

ORDINANCE 2022-08-04-0538

**APPROVING A CONTRIBUTION AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND CHESMAR HOMES, LLC. IN AN AMOUNT NOT TO EXCEED \$90,000.00 FOR THE COMPLETION OF THE ALLEY IMPROVEMENTS PROJECT LOCATED IN COUNCIL DISTRICT 8; AND AUTHORIZING THE APPROPRIATION AND AMENDING OF THE FY 2022 – FY 2027 CAPITAL IMPROVEMENT PROGRAM WITH FUNDS IN THE AMOUNT OF \$90,000.00 FROM CHESMAR HOMES, LLC. TO THE ALLEY IMPROVEMENTS PROJECT. FUNDS IN THE AMOUNT OF \$350,000.00 ARE AVAILABLE FROM THE ALLEY IMPROVEMENTS PROJECT INCLUDED IN THE FY 2022 – FY 2027 CAPITAL IMPROVEMENT PROGRAM FOR A TOTAL PROJECT BUDGET OF \$440,000.00.**

\* \* \* \* \*

**WHEREAS**, as part of the adopted FY 2022 Capital Improvement Project Budget, \$350,000.00 was approved for alley improvements in District 8; and

**WHEREAS**, this will be used for alley improvements between Spring Trail Drive and Spring Manor Drive and between Spring Trail Drive and Spring Garden Drive; and

**WHEREAS**, the improvements will include tree pruning, trash removal, asphalt surface removal and replacement; and

**WHEREAS**, as part of the Contribution Agreement, Chesmar Homes, LLC. will contribute \$90,000.00 to the City to complete these alley improvements; and

**WHEREAS**, construction of the project began in February 2022 and is estimated to be completed in September 2022; and

**WHEREAS**, this ordinance also appropriates and amends the FY 2022 – FY 2027 Capital Improvement Program with funds in the amount of \$90,000.00 from Chesmar Homes, LLC. to the Alley Improvements project; and

**WHEREAS**, funds in the amount of \$350,000.00 are available from the Alley Improvements Project included in the FY 2022 – FY 2027 Capital Improvement Program for a total project budget of \$440,000.00; and

**WHEREAS**, this Ordinance approves a Contribution Agreement between the City of San Antonio and Chesmar Homes, LLC. in an amount not to exceed \$90,000.00 for the completion of the Alley Improvements Project located in Council District 8; and authorizing the appropriation and amending of the FY 2022 – FY 2027 Capital Improvement Program with funds in the amount of \$90,000.00 from Chesmar Homes, LLC. to the Alley Improvements project; **NOW THEREFORE:**



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

**SECTION 1.** The City Manager or designee, or the Director of the Public Works Department or designee, is authorized to approve Contribution Agreement between the City of San Antonio and Chesmar Homes, LLC. in an amount not to exceed \$90,000 for the completion of the Alley Improvements Project located in Council District 8; and authorizing the appropriation and amending of the FY 2022 – FY 2027 Capital Improvement Program with funds in the amount of \$90,000.00 from Chesmar Homes, LLC. to the Alley Improvements project. Funds in the amount of \$350,000.00 are available from the Alley Improvements Project included in the FY 2022 – FY 2027 Capital Improvement Program for a total project budget of \$440,000.00. The Agreement is attached hereto and incorporated herein for all purposes as **Exhibit A**.

**SECTION 2.** Funds in the amount of \$90,000.00 are authorized to be received from Chesmar Homes, LLC to SAP Fund 43099000.

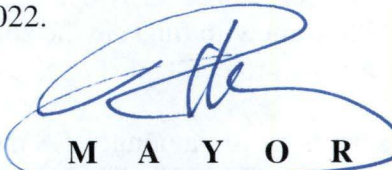
**SECTION 3.** The amount of \$90,000.00 is authorized to be appropriated in SAP Fund 43099000, Project 23-03855, WBS Element 23-03855-90-10-01 and General Ledger 4502280.

**SECTION 4.** The amount of \$90,000.00 is authorized to be appropriated in SAP Fund 43099000, Project 23-03855, WBS Element 23-03855-05-02-02 and General Ledger 5201140.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This Ordinance is effective immediately upon its passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage.

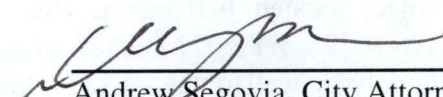
**PASSED and APPROVED** this 4th day of August, 2022.

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney



## City of San Antonio

### City Council Meeting August 4, 2022

8.

**2022-08-04-0538**

Ordinance approving a Contribution Agreement between the City of San Antonio and Chesmar Homes, LLC. in an amount not to exceed \$90,000 for the completion of the Alley Improvements Project located in Council District 8; and authorizing the appropriation and amending of the FY 2022 – FY 2027 Capital Improvement Program with funds in the amount of \$90,000 from Chesmar Homes, LLC. to the Alley Improvements project. Funds in the amount of \$350,000 are available from the Alley Improvements Project included in the FY 2022 – FY 2027 Capital Improvement Program for a total project budget of \$440,000. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

Councilmember Viagran moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello  
Havrda, Sandoval, Pelaez, Courage, Perry

## **EXHIBIT A**

### **Contribution Agreement between the City of San Antonio and Chesmar Homes, LLC.**



**ALLEY IMPROVEMENTS PROJECT  
(BETWEEN SPRING TRAIL DRIVE & SPRING MANOR DRIVE AND  
BETWEEN SPRING TRAIL DRIVE & SPRING GARDEN DRIVE)  
CONTRIBUTION AGREEMENT**

This Alley Improvements Project (Between Spring Trail Drive & Spring Manor Drive And Between Spring Trail Drive & Spring Garden Drive) Contribution Agreement (the "Agreement") is made and entered into as of the Effective Date by and between the City of San Antonio, a municipal corporation (the "City") pursuant to Ordinance No. \_\_\_\_\_ approved on \_\_\_\_\_, 2022, and Chesmar Homes, LLC., a Texas limited liability company, herein after referred to as "Chesmar Homes". The City and Chesmar Homes are each referred to herein as a "Party" and collectively as "Parties".

**RECITALS**

**WHEREAS**, in District 8 a new development project by Chesmar Homes to construct a residential community at 9446 Babcock Road that commenced on Monday, February 7; and

**WHEREAS**, District 8 received a \$1,000,000 allocation from the FY 2022 Approved Capital Improvement Project Budget and identified \$350,000 for the improvement of land owned by the City at 9446 Babcock Road ("Alley Improvements Project"); and

**WHEREAS**, the Alley Improvements Project is needing to be completed; and

**WHEREAS**, the cost to improve the Alley Improvements Project is in an amount not to exceed \$440,000 which includes tree pruning, trash removal, asphalt surface removal and replacement; and

**WHEREAS**, Chesmar Homes has agreed to contribute \$90,000 towards the Alley Improvements Project (herein after referred to as "Chesmar Funding"), Exhibit B to this Agreement documents "Chesmar Funding"; and

**WHEREAS**, the City has agreed to contribute funds towards the completion of the Alley Improvements Project in the amount not to exceed City contribution of \$350,000 inclusive of bid amount, project contingency, construction administration and management, and all City costs from the FY 2022 Capital Improvement Budget (herein after referred to as "City Funding"), Exhibit B to this Agreement documents "City Funding; and

**WHEREAS**, the Parties intend this Agreement to set forth each Party's responsibilities and obligations in connection with the Alley Improvements Project;

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, it is agreed between the Parties as follows:

## **I. PURPOSE**

1.1 Alley Improvements Project will provide for alley improvements between Spring Trail Drive and Spring Manor Drive and between Spring Trail Drive and Spring Garden Drive.

## **II. TERM**

2.1 Unless sooner terminated in accordance with provisions in this Agreement, the term of this Agreement shall commence upon San Antonio City Council approval and execution of the Agreement by all Parties, and continue until Alley Improvements Project completion (defined in 2.2) at which time this Agreement shall terminate.

2.2 Alley Improvements Project completion shall occur when the construction of the Alley Improvements Project is completed the City.

## **III. OBLIGATION CHESMAR HOMES LTD.**

3.1 Chesmar Homes agrees to pay the Chesmar Funding to the City within thirty (30) days after San Antonio City Council approval of the Alley Improvements Project and execution of this Agreement by all Parties, Project as described in Exhibit B attached hereto. Chesmar Homes agrees to work cooperatively with the City to take all necessary steps.

3.2 The City's Project Engineer retains ownership of all engineering documents, drawings, estimates, specifications and all other documents and data (the "Documents") relating to the Project.

3.3 The Chesmar Funding shall be used by the City solely in connection with the Alley Improvements Project.

## **IV. OBLIGATION OF THE CITY**

4.1 The City will contribute the funding for the Project in an amount not to exceed \$350,000 as provided for in Exhibit B. The City's Funding shall constitute City's total contribution to the Project. No City funding will be directed to Chesmar Homes. Contingency and any savings that are not expended on the Project shall be retained by the City. The City will not incur costs that exceed \$440,000 total project budget.

4.2 The City will undertake construction of the Alley Improvements Project through its contractor and will take reasonable measure to work with the Alley Improvements Project Engineer to ensure the Alley Improvements Project is delivered pursuant to the Alley



Improvements Project Scope, Alley Improvements Project Budget, and Alley Improvements Project Schedule described in Exhibit A and Exhibit B.

4.3 Upon request by Chesmar Homes, the City will provide updates on the progress of the Alley Improvements Project.

## **V. MEDIA**

5.1 All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior mutual approval of the Parties. Notwithstanding anything herein to the contrary, each Party has the right to publicly disclose this Agreement and its subject matter as required by applicable laws without the prior written approval of the other Party.

## **VI. NOTICE**

6.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

### **If to the City:**

Razi Hosseini, P.E., R.P.L.S.  
Director/City Engineer, Public Works Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

### **If to Chesmar Homes Ltd.**

Donald P. Klein  
Chesmar Homes, LLC  
480 Wildwood Forest Dr.  
Suite 803  
Woodlands, Texas 77380-2649

## **VII. APPLICABLE LAW**

7.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

7.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

### **VIII. COMPLIANCE WITH LAWS**

8.1 Each Party will comply with all applicable federal, state, and local laws, rules, and regulations which may apply to the performance of their respective obligations under this Agreement.

### **IX. AMENDMENTS**

9.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be affected by an amendment, in writing, executed by the Parties. Notwithstanding the foregoing, The Public Works Department Director, or designee, is authorized to reallocate the City Funding between the Alley Improvements Project line items set out in the Alley Improvements Project Budget in Exhibit B without further San Antonio City Council action, so long as such reallocation does not materially change the Alley Improvements Project purpose set out in Article I.

### **X. SEVERABILITY**

10.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state, or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

### **XI. LEGAL AUTHORITY**

11.1 The signatories to this Agreement represent, warrant, assure, and guarantee that they have full legal authority to execute this Agreement on behalf of the Party for which they are signing and to bind such Party to all of the terms, conditions, provisions, and obligations herein contained.



## XII. ENTIRE AGREEMENT

12.1 This Agreement, together with its authorizing ordinance and its exhibits, constitute the final and entire Agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same is in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the Parties.

12.2 Chesmar Homes Ltd. covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of resulting from or related to Chesmar Homes's activities under this Agreement, including any acts or omissions of Chesmar Homes, any agent, officer, director, representative, employee, consultant or subcontractor of Chesmar Homes, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CIVITAS CORP 2019 AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

12.3 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Chesmar Homes Ltd. shall advise the City in writing within 3 business days of any claim or demand against the City or Chesmar Homes Ltd. known to Chesmar Homes Ltd. related to or arising out of Chesmar Homes's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Chesmar Homes's cost. City shall advise Chesmar Homes Ltd. within 3 business days of any claim or demand against the City or Chesmar Homes Ltd. known to the City arising out of Chesmar Homes's activities under this Agreement. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Chesmar Homes Ltd. of any of its obligations under this paragraph.

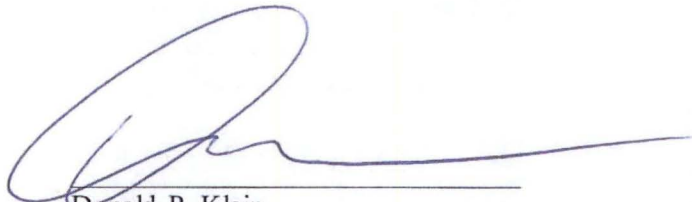
### **XIII. COUNTERPARTS**

13.1 For convenience of the Parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

#### **THE CITY OF SAN ANTONIO**

**By:**

\_\_\_\_\_  
Roderick J. Sanchez  
Assistant City Manager



\_\_\_\_\_  
Donald P. Klein  
CEO  
Chesmar Homes, LLC

**APPROVED AS TO FORM:**

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



**EXHIBIT A**  
**ALLEY IMPROVEMENTS PROJECT SCOPE**

**Alley Improvements Project Description:**

The Alley Improvements between Spring Trail Drive and Spring Manor Drive and between Spring Trail Drive and Spring Garden Drive, will provide for tree pruning, trash removal, asphalt surface removal and replacement.

**Alley Improvements Project Budget:**

The City will utilize allocated funds for construction of project (not to exceed \$350,000) the Alley Improvements between Spring Trail Drive and Spring Manor Drive and between Spring Trail Drive and Spring Garden Drive). The Alley Improvements Project budget is described in detail in Exhibit B.

**Alley Improvements Project Schedule:**

Alley Improvements Project design is complete as of the date of this agreement. Construction is underway, and completion is estimated to be August 2022.

**EXHIBIT B**  
**ALLEY IMPROVEMENTS PROJECT BUDGET**

A	B	C	D
Project Line Items	Partner/Agency Funds	City Funds	Total Line Item Cost Equals B + C
Alley Maintenance Project	\$90,000	\$350,000	\$440,000
	<b>Total:</b> <b>\$90,000</b>	<b>Total:</b> <b>\$350,000</b>	<b>Total Project</b> <b>Funds: \$440,000</b>