

**RESOLUTION NO. 75144**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE AUTHORIZATION OF THE DIRECTOR OF PUBLIC WORKS TO NEGOTIATE AND EXECUTE AN AMENDMENT TO AN AGREEMENT WITH WESTRUST SAN JOSE LCC FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS AT THE NORTHEAST CORNER OF MONTEREY ROAD AND CURTNER AVENUE INCLUDING A REIMBURSEMENT FOR ADDITIONAL REIMBURSEABLE WORK TO WESTRUST SAN JOSE LLC IN A REVISED AMOUNT NOT TO EXCEED \$1,126,338.**

**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**, on June 24, 2008, the Council adopted Resolution No. 74991 authorizing the Director of Public Works to enter into a City-private developer agreement with WESTRUST for the construction of the public improvements, including reimbursement in an amount not to exceed \$979,616 for additional specified work otherwise not required of WESTRUST for its project, as follows: (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 (Reimburseable Improvements); and

**WHEREAS**, on September 16, 2008, the Director of Public Works entered into a City-private developer agreement with WESTRUST as authorized by Resolution No. 74991 with a maximum reimbursement amount of \$979,616 (Agreement); and

**WHEREAS**, the City desires to negotiate and execute an amendment to the Agreement with WESTRUST for the reimbursement to WESTRUST of the cost of construction of public improvements beyond the limits of the project frontage and improvements that are required of its project, and which are in addition to the Reimburseable Improvements, as follows: (1) major modification of the existing traffic signal at Little

Orchard Street and Curtner Avenue; (2) additional median island construction on Curtner Avenue past the project frontage; and (3) conversion of the existing overhead utility facilities to underground utility facilities on Monterey Road and Curtner Avenue ("Additional Reimbursable Improvements"), by increasing the amount that may be reimbursed to WESTRUST by \$146,722, from an amount not to exceed \$979,616 to an amount not to exceed \$1,126,338 from developer in lieu fees collected for these Additional Reimbursable Improvements from other development projects; and

**WHEREAS**, in accordance with the requirements of Section 14.04.330 of the San Jose Municipal Code for City-private developer reimbursement contracts, the Additional Reimbursable Improvements are to be performed by developer WESTRUST in connection with its development of The Plant project, 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, 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 a total of no more than \$100,000 compensation for the Reimbursable Improvements and Additional Reimbursement, so further Council authorization is required for the Director

to negotiate and execute an amendment to the Agreement with WESTRUST for the Reimbursable Improvements and Additional Reimburseable 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 amendment to the September 16, 2008 Agreement with WESTRUST for the Additional Reimbursable Improvements specified in the recitals above in a total amount not to exceed One Million One Hundred Twenty Six Thousand and Three Hundred Thirty Eight and No/100 Dollars (\$1,126,338.00) for both the Reimburseable Improvements and Additional Reimburseable Improvements.

ADOPTED this 27th day of October, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED  
Mayor

ATTEST:



LEE PRICE, MMC  
City Clerk