AZJ
xx/xx/2017
Item No. ##

THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.

AN ORDINANCE

DECLARING AS SURPLUS AN UNIMPROVED 23.30 ACRE TRACT OF CITY OWNED PROPERTY LOCATED IN THE SOUTHWEST BUSINESS AND TECHNOLOGY PARK LOCATED AT STATE HIGHWAY 151 AND OLD HIGHWAY 90 IN COUNCIL DISTRICT 6 AND AUTHORIZING ITS SALE TO THE SAN ANTONIO FOOD BANK FOR $250,000.00

*** * * * ***

WHEREAS, the City of San Antonio city council approved a 20-year lease in 2013 for the Food Bank to utilize city property as an urban farm; and

WHEREAS, the San Antonio Food Bank ("Food Bank") has farmed the land with a goal towards being 100% organic through the use of organic pesticides and injection pumps to provide natural fertilization; and

WHEREAS, the crops supplement other foods distributed by the Food Bank; and

WHEREAS, the farm is also used for outreach and education where volunteers learn about agriculture and how to be self-sustaining; and

WHEREAS, the Food Bank is interested in making long-term, capital investments such as machinery and structures needed for farming operations and ownership of the property will assist the Food Bank in obtaining capital for the long-term improvements; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee, jointly and severally, are authorized and directed to sell to the San Antonio Food Bank the 23.30 acre tract shown and described in **Exhibit A** for $250,000.00. The City Manager and her designee, jointly and severally, are authorized and directed to execute a contract and deed in substantially the same form shown in **Exhibit B**, which is incorporated herein by reference for all purposes as if it were fully set forth. Further, the City Manager and her designee, jointly and severally, are authorized and directed to execute the easement relocation agreement in substantially the same form shown in **Exhibit C**, which is incorporated herein by reference for all purposes as if it were fully set forth. The City manager and her designee, severally, are further authorized and directed to take all other actions reasonably necessary or convenient to effect the transaction, including delivering ancillary documents and instruments conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 24000000253 and General Ledger 4903101.

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SECTION 3. The disposition of surplus property must be coordinated through the City's Finance Department to assure the removal of these assets out of the City's financial records and to record the proper accounting transactions.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this **__th** day of **_____**, **2017**.

M A Y O R
Ivy R. Taylor

ATTEST: **APPROVED AS TO FORM:**

Leticia M. Vacek, City Clerk **Andrew Segovia, City Attorney**

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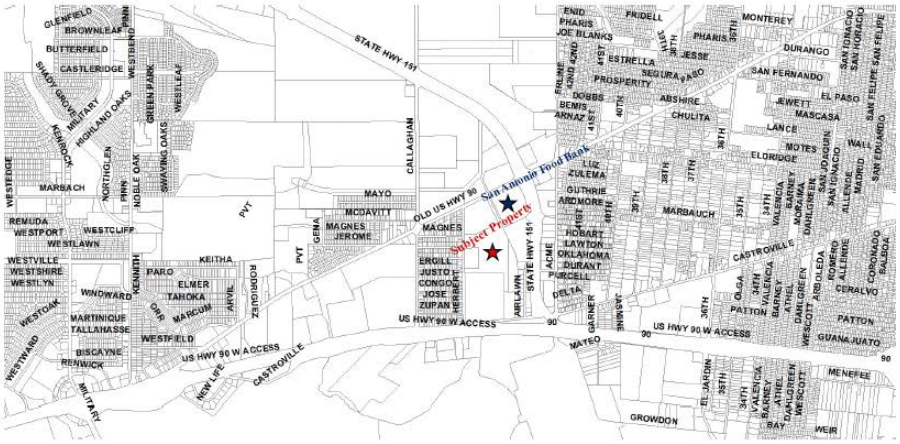
Ordinance Exhibit A



S.P. 1828 Request by the San Antonio Food Bank to declare as surplus and dispose of an unimproved 23.05 acre tract of land located near Old US Hwy 90 West and State Hwy 151

Metes and Bounds
23.30 Acre Tract

Being a 23.30 acre tract of land out of an 89.637 acre tract recorded in Volume 6696, Page 1286-1326 of the Official Public Records of Bexar County, Texas and also being out of the Rafael Herrera Survey No. 1/74, abstract number 311, New City Block 13940, in the City of San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING: at a found ½" iron rod on the east right-of-way line of Herbert Lane (variable width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (variable width R.O.W.), for the southwest corner of this tract being described herein;

Thence: North 00°14'18" East, 131.18 feet, along the east R.O.W. of said Herbert Lane to a set ½" iron rod with cap (GRE 3501) at the southwest corner of Lot 4, NCB 13490, Cable Ranch Subdivision as recorded in Volume 6600, Page 54, of the Deed & Plat Records of Bexar County, Texas, for a corner of this tract being describes herein;

Thence: North 89°56'48" East, 381.00 feet, departing said R.O.W. and along an 8 foot chain link fence on the south line of said Lot 4, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 00°14'21" East, 550.21 feet, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 89°51'17" West, 380.99 feet, to a found ½" iron rod, for a corner of this tract being describes herein;

Thence: North 00°14'09" East, 385.40 feet, to a found ½" iron rod with cap (COSA), same being the southwest corner of Lot 10, NCB 13490, Bay Valley Foods as recorded in Volume 9623, Page 41, of the Deed & Plat Records of Bexar County, for the northwest corner of this tract described herein;

Thence: South 89°44'58" East, 324.53 feet along the south line of said Lot 10, to a found ½" iron rod with cap (COSA), same point being the north corner of a 9.5 acre tract out of a 89.637 as recorded in Volume 16441, Page 692, of the Official Public Records of Bexar County, for an interior corner of this tract described herein;

Thence: South 25°29'53" East, 616.06 feet along the south line of said 9.5 acre tract, to a found ½" iron rod with cap (PD) for the south corner of said 9.5 acre tract same being an interior corner of this tract described herein;

Thence: North 64°27'04" East, 671.87 feet along the southeast line of said 9.5 acre tract, to a found ½" iron rod with cap (GRE 3501) on the west line of Lot 16, Block 3, NCB 16504, Replat & Subdivision Plat Establishing COSA-ACF, Unit 1, as recorded in Volume 9569, Page 191 of the

South 25°45'49" East, 27.07 feet along the said west line to a set ½" iron rod with cap (GRE 3501); and,

South 00°33'57" East, 673.12 feet to a set ½" iron rod with cap (GRE 3501) at the northeast corner of Lot 3, NCB 13940, as recorded in Volume 4457, Page 1379 of the Official Public Records of Bexar County, Texas;

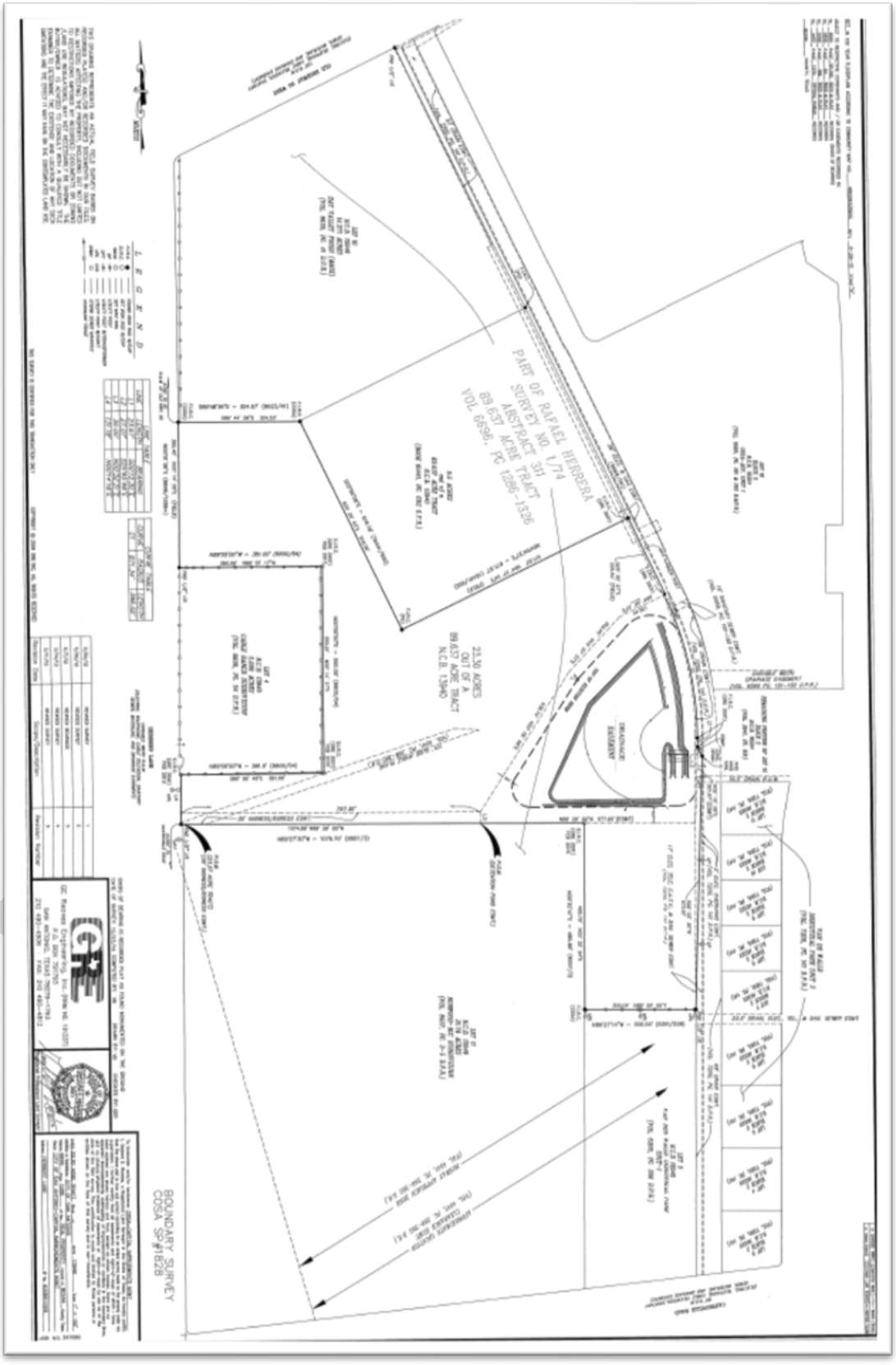
Thence: North 89°27'43" West, 330.77 feet along the north line of said Lot 3, to a found ½" iron rod, on the east line of a 1.724 Acre Ingress-Egress Easement as recorded in Volume 6696, Page 1286 of the Official Public Records of Bexar County, Texas, for the southernmost corner of this tract being described herein;

Thence: North 00°32'17" East, 495.48 feet along the east line of said 1.724 acre easement, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being described herein;

Thence: North 89°27'31" West, 60.29 feet along north line of said easement passing the northeast corner of the aforementioned 13.43 acre tract and continuing 1015.30 feet along the north line of said 13.43 acre tract for a total distance of 1075.59 feet to the **POINT OF BEGINNING** and containing 23.05 acre of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on May 1, 2012.

GE Reaves Engineering, Inc
Gaylord E. Reaves, R.P.L.S. No.3501
Texas Survey Firm Number 101337

6/8/12


PART OF RAFAEL HERRERA
SURVEY NO. 174
ABSTRACT 301
89.637 ACRE TRACT
VOL 6696, PG 1286-1326
21.30 ACRES
OUT OF A
89.637 ACRE TRACT
N.C.B. 1040
BOUNDARY SURVEY
COSA SP#828
LEGEND

Ordinance Exhibit B

Real Estate Sales Contract

(2017 Food Bank Sale)

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Authorizing Ordinance:

Authority for Negotiated Sale: Local Government Code § 272.001(a)

Seller: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Mary Fors, East Point)

Phone: 207-4083

Email: mary.fors@sanantonio.gov

Type of Entity:	Texas municipal corporation

Seller's Counsel:	Audrey Zamora
Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Phone:	207-2094
Email:	audrey.zamora@sanantonio.gov

Buyer:	San Antonio Food Bank, Inc.
Address:	5200 Enrique M. Barrera Parkway, San Antonio, Texas 78227-2209
Phone:	337-3663
Email:	ecooper@safoodbnk.org
Type of Entity:	Texas non-profit corporation

Buyer's Counsel:	Michael Flume, Flume Law Firm, LLC
Address:	1020 NE Loop 410, Suite 200, San Antonio, Texas 78209
Phone:	210-828-5641
Email:	mflume@flumelaw.net

Property:	Approximately 23.30 acres out of an 89.637-acre tract in the City of San Antonio, Bexar County, Texas, as described in an instrument recorded at Volume 6696, Page 1286, Real Property Records of Bexar County, Texas, and as more particularly described on **Exhibit A**.

Title Company:	Alamo Title Company
Address:	434 N. Loop 1604 W., Suite 2208, San Antonio, Texas 78232
Phone:	340-0456

Purchase Price:	$250,000

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Earnest Money: $1,000

Effective Date: The later of (A) the effective date of the Authorizing Ordinance and (B) the date a representative of the Title Company signs a receipt for this fully executed contract

County for Performance Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

1.01.	Earnest Money Deadline	10	Days after the Effective Date
1.01.	Buyer's Objection Deadline	90	Days after the Effective Date
1.02.	Seller's Cure Notice Deadline	15	Days after Buyer's Objection Deadline
1.03.	Buyer's Termination Deadline	10	Days after Notice of Cure Deadline
1.04.	End of Inspection Period	120	Days after the Effective Date
1.05.	Closing Date	30 days after the Inspection Period	
1.06.	Closing Time	10:00 A.M.	

1.07. The deadlines may be altered by the mutual agreement of the parties. The Director of the Transportation and Capital Improvements Department may consent to such changes on behalf of Seller without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

Deed Without Warranty (in the form attached hereto as Exhibit C)

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

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Any other items reasonably requested by the Title Company, whether as administrative requirements for consummating the closing of this transaction, or to issue to Buyer an owner's policy of title insurance (the "**Title Policy**"), if required by Buyer, including but not limited to (i) a customary affidavit of debts, liens and parties in possession, and (ii) a settlement statement setting forth the adjustments and costs described in Paragraph 11.02(c) of this contract.

2.02. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Purchase Price

Any other items reasonably requested by the Title Company, whether as administrative requirements for consummating the closing of this transaction, or to issue the Title Policy, if required by Buyer, including but not limited to a settlement statement setting forth the adjustments and costs described in Paragraph 11.02(c) of this contract.

2.03. The documents listed above are collectively known as the "**Closing Documents**."

3. Exhibits.

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Form of Deed

4. Purchase and Sale of Property.

4.01. Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property on the terms and conditions set forth in this contract. The promises by Buyer and Seller stated in this contract and are the consideration for the formation of this contract. As further consideration for Seller's execution of this contract and the rights granted to Buyer hereunder, Buyer will pay to Seller on or before the Earnest Money Deadline the sum of $100.00 as "**Independent Consideration**". The Independent Consideration will be paid to Seller in all instances, is fully earned by Seller upon the execution of this contract, and will not be applied against the Purchase Price.

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4.02. The Property includes the land described on Exhibit A attached hereto and incorporated herein by this reference (the "**Land**") and all improvements situated on it, together with all right, title, and interest of Seller, if any, in and to all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the **"Additional Interests"**); except that the Additional Interests do not include, and Seller specifically reserves, such of the following interests as Seller holds by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use.

5. Earnest Money.

5.01. Buyer must deposit the Earnest Money in immediately available funds with the Title Company no later than the Earnest Money Deadline. If Buyer does not timely deposit the Earnest Money, then Seller may elect to terminate this contract by notifying Buyer at any time to Buyer's deposit of the Earnest Money.

5.02. Immediately available funds are those available for use immediately upon receipt and do not include funds represented by a check or similar instrument that must clear the institution on which it is drawn.

6. Title and Survey.

6.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: **Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.**

6.02. *Title Commitment, Survey.* Buyer is responsible for procuring its own title commitment and any survey it desires.

6.03. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review survey and title-related matters to notify Seller of Buyer's objections to such matters ("**Buyer's Objections**"). Buyer approves all such matters to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline. The matters that Buyer approves explicitly or otherwise are "**Permitted Exceptions**."

6.04. If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer whether Seller agrees to cure the Buyer's Objections before

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closing ("**Cure Notice**"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, notify Seller that this contract is terminated. In absence of such timely notice, Buyer will be deemed to have waived any of Buyer's Objections which Seller has not agreed to cure in the Cure Notice and all such waived matters will be Permitted Exceptions. If Seller agrees to cure any of the Buyer's Objections in the Cure Notice and all such matters are not cured prior to closing, then Buyer will have the right to terminate this contract by notifying Seller prior to closing.

7. Inspection Period.

7.01. *Entry onto the Property.* Buyer is already in possession of the Property and may perform all inspections it wishes in connection with this transaction for so long as it does not violate the lease.

7.02. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason or no reason at all, in Buyer's sole and absolute discretion, by notifying Seller before the end of the Inspection Period. The Independent Consideration is compensation to Seller for Buyer's right of cancellation and is not refundable under any circumstance.

8. Representations.

The parties' representations stated in Exhibit B are true and correct as of the Effective Date, must be true and correct on the Closing Date and will survive the closing.

9. Condemnation; No Recording of Contract.

9.01. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within 15 days after receipt of Seller's notice to Buyer (and closing will be extended, if necessary, in order to allow Buyer the benefit of the full 15-day period). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer at closing, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

9.02. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract

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or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

10. Termination.

10.01. *Disposition of Earnest Money after Termination*

a *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer.

b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

10.02. *Duties after Termination.* If this contract is terminated, neither party will have further duties or obligations to the other under this contract, except for those obligations that survive such termination pursuant to the express terms of this contract.

11. Closing.

11.01. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Possession.* Buyer is already in possession of the Property under a lease and, upon closing, its possession may continue subject to the terms of the deed.

11.02. *Transaction Costs*

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a. Buyer will pay:

i. the basic charge for the Title Policy (if Buyer elects to purchase the Title Policy);

ii. one-half of the escrow fee charged by Title Company;

iii. the costs to prepare the deed;

iv. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession, if requested by Buyer;

v. the additional premium for the "survey/area and boundary deletion" in the Title Policy, if requested by Buyer;

vi. the costs to obtain the Survey and certificates or reports of ad valorem taxes; and

vii. Buyer's expenses and attorney's fees.

b. Seller will pay:

i. one-half of the escrow fee charged by Title Company;

ii. the costs to record all documents to cure Title Objections agreed to be cured by Seller;

iii. the costs to obtain, deliver, and record all documents other than those to be recorded at Buyer's expense; and

iv. Seller's expenses and attorney's fees.

c. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10. Seller assumes no responsibility for ad valorem taxes for any period, rollback or otherwise, not otherwise imposed on it by law.

d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the

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errors. The parties' respective obligations in this paragraph will survive the closing.

e. Buyer need not close if Seller cannot or does not deliver good and indefeasible fee simple title at closing. If Buyer does not close for want of good and indefeasible fee simple title, the Earnest Money is returned to Buyer.

12. Intentionally Omitted.

13. Prohibited Interests in Contracts.

13.01 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02Buyer warrants and certifies as follows:

(i) Buyer and its officers, employees and agents are neither officers nor employees of the City.

(ii) Buyer has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03 Buyer acknowledges that City's reliance on the above warranties and certifications is reasonable.

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14. Dispute Resolution.

14.01 As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

14.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

14.03 Mediation must be conducted in San Antonio, Bexar County, Texas.

14.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

14.05 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

14.06 Mediator fees must be borne equally.

14.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

15. Miscellaneous Provisions.

15.01 *Applicable Law*. This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

15.02 *Severability*. If any portion hereof is determined to be invalid or unenforceable, such determination does not affect the remainder hereof.

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15.03 *Successors*. This Agreement inures to the benefit of and is binding on the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

15.04 *Integration*. **This Written Agreement, Together With the Contemporaneous Easement Relocation Agreement, Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

15.05 *Modification*.

15.05.01. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

15.05.02 The Director of the Transportation and Capital Improvements Department may, without further action of City Council, agree on behalf of Seller to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

15.06 *Third Party Beneficiaries*. This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

15.07 *Notices*. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete upon its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon actual receipt. Address for notice may be changed by giving notice hereunder.

15.08 *Pronouns*. In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words “herein,” “hereof,” and other, similar compounds of the word “here” refer to this entire Agreement, not to any particular provision of it.

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15.09 *Captions*. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

15.10 *Counterparts*. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

15.11 *Further Assurances*. The parties must execute and deliver such additional documents and instruments as may be reasonably required to effect fully the provisions hereof. No such additional document(s), however, shall alter the rights or obligations of the parties as contained in this agreement

15.12. *Survival.* The obligations of this contract that are expressly stated to survive termination of this contract or closing shall so survive, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents control.

15.13. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

15.14. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

15.15 *Confidentiality.* The parties will keep confidential this contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

15.16 *Waiver of Consumer Rights.* **Buyer Waives Its Rights Under The Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 *et seq.* of The Texas Business and Commerce Code, A Law That Gives Consumers Special Rights and Protections. After Consultation With an Attorney of Its Own Selection, Buyer Voluntarily Consents To This Waiver.**

15.17. *Incorporation by Reference*. All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

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15.18. *Administrative Agreements*. The Director of the Transportation and Capital Improvements Department may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

16. Public Information.

Buyer acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

17. Brokers' Commission.

Buyer and Seller each represent to the other that it has not done or omitted to do anything that would incur liability for a broker's commission arising out of this transaction.

In Witness Whereof, the parties have caused their representatives to set their hands.

Seller:	**Buyer:**
City of San Antonio, a Texas municipal corporation	**San Antonio Food Bank, Inc.**, a Texas non-profit corporation
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

DRAFT

Title Company Acknowledgment and Receipt

Seller: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Buyer: San Antonio Food Bank, Inc.

Address: 5200 Enrique M. Barrera Parkway, San Antonio, Texas 78227-2209

Property: Approximately 23.30 acres out of an 89.637-acre tract in the City of San Antonio, Bexar County, Texas, as described in an instrument recorded at Volume 6696, Page 1286, Real Property Records of Bexar County, Texas

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

Alamo Title Company

By:_____

Printed
Name:_____

Title:_____

Date:_____

DRAFT

Title Company Receipt for Earnest Money

Seller: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Buyer: San Antonio Food Bank, Inc.

Address: 5200 Enrique M. Barrera Parkway, San Antonio, Texas 78227-2209

Property: Approximately 23.30 acres out of an 89.637-acre tract in the City of San Antonio, Bexar County, Texas, as described in an instrument recorded at Volume 6696, Page 1286, Real Property Records of Bexar County, Texas

Title Company acknowledges receipt from Buyer of earnest money in the amount set forth below:

Amount: _____

Alamo Title Company

By:_____

Printed
Name:_____

Title:_____

Date:_____

DRAFT

Contract Exhibit A: Property Description

Metes and Bounds
23.30 Acre Tract

Being a 23.30 acre tract of land out of an 89.637 acre tract recorded in Volume 6696, Page 1286-1326 of the Official Public Records of Bexar County, Texas and also being out of the Rafael Herrera Survey No. 1/74, abstract number 311, New City Block 13940, in the City of San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING: at a found ½" iron rod on the east right-of-way line of Herbert Lane (variable width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (variable width R.O.W.), for the southwest corner of this tract being described herein;

Thence: North 00°14'18" East, 131.18 feet, along the east R.O.W. of said Herbert Lane to a set ½" iron rod with cap (GRE 3501) at the southwest corner of Lot 4, NCB 13490, Cable Ranch Subdivision as recorded in Volume 6600, Page 54, of the Deed & Plat Records of Bexar County, Texas, for a corner of this tract being describes herein;

Thence: North 89°56'48" East, 381.00 feet, departing said R.O.W. and along an 8 foot chain link fence on the south line of said Lot 4, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 00°14'21" East, 550.21 feet, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 89°51'17" West, 380.99 feet, to a found ½" iron rod, for a corner of this tract being describes herein;

Thence: North 00°14'09" East, 385.40 feet, to a found ½" iron rod with cap (COSA), same being the southwest corner of Lot 10, NCB 13490, Bay Valley Foods as recorded in Volume 9623, Page 41, of the Deed & Plat Records of Bexar County, for the northwest corner of this tract described herein;

Thence: South 89°44'58" East, 324.53 feet along the south line of said Lot 10, to a found ½" iron rod with cap (COSA), same point being the north corner of a 9.5 acre tract out of a 89.637 as recorded in Volume 16441, Page 692, of the Official Public Records of Bexar County, for an interior corner of this tract described herein;

Thence: South 25°29'53" East, 616.06 feet along the south line of said 9.5 acre tract, to a found ½" iron rod with cap (PD) for the south corner of said 9.5 acre tract same being an interior corner of this tract described herein;

Thence: North 64°27'04" East, 671.87 feet along the southeast line of said 9.5 acre tract, to a found ½" iron rod with cap (GRE 3501) on the west line of Lot 16, Block 3, NCB 16504, Replat & Subdivision Plat Establishing COSA-ACF, Unit 1, as recorded in Volume 9569, Page 191 of the

Deed & Plat Records of Bexar County, Texas for the northeast corner of this tract being described herein;

Thence: along a 56 foot drainage easement the following courses and distances;

South 25°30'27" East, 225.54 to a found ½ iron rod with cap (GRE 3501) at the P.C. of a curve to the right having a radius of 871.34 feet, and an arc length of 396.02 feet passing a found ½ iron rod on the south line of a Variable Width Drainage Easement as recorded in Volume 9569, Page 192 of the Official Public Records to a found ½" iron rod with cap (GRE 3501);

South 00°15'30" East, 23.67 feet, to a found ½" iron rod with cap (GRE 3501);

South 25°45'48" East, 27.07 feet, to a found mag nail; and,

South 02°02'30" West, 673.61 feet to a found ½" iron rod at the northeast corner of Lot 3, NCB 13940, as recorded in Volume 6200, Page 228 of the Deed and Plat Records of Bexar County, Texas, for the southeast corner of this tract being described herein;

Thence: North 89°25'55" West, 300.04 feet along the north line of said Lot 3, to a found ½" iron rod with cap (COSA), on the east line of Lot 11, NCB 13940, a 31.78 acre tract, Norwood-RCC Subdivision, as recorded in Volume 9557, Pages 3-5 of the Deed and Plat Records of Bexar County, Texas, for a southern most corner of this tract being described herein;

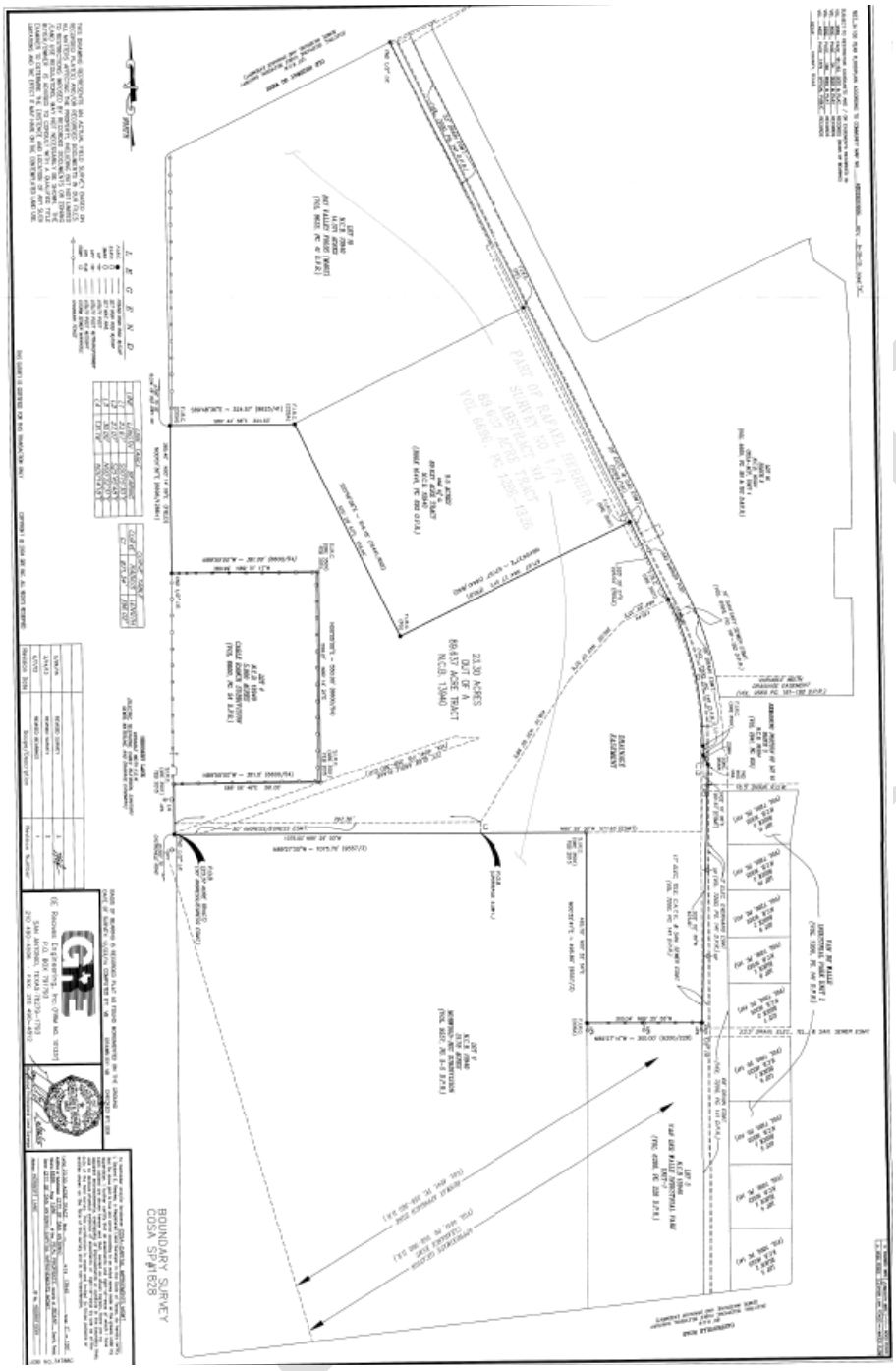
Thence: North 00°32'54" East, 495.79 feet along the east line of said Lot 11, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being described herein;

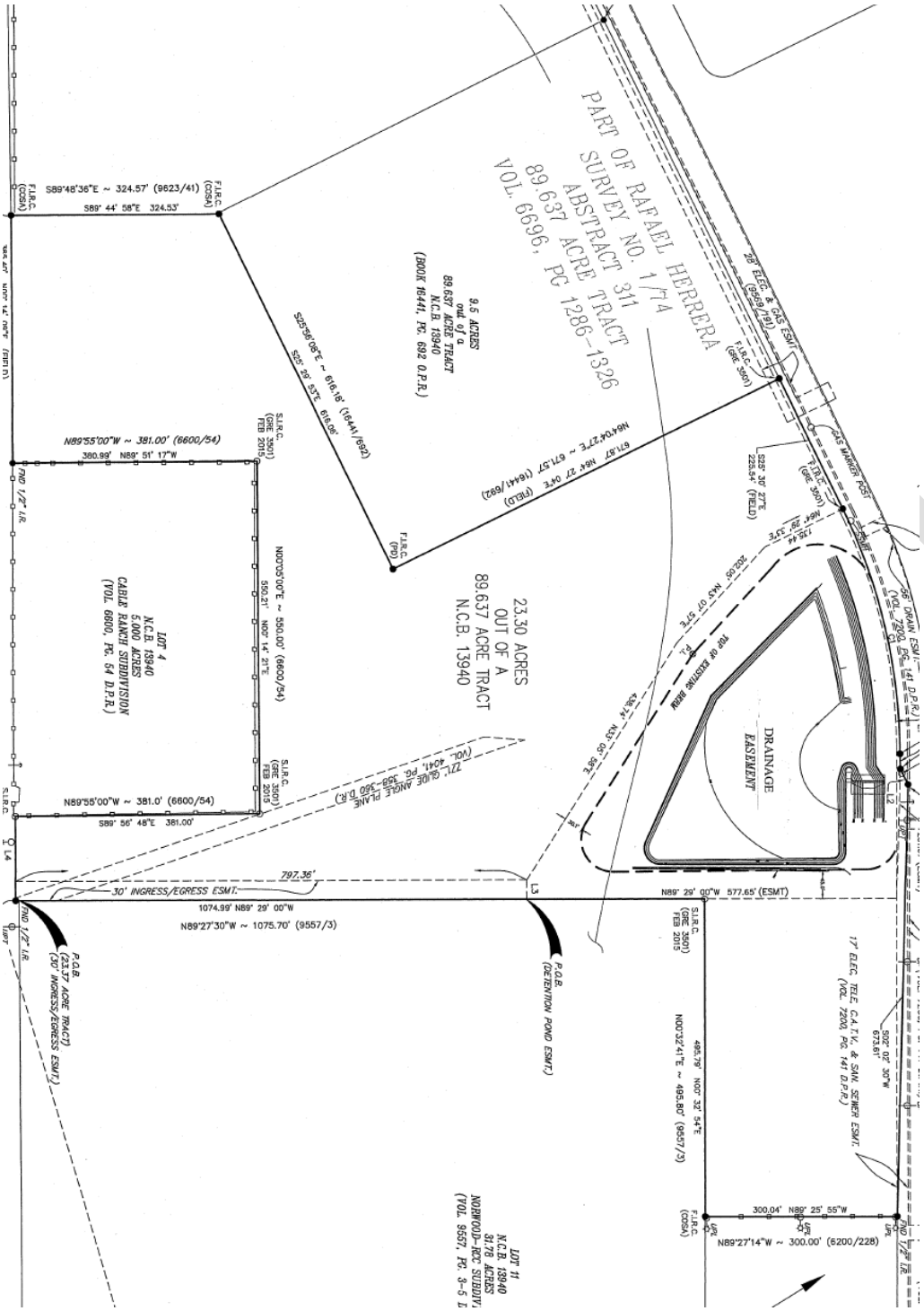
Thence: North 89°29'00" West, 1074.99 feet along north line of said Lot 11, to the **POINT OF BEGINNING** and containing 23.30 acre of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

GE Reaves Engineering, Inc.
Gaylord E. Reaves, R.P.L.S. No.3501
Texas Survey Firm Number 101337

3/18/15

STATE OF TEXAS
REGISTERED
GAYLORD E. REAVES
3501
PROFESSIONAL
LAND SURVEYOR


BOUNDARY SURVEY
COSA SP#1828


PART OF RAFAEL HERRERA SURVEY NO. 1/74 ABSTRACT 311 89.637 ACRE TRACT VOL. 6696, PG 1286-1326
23.30 ACRES OUT OF A 89.637 ACRE TRACT N.C.B. 13940
9.5 ACRES out of a 89.637 ACRE TRACT N.C.B. 13940 (BOOK 16441, PG. 692 O.P.R.)
LOT 4 N.C.B. 13940 5.000 ACRES CABLE RANCH SUBDIVISION (VOL. 6600, PG. 54 D.P.R.)
DRAINAGE EASEMENT
TOP OF EXISTING RIVER
30' INGRESS/EGRESS ESMT.
797.36'
1074.99' N89° 29' 00"W
N89°27'30"W ~ 1075.70' (9557/3)
N89° 29' 00"W 577.65' (ESMT)
P.O.B. (23.37 ACRE TRACT) (30' INGRESS/EGRESS ESMT.)
P.O.B. (DETENTION POND ESMT.)
S89°48'36"E ~ 324.57' (9623/41)
S89° 44' 58"E 324.53'
S25°56'08"E ~ 616.18' (16441/692)
S25° 29' 53"E 616.06'
N89°55'00"W ~ 381.00' (6600/54)
380.99' N89° 51' 17"W
N00°05'00"E ~ 550.00' (6600/54)
550.21' N00° 14' 21"E
N89°55'00"W ~ 381.0' (6600/54)
S89° 56' 48"E 381.00'
N89°27'14"W ~ 300.00' (6200/228)
300.04' N89° 25' 55"W
N00°32'41"E ~ 495.80' (9557/3)
495.79' N00° 32' 54"E
S00° 07' 30"W 673.61'
17' ELEC. TELE. C.A.T.V. & SAN. SEWER ESMT. (VOL. 7200, PG. 141 D.P.R.)
28' ELEC. & GAS ESMT. (9568/191)
.45 MARKER POST
S25° 30' 27"E 225.54' (FIELD)
N64°04'27"E ~ 671.57' (16441/692)
N64° 28' 37"E 671.87' (FIELD)
135.44'
202.05' N45° 07' 57"E
436.54' N35° 05' 38"E
56' DRAIN ESMT. (VOL. 7200, PG. 141 D.P.R.)
LOT 11 N.C.B. 13940 31.78 ACRES NORWOOD-RCC SUBDIVI (VOL. 9557, PG. 3-5 D
FND 1/2" I.R.
F.I.R.C. (CCSA)
F.I.R.C. (GRE 3501)
S.I.R.C. (GRE 3501) FEB 2015
P.I.R.C. (PID)

Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a municipal corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

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8. *No Other Representation.* Except as stated above, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

B. "As Is, Where Is"

This Contract Is An Arms-Length Agreement Between The Parties. The Purchase Price Was Bargained On The Basis Of An "As Is, Where Is" Transaction And Reflects The Agreement Of The Parties That There Are No Representations, Disclosures, Or Express Or Implied Warranties, Except For The Warranty Of Title Stated In The Closing Documents And Seller's Representations To Buyer Set Forth In Section A Of This Exhibit B.

The Property Will Be Conveyed To Buyer In An "As Is, Where Is" Condition, With All Faults. All Warranties, Except The Warranty Of Title In The Closing Documents, Are Disclaimed.

C. Environmental Matters

After Closing, As Between Buyer And Seller, The Risk Of Liability Or Expense For Environmental Problems, Even If Arising From Events Before Closing, Will Be The Sole Responsibility Of Buyer, Regardless Of Whether The Environmental Problems Were Known Or Unknown At Closing. Once Closing Has Occurred, Buyer Indemnifies, Holds Harmless, And Releases Seller From Liability For Any Latent Defects And From Any Liability For Environmental Problems Affecting The Property, Including Liability Under The Comprehensive Environmental Response, Compensation, And Liability Act (Cercla), The Resource Conservation And Recovery Act (Rcra), The Texas Solid Waste Disposal Act, Or The Texas Water Code. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Seller's Own Negligence Or The Negligence Of Seller's Representatives. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Theories Of Products Liability And Strict Liability, Or Under New Laws Or Changes To Existing Laws Enacted After The Effective Date That Would Otherwise Impose On Sellers In This Type Of Transaction New Liabilities For Environmental Problems Affecting The Property.

D. Buyer's Representations to Seller

DRAFT

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Buyer is a non-profit corporation, duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to acquire the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Buyer that might affect Buyer's ability to perform its obligations under this contract.

DRAFT

Contract Exhibit C: Form of Deed

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

State of Texas **}**
}
County of Bexar **}**

Deed Without Warranty

Authorizing Ordinance:

Statutory Authority: Local Government Code § 272.001(a)

SP No./Parcel:

Grantor: City of San Antonio

Grantor's Mailing Address: City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attn: City Clerk)

Grantor's Street Address: City Hall, 100 Military Plaza, San Antonio, Texas 78205 (Bexar County)

Grantee: San Antonio Food Bank, Inc.

Grantee's Mailing Address: 5200 Enrique M. Barrera Parkway, San Antonio, Texas 78227-2209

Consideration: $10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: All of the following real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas, more particularly described by metes and bounds and shown by survey on **Exhibit "A"** attached hereto and incorporated herein verbatim for all purposes (the "**Land**"), together with all and singular the rights, benefits, privileges, easements, hereditaments and appurtenances thereof or in anywise appertaining thereto, and together with any and all improvements, structures and fixtures

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located thereon and all rights, titles, and interests of Grantor, if any, in and to any alleys, strips, or gores adjoining the Land, and any easements, rights-of-way or other interests in, on, under, or to, any land, highway, street, road, right-of-way or avenue, open or proposed, in, on, under, across, in front of, abutting or adjoining the Land, and all rights, titles and interests of Grantor in and to any awards made, or to be made in lieu thereof, and in and to any unpaid awards for damage thereto by reason of a change of grade thereof (all of the foregoing properties, rights, benefits, privileges, easements, tenements, hereditaments, appurtenances. Despite the foregoing language, Grantee receives from Grantor only such rights to public streets, alleys, or other public easements as could be passed to Grantee by a private party.

Grantor, for the Consideration, has Granted, Bargained, Sold and Conveyed, and by these presents does Grant, Bargain, Sell and Convey to Grantee the Property, To Have and To Hold unto Grantee, Grantee's successors and assigns forever, **Without Any Express Or Implied Warranty Whatsoever, Including But Not Limited to Warranties of Title, Condition, or Character.**

Reservations, Restrictions, Exceptions, And Conditions To Conveyance: This conveyance is explicitly subject to the following:

A. Reservations: Grantor reserves two easements from the conveyance by this deed:

1. A drainage easement on the land described on **Exhibit B**. Grantor may use this easement for all drainage-related purposes including detention ponds.

2. An ingress-egress easement on the land described on **Exhibit C**. Grantor may use this easement for all lawful ingress-egress between Herbert Lane and the above-described drainage easement.

B. Easements: All recorded and unrecorded easements, whether or not open and obvious.

C. Restrictions: All covenants and restrictions affecting the Property.

D. Exceptions: All instruments affecting the Property, whether or not recorded.

E. Conditions: All conditions affecting the Property.

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This conveyance does not relieve Grantee of any building, zoning, or other city-imposed requirements, or other land use restrictions applicable to the Property or the obligation to pay any real estate taxes that may otherwise be due.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.

Setting Out The Specific Reservations And Disclaimers Does Not Imply That The Property Is Free Of Other Encumbrances Or Adverse Claims Or Conditions. Grantor Specifically Disclaims Any Such Implication.

In Witness Whereof, Grantor has caused its representative to set its hand:

Grantor:

City of San Antonio, a Texas municipal corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

Approved As To Form:

By:_____
City Attorney

The State of Texas }

County of Bexar }

Before me, the undersigned authority, this instrument was this day acknowledged by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date:_____

DRAFT

_____
Notary Public, State of Texas

My Commission Expires:_____

After Recording, Return To:

_____

_____

_____

DRAFT

Deed Exhibit A: Property Description

Metes and Bounds
23.30 Acre Tract

Being a 23.30 acre tract of land out of an 89.637 acre tract recorded in Volume 6696, Page 1286-1326 of the Official Public Records of Bexar County, Texas and also being out of the Rafael Herrera Survey No. 1/74, abstract number 311, New City Block 13940, in the City of San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING: at a found ½" iron rod on the east right-of-way line of Herbert Lane (variable width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (variable width R.O.W.), for the southwest corner of this tract being described herein;

Thence: North 00°14'18" East, 131.18 feet, along the east R.O.W. of said Herbert Lane to a set ½" iron rod with cap (GRE 3501) at the southwest corner of Lot 4, NCB 13490, Cable Ranch Subdivision as recorded in Volume 6600, Page 54, of the Deed & Plat Records of Bexar County, Texas, for a corner of this tract being describes herein;

Thence: North 89°56'48" East, 381.00 feet, departing said R.O.W. and along an 8 foot chain link fence on the south line of said Lot 4, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 00°14'21" East, 550.21 feet, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 89°51'17" West, 380.99 feet, to a found ½" iron rod, for a corner of this tract being describes herein;

Thence: North 00°14'09" East, 385.40 feet, to a found ½" iron rod with cap (COSA), same being the southwest corner of Lot 10, NCB 13490, Bay Valley Foods as recorded in Volume 9623, Page 41, of the Deed & Plat Records of Bexar County, for the northwest corner of this tract described herein;

Thence: South 89°44'58" East, 324.53 feet along the south line of said Lot 10, to a found ½" iron rod with cap (COSA), same point being the north corner of a 9.5 acre tract out of a 89.637 as recorded in Volume 16441, Page 692, of the Official Public Records of Bexar County, for an interior corner of this tract described herein;

Thence: South 25°29'53" East, 616.06 feet along the south line of said 9.5 acre tract, to a found ½" iron rod with cap (PD) for the south corner of said 9.5 acre tract same being an interior corner of this tract described herein;

Thence: North 64°27'04" East, 671.87 feet along the southeast line of said 9.5 acre tract, to a found ½" iron rod with cap (GRE 3501) on the west line of Lot 16, Block 3, NCB 16504, Replat & Subdivision Plat Establishing COSA-ACF, Unit 1, as recorded in Volume 9569, Page 191 of the

Deed & Plat Records of Bexar County, Texas for the northeast corner of this tract being described herein;

Thence: along a 56 foot drainage easement the following courses and distances;

South 25°30'27" East, 225.54 to a found ½ iron rod with cap (GRE 3501) at the P.C. of a curve to the right having a radius of 871.34 feet, and an arc length of 396.02 feet passing a found ½ iron rod on the south line of a Variable Width Drainage Easement as recorded in Volume 9569, Page 192 of the Official Public Records to a found ½" iron rod with cap (GRE 3501);

South 00°15'30" East, 23.67 feet, to a found ½" iron rod with cap (GRE 3501);

South 25°45'48" East, 27.07 feet, to a found mag nail; and,

South 02°02'30" West, 673.61 feet to a found ½" iron rod at the northeast corner of Lot 3, NCB 13940, as recorded in Volume 6200, Page 228 of the Deed and Plat Records of Bexar County, Texas, for the southeast corner of this tract being described herein;

Thence: North 89°25'55" West, 300.04 feet along the north line of said Lot 3, to a found ½" iron rod with cap (COSA), on the east line of Lot 11, NCB 13940, a 31.78 acre tract, Norwood-RCC Subdivision, as recorded in Volume 9557, Pages 3-5 of the Deed and Plat Records of Bexar County, Texas, for a southern most corner of this tract being described herein;

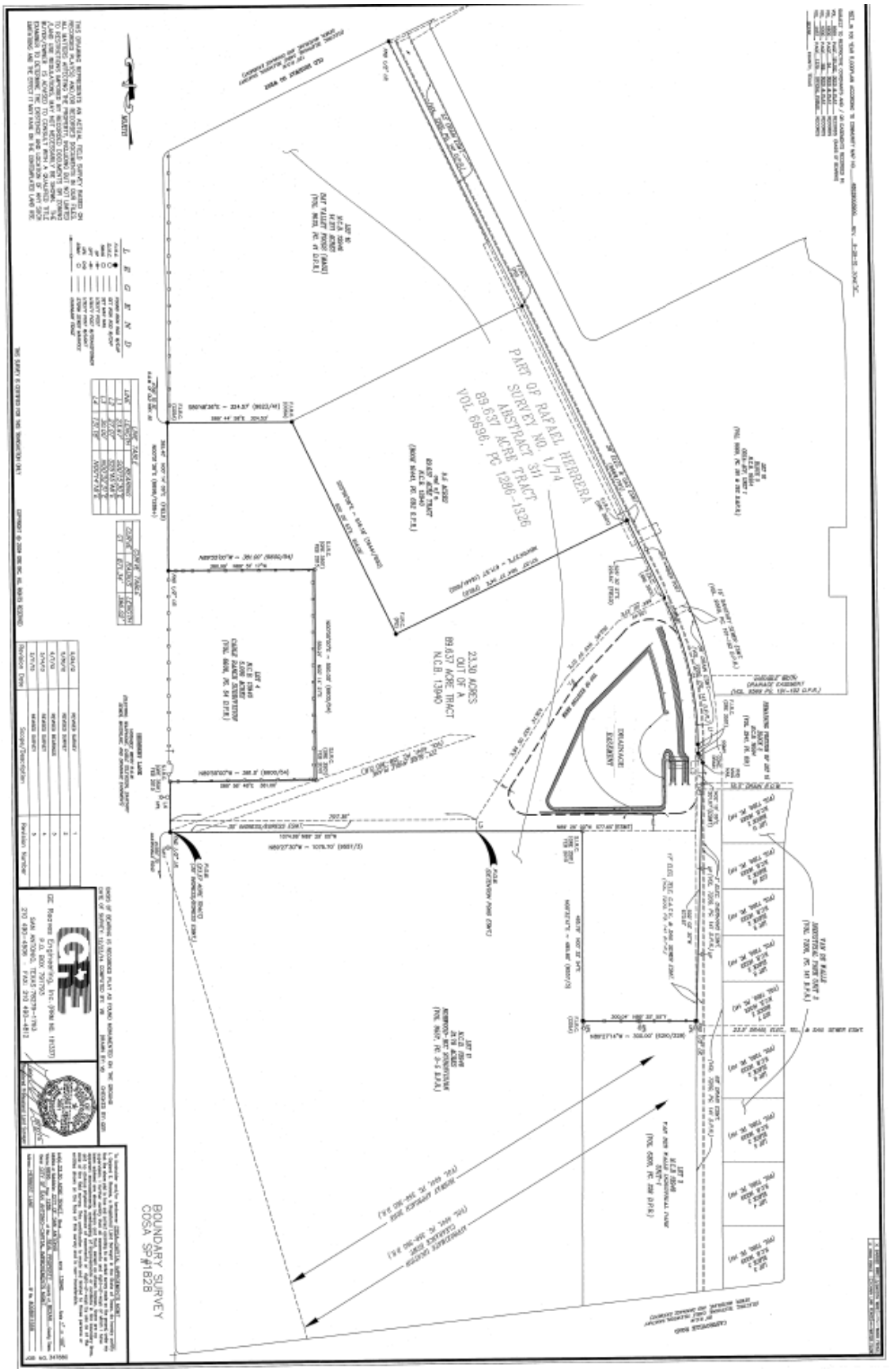
Thence: North 00°32'54" East, 495.79 feet along the east line of said Lot 11, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being described herein;

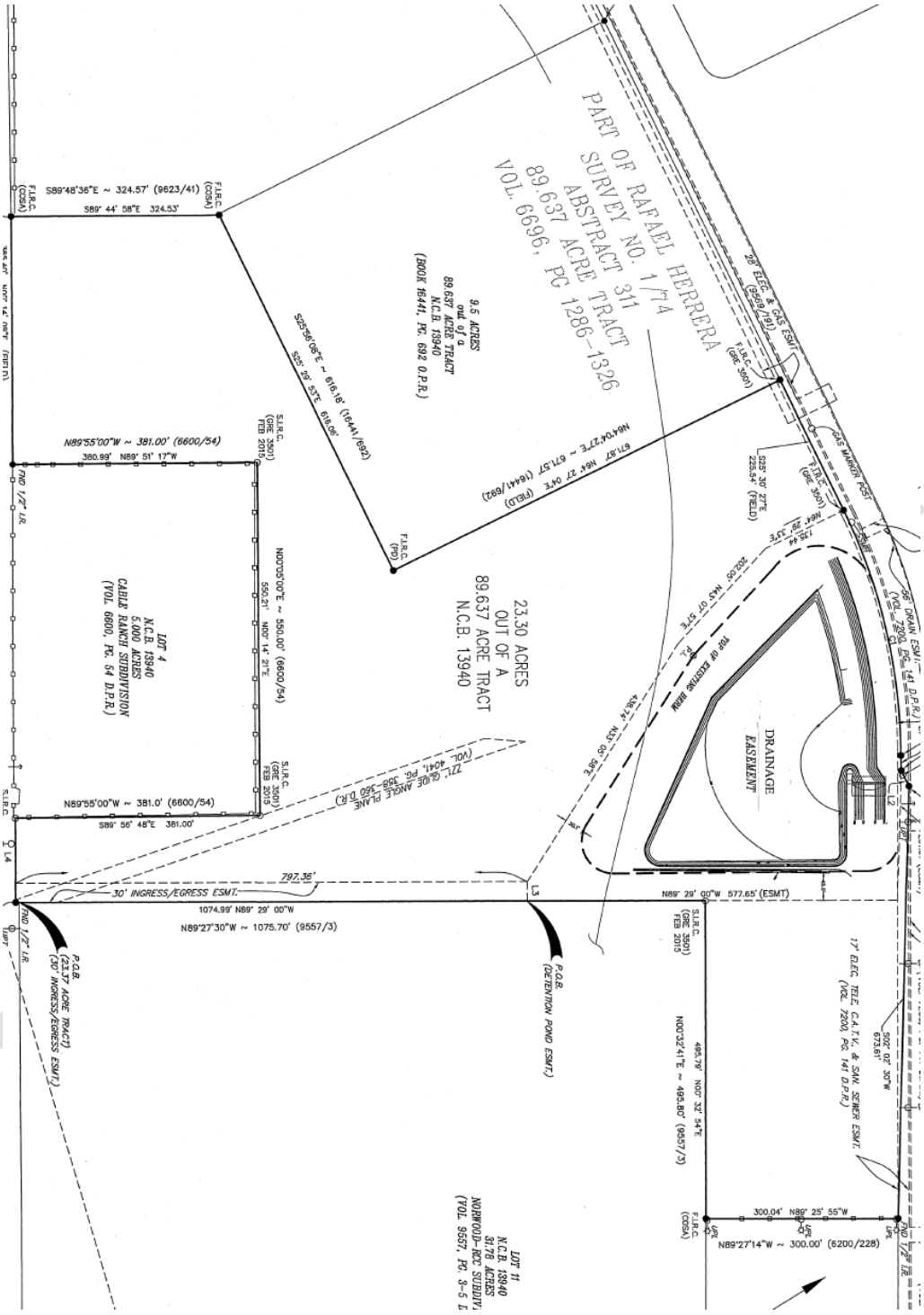
Thence: North 89°29'00" West, 1074.99 feet along north line of said Lot 11, to the **POINT OF BEGINNING** and containing 23.30 acre of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

GE Reaves Engineering, Inc.
Gaylord E. Reaves, R.P.L.S. No.3501
Texas Survey Firm Number 101337

3/18/15

STATE OF TEXAS
REGISTERED
GAYLORD E. REAVES
3501
PROFESSIONAL
LAND SURVEYOR


BOUNDARY SURVEY
COSA SP#1828
PART OF RAFAEL HERRERA SURVEY NO. 1/74 ABSTRACT 311 88.637 ACRE TRACT VOL 6896, PG 1286-1326
23.30 ACRES OUT OF A 88.637 ACRE TRACT N.C.B. 13940
DRAINAGE EASEMENT
LEGEND
GE Reyes Engineering, Inc.
9.O. BOX 791793
SAN ANTONIO, TEXAS 78279-1793
210.481.4300 FAX: 210.490-4812


PART OF RAFAEL HERRERA SURVEY NO. 1/74 ABSTRACT 311 89.637 ACRE TRACT VOL. 6696, PG 1286-1326
23.30 ACRES OUT OF A 89.637 ACRE TRACT N.C.B. 13940
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LOT 11 N.C.B. 13940 31.78 ACRES NORWOOD-RCC SUBDIV (VOL. 9557, PG. 3-5 D
DRAINAGE EASEMENT
TOP OF EXISTING BERM
S89°48'36"E ~ 324.57' (9623/41)
S89° 44' 58"E 324.53'
S25°58'08"E ~ 616.18' (16441/692)
S25° 29' 57"E 616.08'
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300.04' N89° 25' 55"W
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P.O.B. (23.37 ACRE TRACT) (30' INGRESS/EGRESS ESMT.)
P.O.B. (DETENTION POND ESMT.)
FND 1/2" I.R.
S.I.R.C. (GRE 3501) FEB 2015
F.I.R.C. (CCSA)
F.I.R.C. (GRE 3501)
F.I.R.C. (PO)
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Deed Exhibit B: Description of Drainage Easement

Metes & Bounds
Drainage Easement

Legal description for a 5.24 acre Drainage Easement out of the of 89.637 acre tract, City of San Antonio as recorded in Volume 6696, Page 1286, Real Property Records of Bexar County, Texas, being more particularly described as follows:

COMMENNCING: at a found ½" iron rod on the east right-of-way of Herbert Lane (Variable Width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (Variable Width R.O.W.);

Thence: South 89°27'30" East, 797.26 feet, along the north line of Lot 11, NCB 13940, a 31.78 acre tract of land, Norwood-RCC Subdivision, recorded in Volume 9557, Pages 3-5 of the Deed and Plat Records of Bexar County, Texas to the **BEGINNING** of this easement being described herein;

Thence the following bearings and distances:

North 00°32'31" East, 30.00 feet to point;

North 33°05'58" East, 438.74 feet to point;

North 43°07'57" East, 202.05 feet to a point; and

North 64°29'33" East, 135.44 feet to a found iron rod with cap (GRE 3501) located at a corner on the east property line of the 23.30 acre subject property of which this easement is a part, said point also being the point of curvature for the property line of said 23.30 acre tract described herein;

Thence: along this curve to the right, said curve having a radius of 871.34 feet and an arc length of 396.02 feet;

Thence: South 00°15'30" East, 23.67 feet, to a found ½" iron rod with cap (GRE 3501);

Thence: South 02°10'06" West, 201.67 feet, to a point neither set nor found at a corner of this easement described herein;

Thence: North 89°29'00" West, 577.65 feet along the north line of said Lot 11, to the **POINT OF BEGINNING** and containing 5.24 acres of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

GE Reaves Engineering, Inc.
Gaylord E. Reaves, R.P.L.S. No.3501
Texas Survey Firm Number 101337

Deed Exhibit C: Description of Ingress-Egress Easement

Metes and Bounds
Ingress / Egress Easement

Being a 0.55 acre easement out of a 89.637 acre tract recorded in Volume 6696, Page 1286-1326 of the Official Public Records of Bexar County, Texas and also being out of the Rafael Herrera Survey No. 1/74, abstract number 311, New City Block 13940, in the City of San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING: at a found ½" iron rod on the east right-of-way line of Herbert Lane (variable width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (variable width R.O.W.) for the southwest corner of this easement being described herein;

Thence: North 00° 14' 18" East, 30.00 feet along the east R.O.W. of said Herbert Lane to a point neither set nor found at the northwest corner of this tract of land;

Thence: South 89° 29' 00" East, 797.36 feet, departing said R.O.W. and entering into said 89.637 acre tract to a point neither set nor found at the northeast corner of this easement of land;

Thence: South 00° 32' 31" West, 30.00 feet to a point on the north line of Lot 11, NCB 13940, being a 31.78 acre tract, Norwood-RCC Subdivision, recorded in Volume 9557, Page 3-5 of the Deed and Plat Records of Bexar County, Texas to a point neither set nor found at the southeast corner of this easement;

Thence: North 89° 29' 00" West, 797.26 feet along the east line of said Lot 11 to the POINT OF BEGINNING and containing 0.55 acres of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

2/18/15

STATE OF TEXAS
REGISTERED
GAYLORD E. REAVES
3501
PROFESSIONAL
LAND SURVEYOR

Ordinance Exhibit C
Easement Relocation Agreement

This Easement Relocation Agreement ("Agreement") is entered into between The City of San Antonio, Texas ("City") and the San Antonio Food Bank ("Food Bank") as of the date and year set forth at the end of this agreement.

Background:

Contemporaneously with the execution and delivery of this agreement, City is conveying to Food Bank the property described at **Exhibit A** ("Property").

In the conveyance of the Property, City reserved a drainage easement ("Drainage Easement") over the land described on **Exhibit B** and an ingress-egress easement ("Access Easement") over the land described at **Exhibit C**.

The parties acknowledge the Food Bank's concern that the location of the Drainage Easement may impede future activity or development on the Property.

This agreement memorializes the parties' agreement regarding possible relocation of the Drainage Easement and the associated extension or relocation of the Access Easement.

Rights and Obligations:

Now Therefore, as partial consideration for the conveyance of the Property by the City to the Food Bank, and in the further consideration of the premises and the mutual covenants and promises in this agreement, the parties agree as follows:

1. Relocation of Drainage Easement.

Food Bank may at any time give written notice to City of its desire to move the Drainage Easement. City will agree to the Drainage Easement being moved on the following conditions:

a. The Food Bank must own or provide the written consent of the owner of the property to which the easement is to be moved.

b. The Food Bank must provide the City with a title policy insuring the new location of the Drainage Easement, and the title-insurance policy must contain no exceptions reasonably objectionable to City.

c. The proposed new location of the Drainage Easement must be at least as effective for drainage purposes, including detention ponds, as the Drainage Easement. Effectiveness is determined in the City's sole discretion. Nothing in this agreement prevents the Food Bank from making offsite or other provisions for drainage in the future according to then-existing city rules and procedures.

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d. Food Bank must provide City with an extended or, if necessary, relocated Access Easement to the new drainage easement. The path of travel must not be impeded by terrain features or otherwise, and Food Bank must provide a title policy as for the new drainage area. If the City has improved the Access Easement, Food Bank must improve the new ingress-egress area in the same way.

e. The Food Bank must pay all costs related to the relocation, including any associated surety or warranty bonds. Food Bank's obligation to pay also includes construction of a new detention pond, unless detention needs are otherwise met by Food Bank according to then-existing rules and procedures. The City need not do any dirt-moving or other work in connection with the relocation, but the relocation is not complete and Food Bank's payment obligation is not complete until City's engineers have inspected the new easement and stated in writing that it is accepted by the City.

f. The Food Bank and any other owner of associated property must agree that the City shall not be held liable for any damages resulting from the construction, reconstruction, demolition, or maintenance of the old and new Drainage Easements or any other associated improvements.

2. Release of Old Easements.

When the Food Bank has met all conditions to easement relocation, the City will ask City Council to accept the new replacement easements and to release the old Drainage Easement and so much of the old Access Easement as will no longer be used.

3. Limitations on City's Obligations.

Nothing in this Agreement obligates the City to take any particular action(s) or make any particular decision(s) regarding approval of a new Drainage Easement, except as stated in this Agreement, whether such action(s) or decision(s) would customarily be made by the City Council, the Planning Commission, or any department of the City. Nor shall this Agreement be deemed to constitute any prejudgment or predetermination of any matters related to the construction of the new Drainage Easement, including any related discretionary action(s), waiver of any permit requirements, reduced fees or abbreviation of any city procedures. City will cooperate with the Food Bank in such matters to the extent allowed by law and as directed by its governing body

Further, all obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council. If the City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability.

4. Indemnity.

4.01. These definitions apply to the indemnity provisions of this Agreement:

4.01.01"Indemnified Claims" mean all loss, cost, liability, or expense arising, in whole or in part, out of this Agreement. A claim is an Indemnified Claim even if the Indemnitee alleged to be at fault is not a

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party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor but not claims in which Indemnitees are solely negligent.

4.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

4.01.03. "Indemnitor" means the Food Bank.

4.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

4.03. If one or more Indemnitees are finally adjudged to bear fault outside the scope of this indemnity, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations that one or more Indemnitees bear such fault, Indemnitor must nevertheless defend all Indemnitees until final adjudication and all appeals have been exhausted. An Indemnitee may but need not waive appeals. Indemnitor may not recover sums previously spent defending or otherwise indemnifying Indemnitees finally adjudged to bear fault outside the scope of this indemnity and must continue to indemnify other Indemnitees if claims are still asserted against them.

4.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

4.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

4.06. In addition to the indemnity required under this Agreement, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

4.07. Any settlement purporting to bind the City must first be approved by City Council.

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4.08. Nothing in this Agreement waives governmental immunity or other defenses of Indemnitees under applicable law.

4.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees, collectively, and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

5. Miscellaneous Provisions.

5.01. *Applicable Law*. This Agreement is entered into in San Antonio, Bexar County, state of Texas. **THE CONSTRUCTION OF THIS AGREEMENT AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING THEREUNDER ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

5.02. *Integration*. **This Written Agreement, Together With the Contemporaneous Easement Relocation Agreement, Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

5.03. *Counterparts*. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

5.04. *Incorporation by Reference*. All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

5. Public Information.

Buyer acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

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In Witness Whereof, the parties have caused their representatives to set their hands.

Seller:	**Buyer:**
City of San Antonio, a Texas municipal corporation	**San Antonio Food Bank, Inc.**, a Texas non-profit corporation
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

The State of Texas }

County of Bexar }

Before me, the undersigned authority, this instrument was this day acknowledged by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date:_____

_____
Notary Public, State of Texas

My Commission Expires:_____

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The State of Texas }

County of Bexar }

Before me, the undersigned authority, this instrument was this day acknowledged by _____, of and for the San Antonio Food Bank, Inc., a Texas nonprofit corporation, on behalf of that entity in the capacity stated.

Date:_____

_____
Notary Public, State of Texas

My Commission Expires:_____

After Recording, Return To:

San Antonio Food Bank, Inc.
4311 Director Drive
San Antonio, Texas 78219-3202

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Easement Relocation Exhibit A: Description of the Property

Metes and Bounds
23.30 Acre Tract

Being a 23.30 acre tract of land out of an 89.637 acre tract recorded in Volume 6696, Page 1286-1326 of the Official Public Records of Bexar County, Texas and also being out of the Rafael Herrera Survey No. 1/74, abstract number 311, New City Block 13940, in the City of San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING: at a found ½" iron rod on the east right-of-way line of Herbert Lane (variable width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (variable width R.O.W.), for the southwest corner of this tract being described herein;

Thence: North 00°14'18" East, 131.18 feet, along the east R.O.W. of said Herbert Lane to a set ½" iron rod with cap (GRE 3501) at the southwest corner of Lot 4, NCB 13490, Cable Ranch Subdivision as recorded in Volume 6600, Page 54, of the Deed & Plat Records of Bexar County, Texas, for a corner of this tract being describes herein;

Thence: North 89°56'48" East, 381.00 feet, departing said R.O.W. and along an 8 foot chain link fence on the south line of said Lot 4, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 00°14'21" East, 550.21 feet, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being describes herein;

Thence: North 89°51'17" West, 380.99 feet, to a found ½" iron rod, for a corner of this tract being describes herein;

Thence: North 00°14'09" East, 385.40 feet, to a found ½" iron rod with cap (COSA), same being the southwest corner of Lot 10, NCB 13490, Bay Valley Foods as recorded in Volume 9623, Page 41, of the Deed & Plat Records of Bexar County, for the northwest corner of this tract described herein;

Thence: South 89°44'58" East, 324.53 feet along the south line of said Lot 10, to a found ½" iron rod with cap (COSA), same point being the north corner of a 9.5 acre tract out of a 89.637 as recorded in Volume 16441, Page 692, of the Official Public Records of Bexar County, for an interior corner of this tract described herein;

Thence: South 25°29'53" East, 616.06 feet along the south line of said 9.5 acre tract, to a found ½" iron rod with cap (PD) for the south corner of said 9.5 acre tract same being an interior corner of this tract described herein;

Thence: North 64°27'04" East, 671.87 feet along the southeast line of said 9.5 acre tract, to a found ½" iron rod with cap (GRE 3501) on the west line of Lot 16, Block 3, NCB 16504, Replat & Subdivision Plat Establishing COSA-ACF, Unit 1, as recorded in Volume 9569, Page 191 of the

Deed & Plat Records of Bexar County, Texas for the northeast corner of this tract being described herein;

Thence: along a 56 foot drainage easement the following courses and distances;

South 25°30'27" East, 225.54 to a found ½ iron rod with cap (GRE 3501) at the P.C. of a curve to the right having a radius of 871.34 feet, and an arc length of 396.02 feet passing a found ½ iron rod on the south line of a Variable Width Drainage Easement as recorded in Volume 9569, Page 192 of the Official Public Records to a found ½" iron rod with cap (GRE 3501);

South 00°15'30" East, 23.67 feet, to a found ½" iron rod with cap (GRE 3501);

South 25°45'48" East, 27.07 feet, to a found mag nail; and,

South 02°02'30" West, 673.61 feet to a found ½" iron rod at the northeast corner of Lot 3, NCB 13940, as recorded in Volume 6200, Page 228 of the Deed and Plat Records of Bexar County, Texas, for the southeast corner of this tract being described herein;

Thence: North 89°25'55" West, 300.04 feet along the north line of said Lot 3, to a found ½" iron rod with cap (COSA), on the east line of Lot 11, NCB 13940, a 31.78 acre tract, Norwood-RCC Subdivision, as recorded in Volume 9557, Pages 3-5 of the Deed and Plat Records of Bexar County, Texas, for a southern most corner of this tract being described herein;

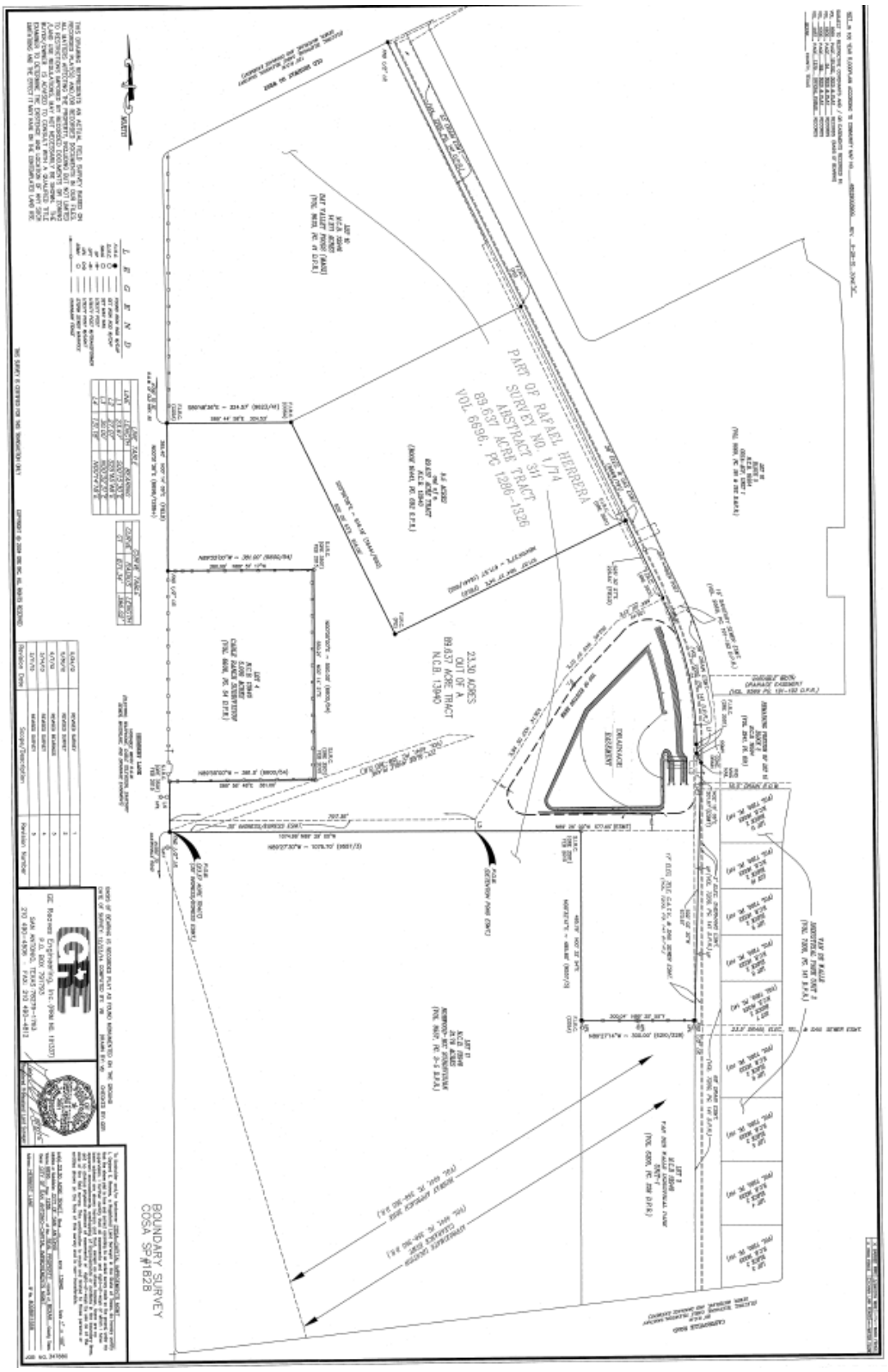
Thence: North 00°32'54" East, 495.79 feet along the east line of said Lot 11, to a set ½" iron rod with cap (GRE 3501), for an interior corner of this tract being described herein;

Thence: North 89°29'00" West, 1074.99 feet along north line of said Lot 11, to the **POINT OF BEGINNING** and containing 23.30 acre of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

GE Reaves Engineering, Inc.
Gaylord E. Reaves, R.P.L.S. No.3501
Texas Survey Firm Number 101337

2/18/15

STATE OF TEXAS
REGISTERED
GAYLORD E. REAVES
3501
PROFESSIONAL
LAND SURVEYOR


BOUNDARY SURVEY
COSA SP#1828
PART OF RAFAEL HERRERA SURVEY NO. 174 ABSTRACT 311 89.637 ACRE TRACT VOL 6696, PG 1286-1326
23.30 ACRES OUT OF A 89.637 ACRE TRACT N.C.B. 13940
DRAINAGE EASEMENT
LEGEND

Easement Relocation Exhibit B: Description of Drainage Easement

Metes & Bounds
Drainage Easement

Legal description for a 5.24 acre Drainage Easement out of the of 89.637 acre tract, City of San Antonio as recorded in Volume 6696, Page 1286, Real Property Records of Bexar County, Texas, being more particularly described as follows:

COMMENNCING: at a found ½" iron rod on the east right-of-way of Herbert Lane (Variable Width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (Variable Width R.O.W.);

Thence: South 89°27'30" East, 797.26 feet, along the north line of Lot 11, NCB 13940, a 31.78 acre tract of land, Norwood-RCC Subdivision, recorded in Volume 9557, Pages 3-5 of the Deed and Plat Records of Bexar County, Texas to the **BEGINNING** of this easement being described herein;

Thence the following bearings and distances:

North 00°32'31" East, 30.00 feet to point;

North 33°05'58" East, 438.74 feet to point;

North 43°07'57" East, 202.05 feet to a point; and

North 64°29'33" East, 135.44 feet to a found iron rod with cap (GRE 3501) located at a corner on the east property line of the 23.30 acre subject property of which this easement is a part, said point also being the point of curvature for the property line of said 23.30 acre tract described herein;

Thence: along this curve to the right, said curve having a radius of 871.34 feet and an arc length of 396.02 feet;

Thence: South 00°15'30" East, 23.67 feet, to a found ½" iron rod with cap (GRE 3501);

Thence: South 02°10'06" West, 201.67 feet, to a point neither set nor found at a corner of this easement described herein;

Thence: North 89°29'00" West, 577.65 feet along the north line of said Lot 11, to the **POINT OF BEGINNING** and containing 5.24 acres of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

GE Reaves Engineering, Inc.
Gaylord E. Reaves, R.P.L.S. No.3501
Texas Survey Firm Number 101337

Easement Relocation Exhibit C: Description of Ingress-Egress Easement

Metes and Bounds
Ingress / Egress Easement

Being a 0.55 acre easement out of a 89.637 acre tract recorded in Volume 6696, Page 1286-1326 of the Official Public Records of Bexar County, Texas and also being out of the Rafael Herrera Survey No. 1/74, abstract number 311, New City Block 13940, in the City of San Antonio, Bexar County, Texas and being more particularly described as follows:

BEGINNING: at a found ½" iron rod on the east right-of-way line of Herbert Lane (variable width R.O.W.), same point being 1350± feet from the intersection of said Herbert Lane and Castroville Road (variable width R.O.W.) for the southwest corner of this easement being described herein;

Thence: North 00° 14' 18" East, 30.00 feet along the east R.O.W. of said Herbert Lane to a point neither set nor found at the northwest corner of this tract of land;

Thence: South 89° 29' 00" East, 797.36 feet, departing said R.O.W. and entering into said 89.637 acre tract to a point neither set nor found at the northeast corner of this easement of land;

Thence: South 00° 32' 31" West, 30.00 feet to a point on the north line of Lot 11, NCB 13940, being a 31.78 acre tract, Norwood-RCC Subdivision, recorded in Volume 9557, Page 3-5 of the Deed and Plat Records of Bexar County, Texas to a point neither set nor found at the southeast corner of this easement;

Thence: North 89° 29' 00" West, 797.26 feet along the east line of said Lot 11 to the POINT OF BEGINNING and containing 0.55 acres of land, more or less, as surveyed on the ground by GE Reaves Engineering, Inc. on February 1, 2015.

2/18/15

STATE OF TEXAS
REGISTERED
GAYLORD E. REAVES
3501
PROFESSIONAL
LAND SURVEYOR