

**FUNDING AGREEMENT BETWEEN THE CITY OF FRANKLIN AND
SECOND HARVEST FOOD BANK OF MIDDLE TENNESSEE, INC.**

COF Contract No. 2019-0191

This Funding Agreement is effective on July 1, 2019, between and among the City of Franklin, Tennessee, a political subdivision of the State of Tennessee (the "City") and SECOND HARVEST FOOD BANK OF MIDDLE TENNESSEE, INC. (the "Agency"), a Tennessee nonprofit corporation.

RECITALS

WHEREAS, Tennessee Code Annotated ("TCA") Section 6-54-111, as amended, authorizes a municipality's governing body to appropriate funds for the financial aid of any nonprofit charitable organization that provides year-round services benefiting the general welfare of the residents of the municipality or any nonprofit civic organization working to maintain and increase employment opportunities in the municipality; and

WHEREAS, the TCA also provides for the Comptroller of the Treasury to establish standard procedures to assist the municipal governing body in the disposition of funds so appropriated; and

WHEREAS, the municipality wishes to comply with the following laws and rules:

1. A municipality may appropriate funds for only those nonprofit charitable organizations that provide year-round services benefiting the general welfare of the residents of the municipality, or any nonprofit civic organization classified under Sections 501(c)(4) or (6) of the Internal Revenue Code working to maintain and increase employment opportunities in the municipality.

2. The governing body of each municipality shall adopt an adequate agreement stating the purpose for which the funds are being appropriated, for each nonprofit organization that is to receive municipal funds.

3. The budget document of the municipality shall include the name of each nonprofit organization and the specific amount appropriated for each organization.

4. Municipal payments to nonprofit organizations shall be limited to the amounts appropriated for such purposes and in keeping with the municipality's guidelines for how the appropriated funds may be spent.

5. Pursuant to Tennessee Code Annotated §6-54-111(c), the Agency shall file with the City a copy of the annual report of its business affairs and transactions that includes, but is not limited to:

- (a) Either a copy of the Agency's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller of the treasury (a blank copy of which is attached as Exhibit A) and certified by the chief financial officer of the Agency;
- (b) A description of the program that serves the residents of the municipality (a blank copy of which is attached as Exhibit B); and
- (c) The proposed use of the municipal assistance (a blank copy of which is attached as Exhibit C).

The report filed shall be open for public inspections during regular business hours of the City.

6. For appropriations to nonprofit civic organizations, notices shall be published in a newspaper of general circulation in the municipality of the intent to make an appropriation, specifying the intended amount and purpose; and

WHEREAS, the City and the Agency intend to enter into this agreement for the purpose of defining the Agency's use of the monies received from the City in fiscal year 2019-2020.

NOW, THEREFORE, in consideration of the mutual covenants and promises, the parties agree as follows:

1. TERM

This agreement shall be effective from and after the effective date and shall extend through June 30, 2020, unless otherwise terminated in accordance herewith.

2. OBLIGATIONS OF CITY OF FRANKLIN

2.1 In accordance with City guidelines after all administrative costs are deducted therefrom, the City will contribute to the Agency the amount of ONE THOUSAND FIVE HUNDRED and 00/100 DOLLARS (\$1,500.00).

2.2 Payments will be made in quarterly installments, payable at or near the beginning of each quarter and will begin only after this Agreement has been executed.

3. OBLIGATIONS OF THE AGENCY

3.1 Use of Funds. The Agency shall use the City funds for the sole and limited purpose of community and economic development of the City of Franklin according to the Statement of Work and Program Objectives provided in Exhibit B, a copy of which is attached hereto and incorporated by reference herein.

3.2 Work Plan. In order to accomplish the objective(s) set forth in paragraph 3.1, the agency shall submit to the City a Work Plan that describes, in detail, the efforts to be undertaken by the Agency to accomplish the performance objectives set forth in Exhibit B, a copy of which is attached hereto as Exhibit C and incorporated by reference herein. At a

minimum, the Work Plan shall include that information required by Exhibit B. The Agency shall coordinate its performance under this Agreement with the City. The Agency shall advise and consult with the City Administrator or his/her designee, with respect to its performance under this Agreement.

3.3 Annual Budget. The Agency shall submit an annual budget in a form and on a schedule acceptable to the City. The annual budget shall contain a detailed analysis of the project administrative expenses for operations and reasonable estimates of the projected amounts to be spent for the services to be provided and Work Plan to be implemented for the calendar year. The budget shall be submitted to the City with this agreement.

3.4 Reporting. Pursuant to Tennessee Code Annotated §6-54-111(c), the Agency shall file with the City a copy of the annual report of its business affairs and transactions that includes, but is not limited to:

- (a) Either a copy of the Agency's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller of the treasury (a blank copy of which is attached as Exhibit A) and certified by the chief financial officer of the Agency;
- (b) A description of the program that serves the residents of the municipality; and
- (c) The proposed use of the municipal assistance.

The report filed shall be open for public inspections during regular business hours of the City.

3.5 Insurance. The Agency shall maintain professional liability and general liability insurance coverages as are reasonably necessary to cover any liability arising out of the acts or omissions of the Agency and its employees. The Agency shall maintain workers' compensation insurance as required by the laws of the State of Tennessee.

The Agency shall require all third parties utilized by the Agency ("Contractors") to maintain professional liability and general liability insurance coverages as are reasonably necessary to cover any liability arising out of the acts or omissions of the Contractors and its employees. The Agency shall require contractors to maintain workers' compensation as required by the State of Tennessee. The contractor's general liability insurance shall be of sufficient limits to provide defense and settlement expenses for Agency that result from the contractor liability. To the extent permissible, the Agency shall require each Contractor to endorse the Agency as an additional insured on the Contractor's general liability policies.

To the extent permitted by law, the Agency shall require such Contractor to indemnify and hold the Agency harmless against any liability caused by acts or omissions of the Contractor and its employees.

Insurance information will be provided to the City upon request. The Agency shall notify the City immediately of incidents that could lead to a major claim against the Agency.

4. RESTRICTION ON USE OF FUNDS

The Agency does hereby warrant and represent that the City Funds shall not be utilized by either the Agency or any of its Contractors for the following purposes:

4.1 Any claim or litigation against the City or any department or division of the City.

4.2 Any political or levy campaigning purposes.

5. RECORDS AND AUDITS

5.1 **Accounting.** The Agency shall maintain full, accurate and complete financial and accounting books, records and reports ("Records") of all direct and indirect uses and expenditures of the City Funds consistent with generally accepted accounting principles (GAAP).

5.2 **Maintenance of Records.** The Agency shall keep records relating to all uses and expenditures of the City Funds received pursuant to this Agreement. The Agency shall maintain a system of bookkeeping adequate for its operations hereunder and shall submit reports from such system to the City and the Agency on an annual basis for review and approval. The Agency shall keep and preserve for at least seven (7) years following each calendar year all sales slips, rental agreements, purchase orders, sales books, cash register tapes, credit card invoices, payroll records, duplicate deposit tapes and invoices, bank accounts, cash receipts and cash disbursements, bank books and other evidence of receipts and expenditures for such period.

5.3 **Audit.** The City or the City's designated representative, at the City's cost and expense, shall have the right to audit the Agency's Records at any time but shall not unreasonably interfere with the Agency's business or operations in connection with any such audit. The Agency acknowledges that this Agreement may be subject to audit by the Auditor of the State of Tennessee.

5.4 **Repayment.** If an audit discloses the Agency has received or retained City Funds in error or in excess of those to which the Agency is entitled under this Agreement or has used the City Funds for a purpose not authorized by this Agreement, the Agency agrees to promptly repay to the City the full amount of such City Funds, with interest thereon at the rate equal to the 90-day U.S. Treasury Note at the time. In the event the Agency fails to promptly repay to the City the full amount of such City Funds, the City may elect to withhold said City Funds from any future payments to the Agency.

5.5 **Additional Remedies.** In addition to the repayment remedy set forth in paragraph 5.4 herein, the City may elect to terminate this Agreement as set forth in section 6, herein with a minimum of 30 days written notice to the Agency's President and Chair of the Board with opportunity to cure any breach.

6. TERMINATION

If either party hereto breaches any term, condition, representation, warranty or covenant contained in this Agreement, or if the Agency engages in any malfeasance or misfeasance with respect to the City Funds, the non-breaching party may elect to terminate this Agreement with a minimum of 30 days written notice to the other party with opportunity to cure any breach.

7. MISCELLANEOUS PROVISIONS

7.1 The Agency and the City agree that, as a condition to this Agreement, they shall not discriminate against any employee on the basis of race, color, sex, religion, natural origin, handicap, or any other factor specified in Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disabilities Act, and subsequent amendments thereto, and all other federal and state laws regarding such discrimination.

7.2 The Agreement may be amended at any time, or any provision hereof may be waived, by written consent of all parties hereto.

7.3 This Agreement shall be governed by and construed under the laws of the State of Tennessee.

7.4 The Agency and the City shall conform to the requirements of all applicable laws and regulations of the State of Tennessee governing the execution of their respective duties under this Agreement.

(Signatures on next page)

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS Agreement as of
this 1 day of July, 2019 by

SECOND HARVEST FOOD BANK OF MIDDLE TENNESSEE, INC.

By: JAYNEE K. DAY
Name: Jayne K. Day
Title: President CEO
Date: June 25, 2019

CITY OF FRANKLIN

By: Eric S. Stuckey
Eric S. Stuckey, City Administrator
Date: 8-6-2019

Approved as to form:

By: Shauna R Billingsley
Shauna R. Billingsley, City Attorney

EXHIBIT A

**Annual Reporting Form for Nonprofit Organizations
Seeking Financial Assistance from Local Governments**

Second Harvest Food Bank of Middle Tennessee

Name of Nonprofit Organization				
331 Great Circle Road	Nashville	Davidson	TN	37228
Street Address	City	County	State	Zip

Annual Financial Report of Cash Receipts, Disbursements, and Balances

For the Fiscal Year from 7/1/18 through 6/30/19

Report Required by Title 5, Chapter 9, Part 1,

And Title 6, Chapter 54, Part 1, *Tennessee Code Annotated*

Receipts

Federal Grants	\$ 1,007,530	
State Grants	350,000	
Financial Assistance from Local Governments	265,666	
Donations and Gifts from Citizens	12,921,400	
Membership Dues	-	
Fees/Charges for Services	-	
Fundraising Events	788,738	
Sale of Assets	2,487	
Loans-Borrowed Funds	3,109,583	
Investment Income	90,257	
Other Receipts	35,422,792	
Total Receipts		\$ 53,958,453 (A)

Disbursements

Grants and Other Assistance Paid to Other Organizations and Individuals	\$ -	
Salaries and Wages	6,134,271	
Employee Benefits	1,515,242	
Payroll Taxes	440,106	
Fees for Services (non-employee)	2,530,189	
Advertising and Promotion	1,097,444	
Office Expenses	449,616	
Leases/Rentals	862,354	
Maintenance and Repairs	643,183	
Supplies	933,802	
Travel	108,577	
Utilities	389,962	
Insurance	258,938	
Conferences, Conventions and Meetings	229,775	
Interest	118,649	
Purchase of Capital Assets – Vehicles and Equipment	1,807,561	
Purchase of capital Assets – Property and Buildings	6,386,749	
Loan Payments	37,129	
Other	31,972,571	
Total Disbursements		\$ 55,916,118 (B)
Cash Receipts Less Disbursements for the fiscal Year (A-B=C)		\$ (1,957,665) (C)
Cash Balance - at the beginning of the fiscal year		\$ 3,081,729 (D)
Cash Balance - at the end of the fiscal year (C+D=E)		\$ 1,124,064 (E)

Details of Cash Balance - at the end of the fiscal year

Cash on Hand	\$ -
Cash in Bank – Checking	295,184
Cash in Bank – Savings Accounts	707,909

Cash in Bank – Certificates of Deposits	<u>120,971</u>	
Other Cash	<u>-</u>	
Total Cash - at the end of the fiscal year		\$ <u>1,124,064</u> (E)

Please Explain Proposed Use of the Financial Assistance from Local Governments.

These funds help pay the cost to collect donated food from grocers and other sources, so it is available through our programs to 13 nonprofits in Franklin and Williamson County. These organizations feed people in need. Costs include transportation, warehouse, and handling.

I certify that this report accurately presents the cash receipts, disbursements, and balances of the
Second Harvest Food Bank of Middle Tennessee for the fiscal year noted above.

Name of Nonprofit Organization

Person Preparing Report

Shannon Emley

Printed Name



Signature

Phone Number 615-627-1576

Email Address shannon.emley@
secondharvestmidtn.org

Date 7/24/2019

EXHIBIT B

STATEMENT OF WORK AND PROGRAM OBJECTIVES

The Agency 2019-2020 Statement of Work and Program Objectives (description of program) shall include:

1. Second Harvest will collect food from grocery stores and other food donors.
2. Second Harvest will sort and store rescued food donations in Nashville warehouse.
3. Second Harvest will make donated food available to the current 13 Partner Agencies in Franklin and Williamson County.

EXHIBIT C

WORK PLAN

The Agency 2019-2020 Annual Work Plan (how the funds will be used) shall include:

1. Transportation expense, including vehicle fuel and maintenance, and drivers.
2. Warehouse expense, including utilities, supplies, and equipment.
3. Handling expense, including warehouse employees.

EXHIBIT D

Budget for Current Year

See attached budget.

SECOND HARVEST FOOD BANK OF MIDDLE TENNESSEE, INC.
FISCAL YEAR 2020 BUDGET

Income / Expense	FY20 Budget
Grants and Donations	12,191,178
Project Preserve Sales	35,933,043
Partner Agency Reimbursements	556,868
Other Income	41,600
TOTAL REVENUE	48,722,689
Direct Food Expense	1,800
Personnel Cost	9,170,487
Transportation Cost	2,572,731
Occupancy Expense	1,817,039
Depreciation / Amortization	1,310,003
Communications Expense	709,259
Administration Expense	380,208
Food Distribution Expense	140,580
Professional Fees	299,200
Insurance Expense	272,700
Marketing and Promotion	932,638
TOTAL OPERATING EXPENSES	17,606,645
INTEREST EXPENSE	236,270
COST OF PROJECT PRESERVE SALES	32,005,875
TOTAL EXPENSES	49,848,790
NET INCOME(LOSS) W/O CAPITAL CAMPAIGN	(1,126,101)