

AN ORDINANCE 2017-11-02-0840

AUTHORIZING THE EXECUTION OF A DEVELOPER REIMBURSEMENT AGREEMENT WITH ANSLEY STEUBING FARM APARTMENTS, LLC IN THE AMOUNT NOT TO EXCEED \$143,022.13 FOR THE DEZAVALA OUTFALL PROJECT, A 2007-2012 BOND SAVINGS FUNDED PROJECT LOCATED IN COUNCIL DISTRICT 8.

* * * * *

WHEREAS, the DeZavala Road Phase I (Babcock to Cogburn) Project (the "Project") was funded from the 2007-2012 Bond Program and included design and construction of widening DeZavala Road from Babcock to Cogburn from two to four lanes with a flush median along with curbs, sidewalks, driveway approaches, and necessary drainage and traffic signal improvements; and

WHEREAS, the DeZavala Outfall project ("Outfall Project") is a continuation of the Project and was initiated through an amendment requested by the City for enhanced drainage design services to minimize downstream impacts on a drainage easement located on private property; and

WHEREAS, the Outfall project was required to construct an underground piping system approximately 860 feet in length in order to relieve a rise in water to a private easement adjacent to the Project wherein such rise in water was caused by the design and construction of the Project; and

WHEREAS, after the completion of the Outfall Project design, it was discovered that a developer was developing property adjacent to the DeZavala Outfall Project site and said developer was scheduled to construct a drainage channel in the same vicinity as the City's planned DeZavala Outfall project; and

WHEREAS, the City and the Developer agreed that Developer was in the best position to develop and construct a drainage channel, from DeZavala to approximately 860 feet west to an outfall, to account for the additional water resulting from the Project as well as from the development adjacent to the drainage channel; and

WHEREAS, the City agreed to reimburse the developer in an amount not to exceed 30% of the total projected construction estimate through a reimbursement agreement in the form of a Release Discharge and Settlement Agreement, and said construction of the drainage channel by the developer was completed in April 2017; and

WHEREAS, this is an authorized one-time capital improvement expenditure in the amount not to exceed \$143,022.13 payable to Ansley Steubing Farm Apartments, LLC wherein funds are available from 2007-2012 Bond Savings; **NOW THEREFORE**,

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

SECTION 1. The terms and conditions of the Release Discharge and Settlement Agreement with Ansley Steubing Farm Apartments, LLC for development and construction of a drainage channel are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute the Release Discharge and Settlement Agreement, a copy of which in substantially final form is set out in **ATTACHMENT I.**

SECTION 3. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 23-00858, Clark (Fair to Southcross), shall be revised by decreasing SAP WBS Element 23-00858-05-06 entitled Project Contingency, SAP GL account 5201140, by the amount of \$143,022.13.

SECTION 4. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 23-00858, Clark (Fair to Southcross), shall be revised by decreasing SAP WBS element 23-00858-90-06 entitled Transfer from GO-00045-01-01-36, SAP GL account 6101100, by the amount of \$143,022.13.

SECTION 5. The amount of \$143,022.13 is reverted in SAP Fund 45905001, 2008 GO Streets, SAP WBS GO-00201-01-01-51, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 23-00858-90-01. The amount of \$143,022.13 is authorized to be transferred from SAP Fund 45099000.

SECTION 6. The amount of \$143,022.13 is appropriated in SAP Fund 45905001, 2008 GO Streets, SAP WBS GO-00201-01-01-08-01, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 40-00009-90-02. The amount of \$143,022.13 is authorized to be transferred to SAP Fund 45099000.

SECTION 7. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00009, DeZavala, Phase I (Babcock to Cogburn), shall be revised by increasing SAP WBS element 40-00009-90-02 entitled Transfer from GO-00201-01-01-08-01, SAP GL account 6101100 – Interfund Transfer In, by the amount \$143,022.13.


SECTION 8. The amount of \$143,022.13 is appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00009, DeZavala, Phase I (Babcock to Cogburn), SAP WBS Element 40-00009-05-02-01, entitled Construction-City, SAP GL Account 5201140, and is authorized to be encumbered and made payable to Ansley Steubing Farm Apartments, LLC, for a Release Discharge and Settlement Agreement.

SECTION 9. 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. The financial

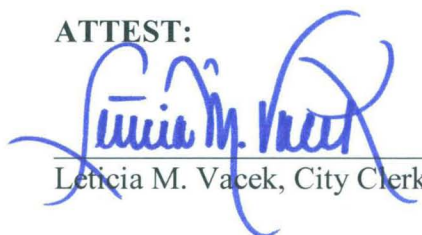
allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio.

SECTION 10. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED on this 2nd day of November, 2017.

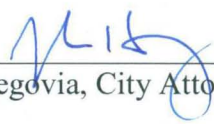

M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Andrew Segovia, City Attorney

Agenda Item:	5 (in consent vote: 4, 5, 6, 7, 9A, 9B, 11, 13, 14, 15, 18, 19, 20)						
Date:	11/02/2017						
Time:	09:23:25 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a Developer Reimbursement Agreement with Ansley Steubing Farm Apartments, LLC in the amount not to exceed \$143,022.13 for the DeZavala Outfall project, a 2007-2012 Bond Savings funded project located in Council District 8. [Peter Zaroni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2	x					
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

Attachment I

State of Texas

§

**RELEASE DISCHARGE AND
SETTLEMENT AGREEMENT**

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County of Bexar

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This Release, Discharge, and Settlement Agreement is hereby made and entered into by and between the City of San Antonio (hereafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 20____, and _____ acting through its _____, its successors and permitted assigns (hereafter referred to as "_____" or "Developer"), acting by and through its officers, hereto duly authorized. City and Developer are individually referred to herein as a "party" and collectively referred to herein as the "Parties."

WHEREAS, City has completed construction on the DeZavala Phase I Project, said Project widened DeZavala Road from two lanes to four lanes with a flush median; and

WHEREAS, as a result of the water runoff that was not accounted for in City's DeZavala Phase I Project, City had planned on constructing a storm sewer system to transport said water runoff underground to a point where said water runoff would be released to an outfall, said work titled the DeZavala Outfall Project; and

WHEREAS, Developer was developing the property adjacent to the DeZavala Outfall Project site and, it was discovered that Developer was scheduled to construct a drainage channel in the same vicinity as City's planned DeZavala Outfall Project; and

WHEREAS, City and Developer agreed that Developer was in the best position to develop and construct a drainage channel, from DeZavala to approximately 860 feet west to an outfall, to account for the additional water resulting from City's DeZavala Phase I Project, as well as from the development adjacent to the drainage channel; and

WHEREAS, City identified Developer as the appropriate party with which to contract for the fulfillment of the public purpose of infrastructure construction in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, Developer is the fee simple owner of the property referenced in the proposed location of the Project; and

WHEREAS, the public benefit gained from the Project is the provision of a drainage channel to account for the additional water runoff from City's DeZavala Phase I Project, as well as the runoff from the adjacent development, reducing the possibility of flooding DeZavala and benefitting the citizens of San Antonio; and

WHEREAS, Texas Local Government Code, Sections 212.071 – 212.074 (hereafter referred to as the "Authorizing Statutes") allow the municipality to contract with a Developer for the construction of public improvements in Developer Participation Contracts; and

ATTACHMENT I

WHEREAS, the Authorizing Statutes limit the participation of the municipality to a level not to exceed 30 percent (30%) of the total contract price; and

WHEREAS, the Authorizing Statutes also allow participation by the municipality at a level not to exceed 100 percent (100%) of the total cost for any oversizing of improvements required by the municipality; and

WHEREAS, City would have required Developer to oversize and construct a drainage channel to account for the water from the City's DeZavala Phase I Project; and

WHEREAS, the total estimated cost of the improvements was a not to exceed amount of FOUR HUNDRED SEVENTY SIX THOUSAND SEVEN HUNDRED FORTY DOLLARS AND 44/100 (\$476,740.44); and

WHEREAS, the City's allowed participation in the Project was estimated to be an amount not to exceed ONE HUNDRED AND FORTY THREE THOUSAND TWENTY TWO DOLLARS AND 13/100 (\$143,022.13); and

WHEREAS, Developer has completed the design and construction of the Project; and

NOW THEREFORE, the Parties hereto severally and collectively agree to and, by the execution hereof, are bound by the mutual obligations herein contained:

For good and valuable consideration of ONE HUNDRED FORTY THREE THOUSAND TWENTY TWO DOLLARS AND 13/100 (\$143,022.13) the receipt and sufficiency of which is hereby acknowledged, the City of San Antonio and _____ hereby agree as follows:

1. The City and _____ mutually fully release, discharge and finally settle any and all possible disputes and caused of action relating to the construction of a drainage channel by Developer to account for the additional water run-off from the City's DeZavala Phase I Project onto Developer's property and to confirm that there are no rights or obligations remaining due or owing between them. To that end, this Agreement, once fully signed by both Parties below, will constitute an Agreement between the Parties that is entered into in the spirit of compromise and settlement, to avoid the expense and uncertainties of further pursuit of their respective claims, to confirm the understanding of the Parties set forth in this Agreement and to mutually release each other from any and all claims or causes of action whatsoever that any of them have ever had, now has or may hereafter have against each other with respect to the City's DeZavala Phase I Project. This Agreement is not intended to constitute an admission by either of the Parties of any unlawful, improper, wrongful, or otherwise injurious conduct.
2. Effective upon countersignature of the below Acknowledgement, both the City of San Antonio and _____ release, remise and forever discharge each other, their respective members, officers, directors, employees, representatives, consultants, agents, successors, predecessors in interest, and affiliates from any and all manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, damages, claims and demands whatsoever, in law, under contract, or in equity, which either Party,

has now has or hereafter may have upon or for reason of any manner, cause or thing whatsoever with respect to any and all claims of any nature whatsoever arising out of, or relating to the City's DeZavala Phase I Project.

3. Each of the signatories hereto represents and warrants that such signatory has the authority to make the representations, agreements, covenants, and warranties set forth herein.
4. This Agreement shall be binding upon and inure to the benefit of the respective predecessors, successors, and assigns of the Parties hereto.
5. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be void or unenforceable, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, or the validity or enforceability of this Agreement as a whole.
6. This Agreement contains all agreements and understandings of the Parties hereto with respect to the matters referred to herein and are the final, complete and exclusive expression of the terms and conditions thereof and supersedes any and all prior agreements or understandings pertaining to any such matters.
7. This Agreement will be governed by the laws of the State of Texas.

The terms and conditions of this Release, Discharge, and Settlement Agreement is hereby accepted and agreed to by the Parties below:

ACCEPTED AND AGREED TO
THIS ____ DAY OF OCTOBER, 2017

City of San Antonio

By: _____

Name: _____

Title: _____

ACCEPTED AND AGREED TO
THIS ____ DAY OF OCTOBER, 2017

Hathaway Development, LLC

By: _____

Name: Nick S. Hathaway

Title: Director of Development