



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: James R. Helmer

SUBJECT: APPROVAL OF DOWNTOWN
PBID AGREEMENT

DATE: 01-02-08

Approved

Date

1/3/08

COUNCIL DISTRICT: 3

RECOMMENDATION

Approval of an agreement with the San Jose Downtown Property Owners Association and the San Jose Downtown Association to provide services for the Downtown Property and Business Improvement District as specified in the agreement and as outlined in the Downtown Property and Business Improvement District Management Plan/Engineer's Report.

OUTCOME

Approval of this agreement will enable the Downtown Property Owners Association (Owners Association) and the San Jose Downtown Association (Downtown Association) to provide baseline and enhanced cleaning, information services and image enhancement capital improvements in Downtown.

BACKGROUND

On August 7, 2007, the City Council and the Redevelopment Agency Board approved the formation of the Downtown Property-Based Business Improvement District (PBID) and directed assessments to be levied and collected after receiving a majority supporting vote from the property owners who cast ballots within the boundaries of the PBID. Council also approved the PBID Management Plan/Engineer's Report (Management Plan) that described the services that will be provided by the PBID. Council also made findings that the Downtown Association was uniquely situated to provide oversight and management of the baseline cleaning services (i.e. street and sidewalk cleaning services already provided by the City) and the enhanced cleaning and information services to be funded by the PBID assessment and authorized the City Manager to begin negotiations with the Downtown Association to provide those oversight and management services. PBID services are scheduled to begin on January 28, 2008.

ANALYSIS

The Downtown Association was instrumental in the formation of the PBID. Once the PBID was formed, pursuant to the adopted Management Plan/Engineer's Report, the Owners Association, a nonprofit corporation representing the property owners being assessed within the PBID, was formed. The Owner's Association will be the entity responsible to the City for the provision of the PBID services in compliance with the Management Plan. It will determine budgets and assessment rates, monitor service delivery, and enter into agreements with service providers. The Downtown Association is expected to provide the day-to-day management of PBID services under a separate agreement with the Owners Association. The City Administration is concluding negotiations with the Owners Association and the Downtown Association and is recommending City Council approval of the agreement.

A summary of the significant items in the proposed agreement are described below.

Limitations to Safety & Information Services

The agreement specifies limitations related to the Safety and Information Services being provided by the safety and information ambassadors. In general, no security services of any kind, with the exception of escorts, will be provided by the District, including:

- Enforcement of laws or ordinances
- Detaining or arresting persons that are suspected of committing a crime
- Traffic and crowd control
- Carrying of weapons, handcuffs, or chemical agents

The ambassadors will also not wear any uniforms that resemble those worn by the Police or Fire Departments, and will not utilize equipment with any logos, stickers, or labels that resemble those used by the Police or Fire Departments.

Annual Reporting by the Owners Association

The City will receive an Annual Report on or before October 1 of each year from the Owners Association on the services provided and the compliance with the Management Plan and this agreement. The report will include the following:

- A summary of the impacts of the enhanced services within the district
- A Certification that all agreements entered into between the Owners Association and any other entity for the provision of services comply with the procurement requirements under the Agreement
- A list of all Board meetings held for the Owners Association
- Financial statements for the preceding fiscal year

The City will also receive a report on or before May 1 of each year from the Owners Association for City Council approval describing any proposed changes to the Management Plan, District boundaries, assessments, or PBID services, as well as projected costs for services for the next fiscal year and the proposed method and basis for levying the next year's assessment.

City Baseline Downtown Cleaning Services

The agreement provides that the Downtown Association, in its role as managing the integration and coordination of the baseline and enhanced cleaning services, will be responsible for providing the following services currently provided by the City:

1. Portering: General sidewalk area trash, litter and debris pickup using basic cleaning tools, materials and equipment, Monday through Friday at the Transit Mall and Repertory Plaza, and three days per week in SoFa and San Pedro Square areas.
2. Power Washing: Power washing sidewalks, plazas and other public rights of way as follows: 16 hours per month in the Transit Mall; 8 hours per month at the Repertory Plaza; and 16 hours per month in SoFa and San Pedro Square areas.
3. Public Litter Cans: Pick up and maintenance of public litter cans within the Transit Mall (approximately 100). Maintenance shall consist of regular cleaning, painting and replacement of the cans.

The City will provide \$335,000 to the Downtown Association for one full year for the above services. The City will continue to perform street sweeping and maintenance of public litter cans outside of the Transit Mall area. These services cost the City approximately \$300,000 annually. Future funding or service levels may vary according to City Council direction. Unless the City Council directs otherwise, the City will make two payments to the Downtown Association annually in the amount of \$167,500 to provide these baseline services. These payments will occur no later than July 10 and February 1 of each year.

The Owners Association and the Downtown Association will also be permitted to use City supplied water with an estimated value of \$10,000 annually through eight existing water meters located within the District for providing baseline and enhanced cleaning activities or new landscaping that may be installed through the Image Enhancement services.

Procurement of Goods and Services by the Owners Association and Downtown Association

The Owners Association and Downtown Association have the authority to procure goods and services using PBID and Baseline Service funds as required in managing and delivering PBID services. In doing so, the Owners Association and the Downtown Association must comply with City's procurement policies as described below:

- The Owners Association and the Downtown Association shall follow an open and fair competitive procurement process for the acquisition of goods and services, and shall

substantially comply with Council Policy 0-35, titled, *Procurement and Contract Process Integrity and Conflict of Interest*.

- The Owners Association and the Downtown Association, shall comply with the City's prevailing and living wage rate determinations for services provided.
- The Owners Association shall certify and document in the Annual Report to the City Council that the Downtown Association complied with all aforementioned City policies and regulations regarding the procurement of goods and services.

Due to the target start date for PBID services in January 2008 and the need to have the service provider(s) prepared, the Owners Association and Downtown Association have already completed the procurement of cleaning and information services. According to the Owners Association and Downtown Association, this procurement process met the intent and purpose of the City's procurement policy in that it was performed in a fair, competitive, open, and transparent manner. Appropriate outreach also occurred in issuing the RFP, soliciting proposers, and providing information regarding the goals, services, and requirements of the RFP and providing potential vendors with an opportunity to ask questions and receive clarification on the RFP. All communication regarding the RFP, starting with issuance of the RFP up to the formal announcement of award to the recommended proposer were channeled through the person listed on the RFP. Additionally, the Board members were informed not to have any communication with any of the proposers or their associates. Each evaluation panel member stated and confirmed that there was neither communication nor conflict of interest that would have compromised the integrity of the procurement process or violated City policy.

Disbursement of Assessment Funds to the Owners Association

The Owners Association will receive from the City the net funds collected from the property based assessments to provide services as outlined in the Management Plan. The City will disburse the assessments to the Owners Association within 30 days of receiving them from the County. Each disbursement will represent approximately one-half of the annual net assessment funds and will be in advance of services rendered, providing operating funds for the following six months.

EVALUATION AND FOLLOW-UP

As part of the agreement and in accordance with the Management Plan, the Owners Association will report back to the City Council two times annually on or before October 1 and May 1 of each year.

POLICY ALTERNATIVES

Not Applicable

PUBLIC OUTREACH/INTEREST

The formation of the PBID required significant public outreach including multiple community meetings, multiple notices sent to each property owner and two public meeting were held with the City Council.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

The agreement and this memorandum have been coordinated with the Redevelopment Agency, Police Department, City Attorney's Office, the City Manager's Budget Office, the Finance Department, and the Downtown Association.

FISCAL/POLICY ALIGNMENT

The formation and operation of the PBID are consistent with Council direction to develop public private partnerships.

COST SUMMARY/IMPLICATIONS

Approval of the agreement will transfer approximately \$335,000 annually from the City's General Fund to the Downtown Association to provide baseline sidewalk cleaning services and it will transfer approximately \$1.6 million, collected from the PBID assessments, annually to the Owners Association to provide services as described in the Management Plan. It is estimated

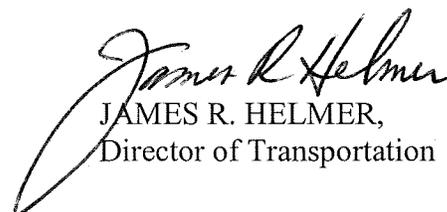
that water usage by the Downtown Association in performing these services will cost the City approximately \$10,000.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC#	Total Appn.	Amt. for Contract	2007-2008 Adopted Operating Budget Page*	Last Budget Action (Date, Ord. No.)
302	3585	Downtown Transit Mall		\$ 167,500	\$167,500	N/A	10/16/07 Ord. No. 28143
302	3586	Downtown Property and Business Improvement District Fund		\$ 800,000	\$800,000	N/A	10/16/07 Ord. No. 28143
Total					\$967,500		

CEQA

Not a project.


JAMES R. HELMER,
Director of Transportation

For questions please contact Jim Ortbal, Assistant Director of Transportation at 535-3845.