



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 06-02-08

Approved

Date

6/4/08

COUNCIL DISTRICT: # 7

SUBJECT: CONSTRUCTION AGREEMENT WITH WESTRUST SAN JOSE, LLC FOR PUBLIC IMPROVEMENTS TO THE NORTHWEST CORNER OF CURTNER AVENUE AND MONTEREY ROAD

RECOMMENDATION

Adoption of a resolution authorizing the Director of Public Works to negotiate and execute a Construction Agreement with Westrust San Jose, LLC ("Developer"), for certain public improvements at the northeast corner of Monterey Road and Curtner Avenue with a reimbursement to the Developer of an amount not to exceed \$979,616.

OUTCOME

Council approves the resolution to allow the Director of Public Works to negotiate and execute a Construction Agreement with Westrust San Jose, LLC, for certain public improvements at the northeast corner of Monterey Road and Curtner Avenue with a reimbursement to the Developer of an amount not to exceed \$979,616.

EXECUTIVE SUMMARY

The purpose of this memorandum is to ask for Council to delegate authority to the Director of Public Works to negotiate and execute a Construction Agreement with Westrust San Jose, LLC, developer of the "Plant" commercial development. This delegation is necessary as the Department is proposing to reimburse Westrust an amount that exceeds the Director of Public Works' current authority of \$100,000.

BACKGROUND

On June 21, 2005, Council approved the Planned Development Rezoning (PDC04-029) for the development of the former General Electric site at the northwest corner of Monterey Road and Curtner Avenue (map attached). This development project, also more commonly known as "The Plant," proposed to construct up to 646,000 square feet of commercial uses on a 55.1 gross acre site. Subsequently, on June 19, 2006 the Director of Planning approved the Planned

Development Permit (PD05-058) for the subject site and this permit specified that certain public improvement conditions be fulfilled by this project.

All new development or redevelopment projects are conditioned to improve the public right of way along the project frontage. These improvements can include constructing curb, gutter, sidewalk, asphalt pavement, street trees, converting overhead utilities to underground systems, as well as installing streetlights and traffic signals. The subject project has three public street frontages on Monterey Road, Curtner Avenue, and Little Orchard Avenue. All three streets provide direct access to the project site and the project was required to improve these frontages to City standards.

There are typical limits of improvement that are required of a development project. For public street improvements, this limit is within the project frontage and extends into the half-street cross section of the street frontage. Typically, the City reimburses developers for actual costs of construction for any requirement to construct additional public improvements beyond this limit.

In addition, the Director of Public Works is authorized to collect payments in-lieu of the construction of public improvements required as a condition of development. This in-lieu fee will be used to reimburse developers required to construct these improvements in the future.

The Developer has been required to construct public improvements beyond the limits within the project frontage and improvements where in-lieu monies have been collected from other developers adjacent to the site. These improvements, further explained below, included:

- Widening of Curtner Avenue beyond the ultimate centerline along the project frontage
- Installation of a median island along project frontage along Curtner Avenue, where in-lieu monies have been collected from a previous developer, and
- Modification of a traffic signal at the corner of Monterey Avenue and Curtner Avenue where in-lieu monies have also been collected from a previous developer.

Curtner Avenue

The City's General Plan 2020 identifies Curtner Avenue as a future 6-lane arterial to provide east-west connectivity between Highway 87 and US Highway 101. Currently, Curtner Avenue is a 4-lane roadway with future development providing the necessary right of way to complete this major thoroughfare. During the Planning process, staff identified the widening of Curtner Avenue to its ultimate right of way width as a necessary improvement. As this improvement extends beyond the centerline of the project frontage, staff met several times with the Developer to negotiate a plan for the Developer to complete the widening of Curtner Avenue to 6-lanes.

Traffic Signal modification at the Intersection of Monterey Road and Curtner Avenue

In order to widen Curtner Avenue from 4 lanes to 6-lanes, it is necessary for the "Plant" project to modify the existing signalized intersection of Monterey Road and Curtner Avenue.

Coincidentally, another nearby development project, the Goble Lane residential development, was required to construct improvements at the same intersection.

Rather than requiring Goble Lane to construct these improvements, it was determined by staff to collect an in-lieu payment instead and require that the Developer incorporate these improvements within their project scope and be reimbursed upon acceptance of the improvements. An in-lieu payment in the amount of \$220,000 has been collected from Goble Lane residential development based on City's estimated costs of their requirement.

Median Island Construction along Curtner Avenue

The City has also collected an in-lieu payment in the amount of \$119,616 from Oak Hill Cemetery in-lieu of constructing median island improvements along their project frontage on Curtner Avenue. The Developer has been required to construct these improvements and upon acceptance of said improvement, City will reimburse developer in the amount collected previously.

In accordance with Section 14.04.410 of the San José Municipal Code, the Director of Public Works has authority to enter into contracts with private developers for the construction of public improvements connected with their project if any reimbursement to the developer is in an amount of \$100,000 or less. In addition, Section 14.04.300 provides the legal authority for the Council to grant additional authority to the Director of Public Works when necessary. As the proposed aggregate reimbursement in the amount of \$979,616, exceeds this authority, it is necessary to have the Council grant the Director authority to execute this agreement. In addition, this subject construction agreement will include language requiring the Developer to go through the public bidding process

ANALYSIS

San José Municipal Code Section 14.04.330 provides the Director of Public Works with the authority to enter into and execute any contract between the City and a private developer based on certain findings. Specifically, three findings must be made: 1) the work being performed is in connection with a development of real property, 2) in the opinion of the Director such work is better performed by the developer, and 3) the cost to the City will be equal or less than if the City constructed the improvements themselves.

The construction of the above mentioned public improvements has a direct connection with the development of the "Plant" site as these improvements will provide enhanced access to the site and is a direct condition of approval of the project. In addition, this work is better performed by the Developer in that this plan will: 1) minimize disruptions to the neighborhood and traffic by having the one contractor coordinate all of the construction at one time, 2) provide a cost-effective means for the completion of these improvements due to economies of scale, and 3) contract the work with a single developer to provide a single point for resolving construction

related issues. Staff has concluded through detailed engineer's estimates that having the Developer perform the work will provide a more cost-effective means of implementing the necessary improvements.

As mentioned above, staff met several times with the Developer to negotiate a comprehensive plan which would require the Developer to: 1) complete the widening of Curtner Avenue to 6-lanes, 2) install a median island along project frontage along Curtner Avenue and 3) perform modifications to the existing traffic signal at the intersection of Monterey Road and Curtner Avenue which includes the improvements for Goble Lane residential development.

Based on these concepts, staff worked with both the "Plant" and Goble Lane development teams and drafted a plan to build these needed improvements with one construction project while providing financial equity to all involved. The Developer agreed to include the additional improvements within their scope of work provided that the City reimburses the Developer for the additional costs incurred.

Curtner Avenue

As the complete widening of Curtner Avenue from 4-lanes to 6-lanes is beyond the half-street requirements of the Plant project, staff worked with the Department of Transportation to identify available Traffic Capital funding to supplement the necessary widening costs. Understanding that this improvement would provide the City with a planned public improvement with benefit to the overall public, the Department of Transportation identified \$640,000 in Traffic Capital funds to reimburse the Developer. This amount is equal to a City engineer's estimate of the widening work above and beyond the standard requirement of the "Plant" project.

In-Lieu Payments

Staff also identified additional in-lieu monies that were available for reimbursement to the Developer. Specifically, as detailed above, \$220,000 was collected from the Goble Lane Residential development in-lieu of requiring the developer to construct these necessary traffic mitigations. In addition, the City collected a \$119,616 in-lieu payment from the Oak Hill Cemetery for future median island construction on Curtner Avenue.

The chart below represents the total amount of monies proposed for reimbursement to the Developer.

Fund	Purpose	Reimbursement Item	Amount
Building and Structure Construction Tax Fund (Fund 429)	Traffic CIP -	Widening of Curtner Avenue	\$640,000
Developer In-Lieu Fee Fund (Fund 138)	Goble Lane In Lieu Fee	Traffic Mitigations at Monterey Road and Curtner Avenue	\$220,000
Developer In-Lieu Fee Fund (Fund 138)	Median Island In-Lieu Fee	Widening of Curtner Avenue	\$119,616
		Total	\$979,616

By executing this Construction Agreement, the City will reimburse the Developer for the expenses incurred from the above-mentioned additional improvements. City staff will review the actual cost of construction and invoices upon completion and acceptance of the improvements and reimburse the Developer its actual expenditures in an amount not to exceed \$979,616.

EVALUATION AND FOLLOW-UP

Upon approval of the proposed resolution, no additional evaluation or follow-up is necessary.

PUBLIC OUTREACH/INTEREST

- 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)**

The subject project was brought forth to the Council on June 21, 2005 during the development of the Planned Development Rezoning. At that time, the condition for this development to construct the above mentioned improvements was identified and finalized at the subsequent Planned Development Permit public hearing on June 19, 2006. Although this action does not meet any of the criteria above, this memorandum will be posted on the City’s website for the June 24, 2008 Council agenda.

COORDINATION

The project has been coordinated with the Departments of Transportation and Planning, Building and Code Enforcement, the City Attorney’s Office and the City Manager’s Budget Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the City’s Proposed 2008-2009 Capital Budget in that it will adhere to several Transportation and Aviation Services City Service Area outcomes. Specifically, construction of this 6-lane facility on Curtner Avenue will assist in providing a transportation system that enhances community livability by increasing the capacity of this major thoroughfare in San Jose. In addition, the project supports the build-out of the City’ General Plan 2020 in that it will further the construction of the necessary transportation thoroughfares as identified in the City’s Land Use/Transportation Diagram.

COST SUMMARY/IMPLICATIONS

- 1. TOTAL PROPOSED REIMBURSEMENT TO APPLICANT: \$979,616

- 2. COST OF AGREEMENT:
 - a. Curtner Avenue Widening \$640,000
 - b. Traffic Mitigations at Monterey Road and Curtner Avenue \$220,000
 - c. Median Island Construction \$119,616
 - TOTAL AGREEMENT AMOUNT: \$979,616

- 3. SOURCES OF FUNDING:
 - Fund 429 - Building and Structure Construction Tax Fund
 - Fund 138 – Developer In-Lieu Fee Fund

- 4. OPERATING COSTS: The proposed operating and maintenance costs of this project have been reviewed and will have no significant impact on the General Fund operating budget.

BUDGET REFERENCE

The table below identifies the funds and appropriations proposed to fund the contract recommended as part of this memo.

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	2007-2008 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Funding Available							
429	5752	Curtner Avenue Widening	57-146265	\$640,000	\$640,000	V-1109	N/A
138*	0001	Street Improvements Deposits	42-000000-9003	\$1,964,394	\$220,000	N/A	N/A
138*	0001	Median Island Deposits	42-000000-9001	\$902,814	\$119,616	N/A	N/A
Total Funding Available				\$3,507,208	\$979,616		

*Please note Fund 138 is not a budgeted fund (Deposit Fund only) and not reflected in the Ordinance—Information from FMS only

CEQA

CEQA: Resolution No. 72771. The subject roadway improvements were addressed in the Final EIR prepared for the General Electric Facility Planned Development Rezoning, File No. PDC04-029.

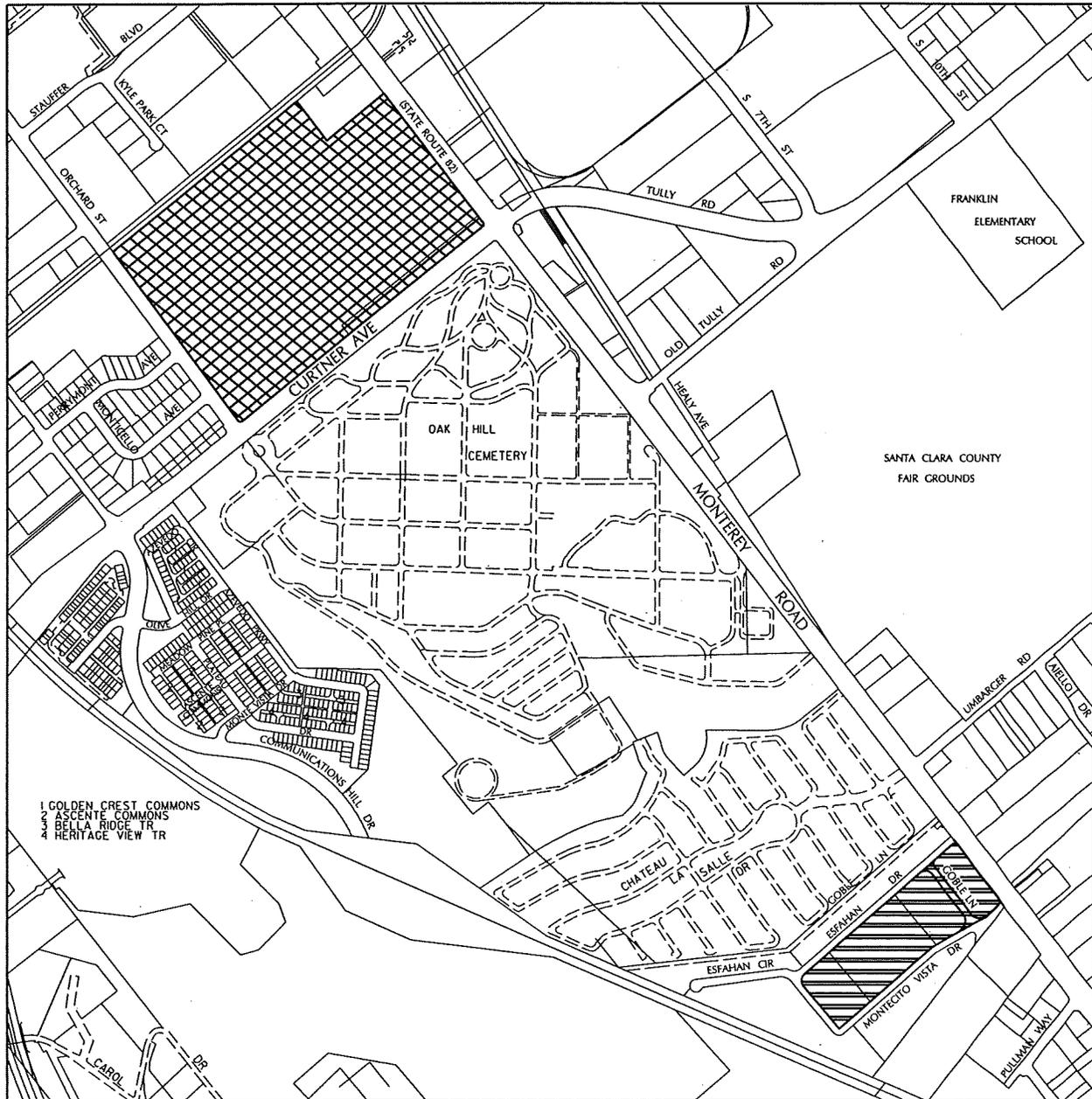
KATY ALLEN
 Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at 408-535-8300.

PD:ML:dcs
 (cm062408GEPlant)
 Attachment

LOCATION MAP

SHOWING THE PROJECT SITE FOR THE "PLANT" DEVELOPMENT PROJECT



PROJECT SITE



GOBLE LANE
DEVELOPMENT

