

STATE OF GEORGIA

COUNTY OF RICHMOND

ENCROACHMENT AGREEMENT

on Property located n/k/a 1833 Broad Street

Between

Augusta, Georgia, a political subdivision of the State of Georgia

And

The Salvation Army, a Georgia Non-Profit Corporation

Date:

I. Purpose

This Encroachment Agreement (hereinafter referred to as "Agreement") commemorates the existence of an easement held by Augusta, Georgia (hereinafter referred to as "Augusta") on the property owned by The Salvation Army and on which The Salvation Army Ray & Joan Kroc Corps Community Center (hereinafter referred to as "the Kroc Center") is located. This Agreement outlines the terms under which The Salvation Army and the Kroc Center may construct the Ann Boardman Park and various constructed elements within the boundaries of the easement, subject to specific criteria agreed upon by all parties.

II. Background

1. Easement History:

Augusta owned several permanent drainage and utility (see Exhibit B) on property that was sold to The Salvation Army for the construction of the Kroc Center. At the time of the sale of the land, Augusta and The Salvation Army agreed to combine certain of these easements into one drainage and utility corridor and canal maintenance easement ranging in width from 100 feet to 133 feet, the description of which is recorded in the Warranty Deed recorded in the Office of the Clerk of the Superior Court of Richmond County, Georgia, in Deed Book 1223 page 1645, dated July 8, 2009. between the Augusta Land Bank and The Salvation Army, on page 3 paragraph No. 3 of said document (see Exhibit B). Said easement

is included in a subdivision plat for The Salvation Army (Kroc Center) by Toole Surveying Company, Inc., dated May 29, 2009, and revised June 25, 2009, June 26, 2009 and June 30, 2009, recorded in said clerk's office in Plat Book 5, Page 101 and to which reference is hereby made for a more accurate description of the metes and bounds of said easement (hereinafter referred to as the "easement"). Augusta has continued to hold this easement for drainage, utility, maintenance, access, and canal maintenance purposes, for both existing systems, any and all future systems Augusta should decide to construct within said easement, as well as all uses described in the aforesaid deed.

2. Proposed Sewer Alignment:

The path of the proposed Mid-City Sewer Replacement alignment has been revisited and is depicted in Exhibit A, attached to this Agreement. When laying out the plan for the Ann Boardman Park, all existing utility structures (including but not limited to (water lines, gravity sanitary sewer line, force mains, fiber optics lines and storm sewer lines) within the easement must be taken into consideration and protected. Other future projects, besides the Mid-City Sewer, may be constructed in this area.

III. Terms of Agreement

1. Construction Within Easement:

The Salvation Army and the Kroc Center may construct a Park and various other non-permanent and non-habitable elements within the boundaries of Augusta's easement, provided that these constructions comply with the criteria outlined in this Agreement and all Federal, State and Local laws, rules, guidelines, and regulations. All initial plans and any subsequent changes must go through the approval process of Augusta, Georgia.

2. City's Rights and Responsibilities:

- a. Augusta reserves the right to exercise its rights as granted in Exhibit B.
- b. Augusta will not be responsible for replacing or repairing any of the Park or the constructed elements placed by The Salvation Army and the Kroc Center, within the Augusta's easement, that are damaged, destroyed or removed during such times that Augusta exercises any of its rights as outlined in Exhibit B.

3. Restrictions on Construction:

The Salvation Army and the Kroc Center agree to the following restrictions within the easement area:

- a. No constructed elements shall be placed in direct conflict with the utility alignment as shown in Exhibit A or any existing infrastructure.
- b. Nothing may be constructed that would interfere with Augusta's maintenance of the canal.
- c. No permanent (non-removable) or habitable structures, deep pavement, footings, or other substantial structures shall be built within the easement.
- d. To avoid interference with existing and future utility projects, as well as canal maintenance, no trees shall be planted within the easement.
- e. Any damages to Augusta's existing infrastructure that is due or caused by the initial construction of Ann Boardman Park, any subsequent construction, maintenance and

operation of the Park shall be the responsibility of The Salvation Army and the Kroc Center. If such damage occurs, The Salvation Army and the Kroc Center shall notify Augusta immediately. The Salvation Army and the Kroc Center agree to be responsible for any and all costs for the repair of said damages, as determined by Augusta, and shall make payment to Augusta within 30 days of receipt of an invoice.

IV. Indemnification - Includes Initial Construction, Subsequent Construction, Maintenance and Operation of the Park:

To the fullest extent permitted by Laws and Regulations, The Salvation Army, the Kroc Center, their employees, agents, consultants, contractors and subcontractors shall indemnify and hold harmless Augusta and its consultants, agents and employees from and against any and all claims, damages, losses, and expenses, direct and indirect or consequential (including, but not limited to fees and charges of architects, attorneys and court arbitration costs) arising out of or resulting from the planning, construction, operation, and maintenance of the Park, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of The Salvation Army, the Kroc Center, their employees, agents, or contractors, any subcontractors, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of any such party.

In any and all claims against Augusta or any of their consultants, agents or employees by any employee of The Salvation Army and the Kroc Center, any contractor or subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for The Salvation Army and the Kroc Center, contractor or any such subcontractor, or other person or organization under workers or workmen's compensation acts, disability benefit acts or other employee benefit acts.

V. Execution

This Agreement serves as a formal acknowledgment of the terms under which the Kroc Center may utilize Augusta's easement for Park construction and other elements. It ensures that Augusta retains its utility rights while permitting The Salvation Army and the Kroc Center to enhance the community with Park amenities.

This Agreement shall be controlled by and construed in accordance with the laws of the State of Georgia, and the venue shall be Richmond County, Georgia.

This Agreement shall run with the land and be binding on all current and future owners.

This Agreement may be terminated by either party, with a sixty (60) day notice to either party.

This Agreement is executed on the date first above written and shall remain in effect until amended or terminated by mutual agreement of the parties.

Signed, sealed and delivered in the presence of

Signatories:

THE SALVATION ARMY, A Georgia Non-Profit Corp.

By: 

Signature

Printed Name: Major Jonathan Raymer

As Its: Area Commander/Senior Kroc Officer

Attest: 

Signature

Printed Name: Dawn Stribbling

As Its: Secretary

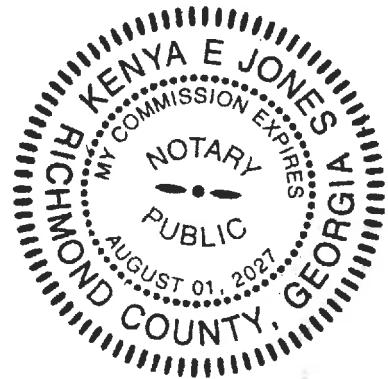
Witness: 

Notary Public: 

For the State of GA County of Richmond

My Commission Expires 8/1/2027

(Notary Seal)



AUGUSTA, GEORGIA

Witness

By: _____
Garnett L. Johnson
As Its Mayor

Notary Public
State of Georgia, County of _____

Attest: _____
Lena Bonner
As Its Clerk of Commission

My Commission Expires: _____

(SEAL)

(Notary Seal)