



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Albert Balagso
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: 07-14-08

Approved

Date

7-18-08

COUNCIL DISTRICT: 7

SNI AREA: Tully / Senter

SUBJECT: THIRD AMENDMENT TO THE DEVELOPMENT, OPERATIONS AND MAINTENANCE AGREEMENT WITH THE VIET HERITAGE SOCIETY AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE SERVICES FOR REDEVELOPMENT CAPITAL PROJECTS FUND (CITY-SIDE REDEVELOPMENT FUND) IN THE AMOUNT OF \$100,000 FOR 2008-2009 AND ADOPTION OF A RESOLUTION MAKING CERTAIN DETERMINATIONS REGARDING THE EXPENDITURE OF AGENCY FUNDS ON CERTAIN PUBLIC IMPROVEMENTS.

RECOMMENDATION

1. Adoption of a resolution authorizing the City Manager to negotiate and execute a third 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 \$100,000, from \$1,730,000 to \$1,830,000; and
 - B. Amend the agreement to change the completion of Phase I of the improvements within 6 years of execution of the original agreement and completion of Phase II of the improvements by December 31, 2015 and to provide the terms of use of the additional funding.
2. Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (450):

- A. Increase Beginning Fund Balance by \$100,000; and
 - B. Establish an appropriation to the Parks, Recreation and Neighborhood Services Department for the Vietnamese Cultural Heritage Garden (PSM 534) in the amount of \$100,000.
3. It is also recommended that the City Council adopt resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Vietnamese Heritage Garden project as more specifically described in the memorandum from the Redevelopment Agency, dated January 15, 2008 attached hereto.

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

OUTCOME

With approval of the actions requested, the City Council will amend the Development, Operations and Maintenance Agreement with VHS, adding \$100,000 to the funds committed to the Vietnamese Heritage Garden project via the Agreement. The amendment would set out proposed payment terms of the additional funding. These actions would update several key dates within the current agreement. 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, the City Council approved an agreement with the VHS for the development, maintenance and operations of a 4.2-acre VHG located within Kelley Park. On October 31, 2006, City Council approved the First Amendment to the Development, Operations and Maintenance Agreement with the VHS. On August 14, 2007, City Council approved the second amendment to the agreement. Collectively, amendments one and two raised the City contribution toward the project to \$1,650,000 with an additional \$80,000 to go toward payment of Department of Public Works for plan review and inspection services for a total City contribution of \$1,730,000.

As part of the 2007-2008 San José Redevelopment Agency Capital Budget process, an additional contribution totaling \$100,000 has been allocated to support the construction phase of the project. Under the proposed third amendment to the agreement, these additional funds will be available to VHS to reimburse costs for construction of Phase I of the gardens.

Under the amended agreement the City's total contribution toward the project would be \$1,830,000, of which \$80,000 goes toward payment of Department of Public Works plan review and inspection services.

Lastly, the requested amendment to the agreement updates several key delivery dates within the agreement.

BACKGROUND

On April 12, 2005, the City Council approved an agreement with the VHS for the development, maintenance and operations of a 4.2-acre VHG located within Kelley Park. Under the terms of the original Agreement the City was to provide a contribution of \$1,000,000 toward construction and design costs for Phase I of the project. It also includes an additional City contribution of \$80,000 for plan review and inspection services. 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 City 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, 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 Development, Operations and Maintenance Agreement with the VHS. 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 term of use of those funds.

On June 19, 2007, City Council approved the appropriation of an additional \$320,000 in support of the Vietnamese Heritage Garden as part of the Adopted 2007-2008 Capital Budget. The additional funds were comprised of \$170,000 from the Council District 7 Construction and Conveyance Fund (Fund 385) and \$150,000 from Council District 5 Construction and Conveyance Fund (Fund 382). On August 14, 2007, the Second Amendment to the Development, Operations and Maintenance Agreement was approved by the City Council, incorporating these additional funds into the agreement and clarifying terms of their use.

As part of the 2007-2008 San José Redevelopment Agency Capital Budget process, an additional contribution totaling \$100,000 has been allocated to support the project. This memorandum includes recommendations to appropriate these funds to the Department of Parks, Recreation and Neighborhood Services under PSM #534 which was executed on May 22, 2008. Under the proposed third amendment to the agreement, these additional funds will be available to VHS within 30 days of

the Notice to Proceed with construction, paid on a reimbursement basis by invoice, to reimburse costs for construction of Phase I of the gardens.

The 100% construction documents are currently undergoing review by the Department of Public Works. Assuming all contractual conditions are met, construction could begin in the fall of 2008, with completion of Phase I in late spring of 2010.

ANALYSIS

Under the current agreement the City contribution toward the project is \$1,650,000 with an additional \$80,000 to go toward payment of Department of Public Works for plan review and inspection services. The VHS has raised \$1,000,000 in donations and has pledges of an additional \$1,000,000. In addition, the State of California, through the California Cultural Historical Endowment will provide \$1,300,000 to VHS. VHS has prepared and submitted other grants, with the outcome of those grants pending.

The current agreement provides that the City contribution of up to \$1,650,000 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. A total amount of \$650,000 has been made available to VHS and dispersed to date 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 part of the 2007-2008 San José Redevelopment Agency Capital Budget process, an additional contribution totaling \$100,000 has been allocated to support the project. Under the proposed third amendment to the agreement, these additional funds will be available to VHS within 30 days of the Notice to Proceed, paid on a reimbursement basis by invoice, to reimburse costs for construction of Phase I of the gardens.

Under the third amended agreement the City contribution toward the project would be \$1,830,000, of which \$80,000 goes toward payment of Department of Public Works for plan review and inspection services. The current preliminary total cost estimate for Phase I of the project is approximately \$9,323,500.

Lastly, the proposed amendment to the agreement adjusts several key delivery dates within the agreement. Due to the unique public-private partnership this project demonstrates, additional time has been needed for plan review and project coordination. Therefore, approval of the proposed amendment extends the completion dates called for in the original agreement, Section 9, Schedule of Performance, from three years after execution of the agreement for Phase I and December 31, 2011

for Phase II to six years after execution of the original agreement for Phase I and December 31, 2015 for Phase II improvements. Applicable language within Section 2, Purpose of this Agreement, and section 4, Completion Date of Phase I, will also be amended to be consistent with Section 9 as outlined above.

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 the first and second amendments 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.

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)**

No public outreach was necessary as this is an amendment to an existing agreement which is limited primarily to funding disbursement issues. This memorandum will be posted on the City's website for the August 5, 2008 City Council agenda.

COORDINATION

This agreement has been coordinated with the Office of the City Attorney, Department of Public Works, and the Department of Planning Building and Code Enforcement.

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

The amendment provides an additional City contribution of \$100,000 toward Phase I of the project.

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	
	Total Project Costs	\$9,323,500
	City's Contribution to the Project	\$1,830,000
	Prior Years Expenditure	<u>\$1,565,853*</u>
	Remaining Project Cost (City's Contribution)	\$264,147

*A total of \$1,565,853 is anticipated to be expended/encumbered from 2005-2006 through 2007-2008.

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

3. SOURCE OF FUNDING:

001- General Fund

382 - Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 5

385 - Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 7

391 - Construction Tax and Property Conveyance Tax Fund: City Wide Parks Purposes

450 - Services for Redevelopment Capital Projects Fund

VHS - includes California Cultural Historical Endowment funds and donations

4. FISCAL IMPACT:

Once the garden is complete, the VHS is responsible for maintaining the facility for the first four years. Upon full City assumption of maintenance and operations costs of Phase I of the Garden (projected in 2012-2013) the annual net cost to the City is projected to be approximately \$164,000. This funding was included in the 2009-2013 General Fund Forecast, released on February 29, 2008.

07-14-08

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

Page 7

BUDGET REFERENCE

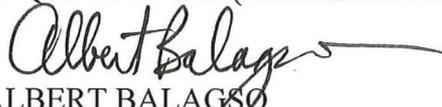
The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction and contingency costs.

Fund #	Appn #	Appn Name	Total Appn.	Proposed Capital Budget Page	Last Budget Action (Date, Ord. No.)
Remaining City's Contribution			\$264,147		
Current Funding Available					
391	4288	Vietnamese Cultural Heritage Garden	\$168,000	V - 457	6/24/2008, Ord. No. 28353
Recommended Additional Funding*					
450	TBD	Vietnamese Cultural Heritage Garden	\$100,000		
TOTAL			\$268,000		

*Included in this memorandum is a request to appropriate \$100,000 from the Services for Redevelopment Capital Projects Fund to provide sufficient funding for the third amendment to the Agreement with the Viet Heritage Society for development of the Vietnamese Cultural Heritage Garden.

CEQA

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


 ALBERT BALAGSO
 Director of Parks, Recreation
 and Neighborhood Services

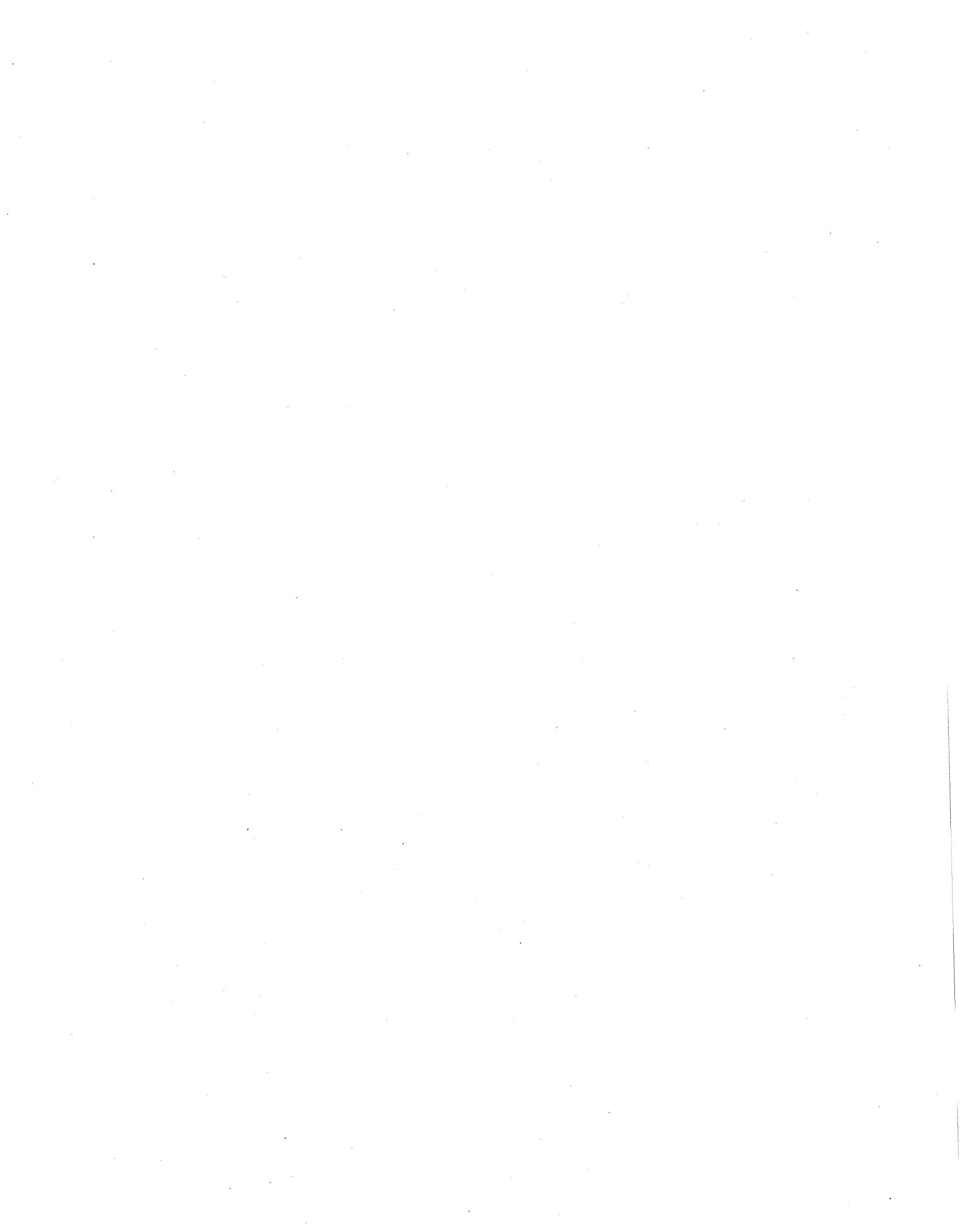

 JENNIFER A. MAGUIRE
 Budget Director

I hereby certify that there will be available for appropriation in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Capital Fund) in the Fiscal Year 2008-2009 monies in excess of those heretofore appropriated there from, said excess being at least \$100,000.


 JENNIFER A. MAGUIRE
 Budget Director

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

Attachment: Memorandum from Redevelopment Agency dated January 15, 2008



THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

MEMORANDUM

TO: KENN LEE CAPITAL BUDGET COORDINATOR	FROM: ANNA L. LE DEVELOPMENT OFFICER
SUBJECT: SEE BELOW	DATE: January 15, 2008

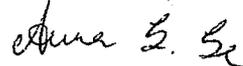
SUBJECT: DETERMINATIONS REGARDING FUNDS TRANSFERRED TO THE CITY FOR PUBLIC IMPROVEMENT PROJECT

The Agency has transferred \$100,000 to fund Parks, Recreation and Neighborhood Services for the construction phase of the Vietnamese Heritage Garden Project in the Strong Neighborhoods Initiative Redevelopment Project area.

Section 33445 of the Redevelopment Law requires the City Council to make certain determination with respect to publicly owned improvements funded by the Redevelopment Agency. The required findings are as follows:

1. The Vietnamese Heritage Garden Project will construct a 4.2 acre cultural garden at Kelly Park in the Tully Senter neighborhood of the Strong Neighborhoods Initiative Redevelopment Project Area. This project will benefit project area residents.
2. This needed funding is not currently included in the City's Capital Budget and there are no other reasonable means of providing these funds to the project.
3. The addition of the Vietnamese Heritage Garden to Kelly Park will assist in the elimination of blight by adding acres of lush landscape, art and architecture to an undeveloped portion of the park, providing more usable open space and an opportunity for visitors to learn more about the Vietnamese culture. Development of park land is included in the Tully/Senter top ten priorities.
4. The implementation plan for the Strong Neighborhoods Initiative Redevelopment Project Area calls for development of open space and parks. This project is consistent with that plan.

Please proceed to incorporate the necessary findings for the public project identified above into a future City Council memo requesting Adoption of Appropriation Ordinance and Funding Sources Resolution Amendments to the City-side Redevelopment Fund.



Anna L. Le
Development Officer