

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

**RECITALS**

**WHEREAS**, the Elgin Community Cupboard has requested financial support from the City of Elgin to operate a nonprofit dedicated to feeding residents of Elgin (as required by association with Central Texas Food Bank and USDA); and

**WHEREAS**, the City of Elgin has considered the request and has determined that the Elgin Community Cupboard provides services that generally promote the health safety, and welfare of the Elgin community at large; and

**WHEREAS**, the goal of this Agreement is to define certain financial support by the City of the endeavors of the Elgin Community Cupboard in their service to the citizens of Elgin.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

**GENERAL PROVISIONS**

**Section 1. Purpose.** The purpose of this Agreement is for the Elgin Community Cupboard to define conditions for certain financial support provided by the City of Elgin through the occupancy and utilization of city-owned property at 114 Depot Street to operate a nonprofit organization dedicated to feeding the Elgin community. Such property shall only be used for 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.

**Section 2. Financial Support by the City.** Subject to the satisfactory overall performance of the Elgin Community Cupboard as determined by the City Council and compliance with the terms of the *Building Lease Agreement between the City of Elgin, Texas and the Elgin Community Cupboard* dated \_\_\_\_\_, 2020, the City agrees to waive all rental payments, utility costs, and building maintenance costs associated with the building located at 114 Depot Street; and as specifically described within said *Agreement*.

**Section 3. Cupboard Reporting Requirements.** The Cupboard shall provide, on a quarterly basis, within thirty (30) days after the end of each quarter, a General Activity Report that includes the following information:

- (a) The number of clients assisted during normal business hours segregated into two categories (1) within the City of Elgin zip code, and (2) outside the City of Elgin zip code; and
- (b) The total amount of food distributed during the quarter; (1) food purchased from Central Texas Food Bank; (2) food donated by local individuals and businesses; (3) food purchased from local businesses; and
- (c) The number of new families who received food; the number of returning families who received food; the recorded headcount of total families served; and,
- (d) The number of volunteers utilized to support the Cupboard and its programs; and
- (e) actual hours of operation of the Cupboard.

**Section 4. Cupboard Operating Hours.** The Cupboard shall maintain operating hours whereby the Cupboard is open for business a minimum of two hours each normal (non-holiday) Tuesday. Unless otherwise agreed to by the City Manager, the average or normal operating hours of the Cupboard shall be every Tuesday 10:00 AM to 12:00 PM. The Cupboard shall not be open for operations on Sunday unless so authorized by the City Manager.

**Section 5. Non-Appropriation of Funds.** All obligations of the City under this Agreement are subject to the availability of annual legislative appropriations by the City Council and the Cupboard acknowledges that the ability of the City to perform under this Agreement is contingent upon the continued availability of funds. The amount of City obligation hereunder shall not at any time exceed the amount certified for the purpose stated in such advance authorization. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are within the exclusive discretion of the Elgin City Council.

**Section 6. Rights.** The City of Elgin has the right, at any time, to inspect the books or records of the Cupboard that may relate to the performance of this Agreement. The City, at its sole expense, has the right to conduct an audit of the Cupboard.

**Section 7. Term.** This Agreement shall become effective as of January 1, 2020 shall continue in effect until December 31, 2024, with subsequent automatic renewals for a period of one year unless terminated by either party in accordance with Section 10 below.

**Section 8. Indemnification.** The Cupboard agrees to defend, indemnify and hold harmless the 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 Cupboard's breach of any of the

terms or provisions of this Agreement, or by any negligent act or omission of the Cupboard, 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 City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the Cupboard and City 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 City that may arise by virtue of this Agreement.

**Section 9. Termination.** Either party hereby reserves the right to terminate this agreement without cause upon sixty (60) days written notice. The City may also terminate this Agreement for breach of any provision of this Agreement, upon written notice of the breach and the Cupboard shall have thirty (30) days after receipt of the written notice in which to cure the breach to the satisfaction of the City.

### **MISCELLANEOUS**

**Section 10. 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

**Section 11. 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.

**Section 12. Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

**Section 13. 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 regarding the subject matter hereof.

**Section 14. Amendments.** Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of both Parties.

**Section 15. 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.

**Section 16. Assignment.** Except as otherwise provided in this Agreement, the Chamber may not assign this Agreement or subcontract the performance of services without first obtaining the written consent of the City.

**Section 17. 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.

**Section 18. 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.

**Section 19. 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:

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

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

**Section 20. 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** §  
§  
**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** §  
§  
**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** §  
§  
**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