

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.

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

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 Indemnatee alleged to be at fault is not a

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 Indemnatee 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 Indemnatee 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 Indemnatee 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 Indemnatee 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.

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.

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

Seller:

City of San Antonio, a Texas
municipal corporation

Signature:_____

Printed
Name:_____

Title:_____

Date:_____

Buyer:

San Antonio Food Bank, Inc., a Texas
non-profit corporation

Signature:_____

Printed
Name:_____

Title:_____

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:_____

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

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



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 $\frac{1}{2}$ " 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 $\frac{1}{2}$ " 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



Gaylord E. Reaves 2/24/15

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 $\frac{1}{2}$ " 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.

Gaylord E. Reaves 2/18/15



A red octagonal seal for a Professional Land Surveyor in the State of Texas. The seal contains the text "STATE OF TEXAS", "REGISTERED", "GAYLORD E. REAVES", "3501", "PROFESSIONAL", and "LAND SURVEYOR".