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**CITY OF SAN ANTONIO  
PUBLIC WORKS DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

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

**SUBJECT:** Execution of Developer Participation Contract between City of San Antonio and Rio Perla Properties, L.P. for the Broadway Corridor Storm Water Drainage Project

**DATE:** March 10, 2005

**SUMMARY AND RECOMMENDATIONS**

This Ordinance authorizes the execution of a Developer Participation Contract between the City of San Antonio and Rio Perla Properties, L.P. (Rio Perla) for the Broadway Corridor Storm Water Drainage Project.

This Ordinance also authorizes the City of San Antonio to pay for the cost to oversize a drainage facility extending from the San Antonio River to Grayson Street and to accept the completed drainage easement from Rio Perla Properties, L.P. for a total amount not to exceed \$4,135,258.

The total City funding contribution to this project is \$4,135,258, which will be provided through 2005 Storm Water Revenue Bonds. This project is located in Council Districts 1 and 2.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

December 9, 2004 the City Council approved a 19.5% Rate Increase to the Storm Water Fee to issue Storm Water Revenue Bonds that would allow for the funding of eleven Regional flood control projects. Regional flood control projects by definition have a drainage area greater than 1.5 square miles and provide a positive impact to the watershed in which they are located. Projects of this nature can be classified as infrastructure recapitalization, major storm water outfalls, regional storm water detention facilities, and low water crossing mitigation. The eleven projects approved were selected using the same selection criteria utilized for the 2003 Storm Water Revenue Bonds. This selection criteria included 1) Linkage with a Master Plan, 2) Ability to leverage non-city dollars, 3) Project initiation within four years, 4) Continuity of a prior authorized bond project, 4) Existence of completed engineering plan, 5) Public or Council request, 6) Safety, health or ADA Project and 7) Infrastructure Model.

Among these eleven projects the "Broadway Corridor, Phase 1" was designated for construction. This is the first of multiple phases projected for the Broadway Corridor. Construction of this project would correct and supplement an aged and undersized drainage channel in the area that is inadequate to prevent severe flooding in the area.

Rio Perla Properties, L.P. is currently redeveloping the Pearl Brewery site into a mixed-use development having large educational and residential components. Plans for the development call for approximately 800,000 square feet of new and renovated space with an estimated value of more than \$100 million upon completion. It is anticipated that the Pearl Brewery redevelopment will encourage other redevelopment in the surrounding area.

Part of the redevelopment effort of the Pearl Brewery requires Rio Perla to adequately carry onsite water resulting from a 100-year storm event by constructing a drainage facility on site that would carry as little as 15 cubic feet per second (cfs) and as much as 80 cfs with an average of approximately 42 cfs of storm water runoff from 2 parcels of property. To accommodate the needs of the Broadway Corridor Project, Rio Perla has agreed to over size that drainage facility to accommodate 675 cfs of storm water run off from approximately 99 acres upstream from the property. Rio Perla has also agreed to grant to the City, without charge, an underground drainage easement across the Pearl Brewery development that would enable the new drainage improvements to avoid existing utilities in the area, resulting in a 12 – 18 month project implementation time savings as well as significant cost savings to the City. This project also matches several of the bond project selection criteria such as: the leveraging of non-city dollars, project initiation within 4 years, and public or Council request.

Section 212 of the Texas Local Government Code allows municipalities to contract with a developer to construct public improvements related to the development and to participate in the cost thereof. This agreement provides funds from the City that will be used to pay for 93.83% of the engineering costs and expenses to prepare the construction documents, including engineering fees and expenses for studies, opinions of probable costs and other expenses related to the watershed and 93.83% of the cost and expenses to construct the project, being the agreed cost of over sizing the drainage project to accommodate the City. The total cost of this project is estimated to be \$4,407,107. The city share of this project will be capped at \$4,135,258.

### **POLICY ANALYSIS**

This ordinance is a continuation of City Council's commitment to complete previously approved bond projects. Additionally, this ordinance continues existing policy to leverage funds with private entities to support infrastructure improvements.

### **FISCAL IMPACT**

This is a one-time capital expenditure in the amount of \$4,407,107. Funds in the amount of \$4,135,258 are available from the 2005 Storm Water Revenue Bonds made payable to Rio Perla Properties, L.P. and \$271,849 will be provided by Rio Perla Properties, L.P. for this project.

Projects associated with the sale of the Storm Water Revenue Bonds were not included in the FY 05-10 Capital Improvement Program Budget, as the funding for these projects was contingent upon a Storm Water fee increase, which was approved by City Council on December 9, 2004. Approval of this ordinance will establish a project budget.

This ordinance is also a declaration of the City's official intent to reimburse itself from the proceeds derived from the sale of the City of San Antonio, Storm Water Revenue Bonds.

## **COORDINATION**

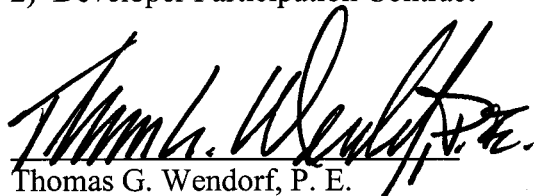
This ordinance has been coordinated with the City Attorney's Office, the Office of Management and Budget, the Contract Services Department and the Finance Department.

## **SUPPLEMENTARY COMMENTS**

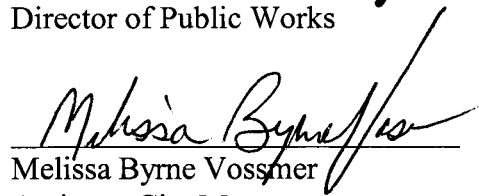
The Discretionary Contract Disclosure Form required is attached.

## **ATTACHMENTS**

- 1) Project Map
- 2) Developer Participation Contract



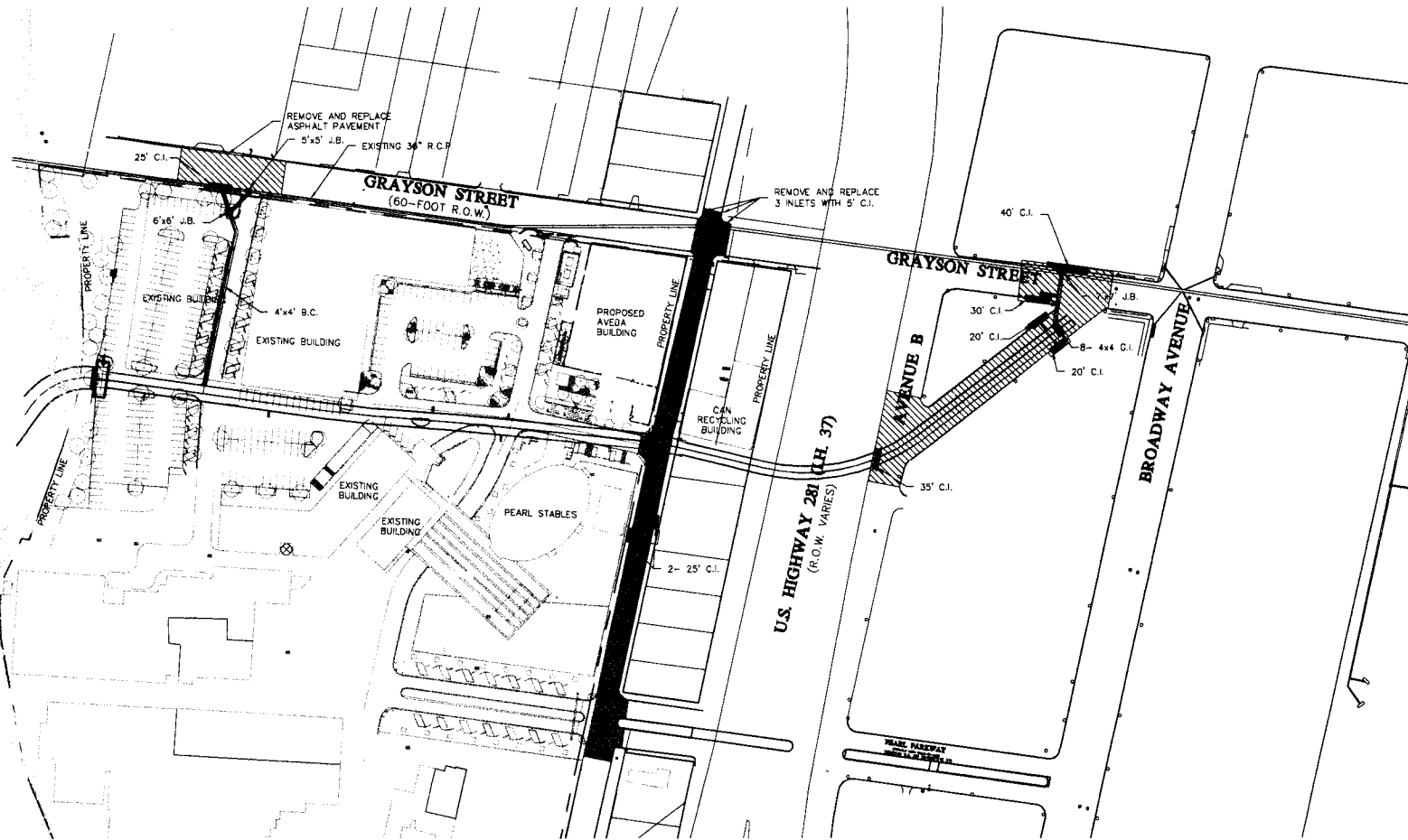
Thomas G. Wendorf, P. E.  
Director of Public Works



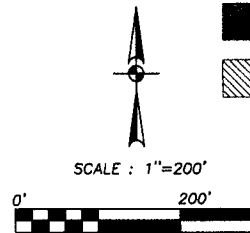
Melissa Byrne Vossmer  
Assistant City Manager



J. Rolando Bono  
Interim City Manager



**BROADWAY CORRIDOR  
 CITY OF SAN ANTONIO DRAINAGE IMPROVMENTS  
 SA3, SA4, SA5, SA6 & SA8  
 WATERSHED SA8 - SAN ANTONIO RIVER TO BROADWAY AVE.  
 PEARL BREWERY SITE**



- PAVEMENT AREA TO BE MILLED AND OVERLAID
- PAVEMENT AREA TO BE RECONSTRUCTED

**PAPE-DAWSON ENGINEERS**

656 EAST RAMSEY | SAN ANTONIO TEXAS 78216 | PHONE: 210.375.9000  
 FAX: 210.375.9010

**DEVELOPER PARTICIPATION CONTRACT  
BROADWAY CORRIDOR WATERSHED SA8  
STORM WATER DRAINAGE PROJECT**

This Contract for certain considerations regarding a storm water drainage project at the southwest corner of the intersection of Grayson Street and Avenue A, dated as of \_\_\_\_\_, 2005 (hereinafter the "Effective Date") is entered into by and between **THE CITY OF SAN ANTONIO, TEXAS**, a Texas Municipal Corporation, and **RIO PERLA PROPERTIES, L. P.**, a Texas Limited Partnership, pursuant to Ordinance No. \_\_\_\_\_ passed by the City of San Antonio City Council on \_\_\_\_\_, 2005.

Whereas, Developer is the owner of the Property. The area surrounding the Property is subject to flooding and drainage problems.

Whereas, the construction of the Project is in the City's interest. Obtaining the Construction Documents and the Drainage Easement will further the Project.

Whereas, receipt of the Construction Documents and the Drainage Easement, all described herein, benefit the City because, among other things: (i) the Project, defined herein, will reduce flooding in the area of the Broadway Watershed SA8 and will increase public safety in the area adjacent to the Property; (ii) the City will obtain the Drainage Easement without monetary consideration; and (iii) the Project will enable economic development of the Property and the areas surrounding the Property.

Whereas, this Contract benefits Developer by allowing a drainage facility that will capture and handle floodwaters from Broadway Drainage Watershed SA8, thereby improving access to the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

## DEFINITIONS:

Certain terms used in this Contract (defined below) shall have the meanings set forth as follows:

1. “City” means the City of San Antonio, Texas, a Texas municipal corporation.
2. “City Share” means 93.83% of the engineering costs and expenses to prepare the Construction Documents and 93.83 % of the cost and expenses to construct the Project (i/e. City Share equals the sum of City Share/Plans and City Share/Facility). In no event shall City Share exceed \$4,135,258 without a written agreement to the contrary between the parties.
3. “City Share/Plans” means 93.83% of the costs and expenses to prepare the Construction Documents, including but not limited to, all engineering fees and expenses for all studies, opinions of probable costs and other work performed by the Project Engineer related to Watersheds SA4, SA5, SA6 and SA8. In no event shall City Share/Plans exceed \$413,860.
4. “City Share/Facility” means 93.83% of the costs and expenses to construct the Project. In no event shall City Share/Facility exceed \$3,721,398.
5. “Contract” means this Developer Participation Contract between the City of San Antonio, Texas and Rio Perla Properties, L. P.
6. “Contract Documents” means this Contract and Exhibits “A” through “E” attached hereto and made a part hereof for all purposes.
7. “Construction Documents” means the plans, specifications and estimates for the Project, which shall be provided by the Developer pursuant to the terms of this Contract. The Construction Documents shall illustrate dimensions, materials, methods of construction, methods of excavation, and other details of the Project. A list of the Construction Documents is provided in **Exhibit “C”**.
8. “Developer” means Rio Perla Properties, L. P., a Texas limited partnership.
9. “Director” means the Director of Public Works, City of San Antonio.

10. “Drainage Easement” means the underground stormwater drainage easement to be conveyed to the City by the Developer in the location described specifically in **Exhibit “B-1”** attached hereto and made a part hereof for all purposes.

11. “Easement Document” means the form of conveyance document used to convey the Drainage Easement by Developer to City and shown in **Exhibit “B”** attached hereto and made a part hereof for all purposes.

12. “Project” means the drainage facility to be constructed by Developer represented and depicted in the Construction Documents, being an underground box culvert and related improvements extending from the intersection of Grayson Street and Avenue B Extension (near the west right-of-way line of Broadway Avenue) to the east bank of the San Antonio River.

13. “Project Engineer” means Pape-Dawson Consulting Engineers, Inc.

14. “Property” means the property, comprising 18.88 acres more or less, situated in the City, owned by Developer, and more fully described in **Exhibit “A”**.

15. “Work” means the installation and construction of the Project by Developer in accordance with the Construction Documents and as provided herein.

### **CONTRACT PROVISIONS**

1. Background. This Contract qualifies as a "Developer Participation Contract" pursuant to Sections 212.071-212.072 et. seq. of the Texas Local Government Code. In this regard, Developer shall construct the Project on the Property running roughly parallel to and approximately 250 feet from Grayson Street. In order to adequately carry the onsite water resulting from a 100-year storm event, the drainage facility would have been sized to carry 80 cubic feet per second (“cfs”). To accommodate City needs, Developer has agreed to oversize this facility to convey 675 cfs relating to stormwater generated from approximately 99 acres upstream of the Property. City shall pay the cost for oversizing the original facility by paying the City Share. The total cost of the Project is estimated to be \$4,407,107. A detailed estimate of the cost of the Project is attached hereto as **Exhibit “C.”** A calculation of the City Share is also

illustrated in **Exhibit "C"**. A depiction of the Project is attached as **Exhibit "D"** and made a part hereof for all purposes.

2. Drainage Easement. Developer shall convey the Drainage Easement to City pursuant to and in the form of **Exhibit "B"**. The Easement Document shall be executed by Developer, as Grantor, simultaneously upon execution of this Contract and shall be held in escrow by Chicago Title Company (Doug Becker) (the "Escrow Agent") until the earlier of: (i) receipt by Developer of City Share, or (ii) the occurrence of an Event of Default by Developer, at which time the Escrow Agent shall record the Easement Document in the Real Property Records of Bexar County, Texas. The Drainage Easement shall be free of encumbrances at all times prior to actual release to City, other than as set forth in **Exhibit "B"**.

3. Construction. Developer shall commence construction of the Project within ten days after the later of (i) execution and delivery of this Contract by City and Developer, (ii) approval of the Construction Documents by the Director, and (iii) receipt by Developer of all governmental and regulatory permits and approvals required in connection with the construction of the Project. Developer's obligation to commence construction of the Project is conditioned upon the receipt by Developer of such permits and approvals on such terms and conditions as Developer may deem to be acceptable in Developer's reasonable discretion. City agrees to cooperate with Developer in obtaining all permits and approvals required in connection with the Project. Construction of the Project shall at all times be performed in a good and workmanlike manner using only first class materials as specified in the Construction Documents. Only new materials shall be used. Construction shall be performed in accordance with the approved Construction Documents. Any variations from same shall require approval by City. In the event change orders are necessary in connection with the construction of the Project, Developer shall submit the same to City for its review and approval, not to be unreasonably withheld. Upon written approval of any change order by both Developer and City, the cost of the Project shall be adjusted to the extent the same is modified thereby and the City Share/Facility shall also be correspondingly adjusted. Notwithstanding the foregoing, Developer acknowledges it has knowledge of the limits on City's authority to fund only up to the maximum amount specified in this Contract plus any contingency amount as approved by ordinance. The Project may be designed and built in stages as Developer may determine subject to City's reasonable approval.



In this regard, City acknowledges that the storm drain at Grayson Street (as labeled on **Exhibit "C"**, being the 266 l. f. of storm drain line extending from the box culvert to Grayson Street and the associated curb inlet) is located where an existing building currently sits, cannot be built until the building is removed (which is not currently scheduled), and will be completed after completion of the balance of the Project. When the storm drain at Grayson is installed, Developer will grant City an easement for the same in the form of **Exhibit "B"** and City shall pay City Share of the cost of the same, subject to the limitations set forth herein.

Notwithstanding the foregoing, Developer may, at its option, submit periodic draw requests to City no more often than once per month during construction of the Project, for payment of that portion of City Share/Facility as may be attributable to the completed construction of the Project since the last periodic draw request. Any such draw request shall be accompanied by a certificate from the Project Engineer certifying the amount of work performed to date on the Project on a percentage of completion basis, confirming that such work was performed in accordance with the Construction Documents, stating the amount of the City Share/Facility attributable thereto, and including a breakdown of labor, names of contractors and materials used. City shall pay the portion of City Share/Facility covered by such periodic draw request within thirty (30) days following City's receipt thereof.

The outlet structure of the Project shall be designed to discharge into the existing channel of the San Antonio River. This Contract does not address and Developer has no responsibility with respect to any modification to the discharge structure that may occur in connection with the construction of the proposed Museum Reach of the San Antonio Riverwalk. City shall not be liable to Developer, Contractor or any third parties for any delays with regard to construction of the Project or the Construction Documents other than those directly caused by City and which are beyond the City's customary application of developmental processes.

Developer shall enter into a contract (the "Construction Contract") for construction of the Project with Shannon-Monk, Inc. or another contractor selected by Developer (the "Contractor") subject to City's reasonable approval which approval shall not be unreasonably withheld provided such alternative contractor has the proven capacity, solvency and expertise to construct the Project. Once commenced, Developer shall cause construction of the Project to be

prosecuted diligently and continuously until completion in accordance with the Construction Documents as certified jointly by the Project Engineer and the Director. The Director shall have the authority to accept the Project on behalf of City, and City shall accept ownership and maintenance of the Project upon approval of the completed Project by the Director.

Prior to the commencement of construction, the Developer shall provide City with (i) payment and performance bonds in form in accordance with the Texas Local Government Code and the Texas Insurance Code reflecting the City as beneficiary thereunder, and (ii) insurance certificates showing the City as a named insured in types and amounts reasonably required by the City's Risk Management Department. The foregoing shall remain active throughout the course of construction of the Project.

The Construction Contract shall prohibit third party beneficiaries other than City which shall be specifically designated as a third party beneficiary. The Contractor shall acknowledge therein that it has read this Contract and understands that City has certain rights hereunder. The Construction Contract shall provide for City access to the Project at all reasonable times for inspection purposes. "As Built" Plans shall be provided to the City no later than 60 days after completion of the Project, as jointly certified by the Project Engineer and the Director.

4. Inspections. The Project shall be accessible at all times to the Director or his designee for inspection. The Developer acknowledges any inspections performed by the City for purposes of this Contract (as opposed to routine building and construction inspections performed by City for permitting and acceptance purposes common to all similar construction projects) are for the benefit of the City only and may not be relied upon by others, be claimed by the Developer as an approval by City, a permit granted by the City, a waiver by the City, or used for any purpose by the Developer, the Contractor or any third party. Developer further acknowledges that Developer and Contractor are required to perform their own inspections and inspections by the City do not address any obligations of Developer or others.

5. Construction Documents. Developer shall provide the City with a complete set of Construction Documents meeting the requirements of this Contract no later than June 1, 2005. Construction of any part of the Project shall in no event commence prior to City approval of the Construction Documents for that part of the Project. The Construction Documents shall be in

accordance with the requirements of this Contract and be prepared by and bear the seal of the individual engineer working on behalf of the Project Engineer. City shall pay to Developer City Share/Plans thirty (30) days after receipt and approval of the Construction Documents by the Director. Developer shall cause the Project Engineer to commence preparation of the Construction Documents promptly upon full execution of this Contract and to diligently continue same to completion. Developer shall provide City with copies of Project Engineer's invoices for the Project as such invoices are received by Developer. The Construction Documents shall conform to all applicable local, state and federal codes and regulations and customary engineering practices. City shall own the Construction Documents upon payment of City Share/Plans and Developer shall obtain Project Engineer's assignment of its interest to City in same. Developer hereby assigns its interest in the Construction Documents to City, to become effective upon receipt by Developer of City Share/Plans. City shall own the Construction Documents for all purposes and may duplicate them, license them, use them and re-use them for any and all purposes.

6. Warranty. If the Work is found to be defective, either wholly or in part, and/or found to be non-conforming with the Contract Documents and/or the Construction Documents during the 12-month period following acceptance of the Project by City, Developer shall correct such defective or non-conforming Work within thirty days of notice thereof given by City. Developer may take such longer time to correct such Work as may be reasonably necessary, provided Developer is working diligently and continuously towards a cure. If Developer fails to cure such defective or non-conforming Work, then City may, at its own expense, correct such defective or non-conforming Work, by City's own crews, or by outside contractors, and the reasonable cost of such correction shall be deemed to be sums due City by Developer, at City's option, pursuant to this Contract, and may be offset against any other outstanding sums due by City to Developer under the Contract. The cost of City crews shall be determined by prevailing market rates for performing the work required to correct such defects and/or labor. Upon completion of the Project, as previously defined, all available product and material warranties, including all warranties given by Contractor, shall be provided and/or assigned to City. This Contract shall be deemed to operate as an assignment of same. This provision shall survive termination of this Contract.

7. Default. Upon default by Developer in the performance of its obligations hereunder and failure of Developer to cure such default within 30 days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided the Developer commences the cure within 30 days and continuously and diligently pursues the cure to completion) (a "Default") City shall have the right to terminate this Contract.

In the event of Default by Developer, City may require Developer to cease construction and City may, at its option, take over construction of the Project with its own Contractor. In such event the Easement Document shall be recorded in the Real Property Records of Bexar County, Texas, and this Contract shall operate as an agreement by Developer to allow City access to the Property as necessary to complete the Project. These remedies are in addition to any money damages and/or legal, equitable and/or other contract rights City may have in the event of Developer's default; provided that it is expressly agreed that neither party shall have the right to seek consequential or punitive damages against the other for any default under this Contract.

8. Record. This Contract, at City's option, may be filed and recorded in the real property records of Bexar County. This Contract is a covenant that shall be and is binding on subsequent owners of the Property or any part thereof, and operates as a covenant that runs with the land.

#### **GENERAL PROVISIONS:**

9. The City's Representative. The City hereby designates the Director and/or such other person or persons as the Director may hereafter designate upon prior written notice to Developer, as the "City's Representative."

10. Developer's Representative. Developer hereby designates William G. Shown, or such other person as Developer may hereafter designate upon prior written notice to the City, as "Developer's Representative."

11. Representations and Warranties. Developer and City represent, warrant, certify and agree that neither this Contract, nor the Contract Documents, nor any part of the relationship between the parties hereto shall be construed in any way or operate as creating a joint venture, partnership or other business entity between Developer and City.

12. Assignment. Developer may not assign its rights or obligations under this Contract without the prior written consent of City. Any such assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, without the prior written consent of City shall, at City's option, be of no force and effect whatsoever. Any consent to any such assignment or transfer shall not constitute a waiver of any of the restrictions of this section and the provisions of this section shall apply to each successive assignment or other transfer hereunder, if any. This section of this Contract shall have no effect on any other provisions of this Contract.

13. Indemnity. During the performance of the Work Developer shall direct the Contractor(s) and other contractors to exercise care to avoid accident or injury to persons and/or property and/or the Property and maintain sufficient barriers, signs and all necessary safeguards, including watchmen, if necessary, in order to protect against accidents. Developer shall also direct the Contractor(s) and other contractors to maintain adequate lighting, reflective and other warning devices, and take reasonable precautions to protect persons and property and prevent accidents and damage arising out of the Work. Developer shall defend, protect, indemnify and hold harmless City from and against all claims, damages to persons or property, demands, causes of action, liability or proceedings and all costs and expenses of any kind and attorneys' fees and cost of suit, arising, in whole or part, whether now known or otherwise, out of or resulting from Developer's and/or Contractor's performance of the Work and/or Developer's other obligations under this Contract, the Contract Documents, and/or the Construction Documents This provision survives termination and/or expiration of this Contract.

14. Entire Agreement. The terms of this Contract are intended to be a final expression of the parties and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings, whether written or oral. The parties expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that this Contract constitutes the complete and exclusive statement of the parties' intent and that no extrinsic evidence may be introduced in any proceeding involving the Contract Documents. No addition to, deletion from, or modification of any term or provision of this Contract shall be effective unless it is made in a writing signed by the parties hereto.

15. Conflicts Between Documents. In the event of any conflict between the Exhibits hereto and the terms and provisions of this Contract, the terms and provisions of this Contract shall control; provided, however, that the Easement Document is and shall be a complete and final expression of the terms of the Drainage Easement and shall be interpreted, construed and enforced without reference to this Contract.

16. Waiver. It is understood and acknowledged that City exercises no control over the means of accomplishing the Work. No approval by City shall impose any liability on City for any risk or damage to persons or property or the Property or shall imply or guarantee any drainage implications to the parties, any other party or otherwise.

17. Attorneys' Fees. If either party commences an action against the other to enforce any of the terms of this Contract or for damage relative to this Contract, the losing party shall pay to the prevailing party the costs and expenses incurred in connection with the prosecution or defense of such action, including attorneys' fees and all other costs of suit.

18. Notices. Any notice required or permitted to be given under this Contract shall be in writing and shall be (1) mailed by certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service, at its address set forth as follows:

If to Developer:      Rio Perla Properties, L.P.  
Attn: William G. Shown  
5121 Broadway  
San Antonio, TX 78209  
Telephone No. (210) 930-1251 ext 23

If to the City:      City of San Antonio  
Attn: Thomas Wendorf, P.E. Director of Public Works  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Telephone No. (210) 207-8024

City of San Antonio  
Attn: Andrew Martin, City Attorney  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Telephone No. (210) 207-8940

Any communication so addressed and mailed shall be deemed to be given on the earliest of: (a) when actually received or delivered; (b) when proof of return of certified mail is received; or (c) on the first business day after deposit with an overnight air courier service, if proof to the address of the intended addressee is provided. A change of address may be given by written notice as provided herein.

19. Third Party Beneficiaries. There shall be no third party beneficiaries to this Contract other than as specifically stated herein to the contrary.

20. Partial Invalidity. Any provisions or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties and construed as close as reasonably possible to their original intent.

21. Authority of Signatory. The persons signing on behalf of each of the parties to this Contract represent that they each have the authority to bind their respective party to this Contract. The signature on this Contract or any document on behalf of the City is subject to passage of an ordinance approving the authority of such signatory.

22. Gender and Number. Other Terms. Where the context of this Contract permit, the singular shall include the plural, the plural the singular, and the masculine shall include the neuter and feminine.

23. Governing Law and Venue. This Contract shall be construed and interpreted under and shall be governed and enforced according to the laws of the State of Texas. Venue for any legal proceeding arising out of or in connection with this Contract shall be in Bexar County, Texas.

24. No Oral Modification. This Contract shall not be modified orally or by course of conduct or dealing. Any modification of this Contract shall be in writing and signed by the authorized party.

25. Counterparts. The Contract Documents may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

26. Force Majeure. In the event Developer or City is unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Contract, the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for the period of such delay, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, acts of terrorism, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to overcome.

*[signatures on next page]*



IN WITNESS WHEREOF, this Contract is entered into as of the day and year set forth above.

OWNER:

CITY OF SAN ANTONIO,  
a Texas Municipal Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2005

DEVELOPER:

RIO PERLA PROPERTIES, L. P.,  
By its general partner,  
Rio Perla Management, L.L.C.

By: \_\_\_\_\_  
William G. Shown, Vice President

Date: \_\_\_\_\_, 2005

ACKNOWLEDGED AND AGREED TO ACT AS  
ESCROW AGENT:

\_\_\_\_\_  
Doug Becker  
Chicago Title Company

STATE OF TEXAS        }  
                             }  
COUNTY OF BEXAR     }

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by \_\_\_\_\_, \_\_\_\_\_ of the City of San Antonio, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS        }  
                             }  
COUNTY OF BEXAR     }

This instrument was acknowledged before me on \_\_\_\_\_, 2005, by William G. Shown, as Vice President and on behalf of Rio Perla Management, L.L.C., a Texas limited liability company, as general partner on behalf of Rio Perla Properties, L.P., a Texas limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT A



### FIELD NOTES

#### FOR

#### TRACT 1

A 18.88 acre, 822,613 square foot more or less, tract of land being all of Lot 1, Block 1, New City Block (N.C.B.) 14164, Pearl Brewing Company Property Subdivision recorded in Volume 5870, Pages 115-116 of the Deed and Plat Records of Bexar County, Texas, being the same tract of land as conveyed to S&P Company, in deed recorded in Volume 4300, Pages 535-539 of the Official Public Records of Bexar County, Texas, in the City of San Antonio, Bexar County, Texas, said tract being more particularly described as follows;

**BEGINNING:** At a set  $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", at the intersection of the south right-of-way line of East Grayson Street a 60-foot right-of-way per City Engineers Map Number 19, and the west right-of-way line of Avenue A, a 40-foot right-of-way at this point per City Engineers Map Number 19, the northeast corner of the herein described tract;

**THENCE:** S  $12^{\circ}27'35''$  W, departing the south right-of-way line of East Grayson Street, coincident with the west right-of-way line of Avenue A, a distance of 1,280.33 feet to a set  $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", the beginning of a curve to the right;

**THENCE:** Southwesterly coincident with said curve, the west right-of-way line of Avenue A, said curve having a radius of 15.00 feet, a central angle of  $85^{\circ}16'59''$ , a chord bearing and distance of S  $55^{\circ}06'05''$  W, a distance of 20.32 feet and arc length of 22.33 feet to a set  $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson" on the north right-of-way line of Newell Avenue, a 60-foot right-of-way as recorded in said Volume 5870, Pages 115-116, a point of tangency;

**THENCE:** N  $82^{\circ}15'26''$  W, coincident with the north right-of-way line of Newell Avenue, a distance of 243.29 feet to a set  $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson" at the intersection of the north right-of-way line of said Newell Avenue, the east right-of-way line of Karnes Street, a 45-foot right-of-way per City Engineers Map Number 19, the southwest corner of the herein described tract;

**THENCE:** N  $12^{\circ}27'35''$  E, departing the north right-of-way line of Newell Avenue, coincident with the east right-of-way line of said Karnes Street, a distance of 411.50 feet to a set  $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson", a corner of the herein described tract;

**PAPE-DAWSON ENGINEERS, INC.**

555 East Ramsey | San Antonio, Texas 78216 | Phone: 210.375.9000 | Fax: 210.375.9010 | [info@pape-dawson.com](mailto:info@pape-dawson.com)

THENCE: N 82°15'26" W, departing the east line of said Karnes Street, a distance of 45.15 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", on the east line of N.C.B. 959, the west line of said Karnes Street, an angle of the herein described tract;

THENCE: Departing the west line of said Karnes Street, coincident with the north line of N.C.B. 959, the following calls and distances;

S 78°56'35" W, a distance of 73.41 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" the beginning of a curve to the left;

Southwesterly along with said curve, said curve having a radius of 48.83 feet, a central angle of 29°56'40", a chord bearing and distance of S 63°58'15" W, a distance of 25.23 feet and a arc length of 25.52 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" to a point of tangency;

S 48°59'35" W, a distance of 164.32 feet to a found ½" iron rod;

S 33°37'06" W, a distance of 57.12 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", a corner of the herein described tract;

THENCE: N 47°39'25" W, a distance of 162.10 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", on the east line of the San Antonio River;

THENCE: Coincident with the east line of a 12,103 square foot tract as recorded in Volume 5597, Pages 82-84 of the Deed Records of Bexar County, Texas, and as shown on the Map of the San Antonio River Between Grayson St. and Newell Ave. dated October 22, 1964, as provide by the San Antonio River Authority, the following calls and distances

N 37°22'51" E, a distance of 6.53 feet to a point;

N 17°08'50" W, a distance of 34.10 feet to a point;

N 13°42'13" E, a distance of 75.00 feet to a point;

N 22°16'10" W, a distance of 112.07 feet to a point;

N 09°54'00" W, a distance of 174.14 feet to a point;

N 02°35'54" W, a distance of 41.83 feet to a found ½" iron rod set in a concrete shaft;

N 07°21'09" E, a distance of 34.27 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 24°15'00" E, a distance of 61.11 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

S 83°15'34" E, a distance of 10.62 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson";

N 20°10'18" E, a distance of 126.83 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" the beginning of a curve to the left;

Northerly coincident with said curve, said curve having a radius of 476.97 feet, a central angle of 23°00'00", a chord bearing and distance of N 08°40'18" E, a distance of 190.19 feet, and a arc length of 191.47 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", a point of tangency;

N 02°49'42" W, a distance of 98.20 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson" on the south line of Lot 1, Block 2, N.C.B. 973, recorded in Volume 4305, Page 174 of the Deed and Plat Records of Bexar County, Texas, a corner of the herein described tract;

THENCE N 87°48'39" E, departing the east line of the San Antonio River, coincident with the south line of said Lot 1, a distance of 23.23 feet to a set ½" iron rod with a yellow cap marked "Pape-Dawson", the southeast corner of said Lot 1, a corner of the herein described tract;

THENCE: N 10°18'09" E, coincident with the east line of said Lot 1, a distance of 80.42 feet to a found "+" in concrete on the south right-of-way line of said East Grayson Street, the northeast corner of said Lot 1, the northwest corner of the herein described tract;

THENCE: S 81°56'31" E, departing the east line of said Lot 1, coincident with the south right-of-way line of said East Grayson Street, a distance of 339.90 feet to a found "+" in concrete;

THENCE: S 82°06'21" E, coincident with the south right-of-way line of East Grayson Street, a distance of 445.20 feet to the POINT OF BEGINNING, and containing 18.88 acres in the City of San Antonio, Bexar County, Texas. Said 18.88 acres being described in accordance with an on the ground field survey and a map or plat prepared by Pape-Dawson Engineers.

PREPARED BY: PAPE DAWSON ENGINEERS INC.  
DATE: July 18, 2002, July 26, 2002.  
JOB No.: 9385-02  
FILE: N:\Survey02\2-9400\9385-02\notes\9385-02TRI.DOC

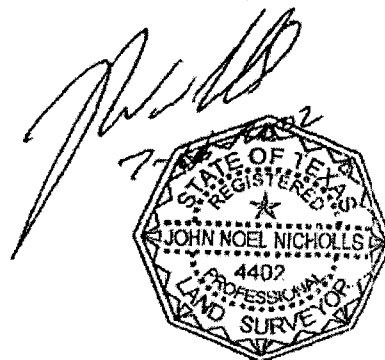


EXHIBIT B  
TO  
DEVELOPER PARTICIPATION CONTRACT

**UNDERGROUND STORMWATER EASEMENT**

STATE OF TEXAS       §  
                                  §       **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF BEXAR   §

That, **RIO PERLA PROPERTIES, L.P.**, a Texas limited partnership ("Grantor"), acting by and through its duly authorized officers, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration in hand paid by the **CITY OF SAN ANTONIO**, a Texas municipal corporation ("Grantee"), the receipt and sufficiency of which are hereby acknowledged and confessed, has granted, sold and conveyed and by these presents does hereby grant, sell and convey unto Grantee, whose mailing address is P. O. Box 839966, San Antonio, Texas 78283-3966, an easement (the "Easement") for the specific purpose of permitting Grantee to operate and maintain an underground stormwater drainage culvert and related pipes, lines and appurtenances (collectively, the "Easement Appurtenances") within that certain real property located in the City of San Antonio, Bexar County, Texas, as more particularly described and shown by field notes attached hereto as Exhibit "A" and a drawing marked Exhibit "B" attached hereto and made a part hereof (the "Easement Area").

Grantee shall have the right to remove from the Easement Area by standard industry practices employed in vegetation management, all trees, and parts thereof, any vegetation or obstructions which interfere with the installation, maintenance, and/or repair of the Easement Appurtenances within the Easement Area.

Grantor reserves for itself and its tenants and their respective successors and assigns, with the right of assignment in whole or in part, the full and complete enjoyment of the Easement Area without limitation, including the right to use the surface of the Easement Area, except that Grantor's use of the Easement Area shall not interfere with the rights specifically granted herein to Grantee. Grantor shall have the right to dedicate, construct, place, maintain, lay, inspect, protect, operate, repair, alter, substitute, replace and remove, except the Easement Appurtenances (i) surfacing materials, roads, streets, sidewalks, parking lots and landscaping over, across and along the Easement Area, and (ii) telephone, electric, gas, sewer and water lines or public utilities across and through the Easement Area and such activities shall not constitute interference with the Easement so granted so long as such improvements on the Easement Area do not impair Grantee's use of the Easement. Grantor shall also have the right to connect the stormwater drainage lines and facilities serving Grantor's Property described in Exhibit "C" hereto ("Grantor's Property") into the Easement Appurtenances at such locations as may be necessary or desirable to allow the transmission of the stormwater drainage from Grantor's Property into the Easement Appurtenances (the "Drainage Connections"), provided that such

Drainage Connections are done at no cost to Grantee and in a manner that does not interfere with the Easement rights of Grantee hereunder.

Grantor acknowledges that the Easement herein granted is paramount to the fee interest reserved by Grantor and is for the exclusive benefit of Grantee only. Notwithstanding any other provision contained herein, except for the Drainage Connections, Grantor may not dedicate, construct, place, maintain, lay, inspect, protect, operate, repair, alter, substitute, replace, remove, or in any way otherwise intrude in or on the Easement Appurtenances, including the outside surfaces thereof. Grantor may install and operate utility lines and other facilities within the Easement Area above, below and alongside the Easement Appurtenances but, except for the Drainage Connections, not within or attached to the Easement Appurtenances. Any underground utility lines or other facilities constructed or maintained by Grantor within the Easement Area shall either cross in a perpendicular direction to the Easement Appurtenances or shall run along either side (but not above or below) the Easement Appurtenances. Gr Grantor's underground improvements (the "Improvements") in the Easement Area shall be installed and maintained at Grantor's own risk. Grantor shall provide Grantee with as-built drawings showing the location of the Improvements in the Easement Area within thirty (30) days of completion of each and all Improvements. In the event of any damage or destruction to the Improvements caused by Grantee in the course of Grantee's use of the Easement Area in accordance herewith, Grantor shall bear the cost of any repair or replacement and the cost of any damages of any kind resulting from such damage to the improvements (other than repairs to surface improvements such as paving or landscaping as provided below) whether or not such damages are sustained by Grantor or by third parties. In the event Grantee has the need to perform work in the Easement Area, Grantee shall notify Grantor in advance when feasible to do so.

The Easement does not constitute a conveyance of fee simple title to the Easement Area or of the minerals or mineral rights therein and thereunder, but rather a conveyance of the Easement only. This Easement is a grant that is subject to all matters of record in Bexar County, Texas validly subsisting against the Easement Area on this date, and all easements, rights-of-way and prescriptive rights, of record; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances and other instruments, other than liens and conveyances, that affect the Easement Area; rights of adjoining owners in any wells and fences situated on a common boundary; any discrepancies, conflicts or shortages in area or boundary lines; and any existing encroachments or overlapping of improvements (collectively, the "Permitted Exceptions").

Grantee shall maintain and repair the Easement Area and the Easement Appurtenances at its sole cost and expense, to the extent necessary to keep the Easement Area and the Easement Appurtenances in good condition and repair, and in compliance with all City and governmental ordinances, rules and regulations. Grantee shall have access over the drives and access ways situated from time-to-time on Grantor's Property so as to access the Easement Area at all times. Grantee shall promptly restore the surface of any property damaged by Grantee's use of the Easement, at Grantee's sole cost and expense, including without limitation restoration of any sidewalks, driveways, or similar surface improvements located upon or adjacent to the Easement Area, which may have been removed, relocated, altered, damaged, or

destroyed as a result of the Grantee's use of the Easement Area. Grantee shall remove any debris resulting from its use of the Easement Area pursuant to the Easement.

TO HAVE AND TO HOLD the Easement and rights unto Grantee, its successors and assigns, until the use of the Easement by Grantee shall be permanently abandoned. Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the Easement and rights unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject to the terms, conditions and provisions set forth herein, including but not limited to the Permitted Exceptions.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**RIO PERLA PROPERTIES, L.P.**

a Texas limited partnership

By: Rio Perla Management, L.L.C.  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name: William G. Shown  
Title: Vice President

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by William G. Shown, the Vice President of Rio Perla Management, LLC., a Texas limited liability company, the general partner of RIO PERLA PROPERTIES, L.P., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas



EXHIBIT "A"  
TO  
UNDERGROUND STORMWATER EASEMENT  
**LEGAL DESCRIPTION OF EASEMENT AREA**

EXHIBIT "B"  
TO  
UNDERGROUND STORMWATER EASEMENT  
**DRAWING OF EASEMENT AREA**

EXHIBIT "C"  
TO  
UNDERGROUND STORMWATER EASEMENT  
GRANTOR'S PROPERTY

**EXHIBIT "C"**  
**TO**  
**DEVELOPER PARTICIPATION CONTRACT**

**Cost Estimate**

BROADWAY CORRIDOR  
CITY OF SAN ANTONIO DRAINAGE IMPROVEMENTS FOR  
SA3, SA4, SA5, SA6, & SA8

V. WATERSHED SA 8  
SUMMARY

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
PAVING					
1.	Remove & Replace Curb	LF	790	\$54.70	\$43,213
2.	Remove & Replace HMAC	SY	3,365	\$94.90	\$319,338
3.	Mill and Overlay HMAC (Ave. A)	SY	2,420	\$25.00	\$60,500
Subtotal Paving:					\$423,051

WATER

1.	Relocate 6" C.I. Water	EA	1	\$14,290.00	\$14,290
Subtotal Water:					\$14,290

STORM WATER

1.	Reinforced Concrete Class 'A'				
	a. 3 - 9' x 3' Headwall	EA	1	\$39,236.00	\$39,236
2.	Tie In @ River	EA	1	\$85,000.00	\$85,000
3.	2 - 10' x 4' Multiple Box Culvert (10-14)	LF	793	\$1,469.00	\$1,164,917
4.	10' x 4' - 8' x 4' Reducer	EA	2	\$5,050.00	\$10,100
5.	2 - 8' x 4' Multiple Box Culvert (10-14)	LF	594	\$1,274.50	\$757,053
6.	2 - 8' x 4' Multiple Box Culvert Bend	EA	0	\$12,060.00	\$0
7.	MBC - 48"RCP Connection	EA	2	\$2,525.00	\$5,050

8.	MBC - 12' x 4' Connection	EA	0	\$5,050.00	\$0
9.	12' x 4' Box Culvert (8-10)	LF	0	\$1,439.10	\$0
10.	7' x 4' Box Culvert (8-10)	LF	39	\$600.00	\$23,400
11.	5' x 4' Box Culvert (8-10)	LF	29	\$450.00	\$13,050
12.	4' x 4' Box Culvert (8-10)	LF	240	\$342.10	\$82,104
13.	30" RCP CLIII (6'-8')	LF	16	\$200.00	\$3,200
14.	36" RCP CLIII (6'-8')	LF	95	\$237.00	\$22,515
15.	42" RCP CLIII (8-10)	LF	29	\$225.60	\$6,542
16.	48" RCP CLIII (8-10)	LF	99	\$287.80	\$28,492
17.	Manhole Ring Encasement	EA	1	\$683.00	\$683
18.	4' x 4' Grate Inlet on Box Culvert	EA	8	\$4,500.00	\$36,000
19.	35' Curb Inlet	EA	1	\$12,000.00	\$12,000
20.	30' Curb Inlet	EA	1	\$10,000.00	\$10,000
21.	25' Curb Inlet	EA	3	\$8,225.00	\$24,675
22.	20' Curb Inlet	EA	4	\$7,500.00	\$30,000
23.	5' Curb Inlet	EA	3	\$3,800.00	\$11,400
24.	Demo Existing Inlet	EA	6	\$377.00	\$2,262
25.	7' x 7' Junction Box	EA	1	\$8,000.00	\$8,000
26.	6' x 6' Junction Box	EA	1	\$6,000.00	\$6,000
27.	5' x 5' Junction Box	EA	2	\$3,539.00	\$7,078
28.	47' x 10' Junction Box	EA	1	\$80,000.00	\$80,000
29.	Stage II Junction Box	VF	5	\$393.70	\$1,968
30.	Cross 6" C.I. Water	EA	0	\$9,000.00	\$0
31.	Cross 24" Sanitary Sewer	EA	0	\$2,525.00	\$0
32.	Cross 21" Sanitary Sewer	EA	1	\$2,525.00	\$2,525
33.	Cross 36" Recycled Water Line	EA	1	\$2,525.00	\$2,525
34.	Cross 8" Sanitary Sewer	EA	1	\$2,525.00	\$2,525
35.	Cross Gas Main	EA	3	\$2,525.00	\$7,575
36.	Spoil Disposal	CY	15,250	\$13.80	\$210,450
37.	SWPPP, NPDES, Erosion Control	LS	1	\$30,000.00	\$30,000
38.	Trench Protection	LF	1,935	\$34.10	\$65,985

Subtotal Storm Water:					\$2,792,
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Total Construction Cost					\$3,229,
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SUBTOTAL COST PHASE I					\$2,184,
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SUBTOTAL COST PHASE II					\$580,
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SUBTOTAL COST PHASE III

\$1,641,

TOTAL COST

\$4,407,

V. WATERSHED SA 8

PHASE I

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
PAVING					
1.	Remove & Replace Curb	LF	180	\$54.70	\$9,846.00
2.	Remove & Replace HMAC	SY	695	\$94.90	\$65,955.50
3.	Mill and Overlay HMAC (Ave. A)	SY	0	\$25.00	\$0.00
Subtotal Paving:					\$75,801.50

WATER

1.	Relocate 6" C.I. Water	EA	0	\$14,290.00	\$0.00
Subtotal Water:					\$0.00

STORM WATER

1.	Reinforced Concrete Class 'A'				
	a. Headwall	EA	1	\$39,236.00	\$39,236.00
2.	Tie In @ River	EA	1	\$85,000.00	\$85,000.00
3.	2 - 10' x 4' Multiple Box Culvert (10-14)	LF	750	\$1,469.00	\$1,101,750.00
4.	10' x 4' - 8' x 4' Reducer	EA	0	\$5,050.00	\$0.00
5.	2 - 8' x 4' Multiple Box Culvert (10-14)	LF	0	\$1,274.50	\$0.00
6.	2 - 8' x 4' Multiple Box Culvert Bend	EA	0	\$12,060.00	\$0.00
7.	MBC - 4' x 4' Box Connection	EA	1	\$2,525.00	\$2,525.00
8.	MBC - 12' x 4' Connection	EA	0	\$5,050.00	\$0.00
9.	12' x 4' Box Culvert (8-10)	LF	0	\$1,439.10	\$0.00
10.	7' x 4' Box Culvert (8-10)	LF	0	\$600.00	\$0.00
11.	5' x 4' Box Culvert (8-10)	LF	0	\$450.00	\$0.00

12.	4' x 4' Box Culvert (8-10)	LF	240	\$342.10	\$82,104.00
13.	30" RCP CLIII (6'-8')	LF	0	\$200.00	\$0.00
14.	36" RCP CLIII (6'-8')	LF	0	\$237.00	\$0.00
15.	42" RCP CLIII (8-10)	LF	0	\$225.60	\$0.00
16.	48" RCP CLIII (8-10)	LF	0	\$287.80	\$0.00
17.	Manhole Ring Encasement	EA	1	\$683.00	\$683.00
18.	4' x 4' Grate Inlet on Box Culvert	EA	0	\$4,500.00	\$0.00
19.	35' Curb Inlet	EA	0	\$12,000.00	\$0.00
20.	30' Curb Inlet	EA	0	\$10,000.00	\$0.00
21.	25' Curb Inlet	EA	1	\$8,225.00	\$8,225.00
22.	20' Curb Inlet	EA	0	\$7,500.00	\$0.00
23.	5' Curb Inlet	EA	0	\$3,800.00	\$0.00
24.	Demo Existing Inlet	EA	0	\$377.00	\$0.00
25.	7' x 7' Junction Box	EA	0	\$8,000.00	\$0.00
26.	6' x 6' Junction Box	EA	1	\$6,000.00	\$6,000.00
27.	5' x 5' Junction Box	EA	1	\$3,539.00	\$3,539.00
28.	47' x 10' Junction Box	EA	1	\$80,000.00	\$80,000.00
29.	Stage II Junction Box	VF	5	\$393.70	\$1,968.50
30.	Cross 6" C.I. Water	EA	0	\$9,000.00	\$0.00
31.	Cross 24" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
32.	Cross 21" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
33.	Cross 36" Recycled Water Line	EA	0	\$2,525.00	\$0.00
34.	Cross 8" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
35.	Cross Gas Main	EA	0	\$2,525.00	\$0.00
36.	Spoil Disposal	CY	7,810	\$13.80	\$107,780.80
37.	SWPPP, NPDES, Erosion Control	LS	0.4	\$30,000.00	\$12,501.00
38.	Trench Protection	LF	991	\$34.10	\$33,793.10
Subtotal Storm Water:					\$1,565,105.45

#### Miscellaneous

#### Construction Cost

Street Cost	LS	1	\$75,801.50	\$75,801.50
Drainage Cost	LS	1	\$1,565,105.45	\$1,565,105.45
Traffic Cost	EA	0	\$30,000	\$0.00
Tree Removal & Protection (1/2%)	LS	0	\$8,204.53	\$0.00
Barricades (3%)	LS	0	\$49,227.21	\$0.00
Bond & Insurance (3%)	LS	1	\$49,227.21	\$49,227.21
Mobilization & Preparation (15%)	LS	0	\$246,136.04	\$0.00

Subtotal: \$1,690,134.16

Construction Contingency (15%)	LS	1	\$253,520.12	\$253,520.12
Material Testing (2%)	LS	1	\$33,802.68	\$33,802.68
Engineering Fee	LS	1	\$188,618.97	\$188,618.97
Engineering Contingency (10%)	LS	1	\$18,861.90	\$18,861.90
Right-of-Way (Land Acquisition)	LS	1	\$0	\$0
Right-of-Way Survey	LS	0	\$0	\$0
Environmental	EA	0	\$1,500.00	\$0
FEMA Flood Plain Study	LS	0	\$0	\$0
Project Admin. (7%)	LS	0	\$152,945.65	\$0.00
	LS	0	\$344,400.83	\$0.00

Inflation Factor- Level I (5% per year for three years)

Subtotal: \$2,184,937.84

TOTAL COST PHASE I \$2,184,937.84

# V. WATERSHED SA 8

## PHASE II

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
PAVING					
1.	Remove & Replace Curb	LF	25	\$54.70	\$1,367.50
2.	Remove & Replace HMA	SY	0	\$94.90	\$0.00
3.	Mill and Overlay HMA (Ave. A)	SY	2,420	\$25.00	\$60,500.00
Subtotal Paving:					\$61,867.50

## WATER

1.	Relocate 6" C.I. Water	EA	1	\$14,290.00	\$14,290.00
Subtotal Water:					\$14,290.00

## STORM WATER



1.	Reinforced Concrete Class 'A'				
	a. Headwall	EA	0	\$39,236.00	\$0.00
2.	Tie In @ River	EA	0	\$85,000.00	\$0.00
3.	2 - 10' x 4' Multiple Box Culvert (10-14)	LF	43	\$1,469.00	\$63,167.00
4.	10' x 4' - 8' x 4' Reducer	EA	2	\$5,050.00	\$10,100.00
5.	2 - 8' x 4' Multiple Box Culvert (10-14)	LF	90	\$1,274.50	\$114,705.00
6.	2 - 8' x 4' Multiple Box Culvert Bend	EA	0	\$12,060.00	\$0.00
7.	MBC - 48" RCP Connection	EA	1	\$2,525.00	\$2,525.00
8.	MBC - 12' x 4' Connection	EA	0	\$5,050.00	\$0.00
9.	12' x 4' Box Culvert (8-10)	LF	0	\$1,439.10	\$0.00
10.	7' x 4' Box Culvert (8-10)	LF	0	\$600.00	\$0.00
11.	5' x 4' Box Culvert (8-10)	LF	0	\$450.00	\$0.00
12.	4' x 4' Box Culvert (8-10)	LF	0	\$342.10	\$0.00
13.	30" RCP CLIII (6'-8')	LF	0	\$200.00	\$0.00
14.	36" RCP CLIII (6'-8')	LF	95	\$237.00	\$22,515.00
15.	42" RCP CLIII (8-10)	LF	0	\$225.60	\$0.00
16.	48" RCP CLIII (8-10)	LF	95	\$287.80	\$27,341.00
17.	Manhole Ring Encasement	EA	0	\$683.00	\$0.00
18.	4' x 4' Grate Inlet on Box Culvert	EA	0	\$4,500.00	\$0.00
19.	35' Curb Inlet	EA	0	\$12,000.00	\$0.00
20.	30' Curb Inlet	EA	0	\$10,000.00	\$0.00
21.	25' Curb Inlet	EA	2	\$8,225.00	\$16,450.00
22.	20' Curb Inlet	EA	0	\$7,500.00	\$0.00
23.	5' Curb Inlet	EA	3	\$3,800.00	\$11,400.00
24.	Demo Existing Inlet	EA	5	\$377.00	\$1,885.00
25.	7' x 7' Junction Box	EA	0	\$8,000.00	\$0.00
26.	6' x 6' Junction Box	EA	0	\$6,000.00	\$0.00
27.	5' x 5' Junction Box	EA	1	\$3,539.00	\$3,539.00
28.	47' x 10' Junction Box	EA	0	\$80,000.00	\$0.00
29.	Stage II Junction Box	VF	0	\$393.70	\$0.00
30.	Cross 6" C.I. Water	EA	0	\$9,000.00	\$0.00
31.	Cross 24" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
32.	Cross 21" Sanitary Sewer	EA	1	\$2,525.00	\$2,525.00
33.	Cross 36" Recycled Water Line	EA	0	\$2,525.00	\$0.00
34.	Cross 8" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
35.	Cross Gas Main	EA	2	\$2,525.00	\$5,050.00
36.	Spoil Disposal	CY	2,546	\$13.80	\$35,129.38
37.	SWPPP, NPDES, Erosion Control	LS	0.2	\$30,000.00	\$5,000.00
38.	Trench Protection	LF	323	\$34.10	\$11,014.30

Subtotal Storm Water:	\$332,340
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Miscellaneous

Construction Cost

Street Cost	LS	1	\$61,867.50	\$61,867.50
Drainage Cost	LS	1	\$346,635.68	\$346,635.68
Traffic Cost	EA	0.2	\$30,000	\$6,000.00
Tree Removal & Protection (1/2%)	LS	0	\$2,072.52	\$0.00
Barricades (3%)	LS	0.2	\$12,435.10	\$2,487.02
Bond & Insurance (3%)	LS	1	\$12,509.71	\$12,509.71
Mobilization & Preparation (15%)	LS	0	\$62,548.53	\$0.00
Subtotal:				\$429,499.90

Construction Contingency (15%)	LS	1	\$64,424.99	\$64,424.99
Material Testing (2%)	LS	1	\$8,590.00	\$8,590.00
Engineering Fee	LS	1	\$70,609.78	\$70,609.78
Engineering Contingency (10%)	LS	1	\$7,060.98	\$7,060.98
Right-of-Way (Land Acquisition)	LS	0	\$0	\$0
Right-of-Way Survey	LS	0	\$0	\$0
Environmental	EA	0	\$1,500.00	\$0
FEMA Flood Plain Study	LS	0	\$0	\$0
Project Admin. (7%)	LS	0	\$40,613.00	\$0.00
	LS	0	\$91,451.76	\$0.00

Inflation Factor- Level I (5% per year for three years)

Subtotal:	\$580,185.64
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TOTAL COST PHASE II	\$580,185.64
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V. WATERSHED SA 8

PHASE III

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	AMOUNT
PAVING					
1.	Remove & Replace Curb	LF	585	\$54.70	\$31,999.50
2.	Remove & Replace HMA	SY	2,670	\$94.90	\$253,383.00

3.	Mill and Overlay HMA (Ave. A)	SY	0	\$25.00	\$0.00
Subtotal Paving:					\$285,382.50

#### WATER

1.	Relocate 6" C.I. Water	EA	0	\$14,290.00	\$0.00
Subtotal Water:					\$0.00

#### STORM WATER

1.	Reinforced Concrete Class 'A'				
	a. Headwall	EA	0	\$39,236.00	\$0.00
2.	Tie In @ River	EA	0	\$85,000.00	\$0.00
3.	2 - 10' x 4' Multiple Box Culvert (10-14)	LF	0	\$1,469.00	\$0.00
4.	10' x 4' - 8' x 4' Reducer	EA	0	\$5,050.00	\$0.00
5.	2 - 8' x 4' Multiple Box Culvert (10-14)	LF	504	\$1,274.50	\$642,348.00
6.	2 - 8' x 4' Multiple Box Culvert Bend	EA	0	\$12,060.00	\$0.00
7.	MBC - 48" RCP Connection	EA	0	\$2,525.00	\$0.00
8.	MBC - 12' x 4' Connection	EA	0	\$5,050.00	\$0.00
9.	12' x 4' Box Culvert (8-10)	LF	0	\$1,439.10	\$0.00
10.	7' x 4' Box Culvert (8-10)	LF	39	\$600.00	\$23,400.00
11.	5' x 4' Box Culvert (8-10)	LF	29	\$450.00	\$13,050.00
12.	4' x 4' Box Culvert (8-10)	LF	0	\$342.10	\$0.00
13.	30" RCP CLIII (6'-8')	LF	16	\$200.00	\$3,200.00
14.	36" RCP CLIII (6'-8')	LF	0	\$237.00	\$0.00
15.	42" RCP CLIII (8-10)	LF	29	\$225.60	\$6,542.40
16.	48" RCP CLIII (8-10)	LF	4	\$287.80	\$1,151.20
17.	Manhole Ring Encasement	EA	0	\$683.00	\$0.00
18.	4' x 4' Grate Inlet on Box Culvert	EA	8	\$4,500.00	\$36,000.00
19.	35' Curb Inlet	EA	1	\$12,000.00	\$12,000.00
20.	30' Curb Inlet	EA	1	\$10,000.00	\$10,000.00
21.	25' Curb Inlet	EA	0	\$8,225.00	\$0.00
22.	20' Curb Inlet	EA	4	\$7,500.00	\$30,000.00
23.	5' Curb Inlet	EA	0	\$3,800.00	\$0.00
24.	Demo Existing Inlet	EA	1	\$377.00	\$377.00
25.	7' x 7' Junction Box	EA	1	\$8,000.00	\$8,000.00
26.	6' x 6' Junction Box	EA	0	\$6,000.00	\$0.00

27.	5' x 5' Junction Box	EA	0	\$3,539.00	\$0.00
28.	47' x 10' Junction Box	EA	0	\$80,000.00	\$0.00
29.	Stage II Junction Box	VF	0	\$393.70	\$0.00
30.	Cross 6" C.I. Water	EA	0	\$9,000.00	\$0.00
31.	Cross 24" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
32.	Cross 21" Sanitary Sewer	EA	0	\$2,525.00	\$0.00
33.	Cross 36" Recycled Water Line	EA	1	\$2,525.00	\$2,525.00
34.	Cross 8" Sanitary Sewer	EA	1	\$2,525.00	\$2,525.00
35.	Cross Gas Main	EA	1	\$2,525.00	\$2,525.00
36.	Spoil Disposal	CY	4,894	\$13.80	\$67,539.72
37.	SWPPP, NPDES, Erosion Control	LS	0.4	\$30,000.00	\$12,500.00
38.	Trench Protection	LF	621	\$34.10	\$21,176.10
Subtotal Storm Water:					\$894,859.47

#### Miscellaneous

#### Construction Cost

Street Cost	LS	1	\$285,382.50	\$285,382.50
Drainage Cost	LS	1	\$894,859.47	\$894,859.47
Traffic Cost	EA	0.8	\$30,000	\$24,000.00
Tree Removal & Protection (1/2%)	LS	0	\$6,021.21	\$0.00
Barricades (3%)	LS	0.8	\$36,127.26	\$28,901.81
Bond & Insurance (3%)	LS	1	\$36,994.31	\$36,994.31
Mobilization & Preparation (15%)	LS	0	\$184,971.57	\$0.00
Subtotal:				\$1,270,138.05
Construction Contingency (15%)	LS	1	\$190,520.71	\$190,520.71
Material Testing (2%)	LS	1	\$25,402.76	\$25,402.76
Engineering Fee	LS	1	\$141,747.41	\$141,747.41
Engineering Contingency (10%)	LS	1	\$14,174.74	\$14,174.74
Right-of-Way (Land Acquisition)	LS	0	\$0	\$0
Right-of-Way Survey	LS	0	\$0	\$0
Environmental	EA	0	\$1,500.00	\$0
FEMA Flood Plain Study	LS	0	\$0	\$0
Project Admin. (7%)	LS	0	\$114,938.86	\$0.00
	LS	0	\$258,817.68	\$0.00
Inflation Factor- Level I (5% per year for three years)				
Subtotal:				\$1,641,983.71

**COST SHARING**

Parcel A (11.64 Acres) = 80 cfs  
Parcel B (2.25 Acres) = 15 cfs  
SA8 (Total Watershed) = 675 cfs

**Rio Perla Share**

Parcel A: 80/675 (\$2,184,938 (Phase 1)) = \$258,956  
Parcel B: 15/675 (\$580,185 (Phase 2)) = \$12,893  
Total Silver Share: \$271,849 (6.17%)

**City of San Antonio Share**

\$4,407,107 (Total Cost) - \$271,849 (Total Silver Share) = \$4,135,258 (93.83%)

## 066156.0003 WEST 5670839 v2

ATTACHMENT TO  
#40

City of San Antonio  
Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

n/a

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

Rio Perla Properties, L.P.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

n/a

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

Christopher Goldsberry, Jr.

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

# City of San Antonio

## Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Martin Drought & Torres, Inc.

### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Roger Flores Re-Election Campaign	\$500	10/13/04
Phil Hardberger for Mayor	\$500	12/2/04
Friends of Nelson Wolff	\$1,000	2/16/05
See attached list of Martin Drought & Torres, Inc.		

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

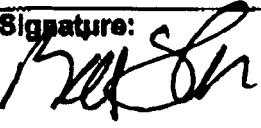
<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



**City of San Antonio**  
**Discretionary Contracts Disclosure\***

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

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Signature: 	Title: <i>Vice President of City</i> Company: <i>Ped Park Properties L.P.</i>	Date: <i>March 4, 2005</i>

# MARTIN, DROUGHT & TORRES, INC.

## POLITICAL CONTRIBUTIONS 2003 -2005

<u>DATE</u>	<u>NAME</u>	<u>AMOUNT</u>
3/10/2003	JULIAN CASTRO CAMPAIGN	\$ 250.00
3/18/2003	CARROLL W. SCHUBERT CAMPAIGN	\$ 500.00
5/7/2003	PHIL CORTEZ CAMPAIGN	\$ 500.00
6/20/2003	RON SEGOVIA CAMPAIGN	\$ 500.00
7/9/2003	ART HALL "RETIRE THE DEBT" CAMPAIGN	\$ 500.00
7/9/2003	ROGER FLORES, JR. CAMPAIGN	\$ 500.00
7/9/2003	CHIP HAASS CAMPAIGN	\$ 500.00
7/14/2003	JOEL WILLIAMS CAMPAIGN	\$ 500.00
10/5/2003	PEOPLE'S NINE	\$ 5,000.00
5/20/2004	CAMPAIGN FOR CHARTER REFORM	\$ 1,000.00
5/20/2004	ROGER FLORES CAMPAIGN	\$ 250.00
5/20/2004	CHIP HAASS CAMPAIGN	\$ 250.00
5/20/2004	ART HALL CAMPAIGN	\$ 250.00
5/20/2004	PATTI RADLE CAMPAIGN	\$ 250.00
5/20/2004	RON SEGOVIA CAMPAIGN	\$ 250.00
5/20/2004	JOEL WILLIAMS CAMPAIGN	\$ 250.00
8/25/2004	CITIZENS FOR BETTER TRANSPORTATION	\$ 1,000.00
11/5/2004	ROGER FLORES CAMPAIGN	\$ 500.00
11/5/2004	CHIP HAASS CAMPAIGN	\$ 500.00
11/19/2004	ENRIQUE BARRERA CAMPAIGN	\$ 500.00
12/11/2004	ART HALL CAMPAIGN	\$ 500.00
2/9/2005	RON SEGOVIA CAMPAIGN	\$250.00