

**RESOLUTION NO. 74491**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH WESTRUST SAN JOSÉ LCC FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS AT THE NORTHEAST CORNER OF MONTEREY ROAD AND CURTNER AVENUE INCLUDING A REIMBURSEMENT FOR SUCH WORK TO WESTRUST SAN JOSÉ LLC IN AN AMOUNT NOT TO EXCEED \$979,616**

**WHEREAS**, Westrust San Jose LLC (“WESTRUST”) is the developer of a commercial subdivision project at the northeast corner of Monterey Road and Curtner Avenue in the City of San Jose, commonly known as “The Plant;” and

**WHEREAS**, on June 21, 2005, the City Council approved a Planned Development Rezoning (PDC04-029) for The Plant project; and

**WHEREAS**, on June 19, 2006, the Director of Planning approved Planned Development Permit (PD05-058) for The Plant project, which permit was conditioned upon WESTRUST’S construction of certain public improvements in the public right-of-way upon the three streets fronting the project: Monterey Road, Curtner Avenue and Little Orchard Avenue; and

**WHEREAS**, the public improvements required for The Plant project include, but are not limited to, construction of curb, gutter, sidewalk, asphalt pavement; and, street tress, conversions of overhead utilities to underground systems, and the installation of streetlights and traffic signals upon the street frontage to The Plant; and

**WHEREAS**, the CITY requires public street improvements on development projects within the frontage of the project and extending to the half street cross section of the street frontage; and

**WHEREAS**, the City desires to negotiate and execute an agreement with WESTRUST for the reimbursement to WESTRUST for the cost of construction of public improvements beyond the limits of the project frontage and improvements that are required of this project, which are: (1) the widening of Curtner Avenue beyond the ultimate centerline along the project frontage; (2) installation of a median island along project frontage along Curtner Avenue, where in lieu monies have been collected from a previous developer; and (3) modification of a traffic signal at the corner of Monterey Road and Curtner Avenue (“Reimbursable Improvements”) in an amount not to exceed \$979,616.00 from developer in lieu fees collected for these improvements from other projects; and

**WHEREAS**, in accordance with the requirements of Section 14.04.330 of the San José Municipal Code for City-private developer reimbursement contracts, the work is to be performed by developer WESTRUST in connection with its development of The Plant project, and it is the Public Work’s Director’s opinion that the work can be performed more efficiently, expeditiously and with less inconvenience to the public by the developer because it will be performed at the same time as public improvements required for The Plant project, and the cost to the City of having the work done by the developer will not be greater than if performed by the City or a contractor because the developer’s workers will already be deployed in the area, and the work will be performed on a greater scale and at the same time; and

**WHEREAS**, San Jose Municipal Code Section 14.04.410 limits the Public Works Director’s authorization to enter into such City-private developer contracts to no more than \$100,000 compensation for the Reimbursable Improvements, so further Council authorization is required for the Director to negotiate and execute an agreement with WESTRUST for the Reimbursable Improvements.

**NOW, THEREFORE,** BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

1. The above-referenced recitals are incorporated herein as findings.
2. The Public Works Director is hereby authorized to negotiate and execute an agreement with Westrust San Jose LLC for the Reimbursable Improvements specified in the recitals above in an amount not to exceed Nine Hundred Seventy Nine Thousand Six Hundred Sixteen and No/100 Dollars (\$979,616.00)

ADOPTED this 24th day of June 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,  
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk