

AN ORDINANCE **2006-02-16-0213**

AUTHORIZING AN AMENDMENT TO EARNEST MONEY CONTRACT UNDER WHICH THE CITY IS SELLING LAND TO THE SAN ANTONIO FOOD BANK, INC, THE AMENDMENT REDUCING THE ACREAGE FROM 17.2 ACRES TO APPROXIMATELY 11.63 ACRES, ADDING AN ADDITIONAL DRAINAGE EASEMENT, AND CHANGING THE PURCHASE PRICE TO THE APPRAISED VALUE OF \$582,593.22; AND PROVIDING FOR AN EFFECTIVE DATE

* * * * *

WHEREAS, the City has previously entered into an earnest money contract (Contract) with the San Antonio Food Bank, Inc. under the authority of Ordinance 101333, dated September 1, 2005.

WHEREAS, the parties have agreed, subject to Council approval to amend the Contract and the Council finds the amendment to be in the best interests of the City.

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

SECTION 1. The City authorizes and directs the City Manager or her designee: to execute and deliver (1) an amendment to the Contract in substantially the form attached hereto as **Attachment A** and (2) and all other documents necessary or convenient to effect the transaction contemplated in the Contract and the amendment. The Council further authorizes the City Manager and her designee to do all things necessary or convenient to effect the transaction, including agreeing to nonmaterial changes to the terms of the Contract and the amendment.

SECTION 2. Funds in the amount of 6% of the sales price are authorized to be paid to Providence Commercial Real Estate Services, and amounts not to exceed \$511.00 for the title insurance policy, and \$500.00 for closing costs are authorized to be paid from fund 40003000, MUNICIPAL BUILDINGS AND GROUNDS, General Ledger 5202020, Contractual Services, WBS Project 23-00525, SOUTHWEST BUSINESS & TECHNOLOGY PARK, upon completion of the sale. These expenses should be encumbered with a purchase order.

SECTION 3. Funds in the amount of 6% of the net sales proceeds are authorized to be deposited in the General Fund 11001000, GL 490319, internal order 224000000017. The balance of the funds from the sale is to be deposited in fund 40003000 General Ledger 4903101 Sales – Land, WBS Project 23-00525.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio. The Director 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 February 26, 2006, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it shall be effective immediately.

PASSED AND APPROVED this 16th day of February 2006.



M A Y O R

PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Attachment A

Amendment to Earnest Money Contract

This Amendment to Earnest Money Contract (Amendment) is entered into by the Seller and the Buyer as of the Effective Date.

1. Identifying Information.

Authorizing Ordinance

(No. & Date):

Seller: The City of San Antonio

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

Buyer: San Antonio Food Bank, Inc.

Buyer's Address: 4311 Director Drive, San Antonio Texas 78219-3203

Contract to be Amended: Real Property Purchase Agreement between Buyer and Seller approved by Ordinance No. 101333, dated September 1, 2005

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

2. Subject Property.

The description of the property to be bought and sold under the Contract to be Amended is deleted and the smaller tract described on **Exhibit I** is substituted in its place.

3. Reduction in Price.

The price to be paid to Seller by Buyer is changed to \$582,593.22.

4. Easements.

Subparagraph 14.01 (d) of the Contract to be Amended is changed to read:

d. The three easement agreements attached to the Amendment to Earnest Money Contract as **Exhibits II, III, and IV**.

5. No Default.

Neither Seller nor Buyer is in default under the Contract to be Amended and neither party is aware of a cause of action against the other arising out of or relating to the period before this Amendment.

6. Same Terms and Conditions.

This Amendment to Earnest Money Contract instrument is a fully integrated statement of the modifications to the Contract to be Amended. Except as expressly modified by

this Amendment, the Contract to be Amended remains a comprehensive statement of the rights and obligations of Buyer and Seller. Buyer and Seller reaffirm the Contract to be Amended.

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

Seller:

City of San Antonio, a Texas
municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

Buyer:

San Antonio Food Bank, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved As To Form:

City Attorney

Exhibit I



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.

11559 IH 10 West, Suite 995
San Antonio, TX 78230-1037
T: 210-641-9999 F: 210-641-6440

February 1, 2006
Job No.: E0252701

DESCRIPTION OF A 11.63 ACRE TRACT OF LAND

Being 11.63 acres of land in New City Block (N.C.B.) 13940, San Antonio, Bexar County, Texas, being a portion of an 89.637 acre tract of land, (Tract XVII) described in Volume 6696, Page 1286, Official Public Records of Real Property, Bexar County, Texas, being out of the Rafael Herrera Survey No. 1/74, Abstract No. 311, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" rebar with an "CEC" plastic cap found on the westerly right-of-way line of State Highway 151, (R.O.W. Varies ~ 350' min.), being the easterly line of said 89.637 acre tract, at the easterly end of a proposed cutback line from the southerly right-of-way line of Old Highway 90, (R.O.W. ~ 120'), the **POINT OF BEGINNING**, a northeasterly corner of this tract, from which a P.K. Nail found in a broken off Texas Department of Transportation right-of-way monument bears, North 26°38'37" West, a distance of 42.84 feet;

THENCE in a southerly direction, coincident with the common line of said right-of-way, and the 89.637 acre tract, the following three (3) courses:

South 26°38'37" East, a distance of 224.49 feet to a Texas Department of Transportation Type II right-of-way monument found, an angle point;

South 23°44'27" East, a distance of 93.97 feet to a Texas Department of Transportation Type II right-of-way monument found, the beginning of a non-tangent curve;

Curving to right, with a radius of 2689.79 feet, a central angle 04°00'35", an arc length of 188.24 feet, a chord bearing of South 17°04'35" East, and a chord distance of 188.20 feet to a 1/2" rebar with a "CEC" plastic cap set, the end of this curve, the most easterly corner of this tract, from which a Texas Department of Transportation Type III right-of-way monument found on said right-of-way bears, along the arc of said curve, a distance of 275.02 feet;

THENCE South 64°20'31" West, departing said right-of-way line, crossing said 89.637 acre tract, a distance of 801.30 feet to a 1/2" rebar with a "CEC" plastic cap set on the northeasterly line of the proposed subdivision plat of COSA-ACF, Unit 1, Plat ID No. 050257, the most southerly corner of this tract, from which a found 1/2" rebar with a "CEC" plastic cap bears South 25°31'14" East, a distance of 283.00 feet;

THENCE North 25°31'14" West, coincident with the common line of said 89.637 acre tract and said proposed COSA-ACF, Unit 1, a distance of 602.50 feet to a 1/2" rebar with a "CEC" plastic cap found, a point of curvature of this tract;

THENCE curving to the right, continuing coincident with said common line, with a radius of 20.00 feet, a central angle 89°51'45", an arc length of 31.37 feet, a chord bearing of North 19°24'38" East, and a chord distance of 28.25 feet to a 1/2" rebar with a "CEC" plastic cap found on the aforementioned southerly right-of-way line of Old Highway 90, a point of tangency of this tract, from which a 1/2" rebar found at the northeasterly corner of Lot 9, Van De Walle Farms, a replat recorded in Volume 9523, Page 129, Deed and Plat Records, Bexar County, Texas, bears South 64°20'31" West, a distance of 132.94 feet;

THENCE North 64°20'31" East, coincident with said right-of-way line, a distance of 687.44 feet a 1/2" rebar with a "CEC" plastic cap found, the west end of the aforementioned proposed cutback line, the most northerly corner of this tract, from which a Texas Department of Transportation Type III right-of-way monument found bears North 64°20'31" East, a distance of 42.75 feet;

THENCE South 71°05'17" East, coincident with said proposed cutback line, a distance of 168.13 feet to the **POINT OF BEGINNING** and containing 11.63 acres of land, more or less.

This description was prepared from a survey made on the ground by employees of Civil Engineering Consultants (CEC). The basis of bearings recited herein is the proposed plat of COSA-ACF, Unit 1, with Plat ID No. 050257. There is a survey with like job number.



Dion P. Albertson R.P.L.S. # 4963

Exhibit II

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

State of Texas §
 § **Know All By These Presents:**
County of Bexar §

16 Foot Private Sanitary Sewer Easement

Grantor: City of San Antonio

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

Grantee San Antonio Food Bank, Inc.

Grantee's Address: 4311 Director Drive, San Antonio Texas 78219-3203

Purpose of Easement: Constructing, reconstructing, inspecting, patrolling, maintaining, and repairing sanitary sewer facilities; relocating such facilities within the servient estate; removing from the servient estate all trees and parts thereof, and other obstructions that may interfere with the exercise of the rights granted hereunder; together with the right of ingress and egress over the servient estate for the purpose of exercising all other rights hereby granted

Description of Servient Estate: 0.040 acres, more or less, in New City Block 13940, out of COSA-ACF, Unit 1, a proposed subdivision with a Plat ID# 050257, being a replat of Van De Walle Industrial Park Unit 3, according to plat thereof filed of record in Volume 8700, Pages 205-208 of the Deed and Plat Records of Bexar County, Texas, the land being more particularly described on **Exhibit A**, which is incorporated herein by reference for all purposes as if it were fully set forth.

Grantor grants, dedicates, and conveys to Grantee, for and in consideration of the benefits accruing to Grantors, and to Grantors' other property, an easement over, across, under, and upon the Servient Estate, and Grantor expressly covenants and agrees for itself, its heirs, executors, successors and assigns, that no building or obstruction will be placed on the servient estate herein granted.

To Have and To Hold the above described easement and rights unto Grantee, its successors and assigns, until its use is abandoned.

At any time that Grantee or those claiming through Grantee cease to use this easement for 12 consecutive months, Grantor has the right to terminate this easement by means of a written instrument recorded in the appropriate records of Bexar County, Texas. The instrument need be signed only by Grantor and assert that the easement was not used for 12 consecutive months. Grantor's right to terminate lapses after four years from a period of non-use, but each 12 consecutive months of non-use gives Grantor a new right to terminate, so that Grantee's successors need inquire into non-use only within the four years immediately preceding the successor's acquisition.

Grantor acknowledges that this easement may be transferred by Grantee to the San Antonio Water System (SAWS). Although SAWS is an agency of Grantor, Grantor specifically intends that this easement remain a separate estate and that it not merge into Grantor's fee ownership of the Servient Estate.

Restriction on Use

All sanitary sewer improvements must be installed underground. Until such time as Grantor builds a driveway across the Servient Estate, Grantee may use trenches when installing or repairing pipes. After Grantor builds a driveway across the Servient Estate, Grantee may no longer disturb the surface of the Servient Estate or otherwise interfere with Grantor's use of the drive. All installation and repair of pipes must then be done through boring.

In Witness Whereof, Grantor has caused its representative to set its hand this _____ day of _____, 2006.

City of San Antonio,
a Texas municipal corporation

(Signature)

(Printed Name)

(Representative Capacity)

Attest:

City Clerk

Approved As To Form:

City Attorney

State of Texas §

County of Bexar §

This instrument was acknowledged before me this date by _____, of the City of San Antonio, a Texas municipal corporation, in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

Exhibit A



February 1, 2006
Job No. E0252701

DESCRIPTION OF A PROPOSED 16-FOOT WIDE SANITARY SEWER EASEMENT (0.040 OF ONE ACRE OF LAND)

Being a proposed 16-foot wide Sanitary Sewer Easement (0.040 of one acre of land), in New City Block 13940, being out of the COSA-ACF, Unit 1, a proposed subdivision with a Plat I.D. # 050257, being a replat of Van De Walle Industrial Park Unit 3, recorded in Volume 8700, Pages 205-208, Deed and Plat Records, Bexar County, Texas, also being out of the Rafael Herrera Survey No. 1/74, Abstract No. 311, and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2" rebar with a "CEC" plastic cap found on the southeasterly right-of-way line of Old Highway 90, at the common corner of said COSA-ACF, Unit 1 and an 89.637 acre tract of land (Tract XVII) described in Volume 6696, Page 1286, Official Public Records of Real Property, Bexar County, Texas, a point of curvature; thence departing said right-of-way line, curving to the left, coincident with the common line of COSA-ACF, Unit 1 and said 89.637 acre tract, having a radius of 20.00 feet, a central angle 89°51'45", an arc length of 31.37 feet, a chord bearing of South 19°24'38" West, and a chord distance of 28.25 feet to a 1/2" rebar with a "CEC" plastic cap found, a point of tangency; thence South 25°31'14" East, a distance of 450.29 feet to a 1/2" rebar with a "CEC" plastic cap set, the **POINT OF BEGINNING**, the most northeasterly corner of this easement;

THENCE South 25°31'14" East, continuing coincident with said common line, a distance of 20.13 feet to a 1/2" rebar with a "CEC" plastic cap set, the most easterly corner of this easement;

THENCE crossing said COSA-ACF, Unit 1, the following five (5) courses:

North 78°09'29" West, a distance of 73.35 feet, an angle point;

South 64°25'35" West, a distance of 36.62 feet to a point on the northeasterly line of a 17-foot Electric, Telephone and Sanitary Sewer Easement shown on the plat of Van De Walle Industrial Park Unit 2, recorded in Volume 7200, Page 141, Deed and Plat Records, Bexar County, Texas, the most southerly corner of this easement;

North 25°39'29" West, coincident with said northeasterly line, a distance of 16.00 feet to a point, the most westerly corner of this easement;

North 64°25'35" East, a distance of 42.06 feet to a point, an angle point;

South 78°09'29" East, a distance of 66.55 feet to the **POINT OF BEGINNING** and containing 0.040 of one acre of land, more or less.

The basis of bearings recited herein is the proposed plat of COSA-ACF, Unit 1, with plat ID # 050257. This description was prepared from a survey made on the ground by employees of Civil Engineering Consultants (CEC).



Dion P. Albertson R.P.L.S. # 4963

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

State of Texas §
 § **Know All By These Presents:**
County of Bexar §

12 Foot Private Underground Drainage Easement

Grantor: City of San Antonio

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

Grantee San Antonio Food Bank, Inc.

Grantee's Address: 4311 Director Drive, San Antonio Texas 78219-3203

Purpose of Easement: Constructing, reconstructing, inspecting, patrolling, maintaining, and repairing underground storm drainage facilities; relocating such facilities within the servient estate; removing from the servient estate all trees and parts thereof, and other obstructions that may interfere with the exercise of the rights granted hereunder; together with the right of ingress and egress over the servient estate for the purpose of exercising all other rights hereby granted

Description of Servient Estate: 0.016 acres, more or less, out of NCB 13490, COSA-ACF, Unit 1, a proposed subdivision with a Plat ID# 050257, being a replat of Van De Walle Industrial Park Unit 3, San Antonio, Bexar County, Texas according to plat thereof filed of record in Volume 8700, Pages 205-208 of the Deed and Plat Records of Bexar County, Texas, as more particularly described on **Exhibit A**, incorporated herein by reference for all purposes as if it were fully set forth.

Grantor grants, dedicates, and conveys to Grantee, for and in consideration of the benefits accruing to Grantors, and to Grantors' other property, an easement over, across, under, and upon the Servient Estate, and Grantor expressly covenants and agrees for itself, its heirs, executors, successors and assigns, that no building or obstruction will be placed on the servient estate herein granted.

To Have and To Hold the above described easement and rights unto Grantee, its successors and assigns, until its use is abandoned.

At any time that Grantee or those claiming through Grantee cease to use this easement for 12 consecutive months, Grantor has the right to terminate this easement by means of a written instrument recorded in the appropriate records of Bexar County, Texas. The instrument need be signed only by Grantor and assert that the easement was not used for 12 consecutive months. Grantor's right to terminate lapses after four years from a period of non-use, but each 12 consecutive months of non-use gives Grantor a new right to terminate, so that Grantee's successors need inquire into non-use only within the four years immediately preceding the successor's acquisition.

Grantor acknowledges that this easement may be transferred by Grantee to the San Antonio Water System (SAWS). Although SAWS is an agency of Grantor, Grantor specifically intends that this easement remain a separate estate and that it not merge into Grantor's fee ownership of the Servient Estate.

Reservation from Easement:

All drainage improvements must be installed underground. Until such time as Grantor builds a driveway across the Servient Estate, Grantee may use trenches when installing or repairing pipes. After Grantor builds a driveway across the Servient Estate, Grantee may no longer disturb the surface of the Servient Estate or otherwise interfere with Grantor's use of the drive. All installation and repair of pipes and the exercise of all other rights under this easement must then be done through boring.

In Witness Whereof, Grantor has caused its representative to set its hand this _____ day of _____, 2006.

City of San Antonio,
a Texas municipal corporation

(Signature)

(Printed Name)

(Representative Capacity)

Attest:

City Clerk

Approved As To Form:

City Attorney

State of Texas §

County of Bexar §

This instrument was acknowledged before me this date by _____, of the City of San Antonio, a Texas municipal corporation, in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____