



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: 03-01-10

Approved

Date 3/10/10

COUNCIL DISTRICT: 6

SUBJECT: APPROVAL OF WILLOW GLEN COMMUNITY BENEFIT DISTRICT AGREEMENT AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE BUSINESS IMPROVEMENT DISTRICTS FUND AND GENERAL FUND

RECOMMENDATION

- a. Approval of an agreement with the Willow Glen Business Association from the date of execution to December 31, 2024 to provide services for the Willow Glen Community Benefit District as specified in the agreement and as outlined in the Willow Glen Community Benefit District Management Plan and Engineer's Report.
- b. Adoption of the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the Business Improvement Districts Fund:
 - 1. Establish a Willow Glen Community Benefit District appropriation to the Department of Public Works in the amount of \$196,737;
 - 2. Establish an estimate for Earned Revenue – Willow Glen Assessment (CBD) in the amount of \$196,737;
 - 3. Establish an Administration Services appropriation to the Department of Public Works in the amount of \$5,000; and
 - 4. Establish a Transfer from the General Fund in the amount of \$5,000.
- c. Adoption of the following 2009-2010 Appropriation Ordinance amendments in the General Fund:
 - 1. Decrease the Non-Personal/Equipment appropriation in the Environmental Services Department by \$5,000; and
 - 2. Establish a Transfer to the Business Improvement Districts Fund in the amount of \$5,000.

OUTCOME

Approval of this agreement will enable the Willow Glen Business Association ("Business Association") to provide district enhanced services for cleaner sidewalks, litter pickup, more attractive streetscapes, better parking management, and increased promotions and events in Willow Glen in accordance with the formation of the Willow Glen Community Business Improvement District ("District"). The recommended appropriation actions will establish a budget mechanism for the operation of the District.

BACKGROUND

On December 18, 2007, the City entered into an agreement with New City America ("Consultant") to assist with the formation of a Community Benefit Improvement District in the Willow Glen area. The agreement specified that compensation for Consultant services shall not exceed \$75,000. The maximum payable to the Consultant through the agreement was set at \$65,000 and a stipulation that if the Consultant costs exceed the City maximum allocation for the contract, the Consultant may be reimbursed up to \$10,000 from revenues from the first installment of property assessments if the district is formed.

On December 16, 2008, the Council approved the formation of the District 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 District. Council also approved the Willow Glen Community Benefit District Management Plan and Engineer's Report ("Plan") that described the services that will be provided by the District. The District was established to fund services beyond what the City traditionally provides, specifically sidewalk operations, beautification, order and parking, district identity and streetscape improvements, and marketing and promotions.

ANALYSIS

The Business Association was instrumental in the formation of the District. The Business Association will be the entity responsible to the City for the provision of the District services in compliance with the Plan. It will recommend to the Council, budgets and assessment rates based on the approved Plan, monitor service delivery, and enter into agreements with service providers. Staff is concluding negotiations with the Business Association and is recommending Council's approval of the agreement.

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

Beautification and Image Enhancement

Any of the following improvements proposed by the Business Association to be located in the public right of way, or on other City owned property, must be separately approved by the City:

- Directional wayfinding and gateway signage
- Installation of street furniture, planter boxes, kiosks, and lighting
- Design and installation of art
- Other public improvements in the right of way

Annual Report and Budget Approval

The City will receive an Annual Report on or before October 1 of each year from the Business Association of the services provided and compliance with the Management Plan and the proposed 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 Business 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 Business 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 Business Association for Council approval describing any proposed changes to the Management Plan, District boundaries, assessments, or District services, as well as budgeted costs for services for the next fiscal year and the proposed method and basis for levying the next year's assessment.

Procurement of Goods and Services by the Business Association

Under the proposed agreement, the Business Association would have the authority to procure goods and services using District funds as required in managing and delivering District services. In doing so, the Business Association must comply with City's procurement policies as described below:

- The Business 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 Business Association shall certify and document in the Annual Report to the Council that the Business Association complied with all the aforementioned City policies and regulations regarding the procurement of goods and services.

Disbursement of Assessment Funds to the Business Association

The Business Association will receive from the City the proceeds from the property based assessments to provide services as outlined in the Plan. The City will disburse the assessments to the Business Association within 30 days of receiving them from the County in two installments,

representing approximately one-half of the proceeds. The two disbursements are paid in advance of services rendered, providing operating funds for the following six months.

The 2009-2010 fiscal year will be the first year of assessment billings for the District and collected through the County property tax bills. The City has already received \$196,737 in assessment receipts to reflect the November 2009 property tax collections and will be recognized and appropriated as recommended in this memorandum. The assessments on properties within the District in 2008-2009 did not occur due to challenges with finalizing the agreement with the Willow Glen Business Association. The revenues from the benefit assessments are restricted and cannot be used for any purposes other than those specified in the Plan. The recommended appropriations will allow for staff charges (\$5,000) and payment for Consultant services.

The Consultant costs for professional services and reimbursable expenses have reached the \$75,000 maximum per the agreement. The City has paid the Consultant \$65,000, which this funding was approved and allocated as directed in the Mayor's June 2007-2008 Budget Message to help facilitate a Lincoln Avenue Property Based Improvement District, through the agreement executed in December 2007; therefore, the additional \$10,000 in costs will be paid from the first installment received from the District property assessments, as specified in the agreement.

As a property owner of two properties (a parking lot and the Willow Glen Library) within the district, the City will be assessed approximately \$5,000 in 2009-2010 as specified in the Plan. For subsequent years, the assessment amount will be updated to approximately \$10,000, to reflect the assessments for an entire fiscal year, and subject to annual Consumer Price Index ("CPI") increases. Since the current Willow Glen Business Improvement District was disestablished and replaced with this new Community Benefit District, the assessments on the two City-owned properties are already budgeted and will have no impact to the General Fund. The assessments will be coordinated through fund transfers at the same intervals as the billing for all other properties within the district.

The location and boundaries of the District are indicated on Attachment A.

EVALUATION AND FOLLOW UP

As part of the agreement and in accordance with the Management Plan, the Business Association will report back to the City two times annually on or before October 1 and May 1 of each year. The reports are submitted to Public Works for review and then forwarded to Council for approval. Recommendations for future appropriation and source adjustments to the District will be brought forward to Council for consideration during the annual budget process.

POLICY ALTERNATIVES

Not applicable.

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 recommended action does not meet any of the above criteria. However, this memorandum will be posted on the City's website for the March 23, 2010 Council agenda.

COORDINATION

This memorandum and related documents were prepared in cooperation with the Departments of Transportation, Environmental Services, Finance, Planning, Building and Code Enforcement, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with the Council-approved Budget Principle in that it utilizes special assessments for enhanced services.

COST SUMMARY/IMPLICATIONS

Upon approval of the recommendations in this memorandum, an appropriation will be established to provide for the collection and distribution of funds that ultimately will be used by the association to provide maintenance and operations costs associated with the District, which are special assessments collected from property owners within the District. As required in the agreement with New City America, \$10,000 from the proceeds of the first installment of assessments will be paid to the Consultant prior to the transfer of the balance to the Business Association.

As a property owner of two properties within the district, the City will be assessed approximately \$5,000 in 2009-2010. For subsequent years, the assessment amount will be updated to approximately \$10,000, to reflect the assessments for the entire fiscal year, and subject to annual CPI increases. Since the City is currently paying assessments on City properties as part of the Willow Glen Business Improvement District which was recently disestablished and will be replaced with this new Community Benefit District, the assessment on City properties are already budgeted and will have no impact to the General Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the assessments for the City-owned properties associated with the establishment of the Willow Glen Community Benefit District.

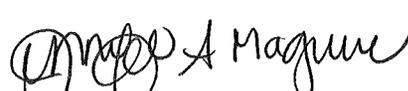
| Fund # | Appn # | Appn. Name | RC # | Total Appn | Amt. for Contract | 2009-2010 Adopted Operating Budget (Page) | Last Budget Action (Date, Ord. No.) |
|--------|--------|---|--------|------------|-------------------|---|-------------------------------------|
| 001 | 0762 | Environmental Services Department - Non-Personal/ Equipment | 500550 | \$439,536 | \$5,000 | N/A | 12/15/09, Ord. No. 28683 |

CEQA

CEQA: Exempt, File PP08-097

Planning has found the minor alterations to land (beautification projects) as a result of the formation of the Willow Glen CBD to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.


KATY ALLEN
Director, Public Works Department

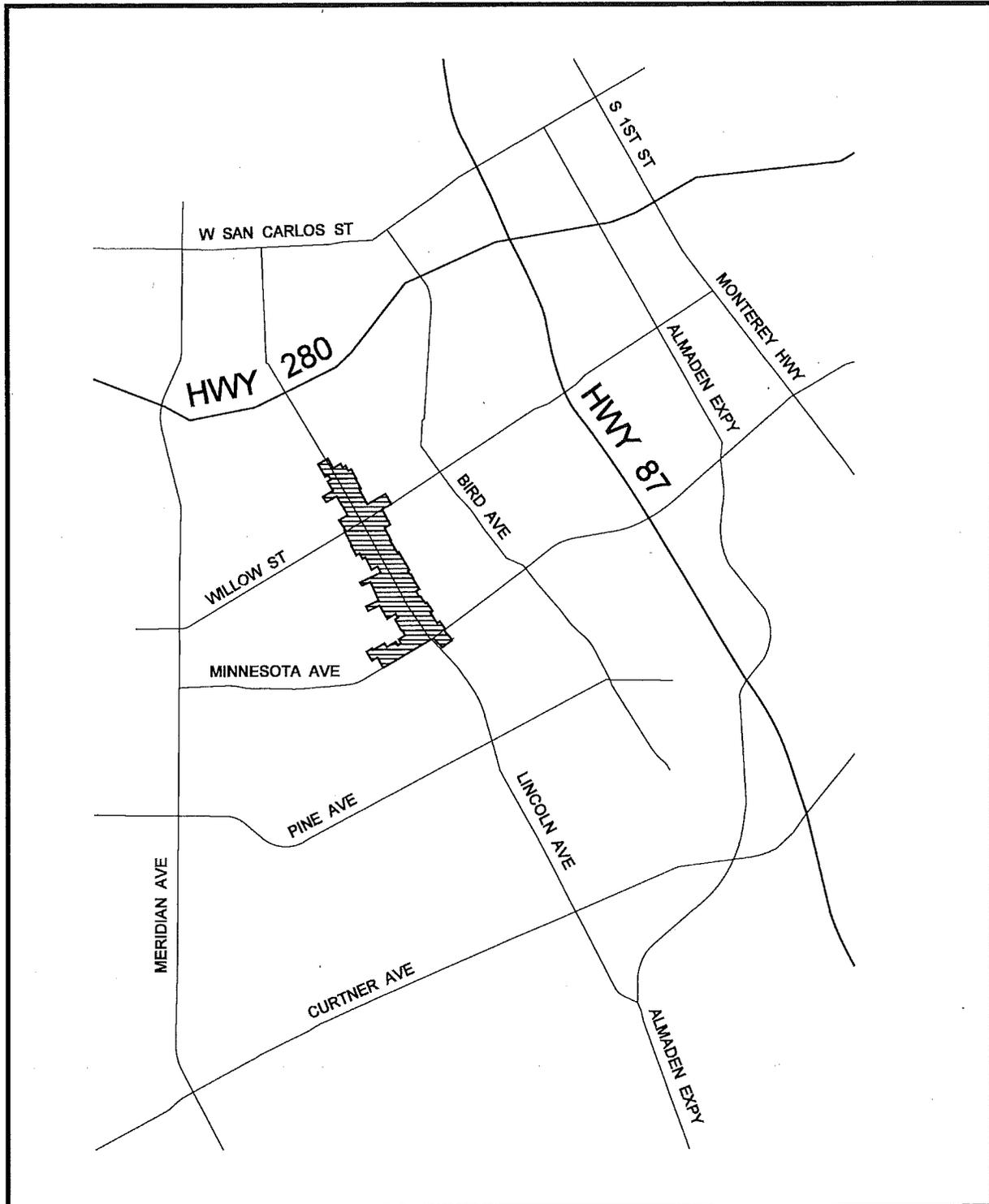

JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Business Improvement Districts Fund in the Fiscal Year 2009-2010 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$196,737.


JENNIFER A. MAGUIRE
Budget Director

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

ATTACHMENT A




CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

PUBLIC WORKS DEPARTMENT
DEVELOPMENT SERVICES DIVISION
BY: SPECIAL DISTRICTS

VICINITY MAP


NOT TO SCALE

CITY OF SAN JOSE, COUNTY OF SANTA CLARA
STATE OF CALIFORNIA
WILLOW GLEN
COMMUNITY BENEFIT DISTRICT