City Council
Agenda Memo

City Council
Meeting Date: 8-23-2012

TO: **Larry D. Gilley, City Manager**

FROM: **Megan R. Santee, Director of Public Works**

SUBJECT: **Final Reading on an Ordinance Approving the Execution of a Developer Participation Agreement between the City of Abilene and Village Investment Partners, LP**

GENERAL INFORMATION

Village Investment Partners, LP (Developer) is the owner of undeveloped land generally located in the area north of Abilene Regional Medical Center between Highway 83/84 and the established residential neighborhood. The undeveloped land is zoned to allow varying types of commercial development. Recently, changes were approved by the City Council to allow the location of a Sam's Club on a portion of the undeveloped land. The area Texas Department of Transportation office has announced plans to limit vehicular traffic on South Clack to one-way southbound traffic. The development of Memorial Drive, which is within our adopted Thoroughfare Plan, will alleviate concerns expressed by the Developer, area residents, and Sam's Club regarding traffic flow and congestion that could occur without the construction of Memorial Drive. The attached Developer Participation Agreement formalizes this arrangement and outlines the responsibilities of both the developer and the City.

On past occasions, the City has utilized Chapter 212 of the Local Government Code to partner with private developers to construct public improvements that benefit the general public. The City is typically limited in its participation to 30% of the total project costs and 100% of oversizing. Staff believes it is in the best interest of the City to enter a Developer Participation Agreement with Developer to construct Memorial Drive at this time.

FUNDING/FISCAL IMPACT

The City will be responsible for up to $200,000.00 of the project cost, as well as engineering, bidding and construction oversight, and right-of-way acquisition, if necessary.

STAFF RECOMMENDATION

Staff recommends approval of the attached ordinance on final reading.

ATTACHMENTS

Ordinance, Developer Participation Agreement

Prepared by: Megan R. Santee Director of Public Works		Disposition by City Council ❑ Approved Ord/Res# _____ ❑ Denied ❑ Other _____ City Secretary
	Item No. 7.1	

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE EXECUTION OF A DEVELOPER PARTICIPATION AGREEMENT BETWEEN THE CITY OF ABILENE (CITY) AND VILLAGE INVESTMENT PARTNERS, LP (DEVELOPER) FOR THE PURPOSE OF MAKING CERTAIN PUBLIC IMPROVEMENTS AS AUTHORIZED BY LAW.

WHEREAS, Chapter 212 of the Local Government Code allows a municipality to enter an agreement with a developer of land to construct public improvements related to the development, and;

WHEREAS, the improvements cannot include the construction of buildings, and the municipality may not participate at a level that would exceed thirty percent of the total project cost and/or one-hundred percent of any oversizing costs, for portions of the public improvement the municipality would not otherwise be solely responsible for anyway, and;

WHEREAS, Developer is planning to construct a new thoroughfare that is part of the adopted Thoroughfare Plan that will provide additional vehicular circulation options for local residents that currently reside nearby or would travel to future commercial development in the immediate area (Project); and

WHEREAS, in order to construct the Project now rather than at some undetermined time in the future, Developer requested participation from City in a lump sum amount that is less than what the City would otherwise be responsible for in the future, and;

WHEREAS, the City and Developer agree it is in the best interest of both entities to enter into a participation agreement at this time to complete the Project.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That the City Manager is authorized to execute a Developer Participation Agreement between the City and Developer for the purpose of allowing the City to participate in the Project, as set out in Exhibit "A", attached hereto and made a part of this Ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PASSED ON FIRST READING this 9th day of August, A.D., 2012.

PASSED ON SECOND AND FINAL READING this 23rd day of August, A.D., 2012.

ATTEST:

_____ _____

City Secretary Mayor

APPROVED:

_____

City Attorney

DEVELOPER PARTICIPATION AGREEMENT

This Agreement is entered into this the ___day of August, 2012 between the City of Abilene (City) and Village Investment Partners, LP(Developer).

WHEREAS, Chapter 212 of the Local Government Code allows a municipality to enter an agreement with a developer of land to construct public improvements related to the development, and;

WHEREAS, the improvements cannot include the construction of buildings, and the municipality may not participate at a level that would exceed thirty percent of the total project cost and/or one-hundred percent of any oversizing costs, for portions of the public improvement the municipality would not otherwise be solely responsible for anyway, and;

WHEREAS, Developer is planning to construct a new thoroughfare that is part of the adopted Thoroughfare Plan that will provide additional vehicular circulation options for local residents that currently reside nearby or would travel to future commercial development in the immediate area (Project); and

WHEREAS, in order to construct the Project now rather than at some undetermined time in the future, Developer requested participation from City in a lump sum amount that is less than what the City would otherwise be responsible for in the future, and;

WHEREAS, the City and Developer agree it is in the best interest of both entities to enter into a participation agreement at this time to complete the Project.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

DEVELOPER RESPONSIBILITIES

1. Developer shall be responsible for the entire up front expense of the public improvements associated with the Project including all engineering services.

2. The public improvements for the Project shall be designed by engineers to the plans and specifications for the construction of such public improvements as approved by City and in accordance with the Land Development Code, including the design of any pedestrian facilities that will be constructed by the City at a later date.

3. The Developer will designate a contact person available to answer questions on behalf of Developer. The contact person for this Agreement is Tony Conder. The secondary contact person for this Agreement is Don Whitehead.

4. The Developer will execute a performance bond in accordance with Section 212.073 of the Local Government Code.

CITY RESPONSIBILITIES

1. Upon completion of the project and acceptance of the improvements by the City, the City shall reimburse Developer $200,000.00 of the construction costs for the public improvements, and up to $50,000.00 of the cost for engineering services (surveying, design, bidding, construction, inspection and testing).

2. The City shall acquire all necessary right-of-way to construct the Project. However, if any portion of the right of way may not be acquired without the use of eminent domain, the City, with the consent of Developer, may request Developer to construct the Project in a manner that does not require the acquisition of additional right of way, if such design and construction is possible and in compliance with generally accepted engineering principles.

3. Because of the need to construct the Project in an expeditious manner for impending and future development in the area to alleviate the anticipated traffic congestion that could be created, the City shall accept the responsibility for the construction of any required sidewalks, hike and bike trails or other related facilities or improvements, to manage Project costs at this time.

4. The City will designate a contact person available to answer questions on behalf of the City. The contact person for this Agreement is Megan Santee, Director of Public Works. The secondary contact person for this Agreement is Jon James, Director of Planning and Development Services.

5. Upon completion of the Project, the City will own and maintain the public improvements.

MISCELLANEOUS TERMS

1. Indemnity

The Developer must indemnify, hold harmless, and defend the City, its officers, agents and employees, from and against liability for any claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of the Developer's work and activities conducted in connection with this Contract, including all causes of action based upon common, constitutional, or statutory law, or based in whole or in part

upon negligent or intentional acts or omissions of Developer, its officers, agents, employees, sub-contractors, licensees, invitees, and other persons.

Developer must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, sub-contractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Developer, its officers, agents, employees, sub-contractors, licensees, invitees, and other persons.

The City assumes no responsibility or liability for harm, injury, or any damaging events, which are directly or indirectly attributable to premise defects, whether real or alleged, which may now exist or which may hereafter arise upon the premises, responsibility for all such defects being expressly assumed by the Developer. The Developer agrees that this indemnity provision applies to all claims, suits, demands, and actions arising from all premise defects or conditions over which Developer has dominion and control, but not otherwise.

The City and Developer must provide the other prompt and timely notice of any event covered which in any way affects or might affect the Developer or City, and the City has the right to compromise and defend the same to the extent of its own interests.

2. Venue and Choice of Law

Venue for any cause of action arising under this Agreement is Taylor County, Texas. This Agreement is governed by the laws of the State of Texas both as to interpretation and performance. This Agreement shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

3. Assignment

The Developer may not assign in whole or in part any rights, duties, obligations or interest arising from this Agreement without the City's prior written consent, and such consent will not be unreasonably withheld.

4. Amendment or Modification

This Agreement, including schedules and attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent, which are not contained in this Agreement, are of no effect. This Agreement may not be amended or modified except by both parties' written consent.

5. Compliance with Laws, Charter, Ordinances

Developer, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Developer must obtain all necessary permits and licenses required in completing the work contracted for in this Agreement.

6. Notice

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party.

IN WITNESS HEREOF the parties have executed this Agreement.

CITY OF ABILENE **DEVELOPER**

By: _____ By: _____
Larry Gilley, City Manager Tony Conder, Managing Partner

ATTEST:

_____
City Secretary

APPROVED:

_____
City Attorney

City Council
Agenda Memo

TO: **Larry D. Gilley, City Manager**

City Council
Meeting Date: 08/23/12

FROM: Mindy Patterson, Director of Finance

SUBJECT: Public Hearing on the Proposed 2012-13 Tax Rate

GENERAL INFORMATION

The FY 2013 Budget approved by Council on July 30, 2012 set the tax rate at 68.60¢. State law requires that two (2) public hearings must be held prior to the final public hearing and vote. Another public hearing will be held on September 13, 2012, with the final public hearing and vote to be held on September 24, 2012.

STAFF RECOMMENDATION

Staff recommends that the City Council hold the public hearing in accordance with state law. No action is required by Council.

ATTACHMENT

1) Ordinance

Prepared By:		**Disposition by City Council**
Name Mindy Patterson		☐ **Approved** ☐ **Denied** ☐ **Other Ord/Res #** _____
Title Director of Finance	**Item No.** 7.2	_____ **City Secretary**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, APPROVING THE ASSESSMENT ROLL FOR 2012, LEVYING AN AD VALOREM TAX FOR THE CITY OF ABILENE, TEXAS, FOR THE YEAR 2012; PROVIDING FOR THE ASSESSMENT AND COLLECTION THEREOF; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; CALLING A PUBLIC HEARING; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 26.05 of the Tax Code requires notice of a tax increase whether that increase occurs by an increase in the tax rate or a rise in property values or both; and

WHEREAS, the City of Abilene is proposing a tax rate increase and property values have risen in the City which trigger components of Section 26.05; and

WHEREAS, the components of Section 26.05 require Cities to post that an increase in property values even when the tax rate is held constant, is considered as an effective tax rate increase; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That the assessment roll for the year 2012, as compiled by the Chief Appraiser of the Central Appraisal District of Taylor County, and amended and approved by the Appraisal Review Board of Taylor County, on the 23rd day of July, 2012, be, and the same is hereby, in all things, approved and adopted.

PART 2: That there be, and is hereby levied, on all of the property located in the City of Abilene, Texas, on the 1st day of January, 2012, and not exempt from taxation by the Constitution and Laws of the State of Texas and the City of Abilene, an ad valorem tax in the aggregate total of --sixty-eight and sixty one-hundredths cents (68.60¢)-- on each one hundred dollars' ($100.00) valuation of said property, apportioned as follows:

General Fund:		
(a)	Operations & Maintenance	$ .4937
Debt Service Funds:		
(a)	2002 Airport C.O. Series	$ .0026
(b)	2003 C.O. Series	$ .0047
(c)	2004 C.O. Series	$ .0036
(d)	2004 Airport C.O. Series	$ .0015
(e)	2005 C.O. Series	$ .0094
(f)	2005A C.O. Series - Public Safety	$ .0240
(g)	2006 C.O. Series	$ .0089
(h)	2006 G.O. Series	$ .0101
(i)	2006 Airport C.O. Series	$ .0025

(j)	2007 C.O. Series	$ .0079
(k)	2007 G.O. Series	$ .0115
(l)	2007 Airport G.O. Series	$ .0020
(m)	2008 C.O. Series	$ .0042
(n)	2008 G.O. Series	$ .0144
(o)	2008A C.O. Series - Energy	$ .0168
(p)	2009 Refunding	$ .0245
(q)	2009 C.O. Series	$ .0030
(r)	2009 G.O. Series	$ .0142
(s)	2009A C.O. Series - HRIS & Finance System Replacement	$ .0044
(t)	2010 Refunding	$ .0074
(u)	2010 C.O. Series	$ .0032
(v)	2011 Refunding	$ .0115
	Debt Rate	$ .1923
	TOTAL RATE FOR THE YEAR 2012	$ .6860

PART 3: That there be, and are hereby authorized exemptions as follows:

1) Homestead exemption -- fifteen percent (15%)
2) Age 65 and over exemption -- $15,000

PART 4: THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 1.7 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $10.00.

PART 5: That notice for the public hearings on the 23rd day of August, 2012, and the 13th day of September, 2012, were given by publication in the Abilene Reporter-News on the 13th day of August, 2012.

PART 6: That notice for the public hearing on the 24th day of September, 2012, was given by publication in the Abilene Reporter-News on the 16th day of September, 2012.

PART 7: That a public hearing was held on the 24th day of September, 2012, in accordance with the City Charter.

PART 8: That any ordinance, resolution, policy or any provision or section of the Code of the City of Abilene, Texas, as amended, in conflict herewith, be, and the same is hereby repealed to the extent of any conflict.

PART 9: That this ordinance shall take effect immediately from and after its date of final passage.

PASSED ON FIRST READING on the 30th day of July, A.D. 2012.

PASSED ON SECOND AND FINAL READING AT A PUBLIC HEARING on the 24th day of September, A.D. 2012.

ATTEST:

_____ _____

CITY SECRETARY MAYOR

APPROVED:

_____

CITY ATTORNEY