

AN ORDINANCE 2017-05-18-0337

**AUTHORIZING THE ACCEPTANCE OF A \$50,000.00 DONATION FROM CAPITOL AGGREGATES, INC., TOWARDS THE IMPROVEMENT OF BULVERDE/NACOGDOCHES ROAD, A PLANNED FY 2017 STREET MAINTENANCE PROGRAM PROJECT (SMP), LOCATED IN COUNCIL DISTRICT 10.**

\* \* \* \* \*

**WHEREAS**, the Bulverde/Nacogdoches Road project provides for the reconstruction of the street and begins at the intersection of Bulverde and Nacogdoches and extending to the intersection of Nacogdoches and Naco-Perrin Street; and

**WHEREAS**, existing street condition shows severe cracking and distress near the driveway of the Capitol Aggregate plant due to the frequent turning movements of heavy vehicles in and out from the plant; and

**WHEREAS**, City and District 10 staff met with Capitol Aggregates, Inc. to discuss project scope, schedule, and possible funding contribution; and

**WHEREAS**, Capitol Aggregates, Inc. agrees to donate \$50,000.00 towards the project budget to supplement any necessary cost to complete this project; and

**WHEREAS**, Transportation and Capital Improvements Department ("TCI") and District 10 staff accept this funding contribution; and

**WHEREAS**, this is a one-time donation that would be used entirely for the purpose of street improvement of Bulverde/Nacogdoches Rad project from the Nacogdoches/Bulverde intersection to the Nacogdoches/Naco-Perrin intersection; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee is authorized to accept \$50,000.00 donation from Capitol Aggregates, Inc. to provide for street reconstruction at the intersection of Bulverde and Nacogdoches and extending to the intersection of Nacogdoches and Naco-Perrin Street.

**SECTION 2.** The City Manager or her designee is further authorized to execute a Donation Agreement in the form attached hereto and incorporated herein as **EXHIBIT A**.

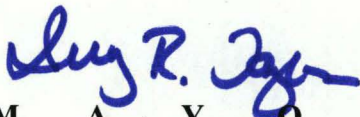
**SECTION 3.** Funds are authorized to be received from Capitol Aggregates, Inc. to SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01535, FY 2017 Street Maintenance Program (SMP), and the budget shall be revised by increasing WBS element 23-01535-90-08, Capitol Aggregates Contribution and SAP General Ledger 4502280, Contribution from other Agencies, in the amount of \$50,000.00.

**SECTION 4.** The amount of \$50,000.00 is appropriated in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01535, FY 2017 Street Maintenance Program (SMP), SAP WBS Element 23-01535-05-02-01, Construction Cost and SAP General Ledger 5201140 Construction Cost.

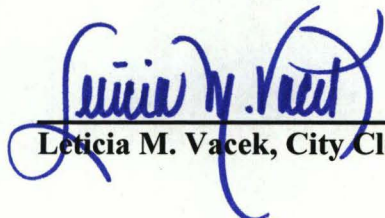
**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 6.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


**PASSED and APPROVED this 18<sup>th</sup> day of May, 2017.**

  
M A Y O R  
Ivy R. Taylor

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>11 ( in consent vote: 5, 6, 7, 8, 9, 11, 13, 14, 15A, 15B, 17, 19, 21, 22, 23, 24, 25A, 25B, 25C )</b>						
<b>Date:</b>	05/18/2017						
<b>Time:</b>	09:21:19 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the acceptance of a \$50,000.00 donation from Capitol Aggregates, Inc., towards the improvement of Bulverde/Nacogdoches Road, a planned FY 2017 Street Maintenance Program Project, located in Council District 10. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
<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>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x			x	

STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF SAN ANTONIO

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**DONATION CONTRACT**

**THIS AGREEMENT** made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio ("City"), a municipal corporation, in the State of Texas, and Capitol Aggregates, Inc. ("Donor"), a Corporation organized under the laws of the State of Texas, said agreement being executed by the City pursuant to the City Charter and Ordinances and Resolutions of the City Council, and by Donor (collectively the "Parties").

**WITNESSETH:** That the Parties hereto, each in consideration of the agreements on the part of the other herein made and referred to, have covenanted mutually, and hereby mutually covenant, the City for itself and its successors, and the Donor for itself and its heirs, executors and administrators or successors, as follows, to-wit:

**A. DEFINITIONS & SCOPE OF CONTRACT**

1. **CITY AND OFFICIALS.** Whenever in this contract is found the term "City", "City Council", "City Manager", "Director of Transportation & Capital Improvements", "Director of Finance", "City Clerk" or other designation of any City institution, officer, employee or title, or a pronoun in its, his or their place, the same shall, unless indicated otherwise, be understood to mean the City of San Antonio or its successors, or the governing body, or the person or persons now or hereafter holding or exercising the duties of such designated official position, office, employment or title, in said City, or any person or persons acting lawfully in the corresponding official capacity on behalf of said City at such time and within the powers and authority held by him or them;

2. **DONOR.** Whenever the term "Donor", Capital Aggregates, Inc.", "Capital Aggregates", "CA" or a pronoun in its place is used herein, it shall be taken to include any person, association or persons, firm or corporation, notwithstanding such pronoun may be used in the masculine gender or singular number, and said term or pronoun shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.

3. **INCLUDED INSTRUMENTS.** This Agreement, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this Donation Contract and are included as if rewritten or copied in full herein, and shall be deemed "Included Instruments" when that term is used. This document and the Included Instruments taken together constitute the contract between the parties and may be referred to herein as the "Contract."

4. **CONTRACT INTERPRETATION.** In case of conflict or inconsistency between this document and the specifications or other Included Instruments, this document shall control, but insofar as such provisions can stand together they shall all be regarded as cumulative.

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS.** Donor agrees to provide and the City agrees to accept \$50,000 for the purpose of replacement of existing asphalt

pavement with concrete pavement, from Bulverde and Naco-Perrin to Nacogdoches and Naco-Perrin (the "Project"). The City will complete all aspects of the design, management, and construction of the project according to the applicable regulations found under the City Code, Charter, Ordinances, and Resolutions of the City Council. Donor funds will be provided to the City no later than June 2017. The City shall work with Donor to determine the scope of the Project and shall use the donated funds provided under this Agreement for Project-related purposes determined necessary by City and Donor. Following receipt of funding under this Agreement, the City will provide Donor with a preliminary timeline for work related to the Project. The City will notify Donor of any changes to the Project timeline or scope.

B. TERM. The term of this Agreement commences May 24, 2017 and will terminate upon final completion of the Project, unless terminated sooner under this Agreement.

C. DEFAULT AND VIOLATIONS OF CONTRACT. If Donor does not provide the contemplated funds no later than June 2017, the Director of Public Works may determine the course of action for the Project, to include initiation, continuation, or cessation in part or total.

D. COMMUNICATIONS BETWEEN DONOR AND CITY. The Donor agrees that the following address in the City of San Antonio, Texas, shall be used for the transmission to him of any notices or correspondence in connection with the performance of this Contract:

Capital Aggregates, Inc.  
San Antonio, Texas

The above address may be changed by filing written notice to that effect with the Director of Public Works. All communications, notices and other correspondence forwarded to the above address shall be presumed conclusively to have been delivered by regular course of mail to the Donor.

E. PARTY REPRESENTATIONS. Each party represents to the other that it has the requisite authority to enter into this Agreement and to perform its obligations and that none of the foregoing actions will conflict with or constitute on its part a breach of or default under any applicable law, court or administrative decision, regulation, decree, order, agreement, mortgage, lease, or instrument to which it is a party or is otherwise governed. In addition, the parties are not, to the best of their knowledge, aware of any applicable Texas law that would impair their ability to enter into and perform its obligations under this Agreement.

F. LIABILITY. Each party shall be responsible for its own actions and those of its employees and/or persons acting by or on its behalf arising from such activities while carrying out the purpose and objectives of this Agreement. Each party agrees to have sufficient insurance or sureties to cover the obligations assumed under this Agreement arising from accomplishment of those obligations. Donor understands and acknowledges that City is a political subdivision of the State of Texas and is subject to, and complies with the applicable provisions of the Texas Tort Claim Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

G. AMENDMENTS. This Agreement may only be amended or supplemented in writing and executed by the Parties. The City Manager is authorized to execute any amendments, unless they require financial obligations on the part of the City, in which case the approval of City Council may be required.

H. GOVERNING LAW. This Agreement is governed by the laws of the State of Texas and is enforceable in Bexar County, Texas. Venue for any action resulting from this Agreement shall be in the courts of Bexar County, Texas.

I. MISCELLANEOUS. This Agreement may be executed in several counterparts, each of which will be regarded as an original and all of which constitute one and the same agreement. This Agreement represents the entire agreement of its subject matter and is made solely for the benefit of its parties. The obligations of the parties made under this Agreement represent obligations of each respective entity and no personal liability of any principal, representative, director, donor, or employee of any entity will arise as a result of this Agreement.

This Agreement is entered into by the Parties and is effective as executed in San Antonio, Texas, on this, the \_\_\_\_ day of May, 2017.

**CITY OF SAN ANTONIO**

**CAPITAL AGGREGATES, INC.**

\_\_\_\_\_  
Mike Frisbie, P.E.  
TCI Director, City Engineer

\_\_\_\_\_  
David Disbrow  
Chief Operating Officer

**APPROVED AS TO FORM**

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