

**THE BYLAWS OF THE  
ALAMEDA COUNTY COMMUNITY FOOD BANK**

**Adopted – April 8, 1997; Amended January 2003; Amended December, 2004; Amended October, 2012; Amended January, 2013; Amended October, 2015; Amended February, 2018; Amended October 2018**

**A NONPROFIT PUBLIC BENEFIT CORPORATION**

**ARTICLE 1**

**1.1 Name.** The name of this Corporation shall be the ALAMEDA COUNTY COMMUNITY FOOD BANK (herein called the “Corporation”).

**1.2 Powers.** Except as limited by its Articles of Incorporation (herein called the “Articles”), the Corporation shall have and exercise such powers in furtherance of its purposes as are now or may hereafter be granted by the California Nonprofit Public Benefit Corporation Law (herein called the “Nonprofit Corporation Law.”)

**1.3 Principal Office.** The Corporation’s principal office shall be fixed and located at such place as the Board of Directors (herein called the “Board”) shall determine. The Board is granted full power and authority to change said principal office from one location to another.

**1.4 Other Offices.** Branch or subordinate offices may be established at any time by the Board at any place or places.

**ARTICLE 2  
PURPOSE**

- 2.1** The purpose of the Corporation shall be to eliminate hunger in our community by:
- (a) distributing nutritious food and providing nutritional education for people who live at or below the poverty level;
  - (b) advocating for and participating in programs that promote the self-sufficiency of poor people;
  - (c) forming alliances with public and private organizations to meet the needs of our constituents; and
  - (d) educating the general public about hunger and other poverty related issues.

**ARTICLE 3  
MEMBERSHIP**

- 3.1** The Corporation shall have one form of membership known as Members.
- 3.2 Membership.** Nonprofit organizations holding State and Federal tax exemption status (qualified under Federal Internal Revenue Code Section 501(c)(3)) with a similar purpose

may apply to the Board for membership. Upon approval of any such Organization's application by the Board, the organization shall appoint or elect one representative and may appoint or elect one alternate. A Member will be solely represented by their chosen representative or alternate.

**3.3 Voting; Absentee Ballot.** Each Member shall have one vote at any Member meeting. This right to vote may be exercised by a Member in person (by its chosen representative or alternate) or by absentee ballot. An absentee ballot listing all of the items to be voted on (and the absentee ballot procedures) will be included with the notice of any Member meeting where it is anticipated that Member approval will be sought on a matter. To be counted, an absentee ballot must be received by the start time for the meeting as set forth in said meeting's notice. If a Member is present at a meeting, the absentee ballot will be cancelled. The Board or a committee of the Board may set additional absentee ballot procedures from time to time.

**3.4 Purpose of the Members.** To serve as a forum for the participating organizations to provide information about their constituency and to advise the Board on local and community matters.

**3.5 Members' Annual Meeting.** The Members shall hold an annual meeting for the purpose of nominating and electing a Network Chair and Network Vice Chair. The role of the Network Chair or the Network Vice Chair in the Network Chair's absence, shall be to preside over meetings of the Members. Annual meetings of the Members shall be held in October or as soon thereafter as reasonably possible. Regular meetings of Members will be held, as described in **Section 3.6**, at which time the Members will have the opportunity to elect Directors to the Board.

**3.6 Members' Regular Meetings.** Regular meetings of the Members shall be held with fourteen (14) days advance notice.

**3.7 Members' Special Meetings.** Special meetings of the Members may be called at any time on one (1) week's notice by the Network Chair, the Chairperson of the Board, the Secretary of the Board, or any three Directors of the Board, to conduct special or regular business.

**3.8 Members' Rights.**

(a) **Voting.** Only Members' representatives or their alternates shall vote at Member meetings. The Network Chair may vote only to break a voting tie.

(a) The Members may remove a Director at any time without cause by a two-thirds vote of the Members present at a Member meeting.

(b) Nothing in these Bylaws limits the rights of the Members otherwise provided in the Nonprofit Corporation Law."

**3.9 Membership Meeting Quorum.** Twenty-five (25) Members or five percent (5%) of the Members of record, whichever is greater, shall constitute a quorum for the transaction of business. At a properly called meeting of the Members, actions will be approved by a majority vote of the members present. If attendance should be less than one third of the

total number of Members, then action by the Members is confined to the agenda items contained in the meeting notice. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Members, if any action taken is approved by at least a majority of the required quorum for such meeting.

**3.10 Committees.** The Members may appoint one or more committees to advise the Board. The Members' committees shall have no authority to obligate the Corporation in any manner.

**3.11 Termination of Members.** A membership shall terminate on occurrence of any of the following:

- (a) Resignation of the Member, on reasonable notice to ACCFB;
- (b) Failure of the Member to pay dues or fees as set by the Board within thirty (30) days after the Member receives written notification of the delinquency;
- (c) Any event that renders the Member ineligible for membership, or failure to satisfy membership qualifications; or
- (d) Removal of the Member. Any organization that is a Member may be removed by a good faith determination by the Board that a Member has failed in a material and serious degree to observe rules of conduct or engaged in conduct materially and seriously prejudicial to the Corporation's purposes and interests after thirty (30) days prior notice of the removal, which shall provide reasons for removal. The affected Member will be given an opportunity to be heard, not less than five days before the effective date of the removal, by the Board.
- (e) Any notice required by this article may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first class or registered mail sent to the last address of the Member shown on the Corporation's records.
- (f) Any action challenging the removal of a Member, including any claim alleging defective notice, must be commenced within one year after the date of the removal. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the Members or of the Board may be set aside solely because a person was, at the time of the vote, wrongfully excluded by virtue of the challenged removal, unless the court finds further that the wrongful removal was in bad faith and for the purpose, and with the effect, of wrongfully excluding the Member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote."

## **ARTICLE 4 DIRECTORS**

**4.1 Board Powers.** Subject to limitations of the Articles and these Bylaws, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate the management of

the activities of the Corporation to any person or persons, a management company, or committees however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:

(a) To select and remove all the other officers, agents, and employees of the Corporation and prescribe powers and duties for them that are not inconsistent with the law, the Articles, or these Bylaws.

(b) To conduct, manage, and control the affairs and activities of the Corporation and to make such rules and regulations not inconsistent with the law, the Articles, or these Bylaws, as they may deem to be in the best interest of the Corporation.

(c) To adopt, make, and use a corporate seal and to alter the form of such seal from time to time as they see fit.

(d) To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefore.

(e) To recruit, approve and present qualified candidates for election to the Board.

**4.2 Number of Directors.** The Board of Directors shall consist of not less than nine (9) voting Directors and not more than twenty two (22) Directors until changed by amendment to the Bylaws as hereafter provided. The exact number of Board members within that range shall be established by resolution of the Board and may be changed by resolution of the Board.

**4.3 Qualification of Directors.** No more than forty-nine percent (49%) of the directors serving on the Board may be interested persons, as defined in Section 5227 of the Nonprofit Corporation Law. However, any violation of this Section 4.3 shall not affect the validity or enforceability of any transaction entered into by the Corporation. All Directors must live, work, or have significant influence/impact in Alameda County as determined by the Board. A minimum of two (2) Directors shall be representatives of Members of the Corporation. All other Directors shall be persons who are interested in the purposes of the Food Bank and represent Alameda County at large.

**4.4 Election of Directors.** All Directors shall be nominated by the Board, or a committee appointed by the Board to make such nominations, and shall be elected by the Members, with the exception of the Network Chair who shall be selected consistent with **Section 3.5**.

**4.5 Terms of Directors.**

(a) The term of office of each Director shall be three (3) years, commencing January 1, 2004. The current Directors shall be assigned to staggered terms of one (1), two (2) and three (3) years by agreement of the Directors, so that approximately one-third of the Directors terms will expire each year.

(b) Upon the expiration of the terms of the offices specified in **Section 4.5(a)** of this **Article 4**, Directors shall be elected by the Members to fill the expired positions. The Directors successively elected thereto shall serve for a term of three (3) years. No person may be reelected if at the time of such reelection the term for which the Director is being elected will result in the Director serving more than three full terms as a Director, whether served before or after (or before and after) the date of the adoption of these Bylaws.

**4.6 Board Vacancies.** Subject to the provisions of Section 5226 of the Nonprofit Corporation Law, any Director may resign effective upon giving written notice to the Board Chair, the Board Secretary, or the full Board, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be selected before such time, to take office when the resignation becomes effective.

Vacancies in the Board shall be filled by election by the Members at a regular meeting.

A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, term expiration or removal of any Director, or if the authorized number of Directors is increased. A Director may be removed for cause by a two-thirds vote of the Directors present at an officially convened Board meeting.

The Board may declare vacant the office of a Director who has failed to attend three (3) consecutive meetings of the Board.

No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of the Director's term of office.

**4.7 Place of Meeting.** Meetings of the Board shall be held at any place within the County of Alameda which has been designated from time to time by the Board. In the absence of such designation, regular meetings shall be held at the principal office of the Corporation.

**4.8 Board Annual Meetings.** The Board shall hold an annual meeting for the purpose of organization, nomination of Directors, and the transaction of other business. Annual meetings of the Board shall be held with prior written notice and shall be the first regular Board meeting after September 30th of each year or as close to that date as reasonably possible. At its Annual Meeting the Board shall elect its officers, except for the Executive Director, the Board Chair and the Chief Financial Officer.

**4.9 Officers.** The officers of the Corporation shall be the Board Chair, the Board Vice-Chair, the Chief Executive Officer/Executive Director, Chief Financial Officer, Board Secretary, and Board Treasurer.

(a) **Chairperson of the Board.** The Chairperson of the Board (also referred to as the “Board Chair”) shall be a Director and shall preside over all meetings of the Board and shall perform such other duties as may be specified by the Board from time to time.

(b) **Vice-Chairperson of the Board.** The Vice Chairperson of the Board (also referred to as the “Board Vice-Chair”) shall be a Director and in the absence or disability of the Board Chair, the Board Vice Chair shall perform all duties of the Board Chair and, when so acting, shall have all the powers of, and be subject to all the restrictions upon the Board Chair.

(c) **Executive Director.** The Executive Director shall be the Chief Executive Operator of the Corporation and is responsible for carrying out the policies of the Board and for the day to day operations of the Corporation, subject to the direction of the Board or a committee designated by the Board. The Executive Director is employed by the Corporation and shall serve at the pleasure of the Board. The Executive Director shall not be Director.

(d) **Chief Financial Officer.** The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation. The books of account shall at all times be open to inspection by any Director. The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the Chief Executive Officer, Board Chair and any other Director, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board. The Chief Financial Officer shall be the Director of Finance and Operations of the Corporation, or similarly titled employee, as approved by the Directors.

(e) **Secretary of the Board.** The Secretary of the Board, also referred to as the Board Secretary, shall be a Director and shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, and the proceedings thereof and shall perform such other duties usual and customary for the secretary of a board or of a non-profit corporation as requested by the Board from time to time. The Secretary shall keep, or cause to be kept, at the principal office in the State of California the original or a copy of the Corporation’s Articles and Bylaws, as amended to date.

(f) **Treasurer of the Board.** The Chair of the Oversight Committee shall serve as the Treasurer of the Board, and shall preside over all meetings of the Oversight Committee, shall serve in an advisory capacity to the Chief Financial Officer regarding the Chief Financial Officer’s conduct of his or her duties and shall perform such other fiscal duties as may be from time to time assigned by the Board.

**4.10 Board Regular Meetings.** Regular meetings of the Board shall be held with prior notice at a minimum of four (4) times a year.

**4.11 Board Special Meetings.** Special meetings of the Board for any purpose or purposes may be called at any time by the Board Chair, Board Vice-Chair, the Secretary, or any two Directors.

Special meetings of the Board shall be held upon three (3) days' notice by first-class mail or twenty-four (24) hours' notice given personally or by telephone, electronic mail, facsimile transmission, or other similar means of communication. Any such notice shall be addressed or delivered to each Director at such Director's address as it is shown upon the records of the Corporation or as may have been given to the Corporation by the Director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver. Notice given by electronic mail must be acknowledged by the recipient Director in order to be effective.

**4.12 Quorum and Voting.** A majority of the current total number of Directors then in office constitute a quorum of the Board for the transaction of business, except to adjourn as provided in **Section 4.15** of this **Article 4**. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law or by the Articles, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Each director present and voting at a meeting shall have one vote on each matter presented to the Board for action at that meeting. No director may vote at any meeting by proxy.

In circumstances deemed appropriate by both the Board Chair and Executive Director, the Board may approve corporate action via e-mail communications so long as (i) each Board member is provided with relevant data and an opportunity to respond; (ii) Board members are given at least three (3) days to respond; (iii) the proposal receives explicit, affirmative approval through a specific response from a majority of the directors then in office; and (iv) the action is subsequently expressly ratified at a Board meeting.

**4.13 Telephone and Electronic Meetings.** Directors may participate in Board meetings through the use of conference telephone or other electronic communications equipment, so long as all Directors participating in such meeting can hear one another and each member is provided the means of participating in all matters before the Board, including the capacity to propose or to interpose an objection to a specific action to be taken by the Board. Participation in a Board meeting by such means constitutes presence in person at such meeting.

**4.14 Waiver of Notice.** Notice of a meeting need not be given to any Director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

**4.15 Adjournment.** A majority of the Directors present, whether or not a quorum is present, may adjourn any Directors' meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

**4.16 Action Without Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. Such consent or consents shall have the same effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board.

**4.17 Rights of Inspection.** Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation.

**4.18 Committees.** The Board may, by resolution of a majority of directors then in office, provided that a quorum is present, create, and appoint members of the Board to, one (1) or more committees ("Board Committees"), each consisting of two (2) or more directors, to serve at the pleasure of the Board. The Board shall create an audit committee if required by the California Nonprofit Integrity Act of 2004 (the "Nonprofit Integrity Act"). Only directors may serve on any Board Committee. The Board may appoint one (1) or more directors as alternate members of any such Board Committee, who may replace any absent Board Committee member at any meeting of the Board Committee. Any such Board Committee, including the Executive Committee, to the extent provided in the Board resolution, shall have all the authority of the Board, except with respect to:

(a) The approval of any action for which the California Nonprofit Public Benefit Corporation Law also requires approval of the members or approval of a majority of all members.

(b) The filling of vacancies on the Board or on any committee which has the authority of the board;

(c) The amendment or repeal of bylaws or the adoption of the new bylaws;

(d) The amendment or repeal of any resolution of the Board unless by its express terms, it is so amendable or repealable;



- (e) The appointment of other committees of the Board or the members thereof;
- (f) The approval of any self-dealing transaction, except as provided in paragraph (3) of subdivision (d) of Section 5233 of the Nonprofit Corporation Law;
- (g) The fixing of compensation of the directors for serving on the Board or on any committee; or
- (h) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

Any such committee must be created by resolution adopted by the Board at a duly held meeting, and any such committee may be designated an Executive Committee or by such other name as the Board shall specify. The Board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this **Article 4** applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee.

**4.19 Fees and Compensation.** Directors shall serve without compensation but may receive reimbursement for expenses, as may be fixed or determined by the Board. Officers who are employees of the Corporation shall receive such compensation for their services, and reimbursement for expenses, as may be fixed or determined by the Board.

**4.20 Advisory Committees.** The Board may create, and appoint individuals to, one (1) or more advisory committees (“Advisory Committees”), each consisting of two (2) or more directors, non-directors, or a combination of directors and non-directors. Advisory Committees may not exercise the Board’s authority to make decisions on the Corporation’s behalf. Advisory Committees shall be restricted to making recommendations to the Board or Board Committees and implementing Board or Board Committee decisions and policies under the Board or Board Committee’s supervision and control. The Board may revoke or modify any or all of the authority delegated to an Advisory Committee at any time.

## **ARTICLE 5 OTHER PROVISIONS**

**5.1 Endorsement of Documents; Contracts.** The Board may authorize any officer(s) or agent(s), in the name of and on behalf of the Corporation, to enter into any contract or execute any instrument. Any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board to the contrary, the Chair, the Executive Director, and the Chief Financial Officer are each authorized to execute such instruments on behalf of the Corporation.

**5.2 Representation of Shares of Other Corporations.** The Executive Director or any other officer or officers authorized by the Board or the Executive Director are each authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority herein granted may be exercised either by any such officer in person or by any other person authorized so to do by proxy or power of attorney duly executed by said officer.

**5.3 Construction and Definitions.** Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the general provisions of the California Nonprofit Corporation Law and in the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws.

**5.4 Amendments.** These Bylaws may be amended or repealed upon a majority vote of approval by the Members present at a properly called meeting of the Members. Before these Bylaws can be amended or repealed, a Committee appointed by the Board must consider and report to the Board on the proposed amendments or changes. In addition, Members must be given seven days written notice of a pending Bylaw vote.

Except as otherwise provided by law and in this Section 5.4, these Bylaws may be amended or repealed or new bylaws adopted by approval of the Board, unless doing so would materially and adversely affect the Members' rights as to voting or transfer. The Board may not, without the approval of the Members, adopt, amend, or repeal a Bylaw provision that:

- (a) Specifies or changes the fixed number of directors of the Corporation or the maximum or minimum number of directors;
- (b) Increases or extends the terms of directors;
- (c) Changes the structure of the Board from fixed to variable or vice versa;
- (d) Increases the quorum for Members' meetings;
- (e) Changes Members' proxy rights;
- (f) Authorizes cumulative voting; or
- (g) Has the effect of amending or otherwise modifying any agency agreement or other contract, or any food distribution operating protocol or practice, between any Member and the Corporation.

Any amendment that would result in the termination of all memberships or any class of memberships shall comply with provisions of Section 5342 of the Nonprofit Corporation Law."

**5.5 Honorary Director.** The title of Honorary Director may be given to a former director, who, in the judgment of the Board has made outstanding contributions to our mission. A decision to award the title of Honorary Director requires approval of the Board. Honorary Directors are not members of the Board and have no voting rights. The term of office of each

Honorary Director shall be three (3) years, commencing Board approval. The Board may, at any time and for any reason, revoke the designation or modify the title of Honorary Director.

## **ARTICLE 6 INDEMNIFICATION**

**6.1 Definitions.** For the purpose of this **Article 6**, “agent” means any person who is or was a Director, officer, employee, or other agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another foreign or domestic Corporation, partnership, joint venture, trust, or other enterprise. “Proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and “expenses” includes without limitation attorneys’ fees and any expenses of establishing a right to indemnification under **Sections 6.4** or **6.5(b)** of this **Article 6**.

**6.2 Indemnification in Actions by Third Parties.** The Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Corporation to procure a judgment in its favor, an action brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust), by reason of the fact that such person is or was an agent of the Corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the Corporation.

**6.3 Indemnification in Actions by or in the Right of the Corporation.** The Corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the Corporation, or brought under Section 5233 of the California Nonprofit Public Benefit Corporation Law, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Corporation against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this **Section 6.3**:

(a) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Corporation in the performance of such person's duty to the Corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(c) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval, unless it is settled with the approval of the Attorney General.

**6.4 Indemnification Against Expenses.** To the extent that an agent of the Corporation has been successful on the merits in defense of any proceeding referred to in **Sections 6.2 or 6.3** of this **Article 6** or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

**6.5 Required Determinations.** Except as provided in **Section 6.4** of this **Article 6** any indemnification under this **Article 6** shall be made by the Corporation only if authorized in the specific case, upon determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in **Sections 6.2 or 6.3** of this **Article 6**, by:

(a) A majority vote of a quorum consisting of Directors who are not parties to such proceeding; or

(b) The court in which such proceeding is or was pending upon application made by the Corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Corporation.

**6.6 Advance of Expenses.** Expenses incurred in defending any proceeding may be advanced by the Corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this **Article 6**.

**6.7 Other Indemnification.** No provision made by the Corporation to indemnify its Directors or officers for the defense of any proceeding, whether contained in the Articles, Bylaws, a resolution of members or Directors, an agreement, or otherwise, shall be valid unless consistent with this **Article 6**. Nothing contained in this **Article 6** shall affect any right to indemnification to which persons other than such Directors and officers may be entitled by contract or otherwise.

**6.8 Forms of Indemnification Not Permitted.** No indemnification or advance shall be made under this **Article 6**, except as provided in **Sections 6.4** or **6.5(b)**, in any circumstances where it appears:

(a) That it would be inconsistent with a provision of the Articles, this Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

**6.9 Insurance.** The Corporation shall have power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the Corporation would have the power to indemnify the agent against such liability under the provisions of this **Article 6**, provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the Corporation for a violation of Section 5233 of the California Nonprofit Public Benefit Corporation Law.

**6.10 Nonapplicability to Fiduciaries of Employee Benefit Plans.** This **Article 6** does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent of the Corporation as defined in **Section 6.1** of this **Article 6**. The Corporation shall have power to indemnify such trustee investment manager, or other fiduciary to the extent permitted by Section 5140 of the Nonprofit Corporation Law.

## **ARTICLE 7 EMERGENCY PROVISIONS**

**7.1 General.** The provisions of this **Article 7** shall be operative only during a disaster, which is defined as an occurrence such as a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, blizzard, pestilence, famine, fire, explosion, building collapse, transportation wreck or other situation that causes human suffering or creates human need that the victims cannot alleviate without assistance.

**7.2 Unavailable Directors.** All Directors of the Corporation who are not available to perform their duties as Directors by reason of physical or mental incapacity or for any other reason or whose whereabouts are unknown shall automatically cease to be Directors, with like effect as if such persons had resigned as Directors, so long as such unavailability continues.

**7.3 Authorized Number of Directors.** The authorized number of Directors shall be the number of Directors remaining after eliminating those who have ceased to be Directors pursuant to **Section 7.2**.

**7.4 Quorum.** The number of Directors necessary to constitute a quorum shall be a majority of Directors remaining pursuant to **Section 7.2**.

**7.5 Directors Becoming Available.** Any person who has ceased to be a Director pursuant to the provisions of **Section 7.2** and who thereafter becomes available to serve as a Director shall automatically resume performing the duties and exercising the powers of a Director unless the term of office of such person has expired in accordance with its original terms and a successor has been selected and qualified.

**CERTIFICATE OF SECRETARY**

**of**

**ALAMEDA COUNTY COMMUNITY FOOD BANK, INC.**

**A CALIFORNIA NONPROFIT CORPORATION**

I hereby certify that I am the duly elected and acting Secretary of said Corporation and that the foregoing Bylaws, comprising fourteen (14) pages, constitute the Bylaws of said Corporation as duly adopted at a meeting of the Members thereof held on April 8, 1997 with amendments approved by a two-thirds vote of the Members in January 2003, in December 2004 and in October 2012, and by a majority of the Board of Directors in January 2013, October 2015, February 2018 and October 2018.

Date: 11/25/2018 7:50:09 PM PST

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Secretary