AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS, BEXAR COUNTY, VERANO LAND GROUP, LP and THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER TWENTY-EIGHT, CITY OF SAN ANTONIO, TEXAS

This Amended and Restated Development Agreement (this "Agreement"), is an amendment and restatement of that one certain Development Agreement ("2008 Development Agreement") that, pursuant to Ordinance No. 2008-11-20-1016, passed and approved on the 20th day of November, 2008 was entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (the "City"); Bexar County, a political subdivision of the State of Texas, acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on December 16, 2008 (the "County"); VTLM Texas, LP, a Texas limited partnership ("VTLM"), and the Board of Directors for Reinvestment Zone Number Twenty-Eight, City of San Antonio, Texas, a tax increment reinvestment zone (the "Board"), said 2008 Development Agreement having been subsequently amended, by the City also pursuant to Ordinance No. 2008-11-20-1016, passed and approved by the City Council on the 20th day of November, 2008, by the County acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on the 2nd day of June, 2009, and by the Board on the 25th day of March, 2009, and subsequently further amended by that one certain Second Amendment to Development Agreement by and among the City, the County, the Board and VTLM, approved by the City pursuant to Ordinance No. 2010-06-24-0621, passed by the City Council of the City on the 24th day of June, 2010, by the County, acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on the 10th day of August, 2010, and by the Board on the 9th day of June, 2010 (said 2008 Development Agreement, as so heretofore amended, being referred to herein as the "Original Amended Development Agreement") The City, the Developer, the County, and the Board may each be referred to singularly as a "Party" or collectively as "Parties."

NOW THIS AGREEMENT is made by and among the City, acting through its City Manager pursuant to Ordinance No. _____ passed and approved by the City Council on the _____ day of _____, 2016, the County, acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on the_____ day of _____, 2016, the Board approved on the_____ day of _____, 2016, and Verano Land Group, LP (the "Developer").

BACKGROUND:

WHEREAS, both the City and County recognize the importance of their continued roles in economic development, community development, planning and urban design; and

WHEREAS, the Texas State Legislature has authorized the issuance of Forty Million Dollars ($40,000,000) of Tuition Revenue Bonds for the construction of a Texas A&M University campus in San Antonio ("TAMU- SA"); and

WHEREAS, the City previously contemplated that the establishment of TAMU-SA would include definitive commitments by the City to provide for adequate levels of public improvements, and that such development would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, the Texas A&M University System ("TAMUS"), the City, VTLM and CPS Energy ("CPS") entered into a Memorandum of Understanding dated September 6, 2007 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, pursuant to the MOU, the City agreed to identify and evaluate economic development incentives for which VTLM and/or the Developer may be eligible, and as a result of this evaluation, the City, pursuant to Ordinance 2007-12-06-1257, created Reinvestment Zone Number Twenty-Eight to promote development of the Developer's property surrounding the campus, pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the "Act"), through the use of tax increment financing, and established the Board; and

WHEREAS, in accordance with the Act, the City authorized the Board to exercise all the rights, powers, and duties as provided to such Boards under the Act or by action of the City Council; and

WHEREAS, on the 19th day of November, 2008, the Board adopted and approved a final Project Plan (said original Project Plan being referred to herein as the "Original Project Plan") and a final Financing Plan (said original Finance Plan being referred to herein as the "Original Finance Plan"), with the Project Plan and the Financing Plan for the development of the Property having been previously amended and being further amended contemporaneously with this Agreement being entered into, and, as previously and contemporaneously amended, referred to in this Agreement as "Project Plan" and "Financing Plan" providing for development of the Property; and

WHEREAS, by Ordinance Number 2008-11-20-1016, dated November 20, 2008, pursuant to the Act, the City expanded the boundaries of the TIRZ to include real property that is not part of the Project (as defined in this Agreement), approved the Original Project Plan and Original Financing Plan for the TIRZ, and authorized the execution of the 2008 Development Agreement on behalf of the City, and to bind the City to the terms and conditions of said 2008 Development Agreement; and

WHEREAS, VTLM has assigned the Original Amended Development Agreement to Verano Land Group, LP and Verano Land Group, LP has assumed the Original Amended Development Agreement (the "Assignment"); and

WHEREAS, the parties hereto wish to further amend and to restate the Original Amended Development Agreement as set forth below in this Agreement;

WHEREAS, Section 311.002 (1), of the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality establishing a reinvestment zone, for costs of public works or public improvements in the TIRZ, plus other costs incidental to those expenditures and obligations, consistent with the

project plan of the TIRZ, which expenditures and monetary obligations constitute project costs, as defined in Section 311.002 (1) of the Act ("Project Costs"); and

WHEREAS, pursuant to the Act and City Ordinance Number 2007-12-06-1257, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Property within the scope of those plans; and

WHEREAS, pursuant to said authority above, the Board, the City, the County and the Developer each enters into this binding agreement with the others to develop the Property as specified in the Project Plan, Financing Plan and this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the City, the County, the Board, and the Developer agree as follows:

ARTICLE I. DEFINITIONS

1.1 The "City," the "County", the "Board", and the "Developer" shall have the meanings specified above.

1.2 "Act" means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as it may be amended from time to time.

1.3 "Administrative Costs" means reasonable costs directly incurred by any Participating Taxing Entity related to its agreement to participate in the funding of the TIRZ, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the TIRZ incurred prior to entering into and during this Agreement, as well as, any such costs and expenses incurred after this Agreement becomes effective. The initial startup Administrative Costs for the City is $28, 279.47 which has been paid as of the date of the execution of this Agreement. All other initial startup and annual Administrative Costs from 2008 – 2016 have been waived by all other Participating Taxing Entities. The total Administrative Costs over the life of the TIRZ for all Participating Taxing Entities are estimated to be Three Million Eight Hundred and Twenty-Seven Thousand Five Hundred and Five Dollars and Seventy-Three Cents ($3,827,505.73).

1.4 "Agreement" means this document by and among the City, the County, the Board, and the Developer, which may be amended from time to time.

1.5 "Available Tax Increment Funds" means the "Tax Increment" contributed by each Participating Taxing Entity to the TIF Fund, as paid out in accordance with the priority of payment listed in Section 7.1, below.

1.6 "Captured appraised value of real property taxable by a taxing unit for a year" has the meaning provided by §311.012(b) of the Act.

1.7 "City Code" means the City Code of the City of San Antonio, as amended.

1.8 "City Manager" means the City Manager of the City or her designee.

1.9 "Completion" means final approval of the construction of a Public Improvement in the TIRZ in accordance with the Developer's engineer's design, the Project Plan, Financing Plan, and this Agreement. In order for a Public Improvement to have achieved a state of "Completion" for the purpose of reimbursement under Article VII of this Agreement, the improvement must:

a. In the case of Public Improvements constructed prior to the Effective Date of the 2008 Development Agreement

(1) be approved and accepted by the City or appropriate entity as evidenced by a final letter of acceptance issued by an authorized official of the City or appropriate entity; and

(2) for streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and

(3) for all Public Improvements, including streets and drainage improvements, be subject to repair, replacement and maintenance pursuant to Section 5.12 of this Agreement; or

b. In the case of Public Improvements constructed after the Effective Date of the 2008 Development Agreement.

(1) be inspected by the Developer's Project design engineer, and be the subject of a certification letter from said design engineer, sealed with said engineer's professional seal, certifying that the Public Improvements were designed in such a manner as to endure without need for maintenance, repair or replacement for five (5) years, taking into consideration the site and traffic conditions, present and future, at or near the improvements, and certifying that the Public Improvements were constructed according to the specifications required by said engineer's design for each improvement; and

(2) be approved and accepted by the City or appropriate entity as evidenced by a final letter of acceptance issued by an authorized official of the City or appropriate entity; and

(3) for streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and

(4) for all Public Improvements, including streets and drainage improvements, be subject to repair, replacement and maintenance pursuant to Section 5.12 of this Agreement.

1.10 "Construction Schedule" means the timetable for constructing the Public Improvements associated with the development specified in the Project Plan, Financing Plan and this Agreement, the timetable for which development being more particularly set forth in **Exhibit A**, attached and

incorporated in this Agreement for all purposes and which timetable may be amended by the parties from time to time pursuant to Section 23.2.

1.11 "Contract Progress Payment Request" ("CPPR") means a request, prepared in accordance with the requirements of **Exhibit D**, attached and incorporated in this Agreement for all purposes, for reimbursement due to the Developer for all work completed in accordance with Section 1.9 above on a specific Phase or Plat in the TIRZ in accordance with the Public Improvements in the Project Plan and the timeline detailed in the Construction Schedule. A CPPR may be submitted only after all work on a specific Plat or a specific Phase has been completed. The CPPR shall also account for all applicable City fees that have been paid and or waived.

1.12 "CPPR Approval Recommendation" means a written acknowledgement from the TIF Unit to the Developer that the CPPR was completed and submitted correctly, and that the CPPR is ready for presentation to the Board for approval and consideration for reimbursement to the Developer.

1.13 "Developer" means Verano Land Group, LP, formerly a Texas limited partnership and now a Nevada limited partnership.

1.14 "Donor" means Verano Land Group, LP, formerly a Texas limited partnership and now a Nevada limited partnership, the donor of approximately 694.5 acres of land within the TIRZ to The Texas A&M University System.

1.15 "Effective Date" means the date that the last party signs this Agreement.

1.16 "Financing Plan" means the final Reinvestment Zone Financing Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which is incorporated into this Agreement by reference for all purposes, as if set out in its entirety.

1.17 "Guidelines" means the 2006 Tax Increment Financing Program Policy and Implementation Manual as passed and approved by the City Council of the City.

1.18 "Participating Taxing Entity" means any governmental entity recognized as such by Texas law, which is participating in this TIRZ by contributing a percentage of its Tax Increment.

1.19 "Plat or Phase" means the separate and distinct plats or phases that include the construction of Public Improvements, which Plat or Phase may be identified by plat, "As-Built" construction plans, a master development pattern plan, or street construction plans, and that include reimbursable improvements. Without limiting the generality of the foregoing, an example of a Plat or Phase is a platted area within the Project that includes Public Improvements.

1.20 "Project" has the meaning specified in Section 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.21 "Project Costs" has the meaning provided by Section 311.002(1) of the Act.

1.22 “Project Plan” means the final Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which is incorporated by reference into this Agreement as if set out in its entirety, for all purposes.

1.23 “Project Status Report” means a report, prepared and submitted by the Developer in accordance with the requirements of Section 5.16 of this Agreement, and according to **Exhibit B** attached and incorporated in this Agreement for all purposes, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.24 “Property” means the contiguous geographic area of the City that is included within the boundaries of the TIRZ, which is more particularly described in the Project Plan.

1.25 “Public Improvements” include those improvements that provide a public benefit and that are specifically or generally described in the Project Plan, the Financing Plan and the Construction Schedule. When an improvement has both private and public benefits, only that portion dedicated to, held open to or accessible by the public may be reimbursed to the Developer as a Public Improvement. The term “Public Improvements” also includes the items and matters set forth in the last sentence of subsection 3.1a of this Agreement.

1.26 “Tax Increment” has the meaning assigned by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the TIRZ.

1.27 “TIF” means Tax Increment Financing.

1.28 “TIF Fund” means the tax increment fund created by the City pursuant to Ordinance 200712-06-1257 for the deposit of Tax Increments for the TIRZ, entitled “Reinvestment Zone Number Twenty-Eight, City of San Antonio, Texas Tax Increment Fund.”

1.29 “TIF Unit” means the employees of the City’s Department of Planning and Community Development responsible for the management of the City’s TIF Program, or any successor department.

1.30 “TIRZ” means Tax Increment Reinvestment Zone Number Twenty-Eight, City of San Antonio, Texas.

1.31 “Utility Services Agreement” means the Utility Services Agreements entered into between San Antonio Water System and the Developer and as amended which were recognized by the City, the Board, the San Antonio Water System and the Developer in the Consent Agreement and Amended and Restated Consent Agreement executed pursuant to City Ordinance Nos. 2009-08-20-0662 and 2016- - - (said Amended and Restated Consent Agreement being referred to herein as the “Amended and Restated Consent Agreement”).

Singular and Plural: Words used in this Agreement in the singular, where the context so permits, also include the plural and vice versa, unless otherwise specified.

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex.

ARTICLE II. REPRESENTATIONS AND AGREEMENTS

2.1 **No Tax-Supported Public Debt:** Subject to the exceptions as specifically set out in this Article II, Section 2.1, the City, the County, the Board and the Developer represent that they understand and agree that neither the City, the County, nor the Board shall issue any bonds or notes to cover any Project Costs directly or indirectly related to the Public Improvements in the TIRZ. The City, the County and the Board understand that Developer may choose to issue bonds and/or notes utilizing TIF reimbursements for eligible costs directly or indirectly related to Public Improvements made by the Developer under this Agreement. Neither the City, the County, nor the Board will be parties to the Developer's bonds or notes. The Parties hereto further agree that no tax-supported public debt instrument will be issued by any Participating Taxing Entity or the Board to finance any costs or improvements of the Project with the exception of City issued certificates of obligation as authorized under Ordinances 2007-12-06-1258 and 2008-11-20-1017 to reimburse Developer for design and construction of certain public improvements within the TIRZ, as more specifically detailed in the Developer Participation Contract for North-South Connector Road Construction Project entered into and effective as of December 1, 2008 providing for University Way (the north/south boulevard). Further the City entered, under Ordinance 2009-05-07-0349, into a funding agreement with the Developer for the major thoroughfare street running east/west, only to the extent there is an unused balance in the fourteen million five hundred thousand dollars ($14,500,000.00) of the certificates of obligation initially issued for University Way, as the City will not issue any additional tax-supported debt for the Project. Notwithstanding the Parties agreement not to finance any costs or improvements of the Project with a tax-supported public debt instrument, the Parties agree to allow the construction and operation of a soccer complex on approximately thirty-five (35) acres of the Project which may be financed from County's issuance of tax-exempt bonds and taxable bonds or from a short term vehicle rental tax.

2.2 **City and County Authority**. The City represents to the Developer that as of the date of the execution of this document, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement. The County represents to the Developer that as of the date of the execution of this document, the County, a political subdivision of the State of Texas, has the authority to carry out the obligations contemplated by this Agreement.

2.3 **Board's Authority**. The Board represents to the County and Developer that as of the Effective Date the TIRZ is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 2007-12-06-1257, passed and approved on December 6, 2007 and that the Board, as established in said ordinance, has authority to carry out the obligations, functions and operations contemplated by this Agreement.

2.4 **Developer's Authority and Ability to Perform**. The Developer represents to the City, the County and to the Board that the Developer is a limited partnership duly formed in the State of Texas and later converted to a Nevada limited partnership; that the Developer has been authorized by its governing body to enter into this Agreement and to perform the requirements of this Agreement; that the Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that the Developer's performance under this Agreement shall not result in the creation of any claim against the City or County for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City, the County or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to

the extent provided in this Agreement; and that the Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

2.5 **All Consents and Approvals Obtained**. The City, the County, the Board and the Developer represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.6 **Right to Assign Payment**. The City, the County, the Board and the Developer may rely upon the payments to be made to them from the TIF Fund out of the Available Tax Increment Funds as specified in this Agreement, and the Developer may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment from the TIF Fund made payable only to the Developer.

2.7 **Reasonable Efforts of all Parties**. The City, the County, the Board, and the Developer represent each to the others that they shall make reasonable efforts to expedite the subject matters of this Agreement and acknowledge that the successful performance of this Agreement requires their continued cooperation.

2.8 **Developer's Continuing Duty to Complete Improvements**. The City, the County, the Board, and the Developer represent each to the others that they understand and agree that even after the TIRZ terminates, the Developer shall diligently work to successfully complete the portions of the Project, as it may have been amended by subsequent amendments to the Project Plan, that were not completed before the TIRZ terminated. Such completion shall be done at no additional cost to the TIF Fund.

2.9 **Interlocal Agreements, Settlement Agreement, and Utility Services Agreement**. The City, the County, the Board and the Developer represent each to the others that they understand and agree that the 2008 Development Agreement, and the Original Amended Development Agreement, and this Agreement had no force or effect unless and until all applicable interlocal agreements, and the Utility Services Agreement and or amendments to the interlocal agreements, or Utility Services Agreement were or have been executed between the City, the Board and the Participating Taxing Entities. As of the date of this Agreement, certain applicable amendments to the interlocal agreements and the Utility Services Agreement required to give this Agreement force or effect have not been executed. The parties also represent each to the others that they understand and agree that this Agreement had no force or effect unless and until all terms and conditions of the Settlement Agreement and Mutual Release between VTLM Texas, LP, and Verano Land Group, LP that relate to the TIRZ development have been met as approved by the United States Bankruptcy Court for the Western District of Texas San Antonio Division in Case No. 13-51330-CAG. As of the date of this Agreement, certain terms and conditions of such Settlement Agreement and Mutual Release required to give this agreement force or effect have not been met. No other agreements with public entities other than the applicable interlocal agreements are necessary to make this Agreement effective. The Developer and any third-party (including, without limitation, any lender) may rely on the written determination of both the TIF Director (as defined below) and the County's Manager as to whether any or all such conditions to this Agreement, the 2008 Development Agreement, and/or the Original Amended

Development Agreement being in force and effect have been satisfied. The parties also represent each and to the others that all will make a good faith effort to work towards completing the conditions contained in this section within six months from the date of execution of this Agreement.

2.10 **Developer Bears Risk of Reimbursement**. The Developer represents that it understands that any expenditures made by the Developer in anticipation of reimbursement from Tax Increment shall not be, nor shall they be construed to be, financial obligations of the Board, the City, the City's General Fund, or of any other Participating Taxing Entity, but shall be reimbursed only through the TIF Fund. The Developer shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

2.11 **No Obligation for ACCD Improvements**. The City, the Board and the County represent, acknowledge and agree that the Developer has no obligation to construct any Public Improvements on any real property in the TIRZ owned or controlled by the Alamo Community College District ("ACCD"). ACCD shall be solely responsible for all TIF reimbursable Public Improvements on their property.

2.12 **No Additional Tax Increment Fund Incentives.** The Developer understands and agrees not to apply for, request, or seek further funding from the City, and or the TIRZ Board for additional incentives directly or indirectly related to this Agreement. The parties acknowledge that the City and the TIRZ Board have no obligation to approve or authorize additional incentives paid from the Tax Increment Fund for any activities directly or indirectly related to this Agreement.

ARTICLE III. THE PROJECT

3.1 **The Project**.

a. The Project is a mixed-use community to be built on property within the TIRZ owned or controlled by the Donor based on the concept of a walkable, integrated urban village surrounding a major institution of higher learning and designed using Form-Based zoning in part. The Project is projected to include a town center, 2,500 multi-family apartment units, 2,461 single-family residences and 750 condominiums/townhomes within urban settings and master-planned hamlets. In addition, there are projected to be 925,000 square feet of office space, 665,000 square feet of retail, restaurants, and other commercial structures, a 1,225,000 square foot industrial area and 200,000 square feet of Institutional support structures including day care, active living facilities and assisted living centers. The project may include various sports facilities, trails, pocket parks and a linear park, all as described in more detail in the Project Plan. Public Improvements within the Project include streets, streetscapes, streetscape enhancements, drainage/retention,

water, sewer, telecom, gas, non-potable water, drainage & detention facilities, streetlights, street signs, dry utilities, electric utilities, linear parks, parks/plazas, public parking garages, drainage, off site drainage, and associated engineering, surveying, geotechnical, architect/landscape, construction management, environmental review, storm water pollution plans, storm water pollution prevention, park fees, planning/zoning fees, impact fees, sewer/water impact fees, and environmental support, and contingency, all as described in more detail in or contemplated by the Financing Plan and Construction Schedule or all other approved Project Costs as per the TIF Act.

b. The construction costs of improvements not dedicated to the City or County, that are maintained by a Homeowners Association, Property Owners Association, other political subdivision or private entity but are held open and accessible to the general public shall be costs eligible for reimbursement by the TIF Fund. These improvements include such improvements on the approximately 451 acres identified for open space use and other amenities (including linear parks, pocket parks, pools, community centers, plazas, streetscapes and rights of way enhancements). The City shall not provide maintenance or services related to these improvements or Park Police services for any of the above open spaces. The City shall provide routinely scheduled maintenance, on the rights of way within the TIRZ, but will not provide enhancements such as landscaping on rights of way within the TIRZ. In the event such an improvement is dedicated to the City, and becomes a City improvement, the City may deduct the maintenance and service costs of said City improvement from the TIF Fund in accordance with the priority of funds set out in Section 7.1.

c. The City, County, Board and Developer agree that in the event a parking garage is constructed within the TIRZ by the Developer, the parties to this Agreement shall negotiate the terms of a subsequent agreement which will outline the contributions of each party and provide for the public use of the garage(s).

3.2 **Competitive Bidding**. Contracts for the construction of Public Improvements reimbursed by the Available Tax Increment Funds shall be competitively bid in a process acceptable to the City, or in compliance with Chapter 252 of the Local Government Code, and be constructed by or on behalf of the Developer, in compliance with all applicable law unless:

a. Available Tax Increment Funds go toward financing 30 percent or less of the cost for a specific Public Improvement which is, not a building of any sort, in compliance with the Developer Participation Contract statutes currently found in Subchapter C in Chapter 212 of the Local Government Code; or

b. Available Tax Increment Funds go toward financing 100 percent of the costs to oversize a specific Public Improvement, in compliance with the Developer Participation Contract statutes currently found in Subchapter C in Chapter 212 of the Local Government Code; or

c. in the event the City creates a Local Government Corporation to manage the TIRZ, pursuant to the provisions of Chapter 431, Subchapter D, Texas Transportation Code.

Should the Developer not competitively bid all or a portion of a Public Improvement, the Developer must obtain written approval by the City in order to be eligible for partial reimbursement of those Project Costs not competitively bid pursuant to the regulations set forth in Chapters 252 and 212 of the Local Government Code. Partial reimbursements to the Developer in that event can be up to 100% of the portion of the Project Costs that were competitively bid, but no more than 30% of the portion of the Project Costs that were not competitively bid.

3.3 **Private Financing.** The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded through the use of the Developer's own capital or through commercial or private loans/lines of credit secured solely by the Developer. The Developer may use any or all of the Property as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication. The City and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided in this Agreement, to reimburse the Developer for eligible Project Costs it has expended. These Available Tax Increment Fund reimbursements made to the Developer are not intended to reimburse the Developer for all its costs incurred in connection with constructing the Public Improvements within the Project.

3.4 **Reimbursement.** The parties to this Agreement agree that neither the City, County nor the Board can guarantee that Available Tax Increment Funds shall completely reimburse the Developer, but that Available Tax Increment Funds shall constitute the only source of reimbursement to the Developer for the construction of the Public Improvements under this Agreement. The parties further agree that the Developer is eligible for reimbursement for Project Costs as of the date the TIRZ was established and for funds already expended in the TIRZ. Developer understands that reimbursement may be limited to partial reimbursement per Section 3.2 if competitive bidding is not used and an LGC is not created by the City to manage the TIRZ.

ARTICLE IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on the date which is the earlier to occur of the following,: (i) the date the Developer receives the final reimbursement available under the Financing Plan for completing the Public Improvements; (ii) the date this Agreement is terminated as provided in Article X; (iii) as provided in the Financing Plan; or (iv) September 30, 2045, provided that all existing warranties on the Public Improvements which were reimbursed with Available Tax Increment Funds shall survive termination of this Agreement.

ARTICLE V. DUTIES AND OBLIGATIONS OF DEVELOPER

5.1 **Compliance with Laws and Ordinances.** The Developer agrees to retain and exercise supervision over the construction of all Public Improvements and private improvements of the

Project, and shall comply and require its contractors to comply with all applicable provisions of the Act, the 2006 Guidelines, the City Code (including the Unified Development Code as amended by the Form-Based zoning adopted by the City, as applicable, and Universal Design and Construction Requirements as provided in Section 5.15), the City Charter, all City ordinances, and state and federal law, as they may be amended from time to time. As to private improvements with respect to which no reimbursement from Available Tax Increment Funds is sought, Developer's duty to retain and exercise supervision over construction of such private improvements as set forth above is fulfilled by ensuring that the initial construction of such private improvements is in compliance with any requirements applicable to such private improvements as provided by this Agreement.

5.2 **Duty to Complete.** Subject to Article VII, "Compensation to the Developer," the Developer agrees to complete, or cause to be completed, the Public Improvements described in the Project Plan, the Financing Plan, and this Agreement. The Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Public Improvements. The Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of the Public Improvements.

5.3 **Commencement of Construction.** From the Effective Date of this Agreement forward, the Developer shall not commence construction on any Public Improvements in any Plat or Phase of the Project until the plans and specifications for such improvements have been approved in writing by the appropriate department of the City, and all federal and state law requirements have been met. For purposes of this Section, letters of certification or acceptance issued by the City shall constitute written approval of the City.

5.4 **Payment and Performance Bonds for Public Improvements.** The Developer must ensure that its contractors constructing Public Improvements obtain payment and performance bonds before beginning construction, as required by Chapter 2253 of the Texas Government Code, and must deliver Chapter 2253 Performance and Payment Bonds to the Developer, who must provide a copy of the Bonds to the City as required in the Unified Development Code and a copy to the Tax Increment Reinvestment Zone Board of Directors as defined in Section 17.1. Failure to meet the City's minimum standards for these Bonds prior to the commencement of construction for each Plat or Phase will be considered a breach of contract. The Bonds shall name both the City and Developer as beneficiaries or obligees of the Bonds. The Bonds for each Plat or Phase shall be in an amount sufficient to cover the entire contract cost of the Public Improvements for that Plat or Phase.

The City's Risk Management Department shall determine whether the bonds meet the minimum standards. Without limiting other material breaches, failure of the Developer to ensure the compliance of its contractor with this paragraph or Chapter 2253 of the Texas Government Code is a material breach of this Agreement, and the City may exercise the full range of legal remedies available to the City, including but not limited to: terminating this Agreement, exercising its rights under Article X, and/or removing the value of Phases and lots which are ineligible for reimbursement, in each case if such failure is not cured within 45 days after written notice of such failure is given to Developer.

5.5 **No Vesting of Rights.** In exchange for receiving reimbursements from Available Tax Increment Funds, the Developer agrees that it has no vested rights under any regulations, City Ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future City Charter, City Code (including the Unified Development Code as amended by the Form-Based zoning adopted by the City, as applicable, and Universal Design and Construction Requirements as provided in Section 5.15), City Ordinances, and state or federal laws and regulations.

5.6 **Payment of Applicable Fees**. The Developer shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses, which have not been waived and are required for construction of the Project.

5.7 **Delays**. The Developer agrees to use Developer's commercially reasonable efforts to commence and complete the Public Improvements in accordance with the Construction Schedule. If commencement or completion of the Public Improvements is delayed by reason of war, civil commotion, acts of God, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Developer's control, then at the City's reasonable discretion (or in the City's sole and absolute discretion as to delays caused by changes in market or economic conditions impacting the Project, changes in interest rates or capital markets), the deadlines set forth in the Construction Schedule may be extended by the period of each such delay. If such an extension of the Construction Schedule is warranted, then Developer shall notify the City within one month of the incident causing the delay and describe the cause for the delay and the extension of time that is requested by the Developer. If Developer fails to notify the City within such one month, then the period of delay claimed by Developer will be deemed to commence no earlier than 30 days prior to the date Developer notifies the City, regardless of when the delay actually began. In the event that the Developer does not complete the Public Improvements substantially in accordance with the Construction Schedule, then the parties, in accordance with Section 23.2 below, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if the Developer continues to fail to complete the Public Improvements in accordance with the revised Construction Schedule, then the City may exercise its termination remedies under Article X, below.

5.8 **Litigation against the City**. Developer acknowledges that it is aware that the City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ, or adversarial proceedings related to TIF or TIRZ, against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the Developer, the Developer's contractors, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ, or adversarial proceedings related to TIF or TIRZ, with the City. Ineligible persons shall be excluded from participating as

either participants or principals in all TIF projects during the term of their litigation. “Person” includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, partnership, association, and any other legal entity. This TIRZ may not be terminated for violations of this policy that occurred more than sixty days prior to the execution of this Agreement.

5.9 [INTENTIONALLY DELETED]

5.10 **Tree Ordinance**. In accordance with Section 5.1 above, the Developer shall comply and shall cause its contractors and subcontractors to comply with the City Code provisions for tree preservation, located in Chapter 35, Article IV of the City’s Unified Development Code, as it may be amended from time to time.

5.11 **Date of Rendering to Appraisal District.** The Developer shall render, or cause to be rendered, all new or completed residential buildings and commercial buildings owned by Developer to the Bexar Appraisal District before December 31 of each year of this Agreement if the buildings were completed prior to December 31 of that year.

5.12 **Maintenance and Repair of Public Improvements**.

a. The Developer shall, at its own cost and expense, maintain or cause to be maintained all Public Improvements, until acceptance by the City as evidenced by written acceptance required by subsection 1.9.a.(1) or 1.9.b.(2), and for one year after Completion.

b. Upon acceptance of a street or drainage improvement for maintenance by the City, Developer or its contractor shall deliver to the City a one-year extended warranty bond, naming the City as the obligee, in conformity with Chapter 35 of the City’s Unified Development Code. The cost of repair, replacement, re-construction, and maintenance for defects discovered during the first year after Completion shall be paid by the Developer, its contractor or the bond company and shall not be paid out of Available Tax Increment Funds.

c. After the expiration of the one-year extended warranty bond, the cost of the repair, replacement and re-construction of the Public Improvement shall be the responsibility of the City; and the City shall be reimbursed from the TIF Fund for those costs it must incur including, but not limited to: demolition, rebuilding, engineering, design, re-construction or any other cost necessitated by the failure without regard to fault or degree of any Public Improvement which is discovered within the second through fifth years after Completion of said Public Improvement.

d. Payment to the City under this Section shall take priority over reimbursement of the Developer, as set out in Section 7.1, below.

e. The TIF Unit shall report any City reimbursements for the re-construction or repair to the Board in a timely manner.

f. It shall be no defense to the City's reimbursement of itself out of the TIF Fund that the City or its agents have inspected, accepted or approved the Public Infrastructure. Approval or acceptance of Public Improvement is not a waiver of claims under this subparagraph. The City may affect multiple repairs on the same Public Improvement and reimburse itself for each repair, provided that the subsequent failure was not caused solely by the City's actions.

g. The Developer, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, the Developer shall use its best efforts to dedicate (or grant a public easement) to the Public Improvements where applicable to the appropriate public entity (as determined by the City), at no additional cost or expense to the City or any other public entity within sixty days after Completion and acceptance of the improvements.

h. Subsection 5.12a, Subsection 5.12b and Subsection 5.12g above concerning maintenance of Public Improvements, warranty bonds, and dedication of Public Improvements do not apply to improvements constructed and work performed on the roadways known as University Way and Verano Parkway prior to the date of this Agreement, or to improvements constructed or work performed prior to the date of this Agreement pursuant to the Utility Services Agreement dated October 15, 2009, by and among Verano Land Group, LP, VTLM, the San Antonio Water System, and The Texas A&M University System (the "Prior Utilities Services Agreement").

5.13 **Utility Payments**. The Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the development of the Property for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas. The Project shall be subject to Section 35.501 et seq. of the San Antonio City Code (impact fees) and the Developer shall not be prohibited from applying for the benefits of any impact fee credits allowed by that section.

5.14 **Duty to Cooperate**. The Developer shall cooperate with the City, County, and the Board in providing all necessary information to the City, County and to the Board in order to assist the City, County, and the Board in determining Developer's compliance with this Agreement.

5.15 **Universal Design and Determination of Tax Increment Portion**. Developer shall comply and by contract shall cause contractors constructing new single-family homes, duplexes, or triplexes to comply with the City's Universal Design policy as required by Chapter 6, Article XII of the City Code. The City and/or Board shall provide written notice to Developer of the noncompliance with Universal Design requirements. Developer has ninety days from date of notice to address and cure noncompliance. If Developer fails to cure noncompliance issues within the ninety-day period, the City and County may, each in its sole discretion, and without Board action, deduct non-compliant units from the captured appraised value in every year of their existence, and reduce its tax increment payment to the TIF Fund accordingly. The TIF Unit

shall report any deductions to the Board in a timely manner. This Section 5.15 only applies with respect to compliance of initial construction of single-family homes, duplexes and triplexes with such Universal Design policy.

5.16 **Quarterly Status and Compliance Reports**. The Developer agrees to provide reports on the progress of construction on the public and private improvements within the Project and of compliance with applicable laws and ordinances to the City, County and the Board using the form attached as **Exhibit B**, as it may be amended from time to time, starting no later than thirty days following the beginning of construction of the Project, and on the 15th day of January, April, July and October thereafter until all the Project is completed, or until the TIRZ terminates, whichever event occurs first. Without limiting other material breaches, failure of the Developer to comply with this paragraph is a material breach of this Agreement, and the City and/or County, after reasonable notice and cure times, may exercise its rights in accordance with Article X. This Section 5.16 does not apply to any failures to comply with such requirements that may have occurred prior to the date of this Agreement.

ARTICLE VI. DUTIES AND OBLIGATIONS OF CITY, COUNTY AND BOARD

6.1 **No TIF Bonds.** Except as provided for in this Agreement, neither the City, the Board, nor any participating taxing entity shall sell or issue any TIF bonds to pay or reimburse the Developer or any third party for any improvements to the Property performed under the Project Plan, Financing Plan, or this Agreement.

6.2 **Pledge of Funds**. Subject to the terms and conditions of this Agreement, the City, County, and Board pledge all Available Tax Increment Funds as reimbursement to the Developer, up to the maximum total amount specified in this Agreement, excluding those taxes that became due after September 30, 2045.

6.3 **Obligation Accrues as Increment is Collected**. The City's and County's obligation to contribute its Tax Increment Payment to the Tax Increment Fund shall accrue as the City and County collects their respective Tax Increment. The City agrees to deposit its Tax Increment Payment to the Tax Increment Fund on or before May 1 and October 1 (or the first business day thereafter) of each year. No Participating Taxing Entity is required to continue participation in the TIRZ once it has reached its maximum contribution.

6.4 **Collection Efforts**.

a. The City, County and the Board shall use reasonable efforts to cause each Participating Taxing Entity which levies real property taxes in the TIRZ to levy and collect their ad valorem taxes due on the Property and to contribute their portion of Available Tax Increment Funds towards reimbursing the Developer for the construction of the Public Improvements required under the Project Plan, Financing Plan and this Agreement.

b. In the event there is a conflict between the parties to this Agreement regarding to the amount of the Tax Increment owed by a Participating Taxing Entity, the parties to this Agreement agree that each Participating Taxing Entity will make a

reasonable determination as to the amount of any Tax Increment it may owe under this Agreement, and its respective interlocal agreement, and each Participating Taxing Entity will be responsible for reasonably determining which tax collections will be apportioned for purposes of determining its respective Tax Increment. The annual total appraised value of all real property taxable by each Participating Taxing Entity located in the TIRZ shall be determined through an independent third-party verification obtained from the Bexar Appraisal District. For the County, the Bexar County Tax Office will verify taxes levied and collected in regards to the property contained within the TIRZ. For the City, the City's Tax Assessor Collector will verify taxes levied and collected in regards to the TIRZ property.

6.5 **Letters of Acceptance**. The City, County, and the Board, where applicable, shall use reasonable efforts to issue, or cause to be issued a field letter of acceptance and a final letter of acceptance for Public Improvements satisfactorily brought to Completion by the Developer.

6.6 **Coordination of Board Meetings.** The City, County, and the Board agree that all meetings of the Board shall be coordinated through and facilitated by the TIF Unit, and that all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with Chapter 2, Article IX, of the City Code.

ARTICLE VII. COMPENSATION TO DEVELOPER

7.1 **Order or Priority of Payment.** The parties agree that the City and the Board may use Available Tax Increment Funds to pay eligible expenditures in the following order or priority of payment:

a. The initial startup Administrative Costs of $28,279.47 for the City, all reimbursement for which has already been received by the City in Fiscal Years 2009 and 2014;

b. To pay all other ongoing Administrative Costs to the Participating Taxing Entities for administering the TIF Fund and/or the TIRZ, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to each Participating Taxing Entity, then the ongoing Administrative Costs of each Participating Taxing Entity shall be reimbursed on a pro rata basis based on each Participating Taxing Entity's level of participation in the TIRZ;

c. To reimburse the City for costs of the repair, replacement, or re-construction of Public Infrastructure and associated costs as described in Section 5.12 of this Agreement;

d. To reimburse the City maintenance expenses, if any, pursuant to Article III;

e. To reimburse a Participating Taxing Entity under any reclaim of funds pursuant to Article X;

f. to reimburse ACCD up to $150,000.00 for public improvements associated with Palo Alto College Signage Project to the extent that ACCD' 's tax increment funds are available;

g. to reimburse the San Antonio Water System for **(i)** the design and construction of wastewater improvements that have been completed and that were funded by SAWS pursuant to the Prior Utilities Services Agreement (the "SAWS-Funded Wastewater Improvements") up to $2,131,618.50; **(ii)** actual costs incurred by SAWS if and to the extent it is necessary for SAWS to repair or reconstruct any wastewater infrastructure designed or constructed by Developer within two (2) years from the date of completion of such infrastructure, as and to the extent set forth in the Utility Services Agreement and contemplated in the Amended and Restated Consent Agreement; and **(iii)** the actual amount of water and wastewater impact fees attributable to certain water and wastewater capacity reserved and allocated to TAMU-SA in the Utility Services Agreement (i.e., 100 EDUs for water service to the tract identified as the "ITC Tract" in the Prior Utility Services Agreement, and 2,783 EDUs for wastewater service to the tract identified as the "TAMU-SA Tract" in the Prior Utility Services Agreement) until the earlier of (A) August 2034 or (B) such time as the water service EDUs reserved and allocated to TAMU-SA for the ITC Tract under the Utility Services Agreement (i.e., a maximum of 100 EDUs of water service) and the wastewater service EDUs reserved and allocated to TAMU-SA for the TAMU-SA Tract under the Utility Services Agreement (i.e., a maximum of 2,783 EDUs of wastewater service) are committed or utilized, as and to the extent set forth in the Utility Services Agreement and contemplated in the Amended and Restated Consent Agreement.

h. to reimburse the City up to one million eight hundred eighty-five thousand dollars ($1,885,000.00) for the value of the Zachry Parcel conveyed to ACCD at a maximum rate of $1,000,000.00 per year and to the extent that ACCD's tax increment funds are available; and

i. To reimburse the Developer for Project Costs of Public Improvements, in accordance with this Agreement, any applicable Interlocal Agreements, the Project Plan, and to the extent that funds in the Tax Increment Fund are available for this purpose.

The foregoing notwithstanding, no funds will be paid from the TIF Fund to any party for its financial or legal services in any dispute arising under this Agreement.

7.2 **Reimbursement Prerequisites**. The Developer understands that no Available Tax Increment Funds will be paid to the Developer for any Plat or Phase until the Storm Water Management Plan for that Plat or Phase of the Project AND any associated modifications to the Master Development Pattern Plan (MDPP) have been approved by the City. No CPPR (as described below) will be approved by the City until the proof of insurance required under Section 8.2 has been approved for a given Plat or Phase.

7.3 **CPPR Approval Recommendation**. Upon Completion of all Public Improvements in a Plat or Phase, the Developer shall submit to the City a completed Contract Progress Payment Request ("CPPR"), as detailed in **Exhibit D**. The CPPR must be accompanied by (i) the contract with the contractor(s) or subcontractor(s) who performed the work on the Public Improvements being submitted for reimbursement pursuant to Section 16.4 and (ii) evidence of payment of applicable taxes and fees pursuant to Section 20.1. The City shall review the CPPR and if approved, issue a written CPPR Approval Recommendation. The CPPR Approval

Recommendation shall then be presented to the Board for review. If the Board approves, then the Board shall authorize reimbursement of the applicable Project Costs. Reimbursement to the Developer shall not be unreasonably denied provided the Public Improvement has reached Completion.

7.4 **Processing of Payment Requests**. The sole source of the funds to reimburse the Developer for Project Costs shall be the Available Tax Increment Funds levied and collected on the Property and contributed by the Participating Taxing Entities. Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within thirty (30) days after approval by the Board, if funds are immediately available in the TIF Fund. If Available Tax Increment Funds do not exist in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority above. No fees, costs, expenses, or penalties shall be paid to any party on any late payment or partial payment resulting from insufficient funds.

7.5 **Repayment of Invalid Payments**. If any payment to the Developer is held invalid, ineligible, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, codes, or ordinances of the City, then and in that event it is the intention of the parties to this Agreement that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by the Developer to the City for deposit in the TIF Fund, and that the remainder of this Agreement shall be construed as if the invalid, illegal or unenforceable payment was never contained in this Agreement.

7.6 **Compensation to Developer and Max Contributions of All Participating Taxing Entities**.

a. Following the Board's authorizations and subject to priority of payment, and available TIF Funds, the Developer shall receive reimbursements for Public Improvements in accordance with the Financing Plan and Project Plan, and this Agreement. . The maximum Tax Increment to be collected by all Participating Taxing Entities shall be up to but not to exceed the following amounts: (i) One Hundred Eighteen Million, Nine Hundred Ninety-Two Thousand, Four Hundred Seventy-Six and No/100 Dollars ($118,992,476.00) from the City, (ii) Eighty-one Million, Three Hundred and Ninety-Three Thousand, Six Hundred Ninety-Two and No/100 Dollars ($81,393,692.00) from Bexar County, and (iii) Fifteen Million and No/100 Dollars ($15,000,000.00) from Alamo Community College District and (iv) Four Million, Three Hundred Ninety-Seven Thousand, Five Hundred and Sixty-Seven and No/100 Dollars ($4,397,567.00) from the San Antonio River Authority.

b. Even though eligible as Project Costs under the Act, the City, the County, the Developer, and the Board agree that no interest calculated on balances of unpaid approved or submitted Contract Progress Payment Requests shall be paid to the Developer.

c. [intentionally omitted]

d. In the event any environmental remediation costs are incurred by the Developer, the Developer shall not seek reimbursement of those costs from the TIF Fund or from any Participating Taxing Entity.

ARTICLE VIII. INSURANCE

8.1 **Applicability.** The Developer will require that the insurance requirements contained in this Article be included in all its contracts or agreements for the construction of Public Improvements where Developer is seeking payment under this Agreement, unless specifically exempted in writing by the City.

8.2 **Proof of Insurance.** Prior to the commencement of any work on Public Improvements under this Agreement, Developer shall furnish copies of all required endorsements and an completed Certificate(s) of Insurance to the City Clerk's Office, attention Risk Management Department; and a copy to both the City's TIF Unit and the County's Community and Development Programs Department, which shall be clearly labeled **"Verano TIRZ, Contract for Plat or Phase No. ___"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City and County at the addresses provided in Section 8.5. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement. The County shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the County's Community and Development Programs Department. No officer or employee, other than the County's Risk Manager, shall have authority to waive this requirement for the County. The City and County shall timely return proof of approval to Developer.

8.3 **Right to Review.** The City and County reserve the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed in good faith to be necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City or County allow modification whereupon City or County may incur increased risk.

8.4 **Required Types and Amounts.** A Developer's financial integrity is of interest to the City and County; therefore, subject to Developer's right to maintain reasonable deductibles in such amounts as are approved by the City and County, Developer, or the Developer's contractors or subcontractor, shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Developer's or the Developer's contractors' or

subcontractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
*if applicable	

8.5 **Requests for Changes.** The City and County shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies) when deemed in good faith to be necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Developer and/or Developer's contractors or subcontractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City and County at the addresses provided below within 10 days of the requested change. Developer and/or Developer's contractors or subcontractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City and County at the following addresses:

City Clerk
City of San Antonio
Attn: Risk Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Department of Planning and Community Development
TIF Unit
1400 South Flores
San Antonio, Texas 78204

and

Bexar County
Office of the County Manager
101 W. Nueva, 10th Floor
San Antonio, Texas 78205

8.6 **Required Provisions and Endorsements**. Developer agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

a. Name the City and County, their respective officers, officials, employees, volunteers, and elected representatives as an additional insured by endorsement, as respects operations and activities of or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability polices;

b. Provide for an endorsement that the "other insurance" clause shall not apply to the City and County where the City and County are additional insured shown on the policy;

c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City and County.

d. Provide thirty calendar days' advance written notice directly to City and County of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

8.7 **Cancellation, Suspension, or Non-Renewal**. Within five calendar days of a suspension, cancellation or non-renewal of coverage, Developer and/or Developer's contractors or subcontractors shall provide a replacement Certificate of Insurance and applicable endorsements to City and County. City and County shall have the option to suspend Developer's and/or Developer's contractors' subcontractors' performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.8 **City's and County's Remedies**. In addition to any other remedies City and County may have upon Developer's and/or Developer's contractors' or subcontractors' failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City and County shall have the right to order Developer and/or Developer's contractors or subcontractors to stop work hereunder, and/or withhold any payment(s) which become due to Developer hereunder, until Developer and/or Developer's contractors or subcontractors demonstrates compliance with the requirements hereof.

8.9 **Responsibility for Damages**. Nothing herein contained shall be construed as limiting in any way the extent to which Developer and/or Developer's contractors or subcontractors may be held responsible for payments of damages to persons or property resulting from Developer's or its subcontractors' performance of the work covered under this Agreement. Contractors and any Subcontractors are responsible for all damage to their own equipment and/or property.

8.10 **Primary Insurance**. It is agreed that Developer's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.11 **Obligation of Developer**. With respect to any work by Developer on Public Improvements, Developer agrees to require, by written contract, that all contractors and subcontractors providing goods or services hereunder obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 8.4 from each subcontractor and provide a Certificate of Insurance and Endorsement that names the Developer, the City and County as an additional insured. Policy limits of the coverages carried by contractors and subcontractors will be determined as a business decision of Developer. Developer shall provide the CITY and County with said certificate and endorsement prior to the commencement of any work by the Developer's contractors or subcontractors. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

8.12 **"All Risk"**. Prior to the commencement of any construction by Developer on Public Improvements, and at all times during the performance of such construction, Developer and/or Developer's subcontractors or contractors shall obtain and keep in full force and effect builder's "all risk" insurance policies affording coverage of such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the insurable value of construction improvements.

ARTICLE IX. WORKERS COMPENSATION INSURANCE COVERAGE

9.1 **Applicability**. This Article is applicable only to construction of Public Improvements, the costs for which the Developer is seeking reimbursement from the City and the Board, and does not apply to the private improvements made by the Developer as part of the Project.

9.2. **Definitions**:

a. Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Public Improvements for the duration of the work being done on such Public Improvements.

b. Duration of the Public Improvements - includes the time from the beginning of the work on a Plat or Phase of the Public Improvements until the Developer's/contractor's/person's work on the Public Improvements has been completed and accepted by the City.

c. Persons providing services on the Public Improvements ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Developer has undertaken to perform on the Public Improvements, regardless of whether that person contracted directly with the Developer and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the Public Improvements. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Public Improvements. "Services" does not include activities unrelated to the Public Improvements, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

9.3 The Developer's contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer's contractor providing services on the Public Improvements, for the duration of the work being done on such Public Improvements.

9.4 The Developer's contractor must provide a certificate of coverage to the addressees in Section 8.5, above, prior to award of the contract.

9.5 If the coverage period shown on the Developer's contractor's current certificate of coverage ends during the duration of the work on the applicable Public Improvements, the Developer's contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City and County showing that coverage has been extended.

9.6 The Developer's contractor shall obtain from each person providing services on the Public Improvements, and shall provide to the City and County:

a. a certificate of coverage, prior to that person beginning work on the Public Improvements, so the City and County will have on file certificates of coverage showing coverage for all persons providing services on the Public Improvements; and

b. no later than seven days after receipt by the Developer's contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the work on the applicable Public Improvements.

9.7 The Developer's contractor shall retain all required certificates of coverage for the duration of the work on the Public Improvements and for one year thereafter.

9.8 The Developer's contractor shall notify the City and County in writing by certified mail or personal delivery, within ten days after the Developer's contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Public Improvements.

9.9 The Developer's contractor shall post on the Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Public Improvements that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

9.10 The Developer shall contractually require each person with whom it contracts to provide services on the Public Improvements, to:

a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Public Improvements, for the duration of the work being done on such Public Improvements;

b. provide to the Developer, prior to that person beginning work on the Public Improvements, a certificate of coverage showing that coverage is being, provided for all employees of the person providing services on the Public Improvements, for the duration of the work being done on such Public Improvements;

c. provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

d. obtain from each other person with whom it contracts, and provide to the Developer:

(1) a certificate of coverage, prior to the other person beginning work on the Public Improvements; and

(2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends before work on the applicable Public Improvements has been completed;

e. retain all required certificates of coverage on file for the duration of the work on the Public Improvements and for one year thereafter;

f. notify the City and County in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Public Improvements; and

g. contractually require each person with whom it contracts with, to perform as required by subparagraphs a-g, the certificates of coverage to be provided to the person for whom they are providing services.

9.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Developer is representing to the City that all employees of all contractors of the Developer who will provide services on the Public Improvements will be covered by workers' compensation coverage for the duration of work done on the Public Improvements, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Workers' Compensation Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Developer's contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 The Developer's failure to comply with any of these provisions in this Article IX is a breach of contract by the Developer which entitles the City to declare the Agreement void and exercise all legal remedies, and entitles the County to terminate its participation in the Zone and exercise its right to reimbursement under Article X, paragraph 10.2, if the Developer does not remedy the breach within ten days after receipt of notice of breach from the City or County without necessity of the ninety-day cure period as set forth in Article X, below; provided, however that if Developer commences diligent efforts to remedy the breach within such ten days, the City and the County will refrain from declaring this Agreement void and from exercising such remedies so long as Developer continues diligent efforts to remedy the breach.

ARTICLE X. DEFAULT AND TERMINATION

10.1 **City's Right to Terminate.**

a. If the County sends notice of breach as provided for herein OR the City determines that Developer has failed to commence construction of the Project, failed to complete construction of the Project, or failed to perform any other obligation pursuant to the Project Plan and Financing Plan or any other term of this Agreement OR Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ, or any type of adversarial proceeding related to TIF or TIRZ, against or involving the City, the City may terminate its participation in the TIRZ.

b. Prior to terminating its participation in the TIRZ, the City shall provide written notice to Developer, the County and the Board (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) stating its intent to terminate its participation in the TIRZ and detailing its objection(s) or concern(s).

c. If the objection and/or concern as set out in the notice is not resolved within ninety (90) calendar days from the date of such notice, the City's participation in the TIRZ shall automatically terminate effective as of the date such notice is sent and the City shall send the Developer a second notice stating that payment is due pursuant to this Section 10.1. The City may extend the ninety-day cure period under this Agreement in its own discretion.

d. If the City terminates its participation in the TIRZ under this Article X, the City shall hold all money in the TIF Fund, and the Developer shall repay to the City, for deposit into the TIF Fund the following amounts, all of which shall be redistributed on a pro-rata basis, between all Participating Taxing Entities other than the County, if the County elects to pursue its rights under Section 10.2:

(1) if the breach occurs during the construction of a Phase or Plat, the Developer shall repay City an amount equal to the funds paid to the Developer for public improvements constructed during that specific Phase or for that specific Plat, if any, and shall not be eligible for reimbursement of costs incurred for construction of public improvements of any portion of said Plat or Phase; or

(2) if the breach occurs after all construction of each Phase or Plat is completed, the Developer shall repay to the City an amount equal to the funds the Participating Taxing Entities, other than the County, contributed to the TIF Fund and paid to the Developer out of the TIF Fund during the twelve months preceding the date notice of breach is sent pursuant to this Article X.

e. Funds which become due and owing under this provision shall be paid to the City within ninety calendar days after Developer receives the second notice from the City under this Section 10.1. The City shall look only to the Developer and the TIF Fund for any reimbursement, contractual claim, damages, or payment of any type.

10.2 **County's Right to Terminate.**

a. If the City sends notice as provided for herein OR the County determines that Developer has failed to commence construction of the Project, failed to complete construction of the Project, or failed to perform any other obligation pursuant to the Final Project and Financing Plan or any other term of this Agreement OR Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ, or any type of adversarial proceeding related to TIF or TIRZ, against or involving the County, the County may terminate its participation in the TIRZ.

b. Prior to terminating its participation in the TIRZ, the County shall provide written notice to Developer, the City and the Board (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) stating its intent to terminate its participation in the TIRZ and detailing its objection(s) or concern(s).

c. If the objection and/or concern as set out in the notice is not resolved within ninety calendar days from the date of such notice, the County's participation in the TIRZ shall automatically terminate effective as of the date such notice is sent and the County shall send the Developer a second notice stating that payment is due pursuant to this Section 10.2. The County may extend the ninety-day cure period under this Agreement in its own discretion.

d. If the County terminates its participation in the TIRZ under this Article X, Developer shall repay to the County the following amounts:

(1) if the breach occurs during the construction of a Phase or Plat, the Developer shall repay County an amount equal to the County TIF funds utilized to reimburse Developer during that specific Phase or Plat, if any, and Developer shall not be eligible for further reimbursement utilizing any portion of TIF funds contributed by the County which remain in the TIF Fund; or

(2) if the breach occurs after all construction of each Phase or Plat is completed, the Developer shall repay to the County an amount equal to funds the County contributed to the TIF Fund which were paid to the Developer out of the TIF Fund during the twelve months preceding the date notice of breach is sent pursuant to this Article X, and any funds contributed by the County and remaining in the TIF Fund but not paid to Developer shall be returned to the County.

e. Funds which become due and owing under this provision shall be paid to the County within ninety calendar days after Developer receives the second notice from the County under this Section 10.2. The County shall look only to the Developer and the TIF Fund for any reimbursement, contractual claim, damages, or payment of any type.

10.3 Upon either the City or the County sending notice in accordance with paragraphs 10.1 or 10.2 above, neither the City nor the County shall make further payments to the TIF Fund. In addition, the City shall not distribute any TIF Fund money to the Developer until the Developer's breach is cured to the satisfaction of the City and/or the County. If the Developer's breach is not cured within the period provided for herein, either the City or the County or both may exercise their rights under this Article X or extend the cure period, in their sole discretion. If both the City and the County elect to terminate their participation in the TIRZ, the City shall then distribute the remaining TIF Fund money to the County and any other Participating Taxing Entities, without Board approval, and in accordance with Interlocal Agreements.

10.4 Notwithstanding paragraph 10.1 or 10.2 above, in the event the Developer fails to furnish any documentation required in Article XIV (Examination of Records) or Article V, Paragraph 5.16 (Quarterly Status and Compliance Reports) within thirty days following the written request for same, then the Developer shall be in breach of this Agreement without necessity of the ninety day cure period as set forth in this Agreement.

ARTICLE XI. INDEMNIFICATION

11.1 The DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), the COUNTY (and the elected officials, employees, officers, directors, and representatives of the County) and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), 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 injury or death and property damage or environmental claims, made upon the CITY, the COUNTY, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the DEVELOPER'S activities under this AGREEMENT, including, but not limited to, any acts or omissions of the DEVELOPER, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or subconsultants of the DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, and in the case of any environmental claim without limitation to whether such claim results from the acts or omissions of the Developer, all without, however, waiving any governmental immunity available to the CITY, the COUNTY, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the parties under Texas, Federal, or International Law.

The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

The DEVELOPER shall advise the CITY, the COUNTY, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the CITY, the COUNTY, the BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the DEVELOPER'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the DEVELOPER's cost to the extent required under the INDEMNITY in this paragraph.

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.

The CITY, the COUNTY, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the DEVELOPER of any of its obligations under this paragraph.

11.2 DEVELOPER shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, the COUNTY and the BOARD and their respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever which are asserted by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. DEVELOPER'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Section 11.1 above, the provisions in Section 11.1 control over those set forth in this Section. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY the COUNTY or the BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within 15 calendar days of receiving the notice.

ARTICLE XII. SITE INSPECTION AND RIGHT OF ENTRY

12.1 The Developer shall, upon twenty-four (24) hour notice allow the City, County and/or the Board reasonable access to the Property owned or controlled by the Developer for inspections during and upon completion of construction of the Project and to documents and records considered necessary by the City and/or the Board to assess the Developer's compliance with this Agreement. The Developer shall, in each contract with a builder or lot purchaser, retain a right of entry into the properties and structures in favor of the City for the purpose of allowing the City, its staff and its agents to conduct random non-destructive walk-throughs and monitoring of the Project. This Section 12.1 applies with respect to a structure on a particular portion of the Property only until such time the structure has had a Certificate of Occupancy issued for such structure and such structure is occupied, as to structures of a type that the City issues Certificates of Occupancy, and otherwise until such time that the structure has been completed pursuant to the building permit therefor and is occupied.

ARTICLE XIII. RESPONSIBILITY OF THE PARTIES

13.1 **Developer.** As between the City, the Developer, the Board, and any Participating Taxing Entity, the Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of the Developer's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of this Agreement.

13.2 **City, Board, Participating Taxing Entities.** To the extent permitted by Texas law, no director, officer, employee, or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIV. EXAMINATION OF RECORDS

14.1 **Right to Review.** The City and County each reserve the right to conduct at its own expense, during regular business hours and following notice to the Board and the Developer, examinations of the books and records related to this Agreement (including such items as contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or the Developer's services hereunder) no matter where the books and records are located. The City and County also each reserve the right to perform any and all additional audits relating to the Board's and/or the Developer's services, provided that such audits are related to those services performed by the Board and/or the Developer for the City or County under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or the Developer.

14.2 **Preservation of Records.** All applicable records and accounts of the Board and/or the Developer relating to this Agreement, together with all supporting documentation, shall be preserved in Bexar County, Texas by the Board and/or the Developer throughout the term of this Agreement and for twelve months after the termination of this Agreement, and then transferred, upon City request, at no cost to the City, to the City for retention. The City or County, at its own expense, may require that the Board and/or Developer submit any or all of such records and accounts for audit to the City or County or to a Certified Public Accountant selected by the City or County, respectively within ten business days following written request for the records and accounts.

14.3 **Discrepancies.** Should the City or County discover errors in internal controls or in record keeping associated with the Public Improvements, the Board and/or the Developer shall correct such discrepancies either upon discovery or within a reasonable period, not to exceed sixty days after discovery and notification by the City or County to the Board and/or the Developer of such discrepancies. The Board and/or the Developer shall inform the City or County in writing of the action taken to correct such audit discrepancies.

14.4 **Overcharges**. If it is determined as a result of such audit that the Board and/or the Developer has overcharged the TIF Fund for the cost of the Public Improvements, then such overcharges shall be immediately returned to the City for deposit in the TIF Fund, and become due and payable with interest at the maximum legal rate under applicable law from the date the

City paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent of the greater of the budget or payments to the Developer for the year in which the discrepancy occurred, and the TIF Fund is entitled to a refund as a result of such overcharges, then the Developer shall pay the cost of such audit.

ARTICLE XV. NON-WAIVER

15.1 **Actions or Inactions.** No course of dealing on the part of the City, the County, the Board, or the Developer nor any failure or delay by the City, the County, the Board, or the Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power, or privilege owing under this Agreement.

15.2 **No estoppel.** The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee, or other official of the City or its subordinate agency, or the County, with responsibility for inspecting or certifying Public Improvement. The actions of a city employee or agent do not work an estoppel against the City or County under this Agreement or the Unified Development Code.

15.3 **Receipt of Services.** Except as set forth in Section 16.3 below, the receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further observance or performance by the Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVI. ASSIGNMENT

16.1 **Binding Agreement.** All covenants and agreements contained herein by the City, the County and/or the Board shall bind their successors and assigns and shall inure to the benefit of the Developer and their successors and assigns.

16.2 **Assignment by City.** The City, the County and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City or County creates without prior consent of the Developer. If the City, the County, and/or the Board assign their rights and obligations under this Agreement then the City, the County and/or the Board shall send the Developer written notice of such assignment within fifteen days of such assignment.

16.3 **Assignment by Developer.** The Developer may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City which shall not be unreasonably withheld, conditioned or delayed, as evidenced by an ordinance passed and approved by the City Council, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement. This restriction on the Developer's rights to sell or transfer is subject to the right to assign as provided in Section 16.6 below. Each transfer or assignment to which there has been consent, shall be by instrument in writing, in form reasonably satisfactory to the City, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and the Board to be bound by and

to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the City. Failure to first obtain, in writing, the City's consent, or failure to comply with the provisions contained in this Agreement shall operate to prevent any such transfer or assignment from becoming effective. In the event the City approves the assignment or transfer of this Agreement, the Developer shall be released from its duties and obligations in this Agreement. Notwithstanding the foregoing, Developer may transfer and assign its rights and obligations under this Agreement without the approval of the Board or the consent of the City to a wholly-owned subsidiary of the Developer. However, the form of the assignment shall be approved by the City Attorney's Office.

16.4 **Work or Services Subject to this Agreement.** Any work or services subject to this Agreement on Public Improvements shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by the Developer's contractors and/or subcontractors with this Agreement shall be the responsibility of the Developer with respect to any work by Developer on Public Improvements. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible Project Costs reimbursement.

16.5 **No Third Party Obligations.** No Participating Taxing Entity shall in any event be obligated to any third party, including any contractor, subcontractor, or consultant of the Developer, for performance of work or services under this Agreement except as set forth in Section 16.3, above.

16.6 **Lending Institutions.** Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, however, shall the City be obligated in any way to said financial institution or other provider of capital.

ARTICLE XVII. NOTICE

17.1 **Addresses.** Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

CITY

City of San Antonio
City Manager's Office
P.O. Box 893366
San Antonio, Texas 78283-3966

(210) 207-7032

With a copy to:

BOARD

Board of Directors, Tax Increment
Reinvestment Zone Number Twenty-Eight,
City of San Antonio, Texas
C/O Department of Planning and Community Development
ATTN: Director
City of San Antonio
1400 S. Flores
San Antonio, Texas 78204

Office of the City Attorney
P.O. Box 893366
San Antonio, Texas 78283-3966
FAX: (210) 207-4004

DEVELOPER

Verano Land Group, LP
_____
_____
_____
Attn: _____
FAX: (____)_____

COUNTY
Honorable Nelson W. Wolff
County Judge
Paul Elizondo Tower
101 W. Nueva, 10th Floor
San Antonio, Texas 78205

With a copy to:

Office of the County Manager
101 W. Nueva, 10th Floor
San Antonio, Texas 78205

With a copy to:

_____
Attn: _____
FAX: (____)_____

With a copy to:

Criminal District Attorney's Office
Civil Section
101 W. Nueva, 7th Floor
San Antonio, Texas 78205

With a copy to:

_____
_____
_____
Attn: _____
FAX: (____)_____

17.2 **Change of Address**. Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business hours or the next business day if such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver of the notice requirement, signed by the person entitled to notice, whether before or after the time stated in the waiver, shall be deemed equivalent to the giving of such notice. Each party shall have the right from time to time and at any time to change its address by giving at least fifteen days written notice to the other party.

ARTICLE XVIII. CONFLICT OF INTEREST

18.1 **Charter and Ethics Code Prohibitions**. The Board and the Developer each acknowledge that it is informed that the Charter of the City and its Ethics Code prohibit a City officer or

employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 **Warrant and Certification.** In accordance with Section 311.0091(h)(1) of the Act, and pursuant to the subsection above, the Board and the Developer each warrants and certifies, and this contract is made in reliance on the warrant and certification, that it, its officers, employees and agents are neither officers nor employees of the City. The Board and the Developer each further warrants and certifies that each member of the Board and that the Developer has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code using the form provided at **Exhibit E.**

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 **No Agency.** It is expressly understood and agreed by all parties to this Agreement that in performing their services under this Agreement, the Board and the Developer at no time shall be acting as agents of the City or the County, and that all consultants or contractors engaged by the Board and/or the Developer respectively shall be independent contractors of the Board and/or the Developer. The parties to this Agreement understand and agree that neither the City nor the County shall be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Board and/or the Developer respectively, under this Agreement, unless any such claims are due to the fault of the City and/or the County, respectively.

19.2 **No Authority.** The parties to this Agreement further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XX. TAXES

20.1 **Duty to Pay.** The Developer shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees which are now or may be levied upon the Property owned by Developer or upon the Developer or upon the business conducted on the Property by Developer or upon any of the Developer's property used in connection with the Property, including employment taxes with respect to Developer's employees; and the Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developer.

ARTICLE XXI. COMPLIANCE WITH SBEDA AND EEO POLICIES

21.1 **Agreement to Not Discriminate.** The Board and the Developer are each advised that it is the policy of the City that business enterprises eligible as Small, Minority, or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Except for those Public Improvements commenced prior to the creation of the TIRZ, the Board and the Developer each agrees for itself that the Board and the Developer will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. The Developer further agrees that with respect to the Public Improvements undertaken after the Effective Date of this Agreement, the Developer will make a good faith effort to comply with the applicable terms and provisions of the City's Non-Discrimination Policy, the City's Small, Minority or Woman-owned Business Advocacy Policy and the City's Equal Opportunity Affirmative Action Policy, these policies being available in the City's Department of Economic Development, Division of Internal Review and the City's Office of the City Clerk.

ARTICLE XXII. PREVAILING WAGES

22.1 The TIF program is a discretionary program, and the Board and the Developer are each advised that it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to TIF Development Agreements. In accordance with the provisions of Chapter 2258, the city passed Ordinance No. 2008-11-20-1045, included as **Exhibit C,** which details the City's wage and hour labor standard provisions for City of San Antonio construction projects. The Developer shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer or the Developer's contractor calls for bids for construction of a given Public Improvement. The Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Developer's general contractor and all subcontractors for construction by Developer of Public Improvements in each Phase. The Developer 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 of each calendar day, that such laborer, workman or mechanic is paid less that the said stipulated rates for any work done on Public Improvements. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from his 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 this Agreement.

ARTICLE XXIII. CHANGES AND AMENDMENTS

23.1 **Ordinance Required.** Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing executed by the City, the County, the Board, and the Developer and evidenced by passage of a City Ordinance, as to the City's approval.

23.2 **Construction Schedule**. Notwithstanding the above, the Construction Schedule may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the Department overseeing the TIF Unit (the "TIF Director"), as long as the overall Project Plan and Financing Plan are not materially changed by such amendment. In the event an amendment to the phasing of the Construction Schedule will result in a material change to the overall Project Plan or Financing Plan, then such amendment shall comply with the requirements of Section 23.1, above. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. The Developer may rely on the determination of the TIF Director whether a proposed change in the phasing of the Construction Schedule would result in a material change to the overall Project Plan and Financing Plan.

23.3 **Automatic Incorporation of Laws**. It is understood and agreed by the parties to this Agreement that changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services under this Agreement may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.

ARTICLE XXIV. SEVERABILITY

24.1 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 charter, code, or ordinances of the City, then and in that event it is the intent of the parties to this Agreement that such invalidity, illegality or unenforceability shall not affect any other clause or provision of this Agreement and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained in this Agreement. It is also the intent of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of this 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.

ARTICLE XXV. LITIGATION EXPENSES

25.1 **Attorney Fees**. Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or any other public entity. Each party to this Agreement shall bear its own costs, including, but not limited to, attorneys' fees, for any action at law or in equity brought to enforce or interpret any provision of this Agreement. Notwithstanding the foregoing, nothing contained in this Section shall affect or otherwise affect the indemnity provisions contained in Article XI above.

25.2 **Mediation**. During the term of this Agreement, if the Board and/or the Developer files and/or pursues an adversarial proceeding against the City and/or the County regarding this Agreement without first engaging in good faith non-binding mediation of the dispute, then, at the City's and/or the County's option, all access to the funding provided for under this Agreement may

be deposited with an escrow agent mutually acceptable to all parties, which escrow agent will deposit such funds in an interest bearing account.

25.3 **Future Funding**. The Board and/or the Developer, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against the City remains unresolved if it was initiated without first engaging in good faith non-binding mediation of the dispute.

25.4 **Adversarial Proceedings**. For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or the Developer against the City and/or the County in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.

ARTICLE XXVI. LEGAL AUTHORITY

26.1 Each person executing this Agreement on behalf of the City, the County, the Board or the Developer, represents, warrants, assures and guarantees that he has full legal authority to (i) execute this Agreement on behalf of the City, the County, the Board and/or the Developer, respectively and (ii) to bind the City, the County, the Board and/or the Developer, respectively, to all of the terms, conditions, provisions and obligations contained in this Agreement.

ARTICLE XXVII. VENUE AND GOVERNING LAW

27.1 **State**. This Agreement shall be governed by the laws of the State of Texas.

27.2 **County**. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

ARTICLE XXVIII. PARTIES' REPRESENTATIONS

28.1 This Agreement has been jointly negotiated by the City, the County, the Board, and the Developer and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXVII. CAPTIONS

29.1 All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties to this Agreement.

ARTICLE XXVIII. ENTIRE AGREEMENT

30.1 **No Contradictions**. This written Agreement embodies the final and entire agreement between the parties to this Agreement, and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

30.2 **Incorporation of Exhibits**. The Exhibits attached to this Agreement are incorporated in and shall be considered a part of this Agreement for the purposes stated in this Agreement, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

[remainder of the page intentionally left blank; signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed on the date of the each signature below. In accordance with Section 1.15 above, this Agreement will become effective on the date of the last signature below:

CITY OF SAN ANTONIO

_____
Sheryl Sculley
City Manager or designee
Date: _____

ATTEST/SEAL:

_____
_____
City Clerk
Date: _____

BEXAR COUNTY

_____
Nelson W. Wolff
County Judge
Date: _____

ATTEST/SEAL:

_____
Gerard C. Rickoff
County Clerk
Date: _____

BOARD OF DIRECTORS
TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-EIGHT, CITY OF SAN ANTONIO, TEXAS

_____
_____
Title: Presiding Officer, Board of Directors
Date: _____

VERANO LAND GROUP, LP, a Nevada limited partnership

By: South San Antonio Management, LLC, a Nevada limited liability company, its General Partner

By: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FINANCIAL CONTENT BY BEXAR COUNTY:

_____
Susan Yeatts, CPA
County Auditor
Date: _____

_____
David Smith
County Manager

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Criminal District Attorney
County of Bexar

_____
Martha G. Sepeda
Acting City Attorney
Date: _____

_____
Gerard Calderon
Assistant Criminal District Attorney
Civil Section
Date: _____

EXHIBIT A

EXHIBIT B

CITY OF SAN ANTONIO
TAX INCREMENT REINVESTMENT ZONE
Project Status Report

Pursuant to the Development Agreement, the DEVELOPER has agreed to provide periodic reports of construction to the CITY upon reasonable request. The City requests that the Developer submit a TIRZ project status report every quarter every year until the project is complete, due by:

January 15th, for the first quarter,
April 15th, for the second quarter,
July 15th, for the third quarter and
October 15th, for the fourth quarter

At the completion of the project, the DEVELOPER shall submit a comprehensive final report.

Each quarterly report must include the following information:

- The number of Private Improvements completed (single-family and/or multi-family and commercial when applicable) and year in which they were completed
- The Public Improvements completed and costs incurred to date by year in which improvements were completed
- Indicate whether the construction is on track with the approved Final Project and Finance Plan
- If the project timeline has slipped, the Developer is to submit an updated project timeline
- The sale prices of the single-family homes completed (Please obtain and provide sales data for original sales price of every home sold.)
- Photos of: housing and commercial developments; before, during and after construction

In addition, for the City to monitor compliance with insurance requirements of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

- the City and its officers, employees and elected representatives are additional insureds as respects the operations and activities of, or on behalf of, the named insured contracting with the City, with the exception of the workers' compensation policy;
- the endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City of San Antonio is an additional insured shown on the policy;
- the Workers' Compensation and employers' liability policy provides a waiver of subrogation in favor of the City of San Antonio; and
- Notification to the City of any cancellation, non-renewal or material change in coverage was given not less than thirty (30) days prior to the change or ten (10) days prior to the cancellation due to non-payment of premiums, accompanied by a replacement Certificate of Insurance.

Attached is a form you may use to fulfill this reporting requirement.

TIRZ Project Progress Report (Construction)

Name of Project:	**TIRZ #:**
Progress Report #:	**TIRZ Term:** **From:** **To:**
Period Covered by this Report: **From:** **To:**	

The number of Private Improvements (single-family and/or multi-family and commercial if applicable) completed and year in which they were done

			Private Improvements							
Phases (year)			Single-Family Units		Multi-family Units		Commercial Acres and Square Feet		Other Improvements (example: day care centers)	
	start date	*end date*	*Proposed*	*Completed*	*Proposed*	*Completed*	*Proposed*	*Completed*	*Proposed*	*Completed*
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

The Public Improvements completed and costs incurred to date by year (phase) in which improvements occurred

			Public Improvements										
Phases (year)			Sidewalks and Approaches	Streets	Drainage	Water	Sewer	Electrical (Line Extension)	Gas	Street Lights	Traffic Signal Light	Landscaping	Other
	start date	*end date*	*Linear Feet*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Number*	*Number/Location*	*Li.Ft.*	
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
TOTALS													

- Is Construction on track with the approved Final Project and Finance Plan? If not, please submit an updated timeline with the actual construction and the projected buildout.

	Original Project Plan			Actual/Projected		
Year	Single-Family	Multi -Family	Other	Single -Family	Multi -Family	Other

Certification: I certify that to the best of my knowledge and belief, the data above is correct and that all outlays were made in accordance with the terms of the Development Agreement.	Signature of Certifying Individual:	Date:
	Type or printed Name and Title:	Telephone #:

EXHIBIT C

General Decision Number: TX150016 01/02/2015 TX16

Superseded General Decision Number: TX20140016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of $10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures)	$ 12.56	
ELECTRICIAN	$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb	$ 12.94	
Structures	$ 12.87	
LABORER		
Asphalt Raker	$ 12.12	
Flagger	$ 9.45	
Laborer, Common	$ 10.50	
Laborer, Utility	$ 12.27	
Pipelayer	$ 12.79	
Work Zone Barricade Servicer	$ 11.85	
PAINTER (Structures)	$ 18.34	
POWER EQUIPMENT OPERATOR:		
Agricultural Tractor	$ 12.69	
Asphalt Distributor	$ 15.55	
Asphalt Paving Machine	$ 14.36	
Boom Truck	$ 18.36	
Broom or Sweeper	$ 11.04	
Concrete Pavement Finishing Machine	$ 15.48	
Crane, Hydraulic 80 tons or less	$ 18.36	
Crane, Lattice Boom 80 tons or less	$ 15.87	
Crane, Lattice Boom over 80 tons	$ 19.38	
Crawler Tractor	$ 15.67	
Directional Drilling Locator	$ 11.67	
Directional Drilling Operator	$ 17.24	
Excavator 50,000 lbs or Less	$ 12.88	
Excavator over 50,000 lbs	$ 17.71	
Foundation Drill, Truck Mounted	$ 16.93	
Front End Loader, 3 CY or Less	$ 13.04	
Front End Loader, Over 3 CY	$ 13.21	
Loader/Backhoe	$ 14.12	
Mechanic	$ 17.10	
Milling Machine	$ 14.18	
Motor Grader, Fine Grade	$ 18.51	
Motor Grader, Rough	$ 14.63	
Pavement Marking Machine	$ 19.17	

```
     Reclaimer/Pulverizer.....$ 12.88
     Roller, Asphalt..........$ 12.78
     Roller, Other............$ 10.50
     Scraper..................$ 12.27
     Spreader Box.............$ 14.04
     Trenching Machine, Heavy....$ 18.48

Servicer.....................$ 14.51

Steel Worker
     Reinforcing..............$ 14.00
     Structural...............$ 19.29

TRAFFIC SIGNAL INSTALLER
     Traffic Signal/Light Pole
     Worker...................$ 16.00

TRUCK DRIVER
     Lowboy-Float.............$ 15.66
     Off Road Hauler..........$ 11.88
     Single Axle..............$ 11.79
     Single or Tandem Axle Dump
     Truck....................$ 11.68
     Tandem Axle Tractor w/Semi
     Trailer..................$ 12.81

WELDER.......................$ 15.97
---------------------------------------------------------------

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

===============================================================


Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).


---------------------------------------------------------------


The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed
in dotted lines beginning with characters other than "SU" or
```

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

EXHIBIT D

CITY OF SAN ANTONIO
Contract Progress Payment Request (CPPR)
Form and Requirements

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- **All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections**
- **Copies of the payment and performance bond in accordance with executed Development Agreement**
- **Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to**: **Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.)***
- **Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes**.

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

* All invoice Payments must be accompanied by:

- **Receipt or Cancelled Check**
- **Must Reference the Project**

* Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice#: **One (1)**	**Phase(s) covered by this invoice:** **Phases 1, 2, & 3**

	A	B	C	D	E
Section	**Activity**	**Maximum Allowable from Final Finance Plan**	**Invoices Amount**	**Prior Requests**	****Balance**
1	Construction Management	44,200	40,624	0	3,576
2	Contingency	192,500	199,215	0	-6,715
3	Driveway Approach	20,000	22,972	0	-2,972
4	Engineering Survey	50,050	50,000	0	50
5	Formation Fees	150,150	200,000	0	-49,850
6	Gas	144,375	100,000	0	44,375
7	Green Belt/Green Space	26,950	21,000	0	5,950
8	Infrastructure Cost	61,600	60,000	0	1,600
9	Legal Fees	10,000	11,500	0	-1,500
10	Organizational Cost	20,800	35,000	0	-14,200
11	Official Traffic Control Device	15,000	10,000	0	5,000
12	Parking Facilities	30,000	28,250	0	1,750
13	Project Cost	86,163	86,100	0	63
14	Public Schools	10,000	11,000	0	-1,000
15	Recreational Park Area	105,942	105,940	0	2
16	Regional Storm Water Improvements	73,344	73,444	0	-100
17	Relocation Cost	40,747	55,474	0	-14,727
18	Sanitary Sewer	35,000	65,000	0	-30,000
19	Sidewalks	47,500	67,587	0	-20,087
20	Streetscape Planting	20,000	20,000	0	0
21	Street Lights	25,000	25,105	0	-105
22	Water	19,500	19,500	0	0
	TOTAL	1,286,321	1,365,211	0	-78,890

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

Receipt or Cancelled Check

Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION:

I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.

Signature of Certifying Financial Official	**Signature of Certifying Engineer**
_____	_____
Typed or printed Name and Title	**Typed or printed Name & Title**
John Doe, CPA _____	John Smith, Engineer_____
DATE: _____	**DATE:**_____

Reimbursement for TIRZ Expenses

Project Name:	**Period covered by this invoice:**
Invoice#:	**Phase(s) covered by this invoice:**

	A	B	C	D	E
Section	**Activity**	**Maximum Allowable from Final Finance Plan**	**Invoices Amount**	**Prior Requests**	****Balance**
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
	TOTAL				

Financing Cost does not accrue interest
**The Balance Column is used for Tracking purposes only
All Invoice Payments must be accompanied by:
Receipt or Cancelled Check
Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION:

I certify, that to the best of my knowledge and belief, the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.

Signature of Certifying Financial Official

_____

Typed or printed Name and Title:

_____

Signature:_____

DATE: _____

Signature of Certifying Engineer

_____

Typed or printed Name & Title:

_____

Signature:_____

DATE:_____

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name:	**Period covered by this invoice:**
NAD Residential TIRZ	**12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 1 **Site Work**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Dirt Movers Inc.	00451364		1520	10,000		Ck# 2140
Dirt Movers Inc.	145246		1555	22,000		Ck# 2141
Dirt Movers Inc.	783581		1600	2,500		Ck# 2142
Dirt Movers Inc.	891771		1680	1,124		Ck# 2142
Dirt Movers Inc.	157863146		1685	5,000		Ck# 2144
Total		**44,200**		**40,624**	**3,576**	

Reimbursement for TIRZ Expenses

Project Name:	**Period covered by this invoice:**
Invoice #:	**Phase covered by this invoice:**

Section 1 **Site Work**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 2 **Streets & Approaches**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
NAD Contractors	00451364		2020	$165,000		Ck# 2523
Total		**$192,500**		**$165,000**	**$27,500**	

Reimbursement for TIRZ Expenses

Project Name:	**Period covered by this invoice:**
Invoice #:	**Phase covered by this invoice:**

Section 2 **Streets & Approaches**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 3 **Parkway**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Fast City Contractors	3574216		123	$10,000		Ck# 8989
			456	$4,500		Ck# 8989
			789	$5,500		Ck# 8989
Total		**$20,000**		**$20,000**	**$0.00**	

Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 3 **Parkway**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Total						

EXHIBIT E

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 entity[1] that is a **party** to the discretionary contract:

(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:**

(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:

(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 question[2] as to whether any city official or employee would violate , ("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: Company or D/B/A:	Date:

[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.