

FILED FOR RECORD AT REQUEST

15257

AFTER RECORDING RETURN TO:
King County Real Estate Services Section
500 Fourth Avenue, Room 500A
Seattle, WA 98104

Reference No: P-14-05
Grantor: King County, Washington
Grantee: White Center Food Bank
Legal Des: SE1/4 of SW1/4 of 6-23-4
Tax ID No: 0623049405

FOOD BANK OPERATIONS EASEMENT AND AGREEMENT

THIS INDENTURE made this _____ day of _____, 2005, between King County, a political subdivision of the State of Washington, hereinafter called the GRANTOR, and White Center Food Bank, a Washington non-profit corporation, hereinafter called the GRANTEE.

WITNESSETH

WHEREAS, the Grantor herein is the owner of that certain parcel of land known as Lakewood Park and described as follows:

Portion of Southeast 1/4 of Southwest 1/4 Section. 6, Township. 23n, Range 4 E, W.M. Beginning at point of the south line of S.W. 108th Street, 353 Feet N. 89°44'43" E., of the east line of 10th Avenue S.W. Thence continuing along said south line 245.90 Feet to the west line of 8th Avenue S.W.; Thence S. 1°37'52" E., 105.06 Ft. To point of curve to left, radius of. 603.14'; Thence along curve to the left, 191.03 Ft. To the intersection with the north south center line of Section. 6; thence S. 1°37'52" E. along said centerline to a point 450 Ft. south of the South. line of S.W. 108th St.; Thence westerly parallel to south line of S.W. 108th St. 482.40 feet. more or less to a point 150.50 feet. east of the east line of 10th Avenue S.W.; Thence N. 1°18'07" W., 210 Ft.; Thence S. 89°44'43" W., 28.50 Ft; Thence N. 1° 18'07" W., 58.50 Ft.; Thence N. 89°44'43" E., 230 Ft; Thence N. 1°18'07" W., 181.50 Ft. to the point of beginning.

The said Grantor, for and in consideration of mutual benefits, do by these presents grant unto said Grantee, its successors and assigns, an easement for the construction, operation, maintenance and repair of a food bank facility over, through, across, and under the following described Easement Area.

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Northeast corner of the northeast 1/4 of the southeast 1/4 of southwest 1/4 of Section 6, Township 23, Range 4 East, beginning at said northeast corner, thence south 1°39'01" W, 450 feet, thence South 89° 41' 57" West 180 feet, thence , North 01° 00' 00" East, 30 feet to the true point of beginning, thence North 01' 00' 00" East, 90 feet, thence north 89' 41' 57" east, 22 feet, thence South 89° 41' 57" West, 90 feet, thence South 01° 00' 00" West, 22 feet to the true point of beginning.

Purpose: The Grantee, its successors and assigns, shall have the rights to enter upon said property for the sole purpose of constructing, operating, maintaining, and repairing a food bank facility for the distribution of foods and other related materials to low-income citizens of King County who are at or below eighty (80) percent of area median income.

The Grantee herein, by accepting and recording this Easement, agree to the terms and conditions described in Appendix "A" attached hereto, and by reference made part of this Easement.

DATED this _____ day of _____, 2005.

KING COUNTY, WASHINGTON

APPROVED AS TO FORM:

Calvin Hoggard, Manager
FMD, Real Estate Services Section

Deputy Prosecuting Attorney

DATED: _____

DATED: _____

WHITE CENTER FOODBANK

AUTHORIZED AGENT
TITLE

DATED: _____

15257

STATE OF WASHINGTON)
)SS
COUNTY OF KING)

I certify that Calvin Hoggard, Manager of the Real Estate Services Section of the Facilities Management Division signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument, and acknowledged it as the Manager of the Real Estate Services Section of the Facilities Management Division of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20____.

NOTARY PUBLIC in and for the State of Washington,
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this day _____ of _____, 1999, before me personally appeared _____ and _____

_____ to me known to be the _____ and _____

_____ of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written.

NOTARY PUBLIC in and for the State of Washington,
residing at: _____
My appointment expires: _____

APPENDIX "A"

Terms and conditions applicable to the Easement granted by King County:

1. PERMIT REQUIRED. Before constructing any improvements or making any alterations to the site pursuant to this Easement, a Special Use Permit must be obtained from the King County Real Estate Services Section or successor agency ("Real Estate Services Section"). Before such County permit will be issued, if applicable, complete plans and specifications of the proposed project, including details of landscaping if any, must be submitted. Construction or alterations shall comply with any and all other provisions as more specifically set forth in the permit application.
2. NO CONFLICT WITH HEALTH CLINIC OPERATIONS. The construction, operation, maintenance and repair of the food bank facility shall not conflict with the operation, parking for and access to the adjacent public health clinic or other facility ("Health Facility") operated by the Seattle-King County Department of Public Health or its successor agency ("Department of Health"). Prior to undertaking construction or engaging in use of the food bank facility, the Grantee shall obtain Department of Health approval of plans and schedules to avoid such conflicts and shall thereafter obtain Department of Health approval of any changes to such plans and schedules.
3. RESTORATION AFTER INSTALLATION. Construction of the food bank facility may to the minimum amount necessary use Grantor's property located outside the Easement Area, provided that prior to such use it obtains a Special Use Permit from the Real Estate Services Section. After any construction of food bank facilities under this Easement, Grantee will return the Grantor's property located outside the Easement Area to its original condition, or to a condition reasonably satisfactory to the Grantor by repairing any damage done to Grantor's property including but not limited to property damage to slopes, shrubbery, landscaping, fencing, roadway, or structures.
4. EMERGENCY SITUATIONS. In the event of an emergency involving Grantee's facilities within this Easement, the Grantee will take immediate steps to perform any necessary repairs. If the Grantee fails to perform any necessary repairs, the Grantor may do all work necessary at the sole cost and expense of Grantee.
5. DAMAGES. If any damage is caused by reason of performing any act authorized by this Easement, Grantee will promptly pay the damaged party the amount necessary to put the damaged party in the position he would have been in had the damage not occurred.
6. ASSESSMENTS. Grantor and its property shall not be subjected to any charge, assessment, or expense resulting from Grantee's use of this Easement.

7. INDEMNITY AND HOLD HARMLESS. Grantee agrees to indemnify and hold harmless King County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors and assigns to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments including costs of defense thereof for injury to persons, death, hazardous materials contamination, or property damage which is caused by or arises out of Grantee's exercise of rights and privileges granted by this Easement. Grantee's obligations under this section shall include:

- (a) The duty to promptly accept tender of defense and provide defense to the King County at the Grantee's own expense.
- (b) Indemnification of claims made by the Grantee's own employees or agents.

In the event it is necessary for the King County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this Easement, Grantee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted there under, and specifically for its negligence concurrent with that of King County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify, and hold harmless the King County for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties, provided, such waiver is solely for the purposes of this indemnity and nothing wherein shall be construed to beneficiary person or entity other than the King County, provided that such waiver's is solely for the purposes for this indemnity and nothing herein shall be construed to beneficiary person or entity other than the King County.

8. INSURANCE.

8.1 By the date of execution of this Easement, the Grantee shall procure and maintain for the duration of this Easement, insurance against claims for injuries to persons or damages to property, including products-completed operations which may arise from, or in connection with, the performance of work hereunder by the Grantee, its agents, representative, employees, and/or sub-Grantees. The cost of such insurance shall be paid by the Grantee or sub-Grantee. The Grantee may furnish separate certificates of insurance and policy endorsements from each sub-Grantee as evidence of compliance with the insurance requirements of this Easement.

For All Coverages:

Each insurance policy shall be written on an "occurrence" form.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Easement. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

8.2. Minimum Scope Of Insurance

Coverage shall be at least as broad as:

1. General Liability:

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering **COMMERCIAL GENERAL LIABILITY.**

2. Automobile Liability:

Insurance Services Office form number (CA 00 01 Ed. 12-90) covering **BUSINESS AUTO COVERAGE,** symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.

3. Workers' Compensation:

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

4. Employers Liability or "Stop-Gap":

The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

8.3. Minimum Limits of Insurance

The Grantee shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory requirements of the State of residency.
4. Employers' Liability or "Stop Gap" coverage: \$1,000,000.

8.4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Grantee's liability to the County and shall be the sole responsibility of the Grantee.

8.5. Other Insurance Provisions

The insurance coverage(s) required in this Easement are to contain, or be endorsed to contain the following provisions:

1. Liability Policy(s) (Except Workers Compensation):
 - a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Grantee in connection with this Easement.
 - b. The Grantee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
 - c. The Grantee's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. All Policies:
 - a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) calendar days prior written notice, has been given to the County.

8.6. Acceptability of Insurers

Unless otherwise accepted by the County:

Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time of the foregoing policies fail to meet the above minimum requirements, the Grantee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

8.7. Verification of Coverage

The Grantee shall furnish the County with certificates of insurance and endorsements required by this Easement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Easement. The County reserves the rights to require complete, certified copies of all required insurance policies at any time.

8.8. Sub-Grantees

The Grantee shall include all sub-Grantees as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each sub-Grantee. Insurance coverages provided by sub-Grantees as evidence of compliance with the insurance requirements of this Easement shall be subject to all of the requirements stated herein.

9. NO WARRANTIES/ACCEPTANCE "AS IS". Grantor does not warrant title to the Easement Area and shall not be liable for defects thereto or failure thereof. Grantor does not warrant, and expressly disclaims all warranties (express or implied) regarding the condition of the Easement Area, including without limitation, its environmental condition. Grantee has inspected the Easement Area, and has had an opportunity to have the Easement Area inspected by experts of Grantee's own choosing qualified to discover patent, latent known, and unknown defects in Grantor's title to the Easement Area, and in the condition, including environmental condition, of the Easement Area, and Grantee hereby accepts the same in its "AS IS, WHERE IS" condition, including without limitation its environmental condition, and with all faults defects or deficiencies whether patent, latent, known or unknown, without recourse to Grantor of any kind; provided, however, Grantor shall not be released from, and Grantee does not accept, any liability to third parties which may result

from the release of hazardous materials that occur prior to the date of the conveyance of the Easement hereby except to the extent now or hereafter caused or exacerbated by Grantee or its use of the Easement Area.

10. ABANDONMENT. In the event that Grantee permanently abandons or discontinues the use of the Easement for the purposes expressed in this document, the Grantee's Easement will terminate.
11. TERMINATION. Upon expiration of the Easement or in the event that the Easement is otherwise terminated for any reason, Grantee will surrender possession of the Easement Area to Grantor, and title to the Easement will remain in Grantor, its successors or assigns, free of any and all claims of the Grantee. Further, Grantee upon Grantor's request will remove, at its sole expense, all facilities placed on or in the Easement Area by the Grantee, and will restore the property to the condition that existed before the installation of facilities, or to a condition that is reasonably satisfactory to the Grantor.

If the Grantee has not completed removal and restoration within ninety (90) days after expiration or termination and notice by Grantor to remove, Grantor may do all work necessary to remove facilities of Grantee, restore the Easement Area, and charge Grantee with the costs thereof. Grantor shall allow a reasonable extension of time if necessary.
12. TERM OF EASEMENT. This Easement will terminate and expire fifteen (15) years from the date of execution of this Easement, provided that this Easement may be terminated by the County prior to expiration of the fifteen (15) year term if the County determines by ordinance that use of the site within Easement Area is necessary to further important public health related functions. No such termination may occur prior to December 31, 2011. No such termination prior to expiration of the fifteen (15) year term shall occur except upon the County's providing a minimum of one year advance written notice to the Grantee. Parties may insert additional terms to appropriately address responsibilities for any repayment to the Community Development Block Grant fund that is required pursuant to Section 8.6 of The Greenbridge Forgivable Loan and Subrecipient Agreement.
13. ASSIGNMENT. The Grantee may not assign this Easement or any rights acquired under it without the prior written consent of the Grantor, which will not be unreasonably withheld.
14. USE RESTRICTIONS. Grantee may be required to temporarily limit operation or curtail use of the site if the Department of Health provides of advance written notice to the Grantee that the County use of the Easement Area is necessary to facilitate construction, renovation, repair or other needed improvements to the Health Facility.
15. FOOD BANK SECURITY. The grantee shall be solely responsible for keeping the food bank facility locked, secured and inaccessible to persons not authorized or invited to access the facility.
16. MAINTENANCE OF FOOD BANK FACILITY. Grantee shall maintain and repair the

Easement Area and any improvements thereon in a neat, clean and safe condition and otherwise suitable for its intended use. This duty shall include keeping the Easement Area and property within the immediate vicinity of the Easement Area free of food debris and material associated with the operation of a food bank.

- 17. LIENS. Grantee shall not contract any debt or debts for labor, materials, services or otherwise which will or may become a lien against the interest of Grantor in the Easement Area, and Grantee shall not do any other act, or any obligation or liability which would in any way subject the interest of King County in the premises to any lien, claim, or demand whatsoever.
- 18. RIGHT OF ENTRY. Grantor, its officers, employees and agents may enter the Easement Area and any improvements thereon for purposes of implementing the terms of this Easement. Except in emergencies, Grantor shall provide Grantee with reasonable prior notice of entry, which notice may be given orally. Grantor, its officers, employees and agents may further enter the portions of the Easement Area and any improvements thereon that are open to the public at any time that such areas are open.
- 19. OTHER APPLICABLE LAWS. Grantee will comply with all federal, state, and local laws, and will assume all cost, expense, and responsibility in connection with compliance, without any liability on the part of the Grantor.
- 20. NOTICE. Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

King County Real Estate Services Section
500 King County Administration Building
500 - 4th Avenue
Seattle, WA 98104

and to:

King County Department of Community and Human Services
Attn. Office of the Director
821 Second Avenue, Suite 600
Seattle, WA 98104

To Grantee:

White Center Food Bank
C/O King County Housing Authority
Attn: Tim Lock

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600 Andover Park West
Seattle, WA 98188

21. PROJECT BENEFICIARY DATA FORM. Grantee shall submit a Project Beneficiary Data Form in a format provided by the Grantor within 30 business days following the end of the first full calendar year (January-December) after the construction of the food bank facility has been completed.

22. MISCELLANEOUS.

22.1. This Easement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. Jurisdiction and venue for any action related to this Easement shall be in the Superior Court of King County.

22.2. This Easement shall not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligations or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other party.

22.3. The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Easement or to exercise any rights or remedies under this Easement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

22.4. This Easement sets forth the entire agreement of the parties. This Easement shall be construed as a whole. All provisions of this Easement are intended to be correlative and complementary.

22.5. No amendment, change or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both parties.