

**CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

AGENDA ITEM NO. **36**

TO: Mayor and City Council
FROM: Ramiro A. Cavazos, Director
SUBJECT: Contract to support consulting services for Culinary Arts School at Pearl Brewery
DATE: April 14, 2005

SUMMARY AND RECOMMENDATIONS

The requested ordinance is to approve and authorize execution of an Agreement to grant funds to Rio Perla Properties, L.P. in the amount of \$90,000.00 for the sole purpose of helping defray the cost of consultant services to be provided by the Culinary Institute of America (CIA) regarding the potential development of a culinary school at the Pearl Brewery properties. This ordinance would also appropriate funds and authorize payment from the Hotel/Motel Fund.

This item is a result of a council consideration request by Mayor Ed Garza.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Rio Perla Properties, L.P. purchased the Pearl Brewery facility and has plans to redevelop the property into a cultural center. The redevelopment plans include the creation of a new, world-class culinary school with a Latin American cuisine focus. Rio Perla Properties, L.P. hired the Culinary Institute of America, one of the most highly regarded culinary schools in the world, as a consultant to provide their expertise in the development of the culinary school. Through a City Council Consideration memo dated October 21, 2004, the City Council expressed its support of a world-class culinary program in San Antonio, and requested staff to develop this contract. The City Council Governance Committee directed staff to bring this item directly to the full City Council for consideration.

The Agreement to use funds will authorize expenditures in an amount not to exceed \$90,000.00 to be used to reimburse Rio Perla Properties, L.P. for costs related to the initial phase of the consulting services provided by the CIA. During the initial phase of the contract, the CIA shall provide consulting services and additional assistance related to strategic and business planning, which shall include:

- (A) Development/outline of a strategic business plan for a Culinary Center to include educational curriculum and formats, scheduling, and pricing;
- (B) Development of operational pro-formas and budgets based on the developed strategic business plan; and
- (C) Design of kitchen/classroom facilities.

To be reimbursed for costs incurred, Rio Perla Properties, L.P. will be required to submit invoices to the City on a quarterly basis. Reimbursement will be based upon invoiced amounts for

expenses authorized under the Agreement during the preceding three months, and in proportion to the amount of City funding to the total cost of Rio Perla's deliverables, as previously described.

POLICY ANALYSIS

As permitted by Chapter 380 of the Texas Local Government Code, the City of San Antonio is authorized to grant and loan municipal funds in furtherance of public purposes for economic development projects.

This project supports the City's *Strategic Plan for Enhanced Economic Development* by encouraging the redevelopment of the Pearl Brewery and downtown. In addition, this project supports the City Council's priority project for a world-class culinary school in San Antonio.

The creation of a highly respected culinary school with a focus on Latin American cuisine in San Antonio and the overall redevelopment of the Pearl Brewery will enhance the quality of life of the city and foster economic development. Beyond the many cultural opportunities this redevelopment and culinary program will provide, this project will also enhance the educational opportunities available for individuals interested in a culinary arts career.

FISCAL IMPACT

The fiscal impact will be a maximum of \$90,000.00. This allocation was previously budgeted in the FY03 One-Time Special Projects fund for the Council priority. Funds will now be appropriated from the Hotel/Motel Fund.

COORDINATION

The Economic Development Department (EDD) staff met with the City Attorney's Office and the Office of Management and Budget to finalize the agreement.

SUPPLEMENTARY COMMENTS


The Discretionary Contracts Disclosure Forms are attached.



Ramiro A. Cavazos, Director
Economic Development Department



Jelynn LeBlanc Burley
Assistant City Manager



J. Rolando Bono
Interim City Manager

Attachments

CITY OF SAN ANTONIO
MAYOR'S OFFICE
INTERDEPARTMENTAL MEMORANDUM

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CITY OF SAN ANTONIO
CITY CLERK

2004 OCT 21 P 4:47

TO: City Council Members

FROM: Edward D. Garza, Mayor

COPIES: Rolando Bono, *Interim City Manager*; Jelynn Burley, *Assistant City Manager*; Ramiro Cavazos, *Director, Economic Development Department*; Erik W. Walsh, *Assistant to the City Manager*; Andrew Martin, *City Attorney*; Leticia Vacek, *City Clerk*; Peter Zanon, *Director, Management and Budget*; Gayle McDaniel, *Assistant to Council*; File

SUBJECT: Funding for Planning – Culinary Institute of America (CIA)


DATE: October 21, 2004

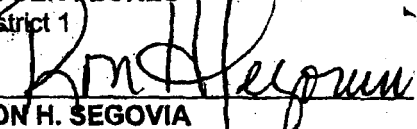
I respectfully request your support in directing staff to place an action item on an upcoming City Council agenda to develop a world-class culinary arts program in San Antonio. The Culinary Institute of America (CIA), the premier culinary education program in the nation, has agreed to work as a consultant in developing curriculum and educational requirements for a culinary school at the former Pearl Brewery. Additional planning and operational analysis is required.


Included in this request is direction for staff to negotiate a contract directly with the CIA and/or related private development interests to undertake this study and planning efforts, as soon as possible. The CIA clearly possesses unequalled knowledge and expertise when considering these programmatic issues.

Approximately \$90,000.00 remains available in the FY03 Mayor's One-Time Special Project (culinary arts program), to support this contract, which will also in part be funded from private sources. It is envisioned that the entire balance would be used for this purpose.


EDWARD D. GARZA
Mayor


ROGER FLORES
District 1


RON H. SEGOVIA
District 3


JOE WILLIAMS
District 2


RICHARD PEREZ
District 4



PATTI RADLE

District 5



JULIAN CASTRO

District 7

CARROLL SCHUBERT

District 9



ENRIQUE M. BARRERA

District 6



ART A. HALL

District 8

CHIP HAASS

District 10

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2009 OCT 21 P 4:47

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**AGREEMENT TO USE FUNDS
OF THE CITY OF SAN ANTONIO, TEXAS**

This AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("CITY"), acting by and through its Interim City Manager, pursuant to Ordinance No. _____, passed and approved on the 14th day of April 2005, and Rio Perla Properties, L.P., a Texas limited partnership ("RECIPIENT").

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant and loan municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, through a City Consideration Memo dated October 21, 2004, the City Council has expressed its support of a world-class culinary program in San Antonio; and

WHEREAS, RECIPIENT has entered into a consulting agreement with the Culinary Institute of America ("CIA"), a premier culinary education and training organization, to services related to the development of an independently owned and operated culinary program; and

WHEREAS, RECIPIENT intends to redevelop property at the former Pearl Brewery location, to include dedicated facilities for a world-class culinary program, and

WHEREAS, in Ordinance No. _____, passed and approved on April 14, 2005, the City Council of the City of San Antonio authorized this Agreement to Use Funds and appropriated funding in an amount not to exceed ninety thousand dollars (\$90,000.00); and

WHEREAS, said Ordinance approved the sum of ninety thousand dollars (\$90,000.00) for distribution to RECIPIENT for the sole purpose of helping to defray the cost of consultant services to be provided by the CIA, as further described in this Agreement; and

WHEREAS, RECIPIENT desires to accept the funding offered by CITY as well as the responsibilities and duties set forth in this Agreement; **NOW THEREFORE**

For and in consideration of the following mutual promises and obligations, and for the benefit of the citizens of the City of San Antonio, CITY and RECIPIENT hereby agree as follows:

1. CITY shall reimburse up to ninety thousand dollars (\$90,000.00) of RECIPIENT's expenses in obtaining consultant services from the CIA. CITY funds provided under this Agreement shall be used to fund the initial phase of RECIPIENT's consulting services agreement with the CIA, as set forth in paragraph 2. Final payment, under paragraph 3, requires successful completion of all the services detailed in paragraph 2, below.

2. During the initial phase of RECIPIENT's contract with CIA, RECIPIENT shall receive consultant services and additional assistance related to strategic and business planning, which shall include:

- (A) Development/outline of a strategic business plan for a Culinary Center to include educational curriculum and formats, scheduling, and pricing;
- (B) Development of operational pro-formas and budgets, based on the developed strategic business plan; and
- (C) Design of kitchen/classroom facilities.

3. RECIPIENT shall submit invoices to CITY for reimbursement on a quarterly basis. CITY, in its sole discretion, shall determine whether the amounts in the quarterly invoices are reimbursable expenses authorized under this Agreement. If CITY determines that any of the amounts invoiced are not reimbursable under this Agreement, it shall not pay such amounts. Funding for the final quarterly reimbursement shall not be available to RECIPIENT until CITY receives written notification certifying that the consultant services set forth in paragraph 2 have been delivered to RECIPIENT by the CIA. Reimbursement shall be based upon invoiced amounts by the CIA to RECIPIENT during the preceding three months, and in proportion to the amount of CITY funding to the estimated total cost of CIA's deliverables described in paragraph 2, above.

4. RECIPIENT shall expend the funds made available under this Agreement only for the purposes specified in paragraph 2.

5. RECIPIENT shall maintain accounting records for all expenditures made from the funding provided under this Agreement. RECIPIENT shall maintain these records in accordance with generally accepted accounting practices and shall make these records available to CITY for audit by CITY or its contracted auditor. These records will contain sufficient documentation to provide full support and justification for each expenditure. RECIPIENT shall maintain these records for four (4) years from the effective date of this Agreement.

6. RECIPIENT shall complete and submit to CITY, a copy of CITY'S Ethics Disclosure Form prior to RECIPIENT's receipt of said funds.

7. This Agreement is not assignable and funds received as a result hereof shall only be used by the party stated herein and for the purpose stated herein.

8. CITY's Director of Economic Development, or his designee, shall be CITY's representative responsible for the administration of this Agreement.

9. RECIPIENT represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required. The signer of this

Agreement for RECIPIENT represents, warrants, assures, and guarantees that he or she has full legal authority to execute this Agreement on behalf of RECIPIENT and to bind RECIPIENT to all terms, performances and provisions herein contained.

10. CITY and RECIPIENT agree that CITY shall not be obligated or liable under this Agreement to any party, other than RECIPIENT, for payment of any monies or provision of any goods or services.

11. RECIPIENT agrees that CITY may carry out monitoring and evaluation activities to ensure RECIPIENT's compliance with this Agreement.

12. RECIPIENT covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or 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 bodily injury, death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to RECIPIENT's activities under this Agreement, including any acts or omissions of RECIPIENT, any agent, officer, director, representative, employee, consultant or subcontractor of RECIPIENT, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, LOANS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this INDEMNITY are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RECIPIENT shall promptly advise the CITY in writing of any claim or demand against the CITY or RECIPIENT known to the RECIPIENT related to or arising out of RECIPIENT's activities under this Agreement and shall see to the investigation and defense of such claim or demand at RECIPIENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RECIPIENT of any of its obligations under this paragraph.

13. It is the **EXPRESS INTENT** of the parties to this Agreement that the INDEMNITY provided for in this Agreement is an INDEMNITY extended by RECIPIENT to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Agreement **SHALL APPLY** only when the **NEGLIGENT ACT** of the CITY is a **CONTRIBUTORY CAUSE** of the resultant injury, death or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury,

death or damage. RECIPIENT further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. RECIPIENT covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of RECIPIENT under this Agreement. RECIPIENT further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

15. No member of CITY's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

16. All alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing executed by both CITY and RECIPIENT, and subject to the approval of the City Council of the City of San Antonio.

17. CITY may terminate this Agreement for any of the following reasons:

- (A) Neglect or failure by RECIPIENT to perform or observe any of the terms, conditions, covenants or guarantees of this Agreement or of any subsequent written amendment between CITY and RECIPIENT, including the failure of RECIPIENT to successfully obtain the services set forth in paragraph 2 from the CIA;
- (B) Continued violation by RECIPIENT of any rule, regulation or law to which RECIPIENT is bound or shall be bound under the terms of this Agreement, after CITY provides RECIPIENT written notice of the violation and reasonable time to cure the violation.
- (C) In the event of termination due to default by RECIPIENT, RECIPIENT will return to CITY, within sixty (60) calendar days of receiving CITY'S written notice of termination, all funds received from CITY under this Agreement.

18. 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 City ordinances, 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.

19. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

20. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

21. This Agreement constitutes the final and entire agreement between the parties hereto and contains 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 this Agreement is amended as proscribed in paragraph 16.

22. In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, CITY shall have the final authority to render or secure an interpretation.

23. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Director, Economic Department
City Hall-P.O. Box 839966
San Antonio, Texas 78283

RECIPIENT:

William G. Shown
Rio Perla Properties, L.P.
5121 Broadway
San Antonio, Texas 78209

24. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

25. RECIPIENT covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of CITY; that RECIPIENT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between CITY and RECIPIENT, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and RECIPIENT. The parties hereto understand and agree that CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be obtained by RECIPIENT under this Agreement and that RECIPIENT has no authority to bind CITY.

26. 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.

27. This Agreement shall commence upon final execution and expire November 30, 2005, unless terminated earlier under paragraph 17.

28. The signer of this Agreement for RECIPIENT represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of RECIPIENT and to bind RECIPIENT to all of the terms, provisions and obligations herein contained.

EXECUTED in duplicate originals this ____ day of _____ 2005.

CITY OF SAN ANTONIO

RIO PERLA PROPERTIES, L.P.

**By its General Partner,
RIO PERLA MANAGEMENT, L.L.C.**

J. Rolando Bono
Interim City Manager

William G. Shown
Vice President

ATTEST:

APPROVED AS TO FORM:

Leticia Vacek
City Clerk

City Attorney

City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Rio Perla Properties, L. P.

(2) Identify any individual or business entity which is a **partner, parent or subsidiary** business entity, of any individual or business entity identified above in Box (1):

☐ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party: Christopher Goldsberry, Jr.

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist or public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ 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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☐ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
Christopher Goldsbury, Jr.	Roger Flores Re-election Campaign Phil Hardberger for Mayor Friends of Nelson Wolff	\$500 \$500 \$1,000	10/13/04 12/2/04 2/16/05


(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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, whichever occurs first.

Signature: 	Title: Vice President of General Partner Company or D/B/A: Rio Perla Properties, L. P.	Date: April 8, 2005
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² 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.