

**BUILDING LEASE AGREEMENT BETWEEN THE CITY OF ELGIN, TEXAS
AND THE ELGIN COMMUNITY CUPBOARD**

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF BASTROP §

THIS LEASE AGREEMENT (the “Agreement”) is entered into between the CITY OF ELGIN, TEXAS, a Texas home-rule city (“LESSOR”), and the ELGIN COMMUNITY CUPBOARD, a Texas non-profit corporation (“TENANT”). In this Agreement, the LESSOR and TENANT are sometimes individually referred to as a “Party” and collectively referred to as the “Parties”.

WITNESSETH:

1. Leased Premises. LESSOR hereby leases to TENANT and TENANT hereby leases from LESSOR the building and adjacent property located at **114 Depot Street, Elgin, Bastrop County, Texas** (herein called the "Building" and/or “Leased Premises”). The Leased Premises are to be used and occupied by the TENANT solely for the purposes of operating a nonprofit organization dedicated to feeding residents of Elgin (as required by association with Central Texas Food Bank and USDA) and related business office activities.

2. Term. Subject to and upon the terms and conditions set forth herein this Lease shall continue in full force for a term of Five (5) years, commencing the 1st day of January, 2020 (hereinafter the "Effective Date") and ending at midnight the 31st day of December, 2024.

3. Conditional Waiver of Rental Payments. Subject to the TENANT’s satisfactory overall performance as determined by the City Council and compliance with the terms of this Agreement, LESSOR agrees to waive rental payments associated with the Leased Premises.

4. Use of the Premises. TENANT shall use the Leased Premises only for the use or incidental uses as may be approved by the City Manager. In connection with its use of and activities in and about the Leased Premises and the Building, TENANT, at its expense, will comply and will cause its employees, agents and invitees to comply with all applicable laws and ordinances, with all applicable rules and regulations of governmental agencies; and TENANT will conduct itself and cause its employees, agents and invitees to conduct themselves, with full regard for the rights, convenience and welfare of all other tenants in the Building. TENANT shall peaceably and quietly hold and enjoy the premises for the term hereof, without hindrance from LESSOR, subject to the terms and conditions of this Agreement.

5. Acceptance of Leased Premise. The taking of possession of the Leased Premises by TENANT shall be conclusive evidence that TENANT accepts the Leased Premises as suitable for the purposes for which same are leased and that LESSOR has fully complied with its obligations contained in this Agreement. TENANT accepts the Leased Premises "AS IS." The Leased Premises is rented on an “AS IS”, “WHERE IS” basis. **There are no warranties expressed or implied.**

6. Use of the Premises by LESSOR. LESSOR and/or the City of Elgin reserves the right to utilize the Leased Premises for periodic city-related functions, events, and uses as may be approved by the City Manager. Such uses shall not include the Elgin Community Cupboard business office nor be in conflict with TENANT's customary uses of same. Any such use of the Leased Premises by LESSOR under this section shall require written notification of TENANT by LESSOR at least ten (10) working days prior to the first date of said use, unless otherwise agreed to by TENANT. Use by LESSOR under this section shall include, but not be limited to, use in support of multi-media productions that encourage growth of the local film industry, a positive impact on the local economy, and the promotion of the City of Elgin, Bastrop, and Travis Counties as a favorable venue in which to make motion pictures and television shows. All such uses of the Leased Premises by any multi-media production or the film industry shall be authorized and managed by the City Manager or his agent. TENANT specifically agrees to assist the LESSOR in accomplishing these public purposes. LESSOR agrees to indemnify and hold harmless the TENANT, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death) or property damage suffered by any person or persons, that may arise out of the LESSOR's use of the Leased Premises under this Section. LESSOR agrees at its own cost and expense to repair or replace any damage of any and all property of the TENANT caused by LESSOR's use of the Leased Premises under this Section.

6. Building Alterations. TENANT shall not construct and install any improvements to the Leased Premises without prior written approval by LESSOR. Plans for any proposed alterations to the Leased Premises shall be submitted to the LESSOR for approval. LESSOR shall notify TENANT of its approval or objections to such plans within fifteen (15) working days of receipt of same. When written approval is obtained, TENANT must obtain all applicable permits for construction from the City of Elgin prior to the start of construction. Once commenced, work on TENANT's improvements shall be continuous, to conclusion; and all work undertaken or materials ordered or purchased shall be paid for by TENANT timely and without the imposition of any claims of lien against the Building or Property. TENANT shall not use or permit the Leased Premises to be used for any purpose other than that stated herein or make or allow to be made any alterations or physical additions in or to the Leased Premises without first obtaining the written consent of LESSOR. In the event that the LESSOR gives its consent to any alterations, additions or improvements, any and all such alterations or improvements, when made to the Leased Premises by TENANT shall at once become the property of LESSOR and shall be surrendered to LESSOR upon the termination of the Lease; provided however, this clause shall not apply to moveable equipment or furniture owned by TENANT.

7. Mechanic's and Materialmen's Liens. TENANT will not create or permit to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, artisans or materialmen for work or materials alleged to be done or furnished in connection with the Leased Premises), encumbrance, or other charge upon the Leased Premises or any part thereof, upon LESSOR's interest therein, or upon TENANT's leasehold interest; provided that TENANT shall not be required to discharge any such liens, encumbrances or charges as may be placed upon the Leased Premises or the Building by the act of LESSOR.

8. Signage. No sign, symbol or identifying mark shall be put upon the Building or in any space or area viewable from the entrances, without the prior written consent of LESSOR. All signs or lettering shall conform in all respects to the sign and/or lettering criteria established by LESSOR and shall be at the expense of the TENANT.

9. Keys. Lessor agrees to furnish TENANT free of charge, with four (4) keys for the door entering the Leased Premises. All such keys shall remain the property of LESSOR. Upon termination of this Lease, TENANT shall surrender to LESSOR all keys to the Leased Premises and give to LESSOR the explanation or the combination of all locks for safes, safe cabinets and vault doors, if any, in the Leased Premises. LESSOR shall not be liable to TENANT for any loss due to theft, burglary, or for damages done by unauthorized persons on the Property.

10. Rules and Regulations. TENANT and TENANT's agents or employees will comply fully with all applicable rules, laws, and regulations. LESSOR shall at times have the right to change such rules and regulations or to amend them in such reasonable manner as may be deemed advisable for safety, protection, care and cleanliness of the Property and appurtenances and the preservation of good order therein and all of which rules and regulations, changes and amendments will be forwarded to TENANT in writing and shall be complied with and observed by TENANT.

11. Services and Utilities. LESSOR agrees to furnish TENANT, while occupying the Leased Premises, with electricity, natural gas, water, wastewater, and trash collection services associated with ordinary office uses and in keeping with the usual standard for municipal buildings in Elgin, Texas. In addition, LESSOR will provide quarterly pest control treatments and after each treatment the provider will leave notice of the treatment at the Cupboard. LESSOR shall not be liable for damages or otherwise for failure, stoppage or interruption of any such service.

12. Entry for Inspection. LESSOR, its officers, agents and representatives, shall have the right to enter all parts of the Leased Premises at all reasonable hours whenever it may deem necessary or desirable.

13. Maintenance and Repairs by LESSOR. LESSOR shall provide for the exterior and/or ground maintenance of the Leased Premises, including landscaping surrounding the Building, in keeping with the usual standard for municipal buildings in Elgin, Texas. Unless otherwise expressly stipulated herein, LESSOR shall not be required to make any improvements or repairs of any kind on the Leased Premises during the Term, except such repairs as may be required by normal maintenance operations.

14. Repairs and Care of the Property by TENANT. TENANT agrees at its own cost and expense to provide for all interior cleaning and/or maintenance of the Building, consistent with the usual standard for municipal buildings in Elgin, Texas. TENANT agrees at its own cost and expense to repair or replace any damage or injury done to the Building, or any part thereof, caused by TENANT, TENANT's agents, employees, licensees, invitees or visitors.

15. LESSOR Insurance. LESSOR, totally at its discretion, will procure, pay for and maintain during the term of this Agreement insurance limits and coverage written by companies licensed in the State of Texas. TENANT is encouraged to procure insurance for personal property to cover the loss or damage of same since LESSOR will not be responsible for the personal property of TENANT. All provisions of this Lease Agreement concerning liability, duty and standard of care

together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

16. TENANT Insurance. TENANT shall procure and maintain, at its own cost and expense, commercial general liability insurance coverage of \$500,000 combined single limit or a substitute providing equivalent coverage, and shall include coverage for bodily injury and death, property damage, and personal injury. LESSOR will be named an additional insured and will be given a minimum of ten (10) days' notice prior to any change in or cancellation of such coverage. In addition, insurance furnished by TENANT shall be in accordance with the following requirements:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by TENANT. LESSOR'S decision thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
3. All liability policies required herein shall be written with an "occurrence" basis coverage.

17. No Assignment or Sublease by TENANT. TENANT shall not assign or in any manner transfer this lease, permit any assignment of this Lease by operation of law or otherwise, or sublet the Leased Premises or any part thereof.

18. Termination. Either party hereby reserves the right to terminate this agreement with or without cause, for no reason or any reason, upon one hundred and eighty (180) days written notice. LESSOR may also terminate this Agreement for breach of any provision of this Agreement, upon written notice of the breach and the TENANT shall have ten (10) days after receipt of the written notice in which to cure the breach to the satisfaction of the LESSOR.

19. Indemnification. The TENANT agrees to defend, indemnify and hold harmless the LESSOR, City of Elgin, the Mayor and City Council, its officers, agents and employees, against any and all claims, lawsuits, judgments, cause of action, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the TENANT's breach of any of the terms or provisions of this Agreement, or by any negligent act or omission of the TENANT, its officers, agents, servants, employees, contractors, or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the LESSOR, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the TENANT and LESSOR under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Both parties expressly agree that this Agreement does not assign any responsibility for civil liability to the LESSOR that may arise by virtue of this Agreement.

20. Approval. This Agreement has been duly and properly approved by each Party's governing body and constitutes a binding obligation on each party herein. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement

21. Governmental Powers. It is understood and agreed that LESSOR, through the execution of this Lease Agreement, does not waive or surrender any of its governmental powers.

22. Severability. The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid portion had never been contained therein.

23. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

24. Entire Agreement. Except as otherwise expressly provided herein, this Agreement contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter hereof.

25. Amendments. Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of both Parties.

26. Applicable Law; Venue. This Agreement shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Bastrop County, Texas.

27. Non-Waiver. A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this Agreement does not preclude the exercise of another right or remedy. Rights and remedies under this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

28. Force Majeure. The Parties shall not be deemed in violation of this Agreement if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

29. Non-Appropriation of Funds. All obligations of the City of Elgin/LESSOR under this Agreement are subject to the availability of annual legislative appropriations by the City Council and TENANT acknowledges that the ability of City of Elgin/LESSOR to perform under this Agreement is contingent upon the continued availability of funds. The amount of City of Elgin/LESSOR's obligation hereunder shall not at any time exceed the amount certified for the purpose stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City of Elgin/LESSOR at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City of Elgin/LESSOR has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City of Elgin/LESSOR budget decisions are within the exclusive discretion of the Elgin City Council. TENANT's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

30. Notices. Notices provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of the other party shown below:

LESSOR: City of Elgin
Attn: City Manager
310 N. Main St.
Elgin, Texas 78621

TENANT: Elgin Community Cupboard
Attn: Executive Director
114 Depot Street
Elgin, Texas 78621

31. Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

CITY OF ELGIN:

By: _____
Chris Cannon, Mayor

Date: _____

By: _____
Thomas L. Mattis. City manager

Date: _____

THE ELGIN COMMUNITY CUPBOARD:

By: _____
Chairman

Date: _____

By: _____

Date: _____

STATE OF TEXAS §
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COUNTY OF BASTROP §

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Chris Cannon, Mayor of the City of Elgin, Texas, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

Notary Public, State of Texas

STATE OF TEXAS §
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COUNTY OF BASTROP §

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Thomas L. Mattis, City Manager of the City of Elgin, Texas, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

Notary Public, State of Texas

STATE OF TEXAS §
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COUNTY OF TRAVIS §

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

Notary Public, State of Texas