



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: James R. Helmer
Scott P. Johnson

**SUBJECT: EXCEPTION TO PREVAILING
WAGE RATE POLICY FOR
SIDEWALK REPAIRS**

DATE: June 4, 2007

Approved

Date 6/8/07

COUNCIL DISTRICT: Citywide

RECOMMENDATION

- 1) Adoption of a resolution establishing an exception to the prevailing wage rate policy for sidewalk repairs performed by the City on behalf of property owners for which the City is reimbursed by property owners, until June 30, 2008.
- 2) Authorize the Director of Finance to execute Purchase Orders with Willson Concrete (Campbell, CA), Duran Hogan Construction, Inc. (San José, CA), and Valley Concrete & Redwood (San José, CA) for a total not-to-exceed amount of \$500,000, for the period of July 1, 2007 through June 30, 2008 with non-prevailing wage rates.

OUTCOME

If the non-prevailing wage rate policy for sidewalk repairs is approved, the Sidewalk Repair Program will be able to continue assisting property owners with their sidewalk repairs at a lower cost to the property owner until June 30, 2008.

Approving the non-prevailing wage rate purchase orders will allow the City to continue providing contractual services to complete sidewalk repairs for over 600 property owners in Fiscal Year 2007-2008.

BACKGROUND

The San Jose Municipal Code follows the California Streets and Highway Code which places the responsibility for sidewalk maintenance on the abutting property owner, and property owners are not required to pay prevailing wages. Maintenance and repair of the sidewalks is normally initiated by a complaint from the public regarding a sidewalk location in need of repair. City

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staff notifies the property owner of the needed repairs and then works with the owner to ensure that the necessary repairs are completed in a professional manner. Repairs need to be made in a timely manner once the City is notified of a damaged sidewalk, to reduce the likelihood of injury resulting from the condition. Consequently, if the property owner does not perform the repairs on their own, or they request assistance from the City, the City will complete the repairs through a private contractor. The City pays the contractor for their work and, per procedures established in the Municipal Code, invoices the property owner for the cost of the repairs plus an administrative fee, that is currently \$130.

Since 1986, the City Council has adopted various assistance programs to help offset the cost of sidewalk repairs to property owners. In 1999, a 100% grant program was approved that covered the entire cost of sidewalk repairs when the area in need of repair was adjacent to a property that was occupied by the owner of the property. Due to budget constraints, grants were capped starting in 2004, and the City currently provides a maximum \$500 grant, or \$1,000 for larger properties, to owner-occupied property owners if they perform the repairs. In addition, the City provides free grinding of minor imperfections in the sidewalk to all property owners and pays prevailing wage rates on this service.

In instances where the property owners do not qualify for a sidewalk repair grant and request that the City oversee the needed repair work on their behalf, the City will hire the contractor to complete the work then invoice the property owner for reimbursement of the costs associated with that work. It has been past practice since 1986 to have this work performed at the eventual expense of the property owner, at non-prevailing wage. On June 27, 2006, City Council awarded three such non-prevailing wage rate purchase orders for Fiscal Year 2006-2007 totaling \$400,000 for use in 2006-2007. Two of the three purchase orders have reached their approved dollar limit (one in January 2007 and one in April 2007) because activity has unexpectedly increased. The third purchase order is with a contractor that was not able to meet the demands of this additional work. An encumbrance adjustment for the two purchase orders was requested in order to meet the additional demand for assistance for sidewalk repairs.

During the purchase order encumbrance adjustment process, the City Attorney's Office noted that the Prevailing Wage Resolution did not contain an exception for sidewalk repairs. It would appear the sidewalk repair program was never officially exempted from Prevailing Wage Resolution. To allow for the continuation of the program, staff recommends that Council adopts a resolution to exempt such sidewalk repairs from the City's prevailing wage requirement but for only for one year until June 30, 2008, to allow sufficient time for DOT to review the current program, benchmark with other agencies and explore alternative service delivery models as part of its current Transportation Maintenance Master Plan outreach with the public.

ANALYSIS

Most property owners that are notified of needed repairs on their sidewalks will perform the repairs and receive the sidewalk repair grant. For those property owners that do not perform the

repairs, the City will hire a contractor to perform the needed sidewalk repairs and will normally use non-prevailing wage rates in an effort to minimize cost to the property owner at no risk to quality of work. The property owner is then invoiced for the work performed.

In some cases the City will pay prevailing wage rates. If the City ultimately is responsible to pay for the work, such as for property owners that qualify for hardship assistance, for City provided sidewalk grinding, or for sidewalks where the City is the abutting property owner, the City pays prevailing wage rates.

Exception to the Prevailing Wage Policy

Property owners have the choice of paying prevailing wage rates or not paying prevailing wage rates to their own contractors, but they are not required to do so. For repairs performed by the City on behalf of property owners who ultimately reimburse the City for the work, it is recommended that the City Council establish an exception to its prevailing wage policy to formalize the long-established practice of exempting sidewalk repairs performed for private property owners from the prevailing wage requirements. The practice keeps direct property owner costs to a minimum as there is a 40-45% difference in cost between prevailing wage rates and non-prevailing wage rates for sidewalk repairs. The typical sidewalk repair includes removing and replacing approximately 150 square feet of damaged sidewalk and the average non-prevailing wage rate cost per sidewalk repair performed by the City for a property owner is \$1,290. In addition, the property owner is charged a \$130 administrative fee that covers staff time to inspect the property and administer the contract. On the average the City conducts approximately 1,000 sidewalk remove & replace repairs annually, and of this total, approximately 300 of them are performed by the City on behalf of property owners. If the City adopts a prevailing wage rate policy for all sidewalk repairs, the average cost per repair for the 600 property owners that the City assists each year would increase to about \$1,850 for an average increase to \$560 for each property owner.

In the event Council approves the recommended exemption to the prevailing wage policy, the prevailing wage requirements for various scenarios as described above would be as follows:

Sidewalk Repair Scenarios	Prevailing Wage Required
Property owner contracts for services	No
Property owner contracts for services and uses City grant	No
City contracts for services which property owner is required to reimburse City	No
City contracts for services for which City seeks no reimbursement due to hardship	Yes
City contracts for grinding services for which no reimbursement is sought	Yes
City contracts for repairs adjacent to City owned property	Yes

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Issuance of three Purchase Orders for Non-Prevailing Wage Rates for Fiscal Year 2007-2008

Authorization for award of these purchase orders is requested to allow for sidewalk repairs as described in the attachment of this memorandum during Fiscal Year 2007-2008. Staff recommends award of these purchase orders. To ensure flexibility to move work among the three contractors, staff recommends that Council approve a collective not-to-exceed amount of \$500,000 for the three purchase orders to support the program.

POLICY ALTERNATIVES

Alternative: Do not approve an exception to the prevailing wage policy for sidewalk repairs and require the payment of prevailing wages for these types of repairs.

Pros: It will create a stronger financial incentive for property owners to take care of sidewalk repairs on their own and ensure that workers earn prevailing wages.

Cons: The cost to property owners will increase by approximately 40 to 45% in instances where the City completes the repairs.

Reason for not recommending alternative: Without the exception, the City cannot continue providing the lowest possible costs for sidewalk repairs for property owners.

PUBLIC OUTREACH /INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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)**

The approval of the recommendations will allow the sidewalk program to continue to provide services to San Jose property owners by providing sidewalk repairs at a lower rate than prevailing wage rates. Further outreach is not required since this practice has been in place for over 20 years.

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COORDINATION

This memo has been coordinated with the City Attorney's Office, Department of Public Works/Office of Equality Assurance, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City Council's direction to seek alternative ways to deliver services and reduce costs through appropriate community partnerships and public-private partnerships.

COST SUMMARY/IMPLICATIONS

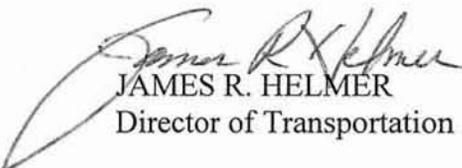
Not applicable.

BUDGET REFERENCE

See attachment.

CEQA

Exempt, File No. PP03-04-139.


JAMES R. HELMER
Director of Transportation


SCOTT P. JOHNSON
Director of Finance

For questions regarding the Sidewalk Repair program please contact Thomas Ferguson, Maintenance Manager, at 277-3056. For questions regarding the purchase orders please contact Walter Rossmann, Chief Purchasing Officer, at 535-7051.

Attachment

Attachment: Open Purchase Orders for Fiscal Year 2007/2008

ITEMS/SERVICES DEPARTMENT	RECOMMENDED VENDOR/ LOCATION	REQUESTED AWARD	PRIOR BALANCE	SOURCE OF FUNDING AND BUDGET PAGE
Sidewalk Repair for the Department of Transportation	Willson Concrete Campbell, CA	\$150,000	\$0	General Fund (001), Appn 3121
	Duran Hogan Construction, Inc. San Jose, CA	\$200,000	\$0	2007-2008 Proposed Operating Budget, Page IX-14
	Valley Concrete & Redwood San Jose, CA	\$150,000	\$0	General Fund (001), Appn 0512 2007-2008 Proposed Operating Budget, Page VIII-130

Establish an open service orders for the period July 1, 2007 through June 30, 2008 to provide all labor, material and equipment necessary for sidewalk removal and replacement of privately maintained sidewalks. Exercising the first option to renew. This requirement was competitively quoted. The quote was divided between the three vendors who submitted the three lowest quotes. Office of Equality Assurance: Prevailing and Living Wage do not apply, since this Open Purchase Order is for privately maintained sidewalks. CEQA: Exempt PP 03-04-139 Cost Implication: General Principles #2, "We must focus on protecting our vital core City services." Desired Outcome: These services are provided to property owners participating in the City-wide Sidewalk Repair Program.