



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 10-05-09

Approved

Date

10/13/09

COUNCIL DISTRICT: 7

SUBJECT: AMENDMENT TO 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 amending the previous Council authorization granted to 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 to increase the amount of reimbursement to the Developer by \$146,722, from \$979,616 to an amount not to exceed \$1,126,338.

OUTCOME

Approval of this resolution authorizing the Director of Public Works to negotiate and execute a Construction Agreement with Westrust San Jose, LLC with a maximum reimbursement amount of \$1,126,338 will enable the City to properly compensate Westrust for construction work performed above their standard development requirements.

EXECUTIVE SUMMARY

The purpose of this memorandum is to recommend that Council amend the authority delegated 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 revised delegation is recommended to allow the City to reimburse the Developer an amount that is greater than the previous authority delegated to the Director of Public Works by the Council on June 24, 2008. This reimbursement is from in lieu funds contributed by other developments toward work that the Developer completed.

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. 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 the Planning, Building and Code Enforcement Department 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. To date, Building permits and Public Works encroachment permits have been obtained and in most part, fulfilled by the developer as the project site is almost fully built out and public improvements are substantially complete.

On June 24, 2008, the Council approved Resolution No. 74491, which authorized the Director of Public Works to negotiate and execute an agreement with Westrust San Jose, LLC for the construction of certain public improvements at the northeast corner of Monterey Road and Curtner Avenue and more importantly included reimbursement for such work to Westrust San Jose, LLC in an amount not to exceed \$979,616. The subject reimbursement by the City was for the Developer’s construction of the following improvements which are in addition to the required improvements for The Plant project:

- 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 previous developments, 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.

On August 22, 2008, the Director of Public Works executed a Construction Agreement based on the authority granted by the Council on June 24, 2008. In addition, the full reimbursement amount of \$979,616 has been paid to the Developer as the specified improvements have been constructed to the satisfaction of the Director of Public Works.

The purpose of the proposed amendment is to include additional reimbursement to the Developer for additional traffic signal and median island work beyond the scope of the work mentioned above. Furthermore, the Developer performed the actual conversion of the existing overhead utility system along Monterey Road and Curtner Avenues into an underground system, which is now eligible for partial reimbursement from the City’s Utility Undergrounding Fund.

ANALYSIS

The San José Municipal Code allows the Director of Public Works to reimburse developers for amounts not exceeding \$100,000. The previously mentioned June 24, 2008 delegation by the Council provides the Director of Public Works the authority to negotiate and execute a

Construction Agreement with a proposed maximum reimbursement of \$979,616. The proposed amendment would amend the Director of Public Works' reimbursement authority, specifically for this project, to an increased maximum amount of \$1,126,338.

The additional \$146,722 in reimbursement is necessary to properly compensate the Developer for construction work performed above and beyond the standard requirements of developments in San José and those required specifically for The Plant project. The chart below represents the total amount of additional monies proposed for reimbursement to the Developer.

Fund	Purpose	Reimbursement Item	Amount
Developer In-Lieu Fee Fund (Fund 138)	Traffic Signal In-Lieu Fee	Traffic Signal Improvements at Little Orchard Street and Curtner Avenue	\$25,000
Developer In-Lieu Fee Fund (Fund 138)	Median Island In-Lieu Fees	Median Island Construction on Curtner Avenue outside of The Plant project frontage limits	\$13,493
Utility Undergrounding Fund (Fund 416)	Undergrounding In-Lieu Fees	Underground Conversion of Overhead Facilities on Curtner Avenue and Monterey Road	\$108,229
		Total	\$146,722

These funds are generated by collecting in-lieu fees from developers and this reimbursement is appropriate as the Developer constructed these additional improvements for which the monies were originally collected.

Additional Traffic Signal Work at Little Orchard and Curtner Avenue

The project performed a major modification of the existing traffic signal at the intersection of Little Orchard Street and Curtner Avenue. The improvements included the removal of both porkchop refuge islands from the northside of Curtner Avenue and the continuation of three lanes of westbound traffic past Little Orchard Street. The above mentioned \$25,000 of Traffic Signal In-Lieu funds were originally deposited by the Oak Hill Cemetery and were intended for the future upgrade of this traffic signal, which the Developer performed.

Additional Median Island Construction on Curtner Avenue

Within the original reimbursement amount of \$979,616, the City included only the previously deposited in-lieu amount from Oakhill Cemetery which totaled \$119,616. This proposed additional median island reimbursement totaling \$13,493, was deposited from previous development projects which are outside of the Plant project boundary. These in-lieu amounts were deposited for the future construction of median island on Curtner Avenue. As the Developer partially completed the median island along these project frontages, the in-lieu amounts are proposed for reimbursement to the Developer.

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Utility Undergrounding Reimbursement

Prior to June 23, 2009, the City could not reimburse developers from the Utility Undergrounding Fund for additional improvements beyond those required for their projects. On June 23, 2009, Council adopted Ordinance No. 28596, which amended Municipal Code Section 15.26, to allow partial reimbursement from in lieu fees collected from previous developers for completion of underground utility projects that include such additional work. As the Developer has performed underground work on both Curtner Avenue and Monterey Road in excess of its project related requirements, this additional work qualifies for reimbursement based on previous in lieu fees collected from developments on the same streets.

By executing an Amendment to the original Construction Agreement, the City will reimburse the Developer for the expenses incurred for 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 \$1,126,338.

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. Additionally, the original Construction Agreement and \$979,616 reimbursement authority for the Director of Public Works was approved by the Council on June 24, 2008. As this action meets criterion #1 above, this memorandum will be posted on the City's website for the October 27, 2009 Council Agenda.

COORDINATION

The project has been coordinated with the Departments of Transportation, 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 2009-2010 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's 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:	\$1,126,338
2.	COST OF ORIGINAL AGREEMENT:	
	a. Curtner Avenue Widening	\$640,000
	b. Traffic Mitigations at Monterey Road and Curtner Avenue	220,000
	c. Median Island Construction	<u>119,616</u>
	TOTAL ORIGINAL AGREEMENT AMOUNT:	\$979,616
	COST OF AMENDMENT:	
	a. Traffic Signal Improvement at Little Orchard Street and Curtner Avenue:	\$25,000
	b. Additional Median Island Construction on Curtner Avenue:	13,493
	c. Utility Undergrounding Work on Monterey Road and Curtner Road Frontages:	108,229
	TOTAL AMENDMENT AMOUNT:	<u>\$146,722</u>
	TOTAL COST OF AGREEMENT:	\$1,126,338
3.	SOURCES OF FUNDING:	
	Fund 138 - Developer In-Lieu Fee Fund	
	Fund 416 - Utility Undergrounding 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.	

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BUDGET REFERENCE

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

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	2009-2010 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Funding Available							
138*	0001	Traffic Signal Deposits	42-000000-9003	\$1,974,000	\$25,000	N/A	N/A
138*	0001	Median Island Deposits	42-000000-9001	\$831,214	\$13,493	N/A	N/A
416	4654	Utility Undergrounding Fund	57-160539-4108	\$1,700,000	\$108,229	V-15	06/23/09, Ord No. 28593
Total Funding Available				\$4,505,214	\$146,722		

*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.

/s/

KATY ALLEN
Director, Public Works Department

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

