

**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 Guenther Development, L.L.C. for the Broadway Corridor Watershed SA6 Storm Water Drainage Project

DATE: December 15, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance appropriates funds and authorizes the execution of a Developer Participation Contract between the City of San Antonio and Guenther Development, L.L.C. and authorizes the execution of an Underground Storm Water Easement agreement.

This ordinance also authorizes the City of San Antonio to pay for the cost in the amount not to exceed \$4,248,276.00 to oversize a drainage facility and its improvements extending from the intersection of Alamo and Cunningham Streets to the Catalpa Pershing Channel in Brackenridge Park (ButterKrust Site) in connection with the Broadway Corridor Phase I, Part II, a 2005 Storm Water Revenue Bond Project located in Council District 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" project was designated for construction. Storm water drainage improvements to the Broadway Corridor remains a priority among City Council. The ButterKrust site, which is in the Broadway Corridor is currently being

redeveloped by Guenther Development, L.L.C., into their corporate headquarters and test kitchens.

Part of the redevelopment effort of the project site, requires Guenther Development, L.L.C. to adequately carry onsite water resulting from a 100-year storm event by constructing a drainage facility on site that would carry approximately 57 cubic feet per second (cfs) of storm water runoff from the property. To accommodate City needs, Guenther Development, L.L.C. has agreed to oversize that drainage facility to convey 1503 cfs of storm water run off generated from approximately 343 acres upstream from the property. Guenther Development, L.L.C. has also agreed to grant to the City, for consideration for One Dollar (\$1.00), drainage easements on the ButterKrust Site for completion of the drainage improvements. This use of a Developer Participation Contract will result in an expedited construction schedule and cost savings that will result in a 12 – 18 month project implementation timesavings 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 96% 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 96% 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 \$4,425,287.50. The City share of this project will be capped at \$4,248,276 and Guenther Development, L.L.C. will provide \$177,012. For a total project cost of \$4,425,288.00

It is anticipated that construction on this project would begin in the 3rd Quarter of 2006 and be completed by December 2007.

POLICY ANALYSIS

This ordinance is a continuation of City Council's commitment to leverage funds with private entities to support infrastructure improvements.

FISCAL IMPACT

This is a one-time capital expenditure in the amount of \$4,248,276. Funds in the amount of \$4,248,276 are available from the 2005 Storm Water Revenue Bonds made payable to Guenther Development, L.L.C.

The table below illustrates the projects funded through the project fund and the fund's balance.

BROADWAY CORRIDOR PHASE I PROJECT FUND	\$9,631,972.00
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 – approved March 10, 2005.	\$4,135,258.00
Amendment to the Developer Participation Contract authorized the cost savings from the Broadway Corridor Storm Water Drainage Project to be used for street and drainage improvements to Pearl Parkway – approved November 17, 2005.	
Professional services agreement with Pape-Dawson Engineers, Inc. for engineering services and drainage improvements along the Broadway Corridor – For future City Council consideration.	\$161,466.40
Developer Participation Contract between the City of San Antonio and Guenther Development, L.L.C. for the Broadway Corridor Watershed SA6 Storm Water Drainage Project – December 15, 2005.	\$4,248,276.00
PROJECT FUND BALANCE	\$1,086,971.60

COORDINATION

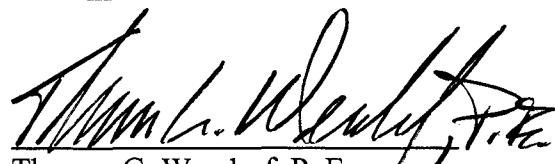
This ordinance has been coordinated with the City Attorney's Office, the Office of Management and Budget, the Contract Services Department and the Finance Department.

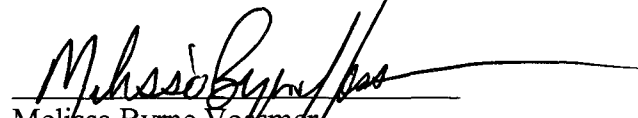
SUPPLEMENTARY COMMENTS

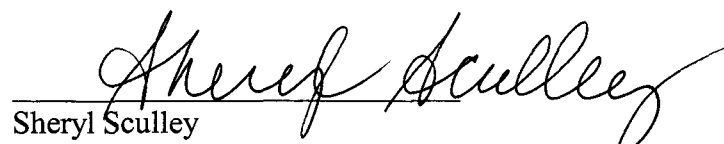
The Discretionary Contract Disclosure Form required is attached.

ATTACHMENTS

- 1) Project Map


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


Melissa Byrne Vossmer
Assistant City Manager


Sheryl Sculley
City Manager

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:

Guenther Development, LLC

(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:

Parent: C.H. Guenther & Son, Inc.

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

☒ No subcontractor(s); or None determined at this time

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:

Lobbyist – Frank Burney

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:
PLEASE SEE ATTACHMENTS 1 & 2			


(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:  Thomas A. McRae	Title: Manager Company or D/B/A: Guenther Development, LLC	Date: 12-1-05
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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.

**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.*

**City of San Antonio Discretionary Contracts Disclosure
By Guenther Development, LLC
Dated December 1, 2005**

Attachment 1

(5) Political Contributions:

The following contributions were made by the law firm of Martin, Drought & Torres, Inc.; Frank Burney (listed in 4 above) is a partner in the firm:

See Exhibit A.

Exhibit A

MARTIN, DROUGHT & TORRES, INC.

POLITICAL CONTRIBUTIONS 2003 -2005

<u>DATE</u>	<u>NAME</u>	<u>AMOUNT</u>
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
3/31/2005	KEVIN WOLFF CAMPAIGN	\$ 500.00
4/4/2005	PHIL HARDBERGER CAMPAIGN	\$ 1,000.00
4/11/2005	AQUIFER PROTECTION INITIATIVE (in-kind)	\$ 104.00
5/12/2005	PHIL HARDBERGER CAMPAIGN	\$ 1,000.00
5/12/2005	RAY LOPEZ CAMPAIGN	\$ 500.00
5/12/2005	SHELIA MCNEIL CAMPAIGN	\$ 500.00
7/12/2005	PHIL HARDBERGER CAMPAIGN	\$ 1,000.00
9/28/2005	KEVIN WOLFF CAMPAIGN	\$ 500.00
10/31/2005	ROLAND GUTIERREZ CAMPAIGN	\$ 500.00
10/31/2005	CRIME CONTROL DISTRICT INITIATIVE (in kind)	\$ 1,500.00
11/1/2005	ELENA GUAJARDO CAMPAIGN	\$ 500.00
11/1/2005	CHIP HAASS CAMPAIGN	\$ 500.00

City of San Antonio Discretionary Contracts Disclosure
By Guenther Development, LLC
Dated December 1, 2005

Attachment 2

(5) Political Contributions:

The following contributions were made by Scott Petty, Jr. and his wife Eleanor Petty. Scott Petty, Jr. was an officer of C.H. Guenther & Son, Inc., the parent of Guenther Development, LLC, during a portion of the two year period prior to the date of this disclosure (December 1, 2003 through December 1, 2005); in addition he served as Chairman of the Board of Directors of C.H. Guenther & Son, Inc. during the entire two year period.*

<i>By Whom Made:</i>	<i>To Whom Made:</i>	<i>Amount:</i>	<i>Date of Contribution:</i>
Eleanor and Scott Petty, Jr.	Lyle Larson	\$100.00	04/13/2004
Eleanor and Scott Petty, Jr.	Carroll Schubert	\$500.00	08/02/2004
Eleanor and Scott Petty, Jr.	Roger Flores	\$500.00	10/19/2004
Eleanor and Scott Petty, Jr.	Roger Flores	\$100.00	01/25/2005
Eleanor and Scott Petty, Jr.	Phil Hardberger	\$500.00	05/16/2005
Eleanor and Scott Petty, Jr.	Phil Hardberger	\$500.00	05/26/2005

