



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

**SUBJECT: FUNDING FOR THE
COMPLETION OF THE
EVERGREEN*EAST HILLS
VISION STRATEGY**

DATE: March 6, 2007

Approved

Ray Winter

Date

3/12/07

COUNCIL DISTRICT: 5, 7 and 8

SNI AREA: West Evergreen

K.O.N.A

East Valley/680

RECOMMENDATION

It is recommended that the City Council take the following actions to continue funding for the completion of the Evergreen*East Hills Vision Strategy, Evergreen Area Development Policy update, and related documents:

1. Approve an amendment to the funding agreement with Yerba Buena Opco, Inc. to extend the funding agreement from January 1, 2007 through June 30, 2007 for the work associated with completing the Evergreen*East Hills Vision Strategy which encompasses an update to the Evergreen Area Development Policy and related documents; and
2. Delegate the authority of approving minor amendments to the funding agreement to the Director of Planning, Building and Code Enforcement to account for increases in funding received from Yerba Buena Opco, Inc. and minor schedule or task changes that remain consistent with the information contained in and the goals identified in this memorandum.

OUTCOME

Extension of the funding agreement provides a mechanism for the City to continue to use the financial support of Yerba Buena Opco, Inc. to fund City staff and consultants working on the Evergreen*East Hills Vision Strategy as applicable.

BACKGROUND

In February 2003, the City Council approved the Mayor's Budget Strategy memorandum setting forth specific guidance to control costs. With respect to long range planning, the direction was "to defer or suspend advance land use planning efforts without outside funding." Per this Council direction, all City staff work associated with the preparation of the Evergreen*East Hills Vision Strategy (Evergreen Area Development Policy update, associated General Plan amendments and related documents) has been funded through a City Council approved funding agreement with self-selected Evergreen property owners (Yerba Buena Opco, Inc.). The first funding agreement covered a period through December 2005. In June 2006, the Council approved a second funding agreement for calendar year 2006.

On December 12, 2006, the City Council upheld an appeal of the Final Evergreen*East Hills Vision Strategy (EEHVS) Environmental Impact Report and deferred the remainder of the action items related to the EEHVS project to March 2007. The deferral was requested and accepted by the City Council due to work that has not been completed, including: (1) a contractual arrangement with the property owners, which secures their voluntary contributions toward improvements and amenities and (2) fiscal and financial impact analyses for EEHVS.

The two consultant studies help to evaluate the outstanding economic questions. The fiscal study analyzes the potential costs and revenues to the City associated with the proposed development alternatives for the opportunity sites (i.e., can the City afford to pay for services for additional residential homes in Evergreen). The property owners have agreed, as mentioned below, to consider the fiscal study a reasonable cost of the EEHVS. In contrast, the financial analysis evaluates the developers' voluntary offer to pay for extraordinary transportation and community amenities in exchange for land use approvals. The owners are not paying for the financial analysis because it is intended to help determine if this offer is reasonable in light of the differential land value between residential and non-residential use.

In January 2007, a memorandum was distributed to the Mayor and Council associated with an agenda item for a Continuation Agreement that will extend the terms of the Funding Agreement that expired December 31, 2006. After several deferrals, the item was dropped from the Council agenda for March 6, 2007 due to the Continuation agreement not yet being final between the City and the property owners. After the item was dropped, the parties completed their negotiations on the agreement and it is now ready for Council consideration.

ANALYSIS

The proposed Continuation Agreement modifies the previous agreement in the following minor ways: 1) the term of the agreement has been extended through June 2007 to reflect changes in the EEHVS project schedule; 2) the funding of a consultant has been added for the necessary work associated with the preparation of a fiscal impact analysis; and 3) the City will use unexpended funds from the previous agreement to pay for its services through the end of June 2007 which are estimated to be sufficient to complete the work. The extension of the funding

agreement between the City of San Jose and Yerba Buena Opco, Inc. would not increase the budget for staff costs despite the extension of the project timeline.

The June 2006 funding agreement, now expired, provided for funding of up to \$2,328,358 for City staff costs for all phases of the project that were to be completed by December 2006. Yerba Buena Opco has made payments consistent with the previous funding agreement in the total amount of \$1,373,455. After a review of expenses to date, there remains approximately \$619,311 in the account. This amount should cover the estimated expenses through June to complete EEHVS. The balance from the original agreement (\$954,902) would no longer be available to the project under the proposed agreement. The original funding agreement and subsequent amendments require that payments for staff work to complete the EEHVS be made in advance (which has occurred) and that any over payments would be reimbursed to Yerba Buena Opco, Inc., upon completion of the EEHVS project.

Based on estimates of staff cost to complete the remaining work plan items for the EEHVS and the cost of consultant work needed to prepare a fiscal impact analysis, no additional funding is required beyond the payments made to date by the property owners. Therefore, staff is requesting only that the City Council extend the original funding agreement to June 2007 and reallocate consultant dollars to allow for the funding of the fiscal impact analysis, using unexpended funds from the previous agreement to pay for its services through the end of June 2007. These unexpended funds are estimated to be sufficient to complete the work.

ALTERNATIVES

Alternative 1: Approve the Continuation Agreement.

Pros: This alternative would provide funding for the completion of EEHVS.

Cons: This alternative would continue funding by property owners/developers, which may contribute to a negative perception about the EEHVS effort. This perception is that the outcome of the effort may favor the developers due to their financial support. Staff has been clear that the developers' money pays for the effort to be occurring at this time and does not influence staff's recommendation regarding EEHVS.

Alternative 2: Not approve the Continuation Agreement.

Pros: The EEHVS would no longer be subject to a perception associated with developer/property owner-funded planning efforts, as described above.

Cons: City departments would need to absorb the cost of EEHVS at a time when their budgets do not include funding to cover this activity. The Administration is already absorbing the approximate \$100,000 cost of a financial analysis of the developer's proposal. If the continuation agreement is not approved, the Administration would need to find an additional \$96,000 to cover the cost of the fiscal analysis. The difference between these two studies is explained in the "Background" section of this memorandum.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**
- ✓ **Criteria 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 Evergreen East Hills Vision Strategy process involves extensive participation through open community task force meetings, broad community meetings at key points in the process, and included public hearings before Planning Commission, other relevant City Commissions, and the City Council.

COORDINATION

The preparation of this memorandum and the Continuation Agreement was coordinated with the City Attorney's Office. Budget cost estimates were coordinated with the City Attorney's Office, Budget Office, Department of Public Works, Finance Department, Office of Economic Development, Department of Parks, Recreation and Neighborhood Services and Department of Transportation.

COST IMPLICATIONS

In February 2003, the City Council approved the Mayor's Budget Strategy memorandum setting forth specific guidance to control costs. With respect to long range planning, the direction was "to defer or suspend advance land use planning efforts without outside funding." Per this Council direction, all City staff work associated with the preparation of the Evergreen*East Hills Vision Strategy (Evergreen Area Development Policy update, associated General Plan amendments and related documents) has been funded through a City Council approved funding agreement with self-selected Evergreen property owners (Yerba Buena Opco, Inc.). Approval of the proposed continuation agreement would continue this arrangement and allow the preparation of the Evergreen*East Hills Vision Strategy to continue to completion without incurring staffing costs to the City General Fund with the outstanding payment noted above.

HONORABLE MAYOR AND CITY COUNCIL
March 6, 2007
Subject: Evergreen*East Hills Vision Strategy
Page 5

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
001	3255	EVERGREEN SMART GROWTH STRATEGY	1,436,040	N/A	IX-8	N/A

CEQA

Exempt, PP03-10-349.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Laurel Prevetti at (408) 535-7901.

Attachment:

Funding Agreement to be submitted under separate cover.