



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Albert Balagso
Jennifer Maguire

SUBJECT: SEE BELOW

DATE: 07-23-07

Approved

Delma Putra

Date

7/28/07

COUNCIL DISTRICT: 7
SNI AREA: Tully / Senter

SUBJECT: SECOND AMENDMENT TO THE DEVELOPMENT, OPERATIONS AND MAINTENANCE AGREEMENT WITH THE VIET HERITAGE SOCIETY AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE CONSTRUCTION TAX AND PROPERTY CONVEYANCE TAX FUND: PARKS PURPOSES COUNCIL DISTRICT #5

RECOMMENDATION

1. Adoption of a resolution authorizing the City Manager to negotiate and execute a second amendment to the agreement ("Agreement") with the Viet Heritage Society (VHS) for the development, maintenance and operations of the Vietnamese Heritage Garden (VHG) to:
 - A. Increase the City's contribution toward the project by \$320,000, from \$1,410,000 to \$1,730,000.
 - B. Document the additional funding and terms of use of such funds.
2. Adoption of the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #5 (Fund 382):
 - A. Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$150,000 for the Vietnamese Cultural Heritage Garden; and
 - B. Decrease the Reserve: Vietnamese Heritage Garden by \$150,000.

CEQA: PP04-228 (Addendum to an EIR).

Subject: Second Amendment to the Development, Operations and Maintenance Agreement with the Viet Heritage Society.

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OUTCOME

With approval of the actions requested, Council will amend an Agreement with VHS, adding \$320,000 to the Agreement for a total of \$1,650,000 in direct funding to the VHS. An additional \$80,000 is committed within the original Agreement for Public Works costs related to plan review and inspection services, thereby making the City's committed contribution to the project up to \$1,730,000. The amendment would set out proposed payment terms of the additional funding. Approval of these actions would advance a longtime goal of the City and the Vietnamese community to create a public garden dedicated to recognizing the richness of the Vietnamese culture and the value of the cultural diversity in San José.

EXECUTIVE SUMMARY

On April 12, 2005, Council approved an Agreement with the VHS for the development, maintenance and operations of a 4.2-acre Vietnamese Heritage Garden located within Kelley Park. On October 31, 2006, City Council approved the first amendment to the Agreement with VHS for development, operations and maintenance of the VHG. Under the current amended Agreement the City contribution toward the project is \$1,330,000 with an additional \$80,000 to go toward payment of Public Works for plan review and inspection services, for a total City contribution of \$1,410,000.

As part of the FY 2007-2008 capital budget process, an additional City contribution totaling \$320,000 [\$170,000 from the Council District 7 Construction and Conveyance Fund (385) and a \$150,000 reserve in the Council District 5 Construction and Conveyance Fund (382)] has been budgeted to support the project. Under the proposed second amendment to the Agreement, these additional funds will be available to VHS within 14 days of execution of the amendment by the City Clerk, paid on a reimbursement basis by invoice, to reimburse costs for planning, design or development of Phase I of the gardens.

Under the amended Agreement the City contribution toward the project would be \$1,650,000 with an additional \$80,000 to go toward payment of Public Works for plan review and inspection services, totaling up to \$1,730,000 in City support. The current preliminary estimate for Phase I of the project is \$6,000,000.

BACKGROUND

On April 12, 2005, Council approved an Agreement with the VHS for the development, maintenance and operations of a 4.2-acre Vietnamese Heritage Garden located within Kelley Park. In the Agreement, VHS agrees to donate the project to the City of San José as a public park for the use and enjoyment of all its residents.

The project is intended to be built in two phases. The 4.2-acre Phase I site improvements include

a central plaza; various elements of cultural significance; a 3-flag display consisting of the United States of America, the Vietnamese Heritage (former Republic of South Vietnam), and the California State flag; park restroom; utilities; miscellaneous plantings; and several specialized gardens made up of native California and Vietnamese plants. A sidewalk will be constructed along the west side of Roberts Avenue to provide pedestrian access to Phelan Avenue. Permanent lighting will include security lighting and streetlights. The park design proposes 57 parking spaces with overflow parking to be accommodated within Kelley Park or other nearby sites. Phase II of the project consists of a 7,000 square foot Vietnamese Historical Museum (housing cultural artifacts, offices and restrooms) and a 4,500 square foot Ben Thanh Building, which will house an information center and rotating cultural exhibits.

On August 27, 2006, a ceremonial ground breaking event occurred at the project site. On October 31, 2006, City Council approved the first amendment to the Agreement with VHS for development, operations and maintenance of the VHG. The first amendment increased the level of direct City support to the Vietnamese Heritage Garden project by \$330,000, from \$1,080,000 to \$1,410,000, and outlined the terms of use of those funds.

On June 19, 2007, City Council approved the allocation of an additional \$320,000 in support of the Vietnamese Heritage Garden with the adoption of the 2007-2008 Capital Budget. The additional funds are comprised of \$170,000 from the Council District 7 Construction and Conveyance Fund (385), which are already appropriated and \$150,000 from a reserve in the Council District 5 Construction and Conveyance Fund (382). Included in this memorandum is an appropriation request to move the reserve funds into an active appropriation, thereby allowing the funds to be expended.

The 95% construction documents were submitted to the City for review on June 5, 2007. Review is scheduled for completion by approximately July 27, 2007. Assuming all contractual conditions are met, construction could begin in late August 2007, with completion of Phase I in late summer of 2008.

ANALYSIS

Under the current Agreement the City contribution toward the project is \$1,330,000 with an additional \$80,000 to go toward payment of Public Works for plan review and inspection services. The VHS has raised \$1,000,000 in donations and has pledged of an additional \$1,000,000. The State of California, through the California Cultural Historical Endowment, will provide \$1,300,000 to VHS.

The current Agreement provides that the City contribution of up to \$1,330,000 be used in support of the planning and construction efforts of Phase I of the project. This funding will be paid on a reimbursement basis by invoice. An initial amount of \$330,000 has been made available to VHS and disbursed to address costs incurred for planning and design of the gardens. Up to one half (\$500,000) of the remaining \$1,000,000 City contribution will be available to reimburse costs

incurred by VHS within 30 days of the notice to proceed for Phase I of the project. VHS may submit invoices on a monthly basis to seek reimbursement up to \$500,000. The Agreement provides that the second \$500,000 of the remaining City contribution is available to reimburse VHS for costs incurred 30 days after Phase I project acceptance by the City.

As previously mentioned, the City is contributing an additional \$320,000 to support the project. Under the proposed second amendment to the Agreement, these additional funds will be available to VHS within 14 days of execution of the amendment by the City Clerk, paid on a reimbursement basis by invoice, to reimburse costs for planning, design or development of Phase I of the gardens.

Under the amended Agreement the City contribution toward the project would be \$1,650,000 with an additional \$80,000 to go toward payment of Public Works for plan review and inspection services, totaling up to \$1,730,000 in City support. The current preliminary estimate for Phase I of the project is approximately \$6,800,000.

With the exception of the terms and conditions described within this report, the proposed amendment retains all of the terms and conditions as called for within the original Agreement and first amendment to the Agreement.

EVALUATION AND FOLLOW-UP

An informational memorandum will be provided to the City Council reporting on the bid and award of the project by VHS at the appropriate time.

The Agreement between the City and VHS includes criteria that must be met by VHS prior to the issuance of a Notice to Proceed for construction, establishes project milestones that must be achieved to trigger the release of City funding, and establishes criteria and checkpoints related to the post-construction maintenance and operations of the facility.

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)**

Subject: Second Amendment to the Development, Operations and Maintenance Agreement with the Viet Heritage Society.

No public outreach was necessary as this is an amendment to an existing agreement which is limited to funding disbursement issues. This memorandum will be posted on the City's website for the August 14, 2007, City Council agenda.

COORDINATION

This Agreement has been coordinated with the Office of the City Attorney, Department of Public Works, Department of Planning, Building and Code Enforcement, and the Office of Council Districts 5 and 7.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Project Delivery (City)	\$80,000
VHS Project Delivery (design and City inspection)	680,000
Construction (if applicable)	5,500,000
Contingency (if applicable)	550,000
Total Project Costs	<u>\$6,810,000</u>

2. COST ELEMENTS OF AGREEMENT/CONTRACT: N/A

3. CITY'S SOURCE OF FUNDING:
- 382 - Council District 5 Construction and Conveyance Tax Fund
 - 385 - Council District 7 Construction and Conveyance Tax Fund
 - 391 - Parks City Wide Construction and Conveyance Tax Fund

4. FISCAL IMPACT: The annual net operations and maintenance impact to the General Fund for the first years of Phase I operation (Projected to be FY 2008-2009) is projected at approximately \$37,000 per year. This is directly due to VHS assumption of the maintenance of the Garden for a period of up to 4 years as outlined in the Agreement. At full City assumption of maintenance and operations, the annual net Phase I cost to the City is projected to be approximately \$157,000. The appropriate budget addition requests will be submitted through standard City processes. In the event that these costs are incorporated within the existing park operations and maintenance program, service levels of existing sites will be impacted.

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BUDGET REFERENCE

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

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2007-2008 Proposed* Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining City's Contribution			\$320,000			
Remaining Funding Available						
385	4288	Vietnamese Heritage Garden	\$170,000	\$170,000	Page V - 395	
Recommended Additional Funding**						
382	TBD	Reserve: Vietnamese Heritage Garden	\$150,000	\$150,000	Page V- 362	
TOTAL			\$320,000	\$320,000		

*The 2007-2008 Proposed Capital Budget was approved by the City Council on June 19, 2007.

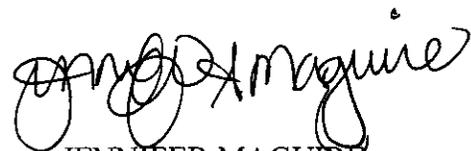
**This memorandum includes appropriation actions to reduce the Vietnamese Heritage Garden reserve and establish an active Vietnamese Heritage Garden appropriation to ensure adequate funding is available for the agreement with the Viet Heritage Society.

CEQA

CEQA: PP04-228 (Addendum to an EIR).



ALBERT BALAGSO
 Director of Parks, Recreation
 and Neighborhood Services



JENNIFER MAGUIRE
 Acting Budget Director

For questions please contact Brian Hartsell, Park Manager at 277-2731.