

CONSENT AGENDA
ITEM NO. 14

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

DATE: November 10, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of an Amendment to a Developer Participation Agreement between the City of San Antonio and Rio Perla Properties, L.P. (Rio Perla) for the Broadway Corridor Storm Water Drainage Project in the amount of \$454,486.87 for the Pearl Parkway (Broadway to Avenue A) Project located in District 1 funded in the amount of \$28,041.87 by Rio Perla, \$226,445.00 transferred from the Broadway Corridor Project and appropriating the sum of \$200,000.00 from 2003-2007 General Obligation Street Improvement Bond funds.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

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.

The Pearl Parkway project provides for landscaping, drainage improvements, pedestrian improvements, and sidewalks along the Pearl Parkway from Broadway to Avenue A and has a total estimated cost of \$454,486.87. Of this amount, \$200,000.00 is funded by 2003-2007 General Obligation Street Improvement Bond funds, \$28,041.87 by Rio Perla Properties, L.P., and the remaining \$226,445.00 is being funded by 2005 Storm Water Revenue Bonds through cost savings on the Broadway Corridor project.

On March 10, 2005 City Council approved 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 amends this contract and authorizes an additional \$426,445.00 to fund the construction of the Pearl Parkway project.

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.

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

The total cost of this project is estimated to be \$454,486.87. Rio Perla Properties, L.P. will provide \$28,041.87 for this project. The city share of this project will be capped at \$426,445.00. Of the total cost, \$200,000.00 is available from the 2003 General Obligation Street and Pedestrian Improvement Bonds and the remaining \$226,445.00 is available from the cost savings from the Broadway Corridor Storm Water Drainage Project.

COORDINATION

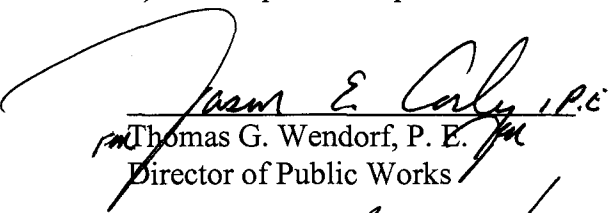
This ordinance has been coordinated with the City Attorney's Office, the Office of Management and Budget, the Contract Services Department and the Finance Department.

SUPPLEMENTARY COMMENTS

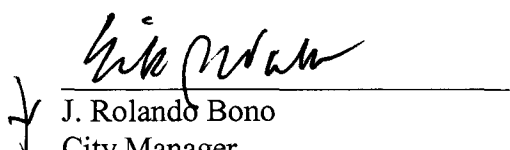
The Discretionary Contract Disclosure Form required is attached.

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
City Manager

FIRST AMENDMENT TO DEVELOPER PARTICIPATION CONTRACT

This First Amendment to Developer Participation Contract (the "Amendment") for certain improvements on and around Pearl Parkway, for certain consideration, the receipt and sufficiency of which is hereby acknowledged, is made and entered into by and between **THE CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation** (the "City"), and **RIO PERLA PROPERTIES, L.P., a Texas limited partnership** (the "Developer"), pursuant to Ordinance No. _____, passed by the City of San Antonio City Council on _____.

RECITALS

1. City and Developer are parties to a Developer Participation Contract Broadway Corridor Watershed SA8 Storm Water Drainage Project dated April 13, 2005 (the "Contract"), whereby Developer agreed to construct certain improvements pursuant to the Contract on and around the Property (as defined in the Contract).

2. The Contract was approved by the City of San Antonio City Council on March 10, 2005 pursuant to Ordinance No. 100556.

3. Flooding and drainage problems are also occurring in and around the Property adjacent to Pearl Parkway within Watershed SA8.

4. It is in the City's interest to amend the Contract to include construction of the Pearl Parkway Project (as defined below) which will reduce flooding and drainage issues in the Parkway area, increase public safety, and encourage economic development of the areas surrounding the Property.

5. This Amendment benefits Developer by allowing a drainage facility that will capture and convey flood waters within Watershed SA8 around Pearl Parkway and in the area around Broadway Street, thereby improving access to the Property.

AGREEMENT

The Contract is amended as follows:

A. Exhibits "F" and "G" attached hereto are hereby made a part of the Contract Documents.

B. The following definitions are hereby added to the "Definitions" section of the Contract:

16. "Pearl Parkway Construction Documents" means the plans, specifications and estimates for the Pearl Parkway Project. The Pearl Parkway Construction Documents shall illustrate dimensions, materials, methods of construction, methods of excavation, and other details of the Pearl Parkway Project. A list of the Pearl Parkway Construction Documents is provided in **Exhibit "F"** attached hereto.

17. "Private Medians" means the medians in Pearl Parkway that are owned by Developer. The median located beneath US Highway 281 is not owned by Developer.

18. "Pearl Parkway Project" means the improvements depicted in the Pearl Parkway Construction Documents, and related improvements, extending from the west side of the intersection of Pearl Parkway and Broadway Street to the east side of the intersection of Pearl Parkway and Avenue A. The Pearl Parkway Project does not include any of the landscaping, irrigation or lighting improvements to be installed in the Private Medians. Improvements in the Private Medians are not subject to this Agreement, and the cost thereof will be borne by Developer

C. The Pearl Parkway Project is hereby made a part of the Project for all purposes. The \$4,135,258 maximum amount currently set forth in the definition of City Share in the Contract is hereby increased to \$4,335,258. In no event shall the City Share of the costs related to the Pearl Parkway Project exceed \$426,445 without a written agreement to the contrary between the parties. A detailed estimate of the cost of the Pearl Parkway Project is attached hereto as **Exhibit "G"**.

D. Developer shall commence construction of the Pearl Parkway Project within ten days after the later of (i) approval of the Pearl Parkway Construction Documents by the Director, or (ii) receipt by Developer of all governmental and regulatory permits and approvals required in connection with the construction of the Pearl Parkway Project. Developer's obligation to commence construction of the Pearl Parkway Project is

conditioned upon the receipt by Developer of such permits and approvals necessary for the Pearl Parkway Project 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 such necessary permits and approvals. Developer shall continuously perform construction (inclusive of the Pearl Parkway Project) on the Project diligently until completion. Developer shall provide City with a complete set of Pearl Parkway Construction Documents meeting the requirements of the Contract no later than November 1, 2005. Upon approval thereof by City, the Pearl Parkway Construction Documents shall be deemed part of the Construction Documents under the Contract.

E. Developer shall either (i) amend the Construction Contract with Shannon-Monk, Inc. to include all or part of the Pearl Parkway Project, (ii) may enter into a separate Construction Contract with another contractor selected by Developer subject to City's reasonable approval which approval shall not be unreasonably withheld provided such other contractor has the proven capacity, solvency and expertise to construct the part of the Pearl Parkway Project to be constructed by that contractor. Prior to the commencement of construction of the Pearl Parkway Project, Developer shall provide City with the following with respect to the Pearl Parkway Project: (i) payment and performance bonds in form acceptable to the City and 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 bonds shall remain in full force and effect throughout the course of construction of the Pearl Parkway Project.

Except as so modified and amended herein, the Contract is otherwise unchanged and the parties hereby RATIFY and AFFIRM the same. This Amendment may be executed in multiple counterparts, all of which, when put together, will constitute one and the same Contract. In the event of a conflict between the provisions of this Amendment,

the Agreement and/or the Contract Documents, the provisions of each shall govern in priority order as set forth in this paragraph. There shall be no third party beneficiaries of this Amendment or any of the aforementioned documents.

EXECUTED to be effective the _____ day of _____, 2005.

IN WITNESS WHEREOF, this Amendment 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

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 F”
TO DEVELOPER PARTICIPATION CONTRACT
CONSTRUCTION DOCUMENTS**

SHEET NO.	TITLE	CONSULTANT	DATE
CIVIL ENGINEERING PLANS			
C1.0	Demolition Plan	Pape-Dawson Engineers	September 26, 2005
C2.0	Overall Drainage Plan	Pape-Dawson Engineers	September 26, 2005
C3.0	Overall Utility Plan	Pape-Dawson Engineers	September 26, 2005
C4.0	Pearl Parkway Plan & Profile	Pape-Dawson Engineers	September 26, 2005
C4.1	Pearl Parkway Plan & Profile	Pape-Dawson Engineers	September 26, 2005
C5.0	Civil Details	Pape-Dawson Engineers	September 26, 2005
C6.0	Signage Plan	Pape-Dawson Engineers	September 26, 2005
C6.1	Signage Details	Pape-Dawson Engineers	September 26, 2005
C6.2	Signage Details	Pape-Dawson Engineers	September 26, 2005
LANDSCAPE ARCHITECTURE PLANS			
L2.1	Layout Plan	Rialto Studio	September 16, 2005
L2.2	Layout Plan	Rialto Studio	September 16, 2005
L3.1	Details	Rialto Studio	September 16, 2005
L4.1	Planting Plan	Rialto Studio	September 16, 2005
L4.2	Planting Plan	Rialto Studio	September 16, 2005
L5.1	Irrigation Plan	Rialto Studio	September 16, 2005
L5.2	Irrigation Plan	Rialto Studio	September 16, 2005
L5.3	Irrigation Notes	Rialto Studio	September 16, 2005
L6.1	Lighting Plan	Rialto Studio	September 16, 2005

EXHIBIT "G"
TO DEVELOPER PARTICIPATION CONTRACT
PEARL PARKWAY PROJECT SCHEDULE OF COSTS

ELEMENT	QUANTITY	UNIT	COST	BUDGET
DEMO				
1 REMOVE ASPHALT/BASE IN ROAD (4" DEEP)	3406	SY	\$ 3.50	\$ 11,921.00
2 TRUCKING EXPORT	600	CY	\$ 7.50	\$ 4,500.00
3 REMOVE CONCRETE SIDEWALK	5447	SF	\$ 2.50	\$ 13,617.50
4 REMOVE ASPHALT BEHIND CURB	2666	SF	\$ 2.00	\$ 5,332.00
5 REMOVE CONCRETE CURB	2213	LF	\$ 2.00	\$ 4,426.00
6 REMOVE/REPLACE LIGHT POLES, FOOTING, AND FIXTURES	6	EA	\$ 500.00	\$ 3,000.00
7 REMOVE SOIL FROM MEDIAN BENEATH 281 (6" DEEP)	2340	SY	\$ 1.75	\$ 4,095.00
8 UTILITY ADJUSTMENTS	1	LS	\$ 5,000.00	\$ 5,000.00
9 TEMP EROSION CONTROL (NPDES)	1	LS	\$ 4,500.00	\$ 4,500.00
10			SUBTOTAL	\$ 56,391.50
SITEWORK				
11 CONCRETE APRON/DRIVE	1120	SF	\$ 5.75	\$ 6,440.00
12 SURVEY/LAYOUT	1	LS	\$ 2,000.00	\$ 2,000.00
13 GRADING AND BASE PREP IN ROAD	3920	SY	\$ 2.25	\$ 8,820.00
14 BLACK BASE 4"	3920	SY	\$ 13.00	\$ 50,960.00
15 NEW ASPHALT PAVING	3920	SY	\$ 7.50	\$ 29,400.00
16 SOIL TESTING	1	LS	\$ 6,000.00	\$ 6,000.00
17 NEW CAST IRON TREE GRATE (8' x 4')	12	EA	\$ 3,700.00	\$ 44,400.00
18 NEW 8' CONCRETE SIDEWALK	8735	SF	\$ 3.50	\$ 30,572.50
19 NEW STREET CURB (COSA STANDARD)	2163	LF	\$ 9.50	\$ 20,548.50
20 CONNECT ELEC. SERVICE FROM O.H. TO UNDERGROUND	1	LS	\$ 7,500.00	\$ 7,500.00
21 TRENCH/SLEEVE FOR ELECTRICAL IN ASPHALT/CONCRETE	160	LF	\$ 10.00	\$ 1,600.00
22 PULL BOXES FOR ELECTRICAL	1	LS	\$ 4,500.00	\$ 4,500.00
23 4" SLEEVES FOR IRRIGATION	325	LF	\$ 10.00	\$ 3,250.00
24 2" SLEEVES UNDER CONC.	425	LF	\$ 8.00	\$ 3,400.00
25 MISC. TRAFFIC SIGNS	1	LS	\$ 800.00	\$ 800.00
26 TRAFFIC CONTROL - BARRICADES	1	LS	\$ 3,500.00	\$ 3,500.00
27 MISC. STRIPING/PAINTING	1	LS	\$ 800.00	\$ 800.00
28 BASE PREPARATION UNDER CONCRETE MEDIAN	2203	SF	\$ 1.25	\$ 2,753.75
29 STAINED CONCRETE IN MEDIAN	2203	SF	\$ 5.25	\$ 11,565.75
30 STAINED CONCRETE RAMPS	15	EA	\$ 325.00	\$ 4,875.00
31			SUBTOTAL	\$ 243,685.50
LANDSCAPE & IRRIGATION				
32 NEW TREES - MEXICAN SYCAMORES (36" BOX- IF AVAILABLE)	12	EA	\$ 2,000.00	\$ 24,000.00
33 PLANT MIX FOR TREES (ROW)	60	CY	\$ 28.00	\$ 1,680.00
34 TREE IRRIGATION (ROW)	1	LS	\$ 5,000.00	\$ 5,000.00
35 NEW WALL MOUNT LIGHTS BENEATH 281	4	EA	\$ 1,850.00	\$ 7,400.00
36			SUBTOTAL	\$ 38,080.00
37 SUBTOTAL				\$ 338,157.00
38 CONSTRUCTION CONTINGENCY				\$ 33,815.70
39 ENGINEERING AND LANDSCAPE DESIGN				\$ 36,652.14
40 ENGINEERING AND LANDSCAPE DESIGN CONTINGENCY				\$ 3,665.21
41 MATERIALS TESTING				\$ 5,000.00
42 BONDS AND INSURANCE				\$ 10,144.71
43 MOBILIZATION				\$ 27,052.56
44 TOTAL PEARL PARKWAY PROJECT COSTS				\$ 454,487.32