

AN ORDINANCE

2013 - 01 - 31 - 0068

**AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH THE SAN ANTONIO FOOD BANK FOR THE USE OF APPROXIMATELY 23.55 ACRES FOR AN URBAN FARM PROJECT LOCATED AT 5200 OLD HWY 90 WEST, FOR A TWENTY YEAR TERM COMMENCING UPON COUNCIL APPROVAL AT AN ANNUAL RENT OF ONE DOLLAR.**

\* \* \* \* \*

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

**SECTION 1.** The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction. This authority includes delivery of a deed to the Premises as provided for in the lease.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000080 and General Ledger 4401110.

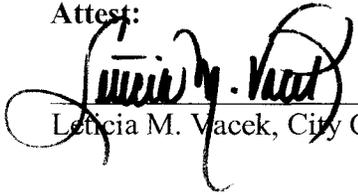
**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** 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.

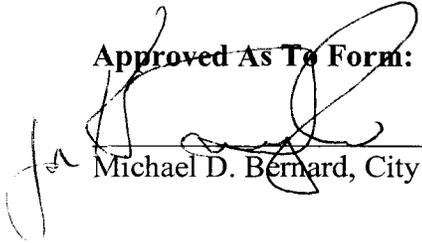
**PASSED AND APPROVED** this 31<sup>st</sup> day of January 2013.

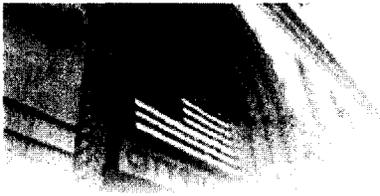
  
M A Y O R  
Julián Castro

Attest:

  
Leticia M. Vacek, City Clerk

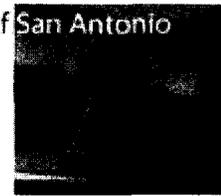
Approved As To Form:

  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
ACTION

City of San Antonio



## Agenda Voting Results - 10

<b>Name:</b>	10						
<b>Date:</b>	01/31/2013						
<b>Time:</b>	10:41:23 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the execution of a lease agreement with the San Antonio Food Bank for the use of approximately 23.55 acres for an urban farm project located at 5200 Old Hwy 90 West , for a twenty year term commencing upon council approval at an annual rent of one dollar. [Ben Gorzell, Chief Financial Officer; Jorge A. Perez, Director, Building and Equipment Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				x

## Attachment I

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### Lease (San Antonio Food Bank)

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#### Table of Contents

1. Basic Information, Definitions.	3
2. Grant, Right of First Refusal.	4
3. Rent.	4
4. Term; Termination.	5
5. Tenant's Affirmative Promises.	5
6. Tenant's Negative Promises.	6
7. Landlord's Promises.	6
8. Quiet Enjoyment.	6
9. Alterations.	6
10. Insurance.	6
11. Indemnity.	9
12. Casualty/Total or Partial Destruction.	10
13. Condemnation/Substantial or Partial Taking.	11
14. Warranty Disclaimer.	11
15. Net Rent.	11
16. Appropriations.	11
17. Dispute Resolution.	11
18. Prohibited Interests in Contracts.	12
19. Default, Remedies for Default.	12
20. Warranty Disclaimer.	15
21. Miscellaneous.	15
22. Public Information.	18
Exhibit A: Description of Premises	19
Exhibit B: Quarterly and Annual Verification of the 5 Acre Crop Yield	22
Exhibit C: Termination Fee Memorandum	23
Exhibit D: Form of Deed	25

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#### 1. Basic Information, Definitions.

##### Authorizing Ordinance:

**Landlord:** City of San Antonio

**Landlord's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: Director, Building and Equipment Services)

**Tenant:** San Antonio Food Bank, Inc.

**Tenant's Address:** 5200 Old Highway 90 West, San Antonio, Texas  
78227

**Premises:** Approximately 23.05 acres of land being more fully described in **Exhibit A** (“Land”).

**Permitted Use:** Agricultural farming in support of food and nutrition services to local, needy residents.

**Commencement Date:** January 1, 2013

**Initial Term:** Twenty years

**Rent:** \$1 a year

**Binding Date:** This Lease is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

## **2. Grant, Right of First Refusal.**

2.01. *Lease.* Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. *Right of First Refusal.* Before Landlord can sell all or any part of the Premises, Landlord must deliver to Tenant a notice of the terms of a proposed sale. At a minimum, the terms must include the price and the conditions, covenants, representations, and warranties of the buyer and the seller in the proposed sale. Tenant may buy the Premises, or the part thereof being offered for sale, provided Tenant delivers written notice of intent to do so to Landlord within 30 days after receipt of Landlord’s notice of terms (“Tenant Purchase Confirmation Date”). For Tenant’s obligation to purchase to be binding, the Planning Commission and City Council must approve the sale. The purchase by Tenant must be at the same price and on the same terms as set forth in Landlord’s notice. If Tenant notifies Landlord that Tenant will not exercise this right or if Tenant fails to deliver timely notice of intent to purchase prior to the Tenant Purchase Confirmation Date, Landlord may sell the affected portion of the Premises free of any claim of Tenant. Likewise, an unexcused failure to close timely entitles Landlord to sell the affected portion of the Premises free of any claim of Buyer. This right of first refusal ends on the earlier of (1) a sale of all or part of the Premises or (2) termination of this lease.

## **3. Rent.**

Landlord acknowledges receipt in full of all rent due under this Lease for the full Initial Term. Landlord also agrees and acknowledges that additional consideration for the Lease is being provided by Tenant hereunder in the form of (a) Tenant’s agreement to use the Premises as a farm in support of food and nutrition services to local, needy residents and (b) Tenant’s agreement to donate the crop yield from 5 acres of the premises to Haven for Hope or other City approved Non Profit Organization designated by the Landlord. On an annual basis, beginning October 1, 2013, Tenant will provide Landlord on a quarterly basis starting April 1, 2013 a written confirmation confirming receipt of agricultural products produced from the 5 acre yield in a format similar to that attached in Exhibit B. On a calendar year basis, Tenant shall provide to Landlord on or before February 28<sup>th</sup> of the year following the year for which the report is being

produced a report recapping the quarterly reports and confirming the annual yield of the 5 acres along with a value of the crops produced based on wholesale market pricing.

In addition to the Rent as specified herein, Tenant shall be responsible for all Expenses associated with this Lease as that term is defined in Section 15 below.

**4. Term; Termination.**

4.01. Term. The “**Term**” of this Lease is the Initial Term.

4.02. Termination. Either party may terminate this lease at anytime during the Initial Term on six months’ written notice. Landlord acknowledges that Tenant plans to install an irrigation system and other fixed asset improvements to the Premises with an estimated value of \$30,000 to \$50,000, the “Initial Investment” and hereby agrees that if Landlord terminates this lease within five years of the Commencement Date, Landlord will reimburse Tenant a portion of Initial Investment as per the following schedule:

Commencement Date thru end of the 36<sup>th</sup> month of the Term – 80% reimbursement  
Month 37 thru the end of Month 48 of the Term – 60% reimbursement  
Month 49 through the end of month 60 of the Term – 50% reimbursement

Should Landlord terminate this lease after the end of the 60<sup>th</sup> month of the Initial Term, Landlord will have no further obligation to Tenant. The exact cost of the Initial Investment shall be confirmed by the parties based on actual expenses incurred by Tenant as evidenced by appropriate documentation determined to be satisfactory by Landlord including, but not limited to, receipts for work, contracts, and cancelled checks for payment. No later than June 30, 2013 the parties will memorialize the Initial Investment in a form similar to that attached hereto as Exhibit C. In the event the Tenant fails to provide Landlord with the documentation to verify the expenses related to the Initial Investment timely so that the parties can execute the Exhibit C document by June 30, 2013, then in the event this Lease is terminated within the first 60 months of the Initial Term, Landlord shall have no obligation to reimburse Tenant any portion of the Initial Investment.

**5. Tenant’s Affirmative Promises.**

Tenant promises that it will:

5.01. Accept the Premises in their present condition “AS IS,” the Premises being currently suitable for the Permitted Use.

5.02. Obey all applicable laws relating to the use, condition, and occupancy of the Premises.

5.03. Obtain and pay for all utility services used by Tenant.

5.04. Allow Landlord to enter the Premises at reasonable times and upon reasonable advance notice of not less than forty-eight (48) hours to perform Landlord’s obligations and inspect the Premises.

5.05. Repair, replace, and maintain the Premises, normal wear excepted.

5.06 On request, execute an estoppel certificate that states the Commencement Date and duration of the lease, identifies any amendments to the lease, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

#### **6. Tenant's Negative Promises.**

Tenant promises that it will not:

6.01. Use the Premises for any purpose other than the Permitted Use.

6.02. Create a nuisance.

6.03. Permit waste.

6.04. Allow a lien to be placed on the Premises.

6.05. Assign this Lease or sublease any portion of the Premises without Landlord's written consent.

#### **7. Landlord's Promises.**

Landlord promises that it will lease the Premises to Tenant beginning on the Commencement Date.

#### **8. Quiet Enjoyment.**

Landlord must not cause any conditions, restrictions, easements, liens, or encumbrances, except those already in existence as of the date hereof and except those imposed not as owner but as a municipality, to affect the Premises at any time during the Term without the prior written consent of Tenant.

#### **9. Alterations.**

Tenant shall have the right to make such improvements or alterations to the Premises as Tenant may elect throughout the Term of this Lease provided that any such improvements or alterations shall be at Tenant's sole cost and expenses and Tenant shall not permit any mechanic's or materialmen's lien to be filed against the Premises in connection therewith. Any physical additions or improvements to the Premises made by Tenant during the Term will become the property of Landlord.

#### **10. Insurance.**

10.01. Landlord will not provide any insurance. As a political subdivision of the State of Texas, Landlord is subject to the Texas Tort Claims Act, and the obligations of Landlord and the rights of persons claiming against Landlord are subject to that Act.

10.02. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to Landlord, in the following types and amounts:

<b>Type:</b>	<b>Amount:</b>
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of Landlord
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to) coverage for the following:	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad form property damages to include fire legal liability	Coverage for replacement cost of Tenant's improvements
4. Business Automobile Liability, including	Combined single limit for bodily injury, death, and property damage of \$1,000,000 per occurrence
(a) Owned/Leased Automobiles	
(b) Non-Owned Automobiles	
(c) Hired Automobiles	

10.03. Tenant shall exercise best efforts to have the following clauses included in the insurance policies required by this Lease:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio  
City Hall/2nd Floor  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

and

Department of Capital  
Improvements Management  
Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Attention: Director"

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

10.04. Tenant shall exercise best efforts to have the following clauses included in the insurance policies required by this Lease, excepting policies for Workers' Compensation and Employer's Liability:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Landlord because of Tenant's breach of representation, warranty, declaration, or condition of this policy."

10.05. If Tenant makes leasehold improvements, Tenant must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance reasonably required by Landlord's Risk Manager with respect to the performance of such leasehold improvements. The policies likewise must be in amounts reasonably required by Landlord's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must maintain or cause its contractors to maintain such insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of the City Council.

10.06. Within 30 days after the Occupancy Commencement Date and promptly after Landlord's later request, Tenant must, at its own expense, deliver to Landlord's Risk Manager and to the City Clerk policy declarations pages reflecting all required insurance coverage; provided, however, that Landlord shall not request this information more than once in any twelve (12) month period. Tenant must also deliver copies of policies and endorsements. All endorsements, certificates, and declarations pages must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant shall exercise best efforts to obtain and deliver to Landlord documentation acceptable to Landlord that confirms that the individual signing the declarations pages, policies, endorsements, and certificates is authorized to do so by the insurance company. Landlord may request changes in policy terms, conditions, limitations, or exclusions

(except where established by law) if such changes and customary for properties or uses similar to the Premises and Tenant's use of the Premises. If Landlord does so and the changes would increase premiums, Landlord will discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the increased cost thereof. Landlord's review and approval of the above documents does not waive noncompliance with the requirements of this Lease.

10.07. Nothing in this Section 10 limits Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

10.08. This Lease does not create any employee, agent, or invitee relationship between Landlord and Tenant or between Landlord and any person whose presence on the Premises is through Tenant. Landlord shall not be liable for any claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, except to the extent the same arise out of the negligence, gross negligence or willful act or omission of Landlord.

## **11. Indemnity.**

11.01. These definitions apply to the indemnity provisions in this Section 11:

**11.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is 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 Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.**

**11.01.02. "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.**

**11.01.03. "Indemnitor" means Tenant.**

**11.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims. Indemnitor must indemnify Indemnitees from the consequences of their own negligence or from the negligence of any of them for so long as it is not sole negligence.**

11.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for an Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

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

11.05. 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. The City may, at its own expense, hire separate counsel to represent some or all Indemnitees. No such actions release or impair Indemnitor's obligations under this indemnity paragraph. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

11.06. In addition to the indemnity required under this Lease, 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.

11.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

11.08. Nothing in this Lease waives governmental immunity or other defenses of Indemnitees under applicable law.

11.09. 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 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.

## **12. Casualty/Total or Partial Destruction.**

All risk of loss is allocated to Tenant, and upon the occurrence of any casualty, Tenant shall be responsible for the repair and restoration of the Premises to substantially its condition prior to the occurrence of the casualty and Tenant shall be entitled to the

proceeds of any insurance proceeds attributable to such casualty. Landlord shall have no obligation under this Lease to repair or rebuild the Premises in the event of casualty.

**13. Condemnation/Substantial or Partial Taking.**

If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Landlord, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

**14. Warranty Disclaimer.**

**There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this Lease.**

**15. Net Rent.**

The Rent payable under this Lease shall be absolutely net to Landlord so that this Lease shall yield, net to Landlord, the Rent specified herein throughout the Term and all insurance premiums obtained by Tenant pursuant to this Lease, utility charges, expenses for ordinary maintenance and repairs, all expenses related to compliance with laws (including any ad valorem property taxes assessed against the Premises), and all other costs, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to Tenant's occupancy of the Premises that may arise or become due during the Term or by reason of events occurring during or prior to the Term (all such items being hereinafter collectively called "**Expenses**") shall be paid or discharged by Tenant.

**16. Appropriations.**

All obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council whether to appropriate funding. 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.

**17. Dispute Resolution.**

17.01. Before bringing any action arising out of this Lease, 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.

17.02. 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.

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

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

17.05. 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 this Lease before the court is authentic and (ii) this Lease 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.

17.06. Mediator fees must be borne equally.

17.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief, or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

### **18. Prohibited Interests in Contracts.**

18.01. 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) a 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.

18.02. Tenant warrants and certifies as follows:

- (i) Tenant and Tenant's officers, employees and agents are neither officers nor employees of the City.
- (ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

18.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

### **19. Default, Remedies for Default.**

19.01. *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

19.01.01. Tenant fails to pay when due any installment of Rent or any Expenses, and such default continues for thirty (30) days after written notice from Landlord.

19.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or Expenses demanded by Landlord and does not cure such failure within sixty (60) days after written notice thereof to Tenant; provided, however, that if such failure cannot be cured by through the exercise of commercially reasonable efforts within such sixty (60) day period, then the cure period shall be extended for so long as is necessary to permit Tenant to cure such failure through the exercise of reasonable diligence and for so long as Tenant is exercising reasonable diligence in curing such failure.

19.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, and the attachment is not to be discharged or disposed of within sixty (60) days after the levy thereof.

19.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Occupancy Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

19.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

19.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord shall have the option to pursue any one or more of the following:

19.02.01 Terminate this Lease and all rights of Tenant hereunder upon thirty (30) days prior written notice. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

19.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for

prosecution or any claim for damages therefor without having terminated the Lease.

19.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

19.03. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then Landlord need not convey the Premises to the Tenant at the end of the Initial Term or otherwise.

19.04. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

19.05. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("**Claimant**") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant shall indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

19.06. *Cumulative Remedies.* Each right and remedy provided to Landlord and Tenant in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord or Tenant of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord or Tenant of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

## 20. Warranty Disclaimer.

20.01. **There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this Lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.**

20.02. **Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.**

## 21. Miscellaneous.

21.01. *Applicable Law.* This Lease is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It 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. Both parties' obligations under this Lease are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this Lease is only in Bexar County, Texas.

21.02. *Severability.* If any part of this Lease is found invalid or unenforceable, the finding does not affect the remainder.

21.03. *Successors.* This Lease inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

21.04. *Integration.* **This Written 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.**

21.05. *Modification.* This Lease may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Lease's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or

condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

21.06. *Third Party Beneficiaries.* This Lease benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

21.07. *Notices.* Any notice, demand or other communication provided for or permitted hereunder must be in writing and delivered to the person to whom the notice is directed, either in person, by overnight delivery service, facsimile with confirmed receipt, or by mail as a registered or certified item, return receipt requested, at the respective address set forth in the preamble hereof. Notices delivered by mail shall be deemed given upon the date when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, and notices delivered by other means shall be effective when received by the party to whom the same is addressed. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

21.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

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

21.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

21.11. *Administrative Actions and Agreements.* The Director of Building and Equipment Services 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 Lease and may declare Landlord defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

21.12. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the lowest number controls.

21.13. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

21.14 *No Duty to a Person not a Party.* Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to, or any liability to anyone not a party, except as otherwise expressly provided herein.

**[Remainder of page intentionally left blank.]**

**22. Public Information.**

Landlord 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 Lease waives an otherwise applicable exception to disclosure.

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

**Landlord:**

**Tenant:**

**City of San Antonio**, a Texas  
municipal corporation

**The San Antonio Food Bank**, a Texas  
non-profit corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

## Exhibit A: Description of Premises

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### Metes & Bounds 23.05 Acre Tract

Being a 23.05 acre tract out 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:

**BEGINNING:** at a set ½" iron rod with cap (GRE 3501) on the east right-of-way of Herbert Lane (Variable Width R.O.W.), being the northwest corner of a 13.43 acre tract, as recorded in Volume 6696, Pages 1286-1326, of the Official Public Records of Bexar County, Texas for an eastern corner of this tract being described herein;

**Thence:** North 00°13'30" West, 130.68 feet, along the east R.O.W. of said Herbert Lane to a set ½" iron rod with cap (GRE 3501) at the southeast corner of Lot 4, as recorded in Volume 6600, Page 54, of the Deed & Plat Records of Bexar County, Texas, for an western corner of this tract being describes herein;

**Thence:** North 89°58'58" East, 381.05 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°19'30" East, 509.02 feet along an 8 ft chain link fence and the east line of said Lot 4 to a interior corner of a 10.00 acre tract out of parcel P-104, of said 89.637 acre tract to a found ½" iron rod with cap (COSA CIMS) for a corner of this tract being described herein;

**Thence:** North 64°28'46" East, 806.57 feet along the south line of said 10.00 acre tract to a found ½" iron rod with cap (COSA CIMS) 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 north corner of this tract being described herein;

**Thence:** along the west line of said Lot 16 and a 56 foot drainage easement the following courses and distances;

South 25°31'14" East, 433.89 feet passing a 28 foot electric, gas, telephone and CATV easement to a set ½" iron rod with cap (GRE 3501) at the P.C. of a curve to the right having a radius of 870.50 feet, and an arc length of 396.03 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 set ½" iron rod with cap (GRE 3501); at the northwest corner of the Remaining Portion of Lot 13, Block 3, N.C.B. 16504, Van De Walle Industrial Park, Unit 3 as recorded in Volume 8700, Page 207-208 of the Deed & Plat Records of Bexar County, Texas;

South 00°15'32" East, 23.67 feet along west line of said Lot 13, to a set ½" iron rod with cap (GRE 3501);

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





**Exhibit B: Quarterly and Annual Verification of the 5 Acre Crop Yield**

For the period for \_\_\_\_\_ to \_\_\_\_\_

The following crops were cultivated from a 5 acre portion of the Premises and distributed to a food service provider as designated by the City of San Antonio.

For the reporting period 100% of the crops detailed below were received by:  
\_\_\_\_\_.

Crop	Wholesale Dollar Value Per Unit of Measurement	Total Wholesale Value
Examples Include		
30 boxes of Ice Berg Lettuce	36 heads per box with a value of \$1 per head	\$1,080.00
750 lbs. of green beans	\$0.85 per lbs.	\$637.50
1,000 lbs of yellow squash	\$0.50 per lbs.	\$500.00
1,000 cucumbers	\$0.75 each	\$750.00
	<b>TOTAL VALUE OF YIELD DISTRIBUTED DURING REPORTING PERIOD</b>	<b>\$2,967.50</b>

## Exhibit C: Termination Fee Memorandum

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### Termination Fee Memorandum

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**Landlord:** San Antonio Food Bank, Inc..  
**Tenant:** City of San Antonio  
**Lease:** Ground Lease of 23.X acres located at YYYYYY, San Antonio and authorized by the Authorizing Ordinance.  
**Authorizing Ordinance:**

*Predicate Facts:*

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

Paragraph 4.01 of the Lease permits Landlord to terminate the Lease before expiration of the Term if it pays a termination fee.

This memorandum sets out the termination fee Landlord and Tenant agree is due if Landlord terminates early according to section 4.01..

*Rights and Obligations:*

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **1. Defined Terms.**

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

### **2. Termination Fee.**

The total Initial Investment is \$ \_\_\_\_\_

This is comprised of the following general categories and dollar amounts:

<u>Irrigation Piping and Installation:</u>	<u>\$ _____</u>
<u>Wells or Water Meter Install:</u>	<u>\$ _____</u>
<u>Fencing:</u>	<u>\$ _____</u>
<u>Land Clearing:</u>	<u>\$ _____</u>
<u>Other</u>	
<u>    List Separately:</u>	<u>\$ _____</u>
 TOTAL	 \$ _____

### **3. Conflict of Terms.**

This instrument controls over anything to the contrary in the Lease.

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

**Tenant**

**City of San Antonio**, a Texas municipal corporation

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

**Landlord**

San Antonio Food Bank, LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit D: Form of Deed**

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**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.**

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State of Texas        }  
                              }  
County of Bexar     }

**Deed Without Warranty**

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**Authorizing  
Ordinance:**

**Statutory  
Authority:**

Texas Local Government  
Code § 253.011

**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

**Grantee:**

San Antonio Food Bank

**Grantee's  
Mailing Address:**

5200 Old Highway 90 West,  
San Antonio, Texas 78227

**Consideration:**

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

**Property:**

Approximately 23.05 acres of  
land being more fully described in  
**Exhibit A** ("Land"), which is  
hereby incorporated for all  
purposes as if fully set forth.

Grantor, for the Consideration, Grants, Bargains, and Conveys the Property to Grantee, together with all and singular the rights and appurtenances thereto in anywise belonging, 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.**

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties herein.

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

**A. Reservations:** Grantor reserves the following reverter:

**Reverter.** After a one-year grace period after the recording of this deed, at such time as Grantee, or its successor in interest, fails or ceases to use the Property primarily for agricultural farming in support of food and nutrition services to local, needy residents, the Property automatically reverts to Grantee. This reversion occurs without action by Grantor and without notice to Grantee.

**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.

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.**

**In purchasing the Property, Grantee is not relying upon any representation, statement, or other assertion from or chargeable to Grantor. Grantee, on behalf of itself and anyone claiming by, through, or under Grantee, by acceptance of this deed, releases Grantor from any and all claims that Grantee or anyone claiming by, through, or under Grantee, may now have or hereafter acquires against Grantor arising out of or related to this acquisition. This release applies**

**according to its express terms and provisions, including, but not limited to unknown and unsuspected claims, damages, and causes of action.**

**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: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
City Clerk

**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: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_