

AN ORDINANCE 2008-11-20-1017

APPROVING A DEVELOPER PARTICIPATION CONTRACT WITH VTLM TEXAS, LP TO OVERSIZE PUBLIC IMPROVEMENTS REQUIRED BY CITY OF SAN ANTONIO (CITY) INCLUDING INCREASED CAPACITY OF IMPROVEMENTS IN ANTICIPATION OF OTHER FUTURE DEVELOPMENT IN THE AREA, AND FOR DEVELOPER TO CONSTRUCT UNIVERSITY WAY ("PROJECT"), A FOUR LANE BOULEVARD (INCLUDING ALL ANCILLARY UTILITIES) FROM SOUTH LOOP 410, TO ACCOMMODATE CITY AND TEXAS A & M UNIVERSITY-SAN ANTONIO NEEDS, AT A CITY COST NOT TO EXCEED \$14,500,000.00 FOR CONSTRUCTION, AUTHORIZING NEGOTIATION OF AN AGREEMENT TO USE ANY PORTION OF THE CITY SHARE FUNDS IN EXCESS OF THE AMOUNT NEEDED FOR THE PROJECT, FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT BENEFIT TAMU-SA, AND APPROPRIATING FUNDS.

* * * * *

WHEREAS, the Texas A&M University System, the City, Verano Land Group, LP ("Donor") and CPS Energy ("CPS") entered into a Memorandum of Understanding, dated September 6, 2007, (the "MOU"), authorized by Ordinance 2007-12-06-1258 which contemplated that the Texas A&M University System-San Antonio ("TAMU-SA") would be provided with a four-lane boulevard (including all ancillary utilities) from South Loop 410 to and through the Main Campus ("University Way" or "Project"); and

WHEREAS, the City Council agreed in the MOU to participate in establishing TAMU-SA by providing required infrastructure improvements for the campus using up to FIFTEEN MILLION and 00/100 DOLLARS (\$15,000,000.00); and

WHEREAS, in the MOU the City committed to pay its \$15,000,000.00 obligation in installments of \$500,000.00 for design \$5,000,000.00 upon receiving a letter from A&M that they would have 1,500 students within a year of sending the letter, and \$9,500,000.00 once all 1,500 students are actually enrolled; and

WHEREAS, in order to complete construction of the four-lane boulevard (including all ancillary utilities) by the time A&M is expected to commence construction, the City will fund the full \$14,500,000.00 now (subject to pending issuance of CO's) rather than in installments; and

WHEREAS, the Contract is only intended to address construction of University Way and the related infrastructure improvements including increased capacity of improvements in anticipation of future development in the area and not the east / west arterial; and

WHEREAS, Donor owns real property in San Antonio for the development of a mixed-use integrated university community urban village; and

WHEREAS, Chapter 212, Section 212.071 of the TEXAS LOCAL GOVERNMENT CODE permits a municipality to participate in a contract with a developer to oversize public improvements required

by the municipality including increased capacity of improvements in anticipation of other future development in the area; and

WHEREAS, University Way is not in the City's adopted Major Thoroughfare Plan, and thus Donor is not required to construct a north-south roadway; and

WHEREAS, University Way, the north-south four-lane boulevard (including all ancillary utilities) from South Loop 410 to the TAMU-SA campus site would not otherwise be required to be constructed by Donor but for the City requirement caused by the agreement between the City and TAMU-SA and authorized in an ordinance by the City Council; and

WHEREAS, the City Manager may negotiate a future use of funds agreement to use any portion of the City Share funds (as defined in the Contract) in excess of the amount needed for the Project;
NOW THEREFORE,

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

SECTION 1. The City Manager or her designee is hereby authorized to execute a Developer Participation Contract between the City of San Antonio and **VTLM Texas, LP** to provide the required infrastructure improvements for University Way. A copy of said Contract is attached hereto as **Attachment I**. This Contract qualifies as a Developer Participation Contract pursuant to Section 212.071 et. seq. of the Texas Local Government Code.

SECTION 2. A future agreement to use any portion of the City Share funds in excess of the amount needed for the Project may be negotiated by the City Manager to use such excess funds for public infrastructure improvements that benefit TAMU-SA.

SECTION 3. City Council hereby approves a modification to the payment schedule set out in the MOU so that the commitment to fund \$14,500,000.00 is solely contingent on the pending issuance of Certificates of Obligations previously approved by City Council, and not on A&M's enrollment of 1,500 Full-Time Students at the TAMU-SA campus.

SECTION 4. This Ordinance shall take effect on the tenth day after this passage.

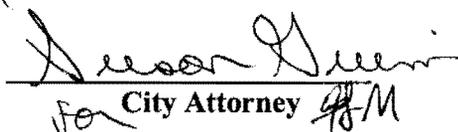
PASSED AND APPROVED this 20th day of November, 2008.


M A Y O R

ATTEST:

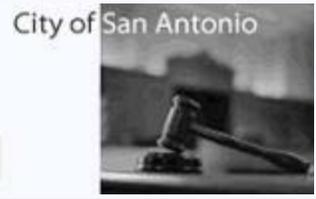

City Clerk

APPROVED AS TO FORM:


for City Attorney JHM



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 6B

Name:	6A, 6B, 6C
Date:	11/20/2008
Time:	02:55:23 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Developer Participation Agreement with VTML Texas, LP to oversize public improvements required by City of San Antonio including increased capacity of improvements in anticipation of other future development in the area for Developer to construct University Way at a cost not to exceed \$14,500,000.00, amending the agreement authorized by Ordinance 2007-12-06-1258, authorizing negotiation of an agreement for public infrastructure improvements that benefit TAMU-SA to use City Share funds in excess of the amount needed for the Project, agreeing that City's funding obligation is no longer subject to a full time student enrollment requirement, and appropriating funds.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

**DEVELOPER PARTICIPATION CONTRACT
SAN ANTONIO, TEXAS
NORTH-SOUTH CONNECTOR ROAD CONSTRUCTION PROJECT**

THIS DEVELOPER PARTICIPATION CONTRACT ("Contract") entered into as of November __, 2008, (hereinafter the "Effective Date") by and between **THE CITY OF SAN ANTONIO, TEXAS**, a Texas municipal corporation ("City"), and **VTLM Texas, LP**, a Texas limited partnership ("Developer"), pursuant to Ordinance No. _____ passed by the City of San Antonio City Council on November __, 2008.

RECITALS

WHEREAS, the Texas A&M University System , the City, Verano Land Group,LP ("Donor") and CPS Energy ("CPS") entered into a Memorandum of Understanding, dated September 6, 2007, authorized by Ordinance 2007-09-06-0947 which contemplated that TAMU-SA would be provided with a four-lane boulevard (including all ancillary utilities) from South Loop 410 to and through the Main Campus ("University Way"); and

WHEREAS, the City Council agreed in the MOU to participate in establishing the Texas A&M University System – San Antonio (TAMU-SA) by providing required infrastructure improvements for the campus using up to Fifteen Million and 00/100 Dollars (\$15,000,000.00); and

WHEREAS, this Contract is only intended to address construction of University Way and the related infrastructure improvements including increased capacity of improvements in anticipation of future development in the area, and not the east / west arterial; and

WHEREAS, Donor owns real property in San Antonio for the development of a mixed-use integrated university community urban village; and

WHEREAS, Chapter 212, §212.071 of the TEXAS LOCAL GOVERNMENT CODE permits a municipality to participate in a contract with a developer to oversize public improvements required by the municipality including increased capacity of improvements in anticipation of other future development in the area; and

WHEREAS, University Way is not in the City's adopted Major Thoroughfare Plan, and thus Developer is not required to construct the north-south roadway; and

WHEREAS, University Way, the north-south four-lane boulevard (including all ancillary utilities) from South Loop 410 to the TAMU-SA campus site would not otherwise be required to be constructed by Developer but for the City requirement caused by the agreement between the City and TAMU-SA and authorized in an ordinance by the City Council; and

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:

A. 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’s Representative” means the Director of Development Services or such other person as the City Manager may designate.
3. “City Share” means Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00).
4. “Contract” means this Developer Participation Contract between the City and Developer.
5. “Contract Documents” means this Contract and **Exhibit A** and **Exhibit B** attached hereto and made a part hereof for all purposes.
6. “Construction Documents” means the plans, specifications and estimates for the Project which shall be provided by Developer pursuant to the terms of this Contract. The Construction Documents shall illustrate the dimensions, materials, methods of construction, and other details of the Project. A description of the Construction Documents is provided in **Exhibit B**.
7. “Developer” means VTLM Texas LP.
8. “Verano Property” means the approximately 1057-acre tract shown on **Exhibit A** attached hereto, fee title to which is held by Donor.
9. “Developer’s Representative” means Chris Linhorst, President of Krestrel Development, LLC or such other person or entity as Developer may designate.
10. “Developer’s Share” means One Hundred Percent (100%) of the total Project Costs, less the City Share.
11. “Development” means MDPP #011-08, Donor’s mixed-use university community urban facilities to be constructed upon portions of the Verano Property.
12. “Director” means the Director of Development Services, City of San Antonio.
13. “Donor” means, Verano Land Group, LP.
14. “Project” means the public works infrastructure improvements consisting of the construction of University Way and associated improvements to be constructed on the Verano Property by Developer pursuant to the Construction Documents, as more fully described in **Exhibit B** attached hereto and made a part hereof for all purposes, and including associated utilities (or coordination with the utility providers in cases where the utility provider itself performs the work).
15. “Project Costs” means all costs and expenses incurred by Developer with respect to the Project in accordance with this Contract, including, without limitation, (a) all costs to prepare the Construction Documents, including, but not limited to, all engineering fees and expenses for all studies, estimates of probable costs and other work performed by the Project Engineer; (b) all costs of preparing any necessary environmental reports; (c) all legal fees; (d) all costs and expenses to construct the Project, and any new storm drains; (e) a Developer fee of 10%; and (f) all other reasonable and necessary fees and expenses relating to the Project.

16. "Project Engineer" means Pate Engineering / Pape Dawson Engineering.
17. "UDC" means Chapter 35 of the City Code of the City of San Antonio, Texas entitled Unified Development Code.
18. "Work" means the installation and construction of the Project by Developer on the Donor Property in accordance with the Construction Documents and as provided herein.

B. CONTRACT PROVISIONS

1. Background. This Contract qualifies as a "Developer Participation Contract" pursuant to Sections 212.071 et. seq. of the TEXAS LOCAL GOVERNMENT CODE. In this regard, Developer shall construct the Project on the Verano Property. In connection with platting any Development, Developer would be required to grant rights-of-way for, and construct roads in the Development. To accommodate City and TAMU-SA needs, Donor has (i) dedicated out of the Verano Property the entire additional right-of-way required to construct University Way, a four lane boulevard (including all ancillary utilities), and (ii) to oversize public improvements required by the municipality including increased capacity of improvements in anticipation of other future development in the area by constructing and performing necessary associated work, as shown in Exhibit B. The City shall pay up to Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00) towards the cost for oversizing public improvements required by the municipality including increased capacity of improvements in anticipation of future development in the area, to be constructed by Developer by paying the City Share. The obligations of the parties are contingent on the pending issuance of Certificates of Obligations, tentatively scheduled to close on December 17, 2008. City will have the right to review and approve the final Project plans and budget prior to commencement of construction.

2. Construction.

(a) Developer shall commence construction of the Project within sixty (60) days after the later of (i) approval of the Construction Documents by the Director, and (ii) receipt by Developer of all governmental and regulatory permits and approvals required in connection with the construction of the Project (the "Permits"), and (iii) receipt of qualifying bids which enable University Way to be constructed. Developer's obligation to commence construction of the Project is conditioned upon the receipt by Developer of the Permits and construction bids on such terms and conditions as Developer may deem to be acceptable in Developer's reasonable discretion. City agrees to use its best efforts (without cost or expense to City) to obtain and shall assist Developer in obtaining the Permits. Without limiting the foregoing, City agrees to use its best efforts (without cost or expense to City) to apply for and obtain all requisite approvals from any regulatory authority in connection with the construction of the Project. Construction of the Project shall at all times be performed in a good and workmanlike manner in accordance with the Construction Documents using only new, high-quality materials as specified in the Construction Documents. In anticipation that the Developer may not receive qualified bids within the cost estimates, the Developer may bid the Project utilizing a base bid and add/alternate structure for portions of the Project which could be eliminated or redesigned to come within the budgeted costs estimates, and in the event the bids to oversize public improvements required by the municipality including increased capacity of improvements are greater than Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00) the Developer will redesign and rebid the Project until it is within an acceptable budget. Any variations from the Construction Documents shall require approval by City's Representative, which approval shall not be unreasonably withheld, conditioned or delayed. In the event change orders are necessary in

connection with the construction of the Project, Developer shall submit the same to City's Representative for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon written approval of any change order by both Developer and City's Representative, the Project Costs shall be adjusted accordingly. In no event shall the City Share change or increase.

(b) With respect to Project Costs, Developer may, at its option, submit periodic draw requests to City during the engineering and construction of the Project, for payment of that portion of City Share as may be attributable to the completed engineering or construction of the Project since the last periodic draw request. All draws shall be submitted through and pursuant to the procedures for the City's Program Management Portal. Prior to submittal of the first draw, Developer will submit a schedule of values for payment to be approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal. City shall pay the City Share in accordance with portal procedures.

(c) The construction documents between the Developer and the contactors do not have to be in any specific form. The City agrees that the City Share may be used to pay for any oversizing of public improvements required by the municipality, including increased capacity of improvements in anticipation of future development in the area, including utilities. The Developer may expend funds for utility improvements, which expenditures may thereafter be reimbursed by contributions from CPS and the other applicable utility providers. Any portion of the City Share in excess of the amount needed for the Project and any portion of the City Share reimbursed by utility providers shall remain available to Developer for public infrastructure improvements that benefit TAMU-SA.

(d) In no event shall City be required to pay more than the City Share, with respect to Project Costs, and Developer shall be required to complete the Project and to pay all Project Costs in excess of the sum of the City Share.

(e) Developer shall enter into a contract (the "Construction Contract") for construction of the Project with a licensed contractor selected by Developer (the "Contractor"). Once commenced, Developer shall use commercially reasonable efforts to cause construction of the Project to be prosecuted diligently and continuously by the Contractor in accordance with the Construction Contract 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. The Project may be designed and built in stages as Developer may determine subject to City's reasonable approval. Developer's obligation to complete the Project shall be suspended or delayed as reasonably necessary as a result of any failure or delay in obtaining any of the easements, consents or approvals described in paragraph 2 of this Article B.

(f) Developer will provide construction schedules in accordance with the City's standard portal procedures.

(g) **PREVAILING WAGE RATE.** The Provisions of Chapter 2258, Texas Government Code, shall expressly be made a part of the Construction Contract. In accordance therewith, the City will provide Developer/Contractor with a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the

Construction Contract and this schedule will become a part of the Construction Contract. The Developer/Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any sub-contractor under it. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Developer/Contractor from its obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under the Construction Contract.

(h) Prior to the commencement of construction, Developer shall cause the Contractor to provide City with (i) a performance bond in the total amount of the construction contract for University Way in accordance with and in satisfaction of Section 212.073 of the TEXAS LOCAL GOVERNMENT CODE, reflecting the City as beneficiary thereunder (it being understood and agreed that Developer itself shall have no obligation to provide a bond other than the bond to be provided by Contractor), 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 in force and effect throughout the course of construction of the Project.

(i) The Construction Contract shall prohibit third-party beneficiaries other than City which shall be specifically designated as a third-party beneficiary, shall not be assignable by the Contractor and shall provide City access to the Project at all reasonable times for inspection purposes. The Contractor shall acknowledge therein that it has read this Contract and understands that City has certain rights hereunder and pursuant to the Construction Contract. "As-Built" Plans shall be provided to the City no later than sixty (60) days after completion of the Project, as jointly certified by the Project Engineer and the Director.

(j) During construction of the Project, Developer shall provide the Director with status reports showing the percentage of completion of the Work and expenditures incurred in connection with the construction of the Project, all in accordance with current project management practices using the City's web portal. In all cases it is Developer's sole responsibility to connect to the City's web portal at no cost to the City.

3. Inspections. The Project shall be accessible at all reasonable times to the Director or his/her designee for inspection. The Developer acknowledges that any inspections performed by City during the course of construction 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 City only and may not be relied upon by others, be claimed by Developer as an approval by City, a permit granted by City, a waiver by City, or used for any purpose by Developer, the Contractor or any third party. Developer further acknowledges that Developer and Contractor are required to perform their own inspections, and inspections by City do not address any obligations of Developer or others. Subject to the foregoing, City shall promptly notify Developer of any defects or non-conformances discovered during any City inspection.

4. Construction Documents. Developer shall provide City with a complete set of Construction Documents meeting the requirements of this Contract and in conformance with applicable local, state and federal codes and regulations and customary engineering practices. The Construction Documents shall be prepared by and bear the seal of the individual engineer working on behalf of the Project Engineer. 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. Developer shall cause the Project Engineer to commence preparation of the Construction Documents promptly upon completion of engineering and design, and to diligently continue same to completion.

5. 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 completion of the Project as defined in the Construction Contract, City shall immediately give Developer written notice thereof specifying the defect and/or non-conforming Work with particularity. Developer shall correct such defective or non-conforming Work within thirty (30) days of notice thereof given by City, or within such longer time as may be reasonably necessary, provided Developer is working diligently and continuously towards a cure. If Developer fails to so 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, at City's option, and the reasonable cost of such correction shall be deemed to be sums due City by Developer, and may be offset against any outstanding sums due by City to Developer under this Contract. The cost of City crews shall be determined by prevailing market rates for performing the work required to correct such defects and/or non-conforming work. At the end of said 12-month period, all available product and workmanship material warranties, including all warranties given by Contractor, shall be assigned to City, to the extent assignable. This provision shall survive termination of this Contract.

6. Default. Upon the occurrence of a default by Developer in the performance of its obligations hereunder and the failure of Developer to cure such default within thirty (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 thirty (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. This Contract shall operate as an agreement by Developer to allow City access to the Verano Property as necessary to complete the Project in accordance with the Contract Documents. 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 a Default; provided that it is expressly agreed that neither party shall have the right to seek consequential, special or punitive damages against the other for any default under this Contract.

7. Record. This Contract may be filed and recorded in the real property records of Bexar County, Texas, without the prior written approval of both parties.

8. 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.

9. Assignment. Except as hereinafter provided, 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. Notwithstanding the above, Developer may assign this Contract without obtaining the City's consent to (i) one or more of its Affiliates, or (ii) an entity which acquires fee title to a portion of the Verano Property from one of its Affiliates.

10. **Indemnity.** Developer covenants and agrees to **FULLY REIMBURSE, INDEMNIFY, and HOLD HARMLESS, City and the elected officials, agents, employees, officers, directors, volunteers, contractors, subcontractors, consultants, sub consultants and representatives of City individually or collectively, (collectively, the "City Parties") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal injury, death and property damage, (the "Damages") made upon City, arising out of or resulting from Developer's negligent activities or omissions under this Contract, including any negligent acts or omissions of any agent, officer, director, representative, employee, consultant, sub consultant, licensee, sublicense, contractor or subcontractor of Developer, and their respective officers, agents, employees, directors and representatives (collectively, "Developer Parties") while in the exercise of the performance of the rights or duties under this Contract, all without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, OR THE CITY PARTIES IN SUCH INSTANCE WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.** The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer shall promptly advise City in writing of any claim or demand against City or Developer known to Developer and related to or arising out of Developer Parties' negligent activities or omissions under this Contract, and shall see to the investigation and defense of such claim or demand at Developer's cost. Notwithstanding any condition imposed by a policy of insurance to which Developer and City are named, City shall retain the right, at its option and at its own expense, to participate in such defense provided by any insurance or self-insurance of Developer under this paragraph without relieving Developer of any of its obligations under this paragraph.

To the extent provided by law, City shall be responsible for all claims, demands, and causes of action against City arising in favor of any person, because of personal injuries or death or damage to property, occurring, growing out of, or incident to, related to or resulting directly or indirectly from, the occurrence of activities or omission of activities contemplated by this Contract, caused by the negligence of City and/or any of the City Parties.

11. **Entire Agreement.** The terms of this Contract are intended to be a final expression of the parties' agreement 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.

12. 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.

13. 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 City Property or shall imply or guarantee any drainage implications or the operation of the drainage facilities to the parties, any other party or otherwise.

14. 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 court ordered costs and expenses incurred in connection with the prosecution or defense of such action, including reasonable attorneys' fees and all other costs of suit.

15. 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: VTML Texas, LP c/o Krestrel Development, LLC
Attn: Chris Lindhorst
3611 Paesano's Parkway, Suite 201
San Antonio, Texas 78231
Telephone No.: (210) 249-0928

and

Verano Land Group, LP
Attn: Ralph Lampman
3157 N. Rainbow, Suite 305
Las Vegas, Nevada 89108
Telephone No.: (702) 655-7763

with copy to: Fulbright & Jaworski, L.L.P.
Attn: Jim Plummer
300 Convent St., Suite 2200
San Antonio, Texas 78205
(210) 270 - 7192

If to City: City of San Antonio
Attn: P.E. Director of Capital Improvements Management Services
P.O. Box 839966
San Antonio, Texas 78283-3966
Telephone No.: (210) 207-8024

and

City of San Antonio
Attn: City Clerk
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.

16. Third Party Beneficiaries. There shall be no third-party beneficiaries to this Contract.

17. 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.

18. 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 City is subject to passage of an ordinance approving the authority of such signatory.

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

20. 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.

21. 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.

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

23. 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. The party claiming force majeure will make reasonable attempts to remedy the effects of the force majeure and continue performance under this Contract 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. If the Developer's contractor suffers any event of "force majeure", such event shall likewise constitute force majeure with respect to Developer.

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

CITY:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By: _____

Name: _____

Title: _____

VTML Texas, LP
A Texas Limited Partnership

By: Texas Manager, LLC, a Nevada Limited Liability Company its General Partner

By: Triple L. Management, LLC a Nevada Limited Liability Company its Manager

By: The Fidelity Trust, dated 6/26/1992 its Manager

By: Ralph J. Lampman
Trustee

Schedule of Exhibits:

Exhibit A – Verano Property Depiction

Exhibit B – Construction Documents

**EXHIBIT A
TO
DEVELOPER PARTICIPATION CONTRACT
VERANO PROPERTY DEPICTION**

EXHIBIT B
TO
DEVELOPER PARTICIPATION CONTRACT

DESCRIPTION OF CONSTRUCTION DOCUMENTS

Verano N/S Boulevard

1. Cover
2. Site Layout Plan
3. Paving Details
4. Street Plan and Profile Sta. 9+00 to Sta. 24+00
5. Street Plan and Profile Sta. 24+00 to Sta. 39+00
6. Street Plan and Profile Sta. 39+00 to Sta. 54+00
7. Street Plan and Profile Sta. 54+00 to Sta. 61+68.53
8. Slip Roads Plan and Profile Sta. 54+00 to Sta. 32+00
9. Intersection Grading Plans: Intersections B and E
10. Intersection Grading Plans: Intersections H and F
11. Intersection Grading Plans: Intersections J and University Way – East West
12. Intersection Grading Plans: Intersections D and Deceleration Lane
13. Paving Materials Sta. 9+00 to Sta. 21+50
14. Paving Materials Sta. 21+50 to Sta. 33+50
15. Paving Materials Sta. 33+50 to Sta. 45+50
16. Paving Materials Sta. 45+50 to Sta. 57+50
17. Paving Materials Sta. 57+50 to End
18. Cross Sections 10+00 to 28+95.89
19. Cross Sections 29+0 to 45+09.95
20. Cross Sections 45+17.12 to 61+16.61
21. Striping and Signage Plan
22. Pavement Marking and Crosswalk Details
23. Traffic Details
24. Channel A Sta. 10+00 to Sta. 15+50
25. Storm Drain A and A-1
26. Storm Drain B Sta. 10+00 to Sta. 16+00
27. Storm Drain B Sta. 16+00 to Sta. 21+76.53
28. Storm Drain C, D and B-1
29. Floodplain Crossing Sta. 10+98.50 to Sta. 12+41.50
30. Storm Drain E Sta. 10+00 to Sta. 11+55.33
31. Channel B 10+00 to 16+00
32. Channel B 16+00 to 21+50
33. Channel B 21+50 to End
34. Drainage Details
35. Drainage Details
36. Drainage Details
37. Wheelchair Ramp Details
38. Box Culvert Details
39. Storm Water Pollution Prevention Plan
40. Utility Construction Plan
41. PW1.0 Water Distribution Plans
42. PW2.0 Water Distribution Plans

43. PW3.0 Water Distribution Plans
44. PW4.0 Water Distribution Plans
45. PW5.0 Water Distribution Plans
46. PW5.1 Water Distribution Plans
47. PW5.2 Water Distribution Plans
48. SS1.0 Sanitary Sewer Plans
49. SS2.0 Sanitary Sewer Plans
50. SS3.0 Sanitary Sewer Plans
51. SS4.0 Sanitary Sewer Plans
52. SS5.0 Sanitary Sewer Plans
53. SS6.0 Sanitary Sewer Plans
54. SS7.0 Sanitary Sewer Plans
55. SS7.1 Sanitary Sewer Plans
56. L0.0 VR-NS Cover Sheet (Landscape)
57. L1.1 Hardscape Plan
58. L1.2 Hardscape Plan
59. L1.3 Hardscape Plan
60. L1.4 Hardscape Details
61. L1.5 Hardscape Details
62. L1.6 Hardscape Details
63. L2.1 Planting Plan
64. L2.2 Planting Plan
65. L2.3 Planting Plan
66. L2.4 Planting Plan
67. L2.5 Planting Plan
68. L2.6 Planting Plan
69. L2.7 Planting Notes and Details
70. L2.8 Plant List
71. L3.1 Irrigation Plan
72. L3.2 Irrigation Plan
73. L3.3 Irrigation Plan
74. L3.4 Irrigation Plan
75. L3.5 Irrigation Plan
76. L3.6 Irrigation Plan
77. L3.7 Irrigation Notes and Details
78. CT1 Cover Sheet (Contech Bridge Solutions)
79. CT2 Bridge Plan
80. CT3 Foundation Plan
81. CT4 Construction Details
82. CT5 Elevation Plan
83. CT6 Construction Details
84. CT7 Construction Details
85. CT8 General Notes
86. CT9 General Notes
87. LC1.0 A&M Tower – Cover Sheet
88. LC1.1 A&M Tower – Genral Notes, Materials Schedule, and Legends
89. S1.0 A&M Tower – Notes, Details, & Section
90. S2.0 A&M Tower – Foundation Plan & Section
91. S2.1 A&M Tower – Section
92. S2.2 A&M Tower – Details & Section
93. LS1.1 A&M Tower – Sitework Plan

94. LS2.1 A&M Tower – Sitework Details
95. LS2.2 A&M Tower – Sitework Details
96. LS2.3 A&M Tower – Sitework Details
97. LS2.4 A&M Tower – Sitework Details
98. LS2.5 A&M Tower – Sitework Details
99. LS2.6 A&M Tower – Sitework Details
100. E1.1 A&M Tower – Electrical Symbols and Abbreviations
101. E1.2 A&M Tower – Electrical Specifications
102. E2.1 A&M Tower – Electrical Lighting Site Plan
103. E2.2 A&M Tower – Electrical Lighting Site Plan
104. E3.1 A&M Tower – Electrical Lighting Plan – Elevation View
105. E4.1 A&M Tower – Electrical Lighting Site Plan



CITY OF SAN ANTONIO Request for Council Action

Agenda Item # 6
Council Meeting Date: 11/20/2008
RFCA Tracking No: R-4196

DEPARTMENT: Housing and Neighborhood Services **DEPARTMENT HEAD:** David D Garza

COUNCIL DISTRICT(S) IMPACTED:
Council District 3, Council District 4

SUBJECT:
Tax Increment Reinvestment Zone #28 (Verano)

SUMMARY:

The following is a summary of the items and actions related to TIRZ # 28:

- 1) Public Hearing to consider an amendment of the boundaries of TIRZ #28.
- 2) An ordinance approving the following:
 - a) Amendment of boundaries of TIRZ # 28
 - b) Final Project and Final Financing Plans
 - c) Development Agreement with VTLM Texas, LP, Bexar County and the Board of TIRZ #28
- 3) An ordinance approving the Developer Participation Agreement with VTLM Texas, L.P. for the North-South Connector Road Construction Project
- 4) A Resolution recommending to the CPS Board of Trustees that an expenditure of \$6,000,000.00 from the Community Infrastructure and Economic Development (CIED) Fund be allocated for electrical infrastructure and the placement of underground distribution facilities and related infrastructure at the Texas A&M - San Antonio, an overhead conversion project.

BACKGROUND INFORMATION:

Pursuant to a Memorandum Of Understanding approved by City Council on September 6, 2007, staff has identified a number of resources that could facilitate the development of both the Texas A&M University - San Antonio campus and a related community development on the southside of San Antonio.

The City Council approved the creation of Tax Increment Reinvestment Zone (TIRZ) Number 28 on December 6, 2007 (the "Verano TIRZ") to facilitate the development of 2,700 acres around the Texas A&M University San Antonio (TAMUS) campus. The boundaries of the TIRZ are south of Loop 410, bounded by Zarzamora to the west,

Pleasanton to the east and Mauermann Road/Toyota Facility to the South. The proposed public infrastructure expenses include streets, sidewalks, streetscape, drainage facilities; water, sewer, gas and electrical distribution infrastructure; public parking garages, public parks and other public improvements. The proposed private development includes approximately 6,938 residential units (2,542 single family; 3,375 multi-family; 1,021 condo/townhomes), approximately 5,977,200 square feet of office, retail/restaurant, industrial/research park, and institutional facilities.

After designation of the Verano TIRZ, staff began negotiations with the Developer and affected taxing entities for their respective participation in the TIRZ. During negotiations, the Alamo Community College District requested that the City change the boundaries of the TIRZ to include the Palo Alto College campus in order to make certain improvements eligible for reimbursement.

The Verano TIRZ Board reviewed and approved the amendment to the TIRZ boundaries, the Final Project and Financing Plans and the Development Agreement on November 19, 2008.

ISSUE:

Amendment of Boundaries:

The purpose of the Public Hearing is to consider amending the TIRZ boundaries on the recommendation of the TIRZ Board to include the Palo Alto College campus. Following the Public Hearing, the City Council will be asked to approve the boundary change by ordinance.

Final Project and Final Financing Plans:

The City Council is being asked to approve, by ordinance, the amendment of the TIRZ boundaries, the Final Project and Final Financing plans for the TIRZ, the payment of all incremental ad valorem taxes generated from the new improvements occurring in the TIRZ into the Tax Increment Finance (TIF) fund as reflected in the Final Financing Plan. The projected revenues over the term of the Verano TIRZ will support the reimbursement for costs associated with the proposed public improvements. Taxing entities participating in the project include the City, Bexar County, the Alamo Community College District, and the San Antonio River Authority.

Development Agreement:

The City Council is also being asked to authorize the execution of the proposed Development Agreement, which ensures the successful completion of the Verano Project as described in the Final Project Plan and Final Financing Plan approved by the Board of Directors on November 19, 2008. The Development Agreement states the obligations of the City, Bexar County, TIRZ Board of Directors, and VTLM Texas, L.P., the Developer. The Development Agreement contains the limitations that the public improvements infrastructure costs incurred by the Developer shall be reimbursed solely from the TIRZ revenues and shall never constitute debt, indebtedness or a pledge of the faith and credit or taxing power of the State, the City or the participating taxing entities listed above, any political corporation, subdivision or agency of the State.

Developer Participation Agreement:

The Memorandum of Understanding, between the TAMU-SA, the City, Verano Land Group, LP and CPS Energy (dated September 2007) contemplated that TAMU-SA would be provided with a four-lane boulevard, including all ancillary utilities, from South Loop 410 to the Main Campus ("University Way") and an arterial road including all ancillary utilities, along the northern boundary of the Main Campus, providing access to Zarzamora Road (the "East/West Arterial"). The City agreed to provide up to \$15 million for these public infrastructure improvements. On December 6, 2007, City Council approved Ordinance

2007-12-06-1258 making \$500,000.00 of the \$15 million available for design services for a North-South Connector Road. This roadway will be a multi-way boulevard of at least four lanes from IH 410 and will serve as a "Gateway" into the Texas A&M campus.

Section 212 of the Texas Local Government Code allows municipalities to participate in a contract with a developer to construct public improvements required by the municipality including increased capacity of improvements in anticipation of other future development in the area. This agreement provides \$14,500,000.00 in funds from the City that will be used to pay for the actual costs incurred for over sizing a north-south road. The approval of this ordinance authorizes the execution of a Developer Participation Contract with VTLM Texas, LP., which provides for the over sizing of a north-south roadway.

CIED Funding by the City:

The Community Infrastructure and Economic Development ("CIED") Fund was established by the CPS Energy Board of Trustees to support overhead conversion, economic development, and environmental stewardship projects that would have a positive impact on the CPS System. One percent (1%) of CPS Energy's retail electrical sales within the city limits is deposited in the CIED Fund on an annual basis. The City Council has the authority to use CIED funds on eligible projects by forwarding its recommendations to the CPS Energy Board of Trustees on a project-by-project basis. Staff recommends City Council approval of a resolution authorizing the CPS Energy Board of Trustees to allocate \$6,000,000.00 from the CIED Fund for expenditures associated with the placement of underground electrical distribution facilities and related infrastructure at the new Texas A&M University - San Antonio Campus. This project qualifies as an Overhead Conversion Project under the CPS Energy CIED Fund Policy. The City supports the use of CIED funds for this project and has concluded that the project will have a positive impact on the CPS Energy System by adding new kWh sales, growing incremental electrical base rate revenues, and increasing customer loyalty. The proposed resolution is in accordance with CIED Fund Policy, Sections 3.1 and 3.3.

ALTERNATIVES:

An alternative is to not proceed with the approval of these documents until all other taxing entities have committed to participate in the TIRZ. This alternative is not recommended because the City's approval of the documents is evidence to other taxing entities of the City's commitment to the TIRZ.

FISCAL IMPACT:

The base value of the TIRZ is \$46,564,312.00. Projected captured values that will be taxed to produce revenues to pay for the capital costs of the public infrastructure improvements commenced in tax year 2010 with collections commencing in tax year 2013 (fiscal year 2014). The 2007 base value is projected to increase in total captured taxable value to \$3,252,607,232.00 net of exemptions and adjustments. The growth is based on proposed improvements throughout the term of the zone.

The cost of the public infrastructure improvements is incurred by the Developer and reimbursed over time from revenues produced by the TIRZ. Revenues derived from the TIRZ will be used to reimburse costs in the following order of priority of payment: (i) to reimburse eligible startup Administrative Costs incurred by each Participating Taxing Entity; (ii) to pay all other ongoing Administrative Costs to the City and County for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City and County, then the ongoing Administrative Costs of the City and County shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in the Development Agreement; (iv) to reimburse

the City \$5,500,000.00 in accordance with the Memorandum of Understanding in the event A&M does not build the university; and (v) Developer for public improvements as provided in the Development Agreement and in the Project Plan to the extent that funds in the Tax Increment Fund are available for this purpose. These funds for reimbursement are separate and apart from CIED funding.

The Developer’s capital cost for public infrastructure improvements is proposed at \$501,441,669.00. The Developer will receive payments no earlier than fiscal year 2014. The earliest projected payoff of the capital cost would occur in fiscal year 2037 and includes an estimated Developer contribution of \$263,294,423.00 out of total project cost of \$505,297,921.00. The TIRZ collections for this project shall not extend beyond September 30, 2037 and may be terminated earlier once each taxing entity has deposited its respective amount described in the table below.

TABLE – TIRZ Contributions

Table—TIRZ Contributions		
Participating Taxing Entities	Maximum Dollar Contribution	Maximum Length of Contributions
City of San Antonio	\$ 138,700,000.00	September 30, 2037
Bexar County	\$ 94,874,108.00	September 30, 2037
Alamo Community College District	\$15,000,000.00	September 30, 2037
San Antonio River Authority	\$5,125,892.00	September 30, 2037
Total	\$253,700,000.00	

The City will contribute \$135,000,000.00 towards the developer’s costs and the remaining portion will fund administrative costs. The City’s commitment to fund \$14.5 million towards the construction of University Way is subject to the pending issuance of Certificates of Obligation previously approved by the City Council.

RECOMMENDATION:

Staff recommends approval of the actions related to the TIRZ #28. Upon City Council approval, legal documents will be executed and staff will monitor the project for compliance.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Voting Results	
Voting Results	
Ordinance/Supplemental Documents	200811201017.pdf
Resolution/Supplemental Documents	200811200055R.pdf
Ordinance/Supplemental Documents	200811201016.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

David D Garza Director Housing and Neighborhood Services

APPROVED FOR COUNCIL CONSIDERATION:

T.C. Broadnax Assistant City Manager

Pat DiGiovanni Deputy City Manager