distributing donated product obtained from the Food Bank to eligible recipients, under the following conditions:
- a. The sponsoring 501(c)(3) organization must affirm such designation in writing, acknowledging the responsibility to enforce all provisions of this Contract between the Food Bank and the sponsored Agency, and accepting all obligations and responsibilities of the Agency under this Contract as though the 501(c)(3) organization was the party to this Contract.
  - b. The 501(c)(3) organization must be programmatically, fiscally, and legally responsible for the donated product handling/distribution activities of the sponsored Agency.
  - c. Funds used to pay shared maintenance fees assessed to the Agency must come from the sponsoring 501(c)(3) organization and not from the sponsored agency. All money received and disbursed in connection with the donated product handling/distribution activity must go through the fiscal books of the sponsoring 501(c)(3) organization.

## **GENERAL EXPECTATIONS**

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1. The Agency will receive, store, transfer, use, and handle product safely and properly in accordance with applicable laws and regulations.
2. The Agency agrees that, in compliance with the requirements of Section 170(e)(3) of the Internal Revenue Code, all donated food received from the Food Bank shall be given directly to its clients in the form of meals, snacks, or distributed in emergency or supplemental food packages, at no charge to the client.
3. All donated product is accepted by the Agency in "as is" condition without any express or implied warranty, guarantee or other assurance of quality.
4. The Agency will not sell, barter, or trade donated product in exchange for money, other properties, or service.
5. The Agency will not use donated product for staff or volunteer use or consumption.
6. The Agency will maintain a procedure for determining that the final recipient of the donated product is ill, needy, or infant, such as using self-declarations or other intake processes.
7. The Agency agrees to pay any shared maintenance fees associated with the purchase or delivery of product, not to exceed \$0.19 per pound. All fees will be disclosed by the Food Bank beforehand.

8. The Agency agrees to allow regular Food Bank monitoring visits, announced or unannounced, and will comply with other policies and procedures as required by the Food Bank.
9. The Agency will not engage in discrimination in the provision of service against any person because of race, color, citizenship, religion, gender, national origin, ancestry, age, marital status, disability, sexual orientation including gender identity or expression, unfavorable discharge from the military or status as a protected veteran or as otherwise prohibited under the current USDA nondiscrimination statement.
10. The Agency must complete an application for each of the programs that will be utilizing product from the Food Bank. Each program must qualify for Agency status under the same eligibility guidelines as the Parent Agency. Product acquired from the Food Bank for the purpose agreed upon in the Program Application, may not be used for any other programs. *For example, if the Agency applies for membership as a Food Pantry, the Agency may not use the food for other programs including, but not limited to, soup kitchens/meal programs, day care programs, retreats, Sunday school, convents, Bible studies, church fellowship functions, appreciation banquets, fundraisers, or any other institutional uses.*
11. Each Agency program shall be listed separately at the end of this Contract.
12. The Food Bank has the authority to place an Agency on probation or suspend an Agency if the Food Bank deems the Agency to be in violation of this Contract, the Handbook, or state or local law.

## **FOOD SAFETY REQUIREMENTS**

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1. The Agency agrees to keep a minimum of one staff person, involved in the agency's food program, food safety certified at all times. To this end, the Agency agrees to update the Nourishing Network Coordinator or the Programs Manager regarding changes to certified personnel. If there is a personnel change, the Agency has sixty (60) days to update their staff person on the appropriate food safety training. If the Agency is defined by multiple programs, the Agency agrees to keep a minimum of one staff person food safety certified at all times for each program or distribution site. If an alternative Safe Food Handling Certification has been obtained, the Agency will provide proof of certification, along with the name of the training company and date of the course.
  - a. If the Agency receives shelf stable product, they will be required to complete an appropriate online course that the Food Bank will provide upon request.
  - b. If the Agency receives cold product (TCS), they will be required to complete the Food Bank offered class or the ServSafe Food Handler's class.
  - c. If the Agency prepares food they receive from the Food Bank, they will be required to complete either the class the food bank offers or possess a ServSafe Manager or equivalent certificate.
  - d. Additionally, it is expected that agencies will provide their Nourishing Network shoppers with appropriate food safety training pertaining to the shopping and transporting of product.
2. The Agency must have adequate refrigeration and storage space to ensure the wholesomeness and safety of food until it is used and/or distributed.

- a. The Agency will make the Programs Manager aware of all food storage locations, regardless of the source of food stored in these locations.
  - b. Agencies without adequate refrigeration and freezer storage will not be permitted to pick up perishable or frozen products.
  - c. Cold product received from the Food Bank must have active temperature control, such as refrigeration, coolers, or thermal blankets, while the food is transported.
  - d. Agencies are responsible for tracking and recording temperatures during transportation as well as in coolers and freezers on location.
3. Food received from the Food Bank shall not be stored in personal vehicles or distributed out of private residences.

## **MISCELLANEOUS PROVISIONS**

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1. Term. The term of this Contract shall commence on the date both parties fully execute the Contract and shall continue until terminated by either party, as provided herein. Either party may terminate this Contract at any time and for any reason, with or without notice, by providing the other party with written notice. Termination shall have no effect on either party's rights and obligations with respect to limitation of liability, indemnification, and disclaimer of warranties, as those provisions survive termination.
2. Disclaimer of Warranties. All food products and any services provided by the Food Bank under this Contract are supplied on an "as is" and "as available" basis without any express or implied warranty, guarantee or other assurance of quality. The Agency accepts all risk concerning suitability, use, quality, performance, or non-performance. The Food Bank makes no warranty, expressed or implied, and disclaims all implied warranties of merchantability and fitness for a particular purpose.
3. Indemnification; Limitation of Liability. The Agency shall be solely responsible for its distribution of any food products from the Food Bank. The Agency hereby warrants and guarantees to indemnify, defend and hold the Food Bank and Feeding America, and their directors, employees and volunteers, as well as the original donor, harmless from all liabilities, claims, losses, causes of action, suits at law or in equity or any other obligation whatsoever arising out of, or related to, this Contract, or any action by the Agency or any third party in connection with the Agency's storage and/or use of the donated product supplied by the Food Bank. In no event shall the Food Bank or Feeding America be liable to the Agency or any other person for any indirect, incidental, consequential or punitive damages, including loss of profit or goodwill, for any matter arising out of or relating to this Contract and its subject matter, whether such liability is asserted on the basis of contract, tort or otherwise, even if it has been advised of such damages.
4. Legal Authority. Agency warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind Agency to its terms. The person(s) executing this Contract on behalf of Agency warrant(s) that such person(s) have full authorization to execute this Contract.

5. Independent Contractors. Each party and its governing board, officers, directors, employees, and agents are independent contractors in relation to the other party with respect to all matters arising under this Contract. This Contract shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. Agency and its employees shall not be considered employees of the Food Bank for any purpose whatsoever and are not entitled or eligible for any employment benefit or compensation from the Food Bank, for example, medical benefits, retirement benefits, or worker's compensation coverage.
6. Choice of Law; Jurisdiction; Venue. This Contract shall be governed by the laws of the State of Colorado, without regard to the conflict of laws provision thereof. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado District Court, and the exclusive venue shall be in the County of Larimer.
7. Entire Agreement; Amendment. This Contract shall constitute the final, complete, entire, and exclusive understanding of the parties and shall supersede all prior or contemporaneous agreements, discussions, representations, and understandings, whether oral or written, between the parties respecting the subject matter hereof and cannot be amended, modified, waived, or discharged except in writing signed by both parties.
8. Third Party Beneficiaries. Enforcement of this Contract and all rights and obligations hereunder and are reserved solely to the Food Bank and Agency. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.
9. Waiver. The waiver by either party of a breach or violation of any provision of this Contract shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
10. Severability. In the event that any provision of this Contract is held unenforceable for any reason, the remaining provisions of this Contract shall remain in full force and effect.
11. Assignment. The Agency's rights and obligations hereunder are personal and may not be transferred, assigned, or subcontracted without the prior, written consent of the Food Bank. Any attempt at assignment, transfer, subcontracting without such consent shall be void.

**In Witness Whereof, the parties hereto have executed this Contract to be effective as of the dates set forth herein.**

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**Agency Executive Director (or equivalent) Date**

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**Agency Board President (or equivalent) Date**

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**Food Bank for Larimer County:**

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**Food Bank Programs Director Date**

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**Food Bank CEO Date**

**PROGRAM INFORMATION**

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Please list all Programs operated and covered by the Agency that has entered into the above Contract. Add additional pages if necessary.

**Program #1:**

Type of Program (please circle/highlight):

Food Pantry	Meal Program	Residential	After- School/ Snack Program	Shelter	Other:
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Program Physical Address:

Program Mailing Address:

City/State/Zip Code:

Phone:

Food Program Coordinator:

E-Mail Address:

**Program #2:**

Type of Program (please circle/highlight):

Food Pantry	Meal Program	Residential	After- School/ Snack Program	Shelter	Other:
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Program Physical Address:

Program Mailing Address:

City/State/Zip Code:

Phone:

Food Program Coordinator:

E-Mail Address:

**Program #3:**

Type of Program (please circle/highlight):

Food Pantry	Meal Program	Residential	After- School/ Snack Program	Shelter	Other:
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Program Physical Address:

Program Mailing Address:

City/State/Zip Code:

Phone:

Food Program Coordinator:

E-Mail Address:

**Program #4:**

Type of Program (please circle/highlight):

Food Pantry	Meal Program	Residential	After- School/ Snack Program	Shelter	Other:
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Program Physical Address:

Program Mailing Address:

City/State/Zip Code:

Phone:

Food Program Coordinator:

E-Mail Address: