

## **MEMORANDUM OF UNDERSTANDING**

**This MEMORANDUM OF UNDERSTANDING** ("MOU") is made this \_\_\_\_ day of December, 2017, between Lift To Rise (hereinafter called "LTR"), a non-profit organization, and Regional Access Project Foundation ("RAPF"), a California non-profit corporation, regarding the potential fiscal agency relationship between LTR and RAPF. LTR and RAPF may hereinafter be referred to as "Party" or "Parties," as applicable.

### **INTRODUCTION.**

LTR currently exists as a concept for facilitating charitable work to the residents of the Coachella Valley, using a collective action network approach. LTR intends to formally organize as a California non-profit corporation within the approximately next eighteen (18) months. Until such time as LTR is fully organized as a non-profit corporation under the applicable state and federal laws, LTR must affiliate itself with an established non-profit corporation that can act as LTR's "fiscal agent" for the purpose of formally receiving and disbursing funds provided to LTR by public and private organizations that have agreed and/or will agree to provide funds to support LTR'S charitable work but cannot disburse funds directly to an unincorporated organization or to an organization that does not have legal tax-exemption status.

LTR is currently in the process of dissolving its fiscal agency relationship with FIND Food Bank ("FIND") and expects to finalize that dissolution on or before June 30, 2018.

RAPF is a non-profit corporation, duly organized under California and federal law. RAPF has expressed an interest in assuming the fiscal agency responsibilities for LTR, starting January 1, 2018 for all new activities not covered through the LTR'S fiscal agency MOU with FIND and continuing until such time as LTR obtains its tax-exempt status, not to exceed eighteen (18) months.

The Parties desire to enter into this MOU for the limited purpose of defining LTR'S and RAPF'S respective duties with respect to RAPF'S fiscal agency role.

Therefore, the Parties agree as follows:

### **SECTION 1. PRELIMINARY OBJECTIVES**

1.1 The Parties agree that the primary objective of both LTR and RAPF is to ensure that the fiscal agency relationship does not compromise either LTR'S or RAPF'S financial integrity or create an adverse financial impact on either Party.

1.2 The Parties agree to work collaboratively to define the parameters of fiscal agency relationship in a manner that truthfully conveys both Parties' financial and operational responsibilities and needs and thereafter, to enter into a formal fiscal agency MOU based on these parameters.

1.3 The Parties acknowledge that RAPF will incur expenses as a result of accepting fiscal agency responsibilities on behalf of LTR. Therefore, the Parties will endeavor to identify the most effective and economically feasible method for LTR to compensate RAPF for assuming the responsibility of being LTR'S fiscal agent, whether that method involves LTR paying RAPF a percentage of its incoming revenue, a percentage of RAPF'S operational expense, or some other form of compensation. Subject to change upon further consideration by the Parties, LTR agrees, as a preliminary matter, to pay to RAPF, as compensation for the expenses RAPF will incur as LTR'S fiscal agent, an amount equal to five percent (5%) of the total funds that RAPF receives on behalf of LTR in RAPF's capacity as LTR'S fiscal agent.

1.4 LTR agrees to diligently pursue efforts to incorporate as a California non-profit corporation within the next eighteen (18) months, in order to avoid having to extend the fiscal agency relationship beyond the reasonable amount of time necessary for LTR to establish its corporate and financial operations.

## **SECTION 2. OPERATIONAL CONCERNS.**

2.1 LTR'S EMPLOYEES. LTR'S employees are currently legally employed by FIND. RAPF does not wish to assume the legal, fiscal, or operational responsibilities of employing LTR'S employees. Therefore, LTR will undertake the measures necessary to become the legal employer of its employees on or before the date on which ~~RAPF becomes the fiscal agent for LTR. LTR'S fiscal agency relationship with FIND dissolves, i.e., June 30, 2018,~~ including, but not limited to, obtaining federal and state tax ID numbers, establishing the necessary employer accounts with the California Employment Development Division, setting up payroll processing mechanisms, and securing the appropriate employment insurance policies.

2.2 LTR'S PHYSICAL OPERATIONS. LTR'S operations are currently housed at FIND'S offices. LTR expects to be able to continue operating out of FIND'S offices for the foreseeable future. RAPF does not currently have the ability to support or house LTR'S physical operations in RAPF'S offices. Thus, in the event that LTR must move out of FIND'S offices in the future, it will not require RAPF to physically house its operations as part of the fiscal agency relationship.

2.3 INSURANCE. During the fiscal agency period, LTR agrees to maintain adequate liability insurance and to name RAPF as an additional insured.

## **SECTION 3. ASSIGNMENT.**

3.1 This MOU, any interest herein, and any funds the Parties identify as belonging to LTR shall not be assigned, in whole or in part, by RAPF without the prior written consent of LTR, except that without securing such prior consent, RAPF shall have the right to assign this MOU to any successor of RAPF by way of merger or consolidation or the acquisition of substantially all of the assets of RAPF relating to the subject matter of this MOU, if such successor has expressly assumed all obligations and liabilities of RAPF under this MOU.

## **SECTION 4. TERM OF MOU.**

4.1 This MOU shall be effective as of the date first set forth above upon the execution by all the Parties, and shall terminate on the date the Parties execute a formal fiscal agency MOU.

4.2 Termination of this MOU shall not terminate rights and obligations of the Parties which arose prior to such termination, but nothing in this Section shall confer, create, or expand any rights in either LTR or RAPF any other third parties.

## **SECTION 5. MISCELLANEOUS.**

5.1 This MOU will be interpreted and the rights of the Parties construed in accordance with California law, and any litigation concerning this MOU shall be limited and confined exclusively to the appropriate State or Federal Court located within the State of California.

5.2 This MOU shall relate only to the matters specified herein and nothing herein shall be deemed to:

- (a) Confer any right or impose any obligation or restriction on a Party with respect to any other project at any time undertaken by any Party hereto, or
- (b) Preclude a Party hereto from soliciting or accepting any funds from third parties.

5.3 Any notice, demand or request required or permitted by this MOU shall be in writing and shall be deemed to have been sufficiently given when personally delivered or deposited in the United States mail and received within seven (7) days of postmark, registered or certified, postage prepaid, addressed as follows:

LTR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: Heather Vaikona

RAPF:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: Leticia De Lara

5.4 This MOU constitutes the entire understanding and MOU of and among the Parties with respect to the subject matter hereof and supersedes all prior representations and MOUs, verbal or written. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party.

5.5 Paragraph headings herein are for convenience only and shall not limit in any way the scope or interpretation of any provision to this MOU.

**5.6 Legal Fees and Costs.**

In the event either party brings any action for relief against the other, declaratory or otherwise, arising out of this MOU (including actions to enforce and interpret this MOU), the losing party shall pay to the prevailing party, in addition to any other relief to which such party shall be entitled, a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment, in addition to any other relief to which such party shall be entitled.

**5.7 Third Parties.**

None of the provisions of this MOU shall be for the benefit of third parties or enforceable by any third party. Any agreement to pay an amount and any assumption of a liability herein contained, expressed or implied, shall only be for the benefit of the parties hereto and such agreement or assumption shall not inure to the benefit of the any third party, including an obligee.

**5.8 Force Majeure.**

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this MOU or other interruption of service deemed to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes

IN WITNESS WHEREOF, the Parties have executed this MOU the day and year first written above.

**REGIONAL ACCESS PROJECT FOUNDATION**

**LIFT TO RISE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Leticia De Lara

Name: Heather Vaikona

Title: CEO

Title: Director