

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
PUBLIC WORKS DEPARTMENT**

**TO:** Mayor and City Council

**FROM:** Thomas G. Wendorf, P.E., Director of Public Works

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Melissa Byrne Vossmer, Lou Lendman, Milo Nitschke, Andrew Martin, Steven F. Hodges; File

**SUBJECT:** Ordinance authorizing procurement of right-of-way in the total sum of \$635,460.20 in the Babcock Road/Leon Creek Improvements-Hausman to DeZavala Project

**DATE:** September 4, 2003

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes funds in the amount of \$635,460.20 payable to Gerry Rickhoff, County Clerk, for acquisition of Fee Simple Title to one parcel in connection with Condemnation Cause No. 2000-ED-0018, City of San Antonio vs. The Bertetti Family Limited Partnership, Et Al in connection with the Babcock Road/Leon Creek Improvements – Hausman to DeZavala Project, funded from Certificates of Obligation for this project located in Council District 8.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

City Ordinance No. 91759, dated May 11, 2000, authorized the filing of eminent domain action to obtain a fee simple title to this property in the Babcock Road/Leon Creek Improvements – Hausman to DeZavala Project. At a Special Commissioners Hearing held on February 4, 2003, Mr. Don Canaday, the City's Contract Appraiser, presented evidence as to his opinion of the value of the property, which was initially appraised at \$20,971.00. After hearing testimony from both parties, Special Commissioners then established the compensation of \$621,000.00 for the acquisition cost of this parcel.

On September 25, 1997 by Ordinance No. 86711, the City declared the drainage of the City to be a "Public Utility" and re-established the 100-year flood plain previously issued by the Federal Emergency Management Agency (FEMA) on February 16, 1996. FEMA accepted the engineering study from Pape-Dawson Engineers, Inc. referred to in Ordinance No. 86711. As a result of the Engineering Study there was a change in the 100-year flood plain across the property which reduced the size of usable land. The property owner claimed additional damages because of an increased flood plain area due to the 1997 ordinance.

The City appealed the Special Commissioners Award and on August 15, 2003 a Hearing was held on Defendant's Motion For Order to Deposit Award. Judge Rickhoff granted the Motion and ordered that the amount of the Award plus interest at six percent per annum be deposited "forthwith". The Right of Entry Agreement calls for the Award to be deposited within 45 days from the date of the Award. The date of the Award was February 4, 2003.

Therefore, the interest is to run from the 45<sup>th</sup> day (plus 30 days pursuant to §302.002 of the Civil Practice Remedy Code), i.e. from April 20, 2003. This amounts to \$12,420.00 (from April 20 to August 20, 2003 at \$3,105 per month) plus \$102.01 per day from August 20, 2003 until paid. The total amount to be deposited is \$621,000 plus \$12,420, or \$633,420 plus the daily interest until paid from August 20, 2003. However, the City does not agree with this award and has filed an appeal. A Hearing on a Motion for Partial Summary Judgement asking the court to dismiss the pre-condemnation claims of the defendant has been set for September 19, 2003.

We have 22 signed instruments, one gift deed, and four condemned parcel in the 27-parcel project. This project has completed construction. The scope of this project included the reconstruction of Babcock Road from Hausman to Nickle and from DeZavala to a point west of Spring Rain to a typical 44-foot width. This project also constructed the new location of Babcock Road from Nickle to a point west of Spring Rain to a typical 44-foot width. It also included the construction of new bridges at Huesta and Leon Creeks and new curbs, sidewalks, and driveways.

### **POLICY ANALYSIS**

The acquisition of this property is necessary to complete the real estate transaction of this project.

### **FISCAL IMPACT**

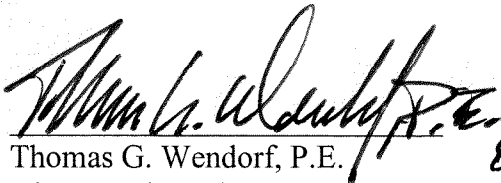
This is a one-time capital improvement expenditure. Funds in the amount of \$635,460.20 are included in the FY03-FY08 Capital Improvement Program Budget. Funds are available from Certificates of Obligation and authorized payable to Gerry Rickhoff, County Clerk.

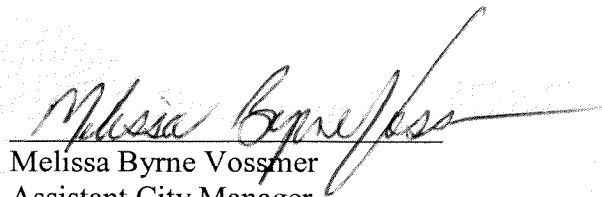
### **COORDINATION**

This ordinance was coordinated with the City Attorney's Office, the Finance Department, and the Office of Management and Budget.

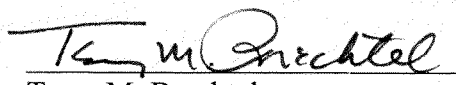
### **SUPPLEMENTARY COMMENTS**

This Ordinance does not require a Discretionary Contracts Disclosure Form.

  
Thomas G. Wendorf, P.E. 8/27/03  
Director of Public Works

  
Melissa Byrne Vossmer  
Assistant City Manager

Approved:

  
Terry M. Brechtel  
City Manager

## **ATTACHMENT 1**

### **FISCAL DATA**

**Project Name: BABCOCK ROAD/LEON CREEK IMPROVEMENTS-HAUSMAN TO  
DeZAVALA PROJECT  
Council District 8**

#### **Budget Information:**

This is a one-time capital improvement expenditure.

Funds in the amount of \$635,460.20 are included in the FY03-FY08 Capital Improvement Program Budget.

Funds are available from Certificates of Obligation Funds

This item represents a portion of a total estimated City project cost of \$7,743,167.79.

**FACT SHEET FOR PARCELS 14566, 14566a & 14587**

**BABCOCK ROAD/LEON CREEK IMPROVEMENTS  
HAUSMAN TO DEZAVALA PROJECT**

|  |                      |
|--|----------------------|
| <b>Appraisal Value</b>   | <b>\$ 20,971.00</b>  |
| <b>Property Owners' Appraisal Value</b>  | <b>\$ 621,000.00</b> |
| <b>COSA Final Offer</b>  | <b>\$ 20,971.00</b>  |
| <b>Special Commissioners' Award</b>  | <b>\$ 621,000.00</b> |
| <b>COSA filed Appeal – Hearing on August 15, 2003</b>                                    |                      |
| <b>Judge granted Defendant's Motion For Order<br/>To Deposit Award</b>                   | <b>\$ 621,000.00</b> |
| <b>Plus: Interest at 6% per annum until deposited in<br/>the Registry of the Court –</b> |                      |
| <b>From April 20 to August 20</b>  | <b>\$ 12,420.00</b>  |
| <b>From August 21 to September 9(20 days)</b>  | <b>\$ 2,040.20</b>   |
| <b>(\$102.01 per day from August 20, 2003 until paid)</b>                                |                      |
| <b>TOTAL TO BE DEPOSITED AS OF 09/14/03</b>  | <b>\$ 635,460.20</b> |
| <b>Difference between COSA Final Offer &amp; Award</b>                                   | <b>\$ 614,489.20</b> |
| <b>Additional Costs:</b>   |                      |
| <b>• Court Costs (Bill of Costs)</b>   | <b>\$ 1,652.00</b>   |

**REASON FOR CONDEMNATION:**

**Property Owner felt property was worth more than City was offering.**

# THE BABCOCK ROAD/LEON CREEK IMPROVEMENTS HAUSMAN TO DEZAVALA PROJECT

