

RESOLUTION NO. 2010-073

Adopted by the Sacramento City Council

February 16, 2010

APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF SACRAMENTO AND THE CITY OF SACRAMENTO REGARDING THE REIMBURSEMENT TO CITY FOR CONSULTANT AND STAFF COSTS FOR PHASE IV OF THE NATOMAS JOINT VISION

BACKGROUND

- A. The City of Sacramento (City) and Sacramento County (County) have entered into a Memorandum of Understanding (MOU) on December 10, 2002, establishing principles for land use and revenue sharing for the Natomas Joint Vision Area.
- B. The City and County jointly commenced the planning, engineering, environmental, habitat, and other activities (Technical Phase III) necessary for the implementation of the Joint Vision MOU.
- C. The City and County propose to jointly commence Phase IV of the Natomas Joint Vision work effort – focused on preparing a habitat conservation strategy. As City and County are similarly interested in the completion of Phase IV, City and County agree to incur the costs of preparing and processing Phase IV in anticipation of having those costs paid for by the Natomas Landowners Group.
- D. The County has entered into an agreement with the Natomas Landowners Group to pay the County a dollar amount sufficient to cover the City's and County's costs of completing Phase IV. The City and County now desire to enter into an agreement for the City to be reimbursed by the County for the costs the City incurs for staff time and consultant services for the preparation and processing of Phase IV.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council finds and determines that the background statements A through D are true.
- Section 2. The City Council approves and authorizes the City Manager to execute the Memorandum of Understanding Between the City of Sacramento and the County of Sacramento Regarding the Reimbursement to City of Consultant and Staff Costs for Phase IV of the Natomas Joint Vision, attached hereto as Exhibit A.
- Section 3. Exhibit A and the attachment thereto are part of this resolution.

Table of Contents:

Exhibit A: Agreement – Memorandum of Understanding Regarding Reimbursement of City Costs for NJV Phase IV

Attachment to Exhibit A – Funding Agreement with the Natomas Landowners Group for County of Sacramento Participation in the Natomas Joint Vision Phase IV

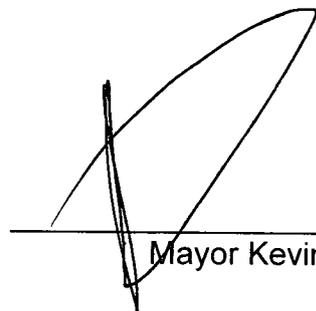
Adopted by the City of Sacramento City Council on February 16, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SACRAMENTO AND
THE COUNTY OF SACRAMENTO REGARDING THE REIMBURSEMENT TO CITY FOR
CONSULTANT AND STAFF COSTS FOR
PHASE IV OF THE NATOMAS JOINT VISION**

This Memorandum of Understanding ("MOU") is made and entered into on _____ by and between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as "County", and the City of Sacramento, a charter municipal corporation, hereinafter referred to as "City".

RECITALS

- A. City and County entered into a Memorandum of Understanding, hereinafter referred to as Joint Vision MOU, on December 10, 2002, agreeing to principles of urbanization, open space preservation and revenue sharing for unincorporated Natomas.
- B. The City and County have determined that the Visioning Plan process (Phase II) provided for in the Memorandum of Understanding dated October 29, 2008 has been completed.
- C. The City and County have determined that the Technical Phase III process provided for in the Memorandum of Understanding dated June 24, 2009 has been completed.
- D. City and County desire to work cooperatively in the next phase of the planning process (the "Phase IV").
- E. City and County are similarly interested in the completion of the Phase IV, and therefore City and County desire to share the cost of Phase IV in anticipation of having those costs paid for by the Natomas Landowners Group.
- F. City, through the City Attorney's office, will retain legal consultants in the amount of up to \$100,000 to assist in the processing of the Phase IV.
- G. City anticipates that it will incur staff costs of up to \$120,000 to work on the preparation and processing of the Phase IV over the twelve month work program.
- H. County has amended the September 24, 2008 Funding Agreement With The Natomas Landowners Group For County Of Sacramento Participation In The Development Of A Vision Plan For Natomas (hereafter "Second Amendment to the Funding Agreement"), attached hereto as Exhibit A and incorporated herein by this reference, whereby the Natomas Landowners Group will pay the County a dollar amount sufficient to pay for the City's and County's costs of the Technical Phase IV.
- G. City and County now desire to enter into a reimbursement agreement ("Reimbursement MOU") for the City to be reimbursed by the County for costs the City incurs for legal consultant services and staff time for the preparation and processing of the Phase IV.

AGREEMENT

Now, therefore, City and County agree as follows:

1. Defined Terms

All defined terms in the 2002 Memorandum of Understanding shall be deemed incorporated herein. Phase IV shall mean those planning, engineering, environmental, habitat, and other activities that shall be necessary to establish the fundamental elements of a land use master plan for the Joint Vision Area and a conservation strategy in sufficient detail to lead to the completion of the appropriate Habitat Conservation Plan. Phase IV shall also include such activities, studies or other analyses necessary to initiate the CEQA process by the County or City.

2. Cost of Consultant.

County acknowledges that City, through the City Attorney's Office, will retain a legal consultant to assist in the preparation and processing of Phase IV for a total of up to \$100,000.

3. Staff Support and Responsibilities.

a. City and County staff shall provide staff support for the preparation and processing of Phase IV as described in the Second Amendment to the Funding Agreement. Pursuant to the Joint Vision MOU, the Scope of Work's focus will be on the portion of the Natomas Basin within Sacramento County that includes the entire Joint Vision Area. The Scope of Work may only be amended in writing and signed by both parties. City and County staff will provide for multiple check-in points with City and County elected officials and the consultants as necessary. City and County shall work together to provide direction to their consultants. City shall act as the primary contact for the City's consultant.

b. County acknowledges that the cost of City staff time to assist in the preparation and processing of Phase IV is estimated to be up to \$10,000 per month for twelve months, for a total of up to \$120,000. City and County agree and acknowledge that the City's estimates for staff time and legal consultant are estimates only and are not binding on the City.

c. City and County agree that neither party has made any promises, representations or warranties to the Natomas Landowners Group, express or implied, as to the outcome of the Visioning Plan, and that the use of landowner funds in no way influences the content of the final product. The City and County acknowledge that pursuant to Section 9 of the September 24, 2008 Funding Agreement, the Natomas Landowners Group also agrees that neither the City nor County have made any promises, representations or warranties to the Natomas Landowners Group, express or implied, as to the outcome of the Phase IV, and acknowledges that reimbursement of the City's and County's expenses with landowner funds will in no way influence the content of the final product.

4. Payment of the Consultant by City.

Upon receiving periodic invoices from its legal consultant, for assistance in preparing and processing the Phase IV, City shall be responsible for paying said invoiced amounts.

5. Re-payment of Consultant and Staff-time Costs to City by County.

a. County acknowledges that it has amended the Funding Agreement with the Natomas Landowners Group entered into on September 24, 2008. The Natomas Landowners Group will pay the County, in accordance with the amended Funding Agreement, a dollar amount sufficient to pay for the City's and County's costs of preparing and processing Phase IV. County further acknowledges that the City was not a party to amended Funding Agreement in anticipation that the County will reimburse the City for its consultant and staff costs incurred in the Phase IV under this separate Reimbursement MOU.

b. The City shall submit to County its cost estimates for the following quarter in a timely fashion so that the County can submit its cost estimates to the Natomas Landowners Group as required by Section 5 of the amended Funding Agreement. The City and the County shall confer and agree upon the amount of the estimates to be included in the quarterly estimates delivered to the Natomas Landowners Group in accordance with the amended Funding Agreement. County shall pay to City the amount of the City's quarterly estimate agreed upon by the City and County within 30 days of receipt by the County of the quarterly funds from the Natomas Landowners Group. Within 30 days after the end of each quarter, the City shall prepare and submit to County a summary of any invoices it has paid to its legal consultant in connection with the preparation and processing of Phase IV and a summary invoice for the City's staff time, each in sufficient detail to establish the costs allocated to Phase IV. If the summary invoice amount exceeds the quarterly estimate, County shall remit the difference to City within 60 days of receiving the City's summary invoices. The City shall submit both the quarterly estimates and the summary of invoices to County at the address listed below:

County of Sacramento
Planning Department
827 7th Street, Room 230
Sacramento, CA 95814
Attn: Sheryl Lenzie

County shall remit to City all payments required under this MOU at the address listed below:

City of Sacramento
Community Development Department
300 Richards Blvd, 3rd Floor
Sacramento, CA 95811
Attn: Scot Mende

c. Within 30 days of the end of each quarter, City and County shall reconcile the amounts paid to City based on the quarterly estimates with actual costs incurred by City. Any excess payments made to the City shall be credited against future quarterly estimates. If after the completion or termination of Phase IV, the dollar amount paid to the City pursuant to this Reimbursement MOU exceeds its actual costs, City shall repay the overage to County to be repaid to the Natomas Landowners Group in accordance with the amended Funding Agreement.

d. If at any time the City anticipates that its total costs are likely to exceed \$100,000 for legal consultant services or \$120,000 for staff time, it shall bring this fact to the attention of County and the parties shall negotiate as to any additional amounts that shall be paid to City, or as to what services the County and Natomas Landowners Group are willing to forego in order to avoid such additional costs. This Reimbursement MOU shall then be amended to reflect any additional reimbursement that will be allowed.

e. The payments required to be made to City under subsection 5 b. are required to be made within 60 days only if County has received the necessary funding from the Natomas Landowners Group pursuant to the amended Funding Agreement.

f. City reserves the right to take any necessary action to enforce payment of amounts due under this Reimbursement MOU, including but not limited to, suspending work or filing a lawsuit against County or the Natomas Landowners Group, or both, to recover payment.

6. Amendments.

This MOU may be amended only in writing, signed by both parties.

7. Additional Work or Changes in Work.

This MOU shall apply to all additional work or changes in work that are necessary to complete Phase IV. Prior to executing any supplemental agreement or other agreement that will increase the costs associated with the Phase IV City and County shall confer regarding the necessity of the proposed supplemental agreement or other agreement.

8. Notices.

Any notice or other correspondence to a party to this MOU shall be deemed given on the date it is placed in the United States mail, first class, postage prepaid, and addressed to the party at the following address:

Notices to City:

David Kwong, Planning Director
Community Development Department
300 Richards Blvd, 3rd Floor
Sacramento, CA 95811

Notices to County:

Robert Sherry
Planning Director
827 7th Street, Room 230
Sacramento, CA 95814

9. Effective Date.

This Reimbursement MOU shall be effective upon the date it is fully executed by both parties.

IN WITNESS WHEREOF, the parties hereby execute this Memorandum of Understanding as of the date and the year written above.

COUNTY OF SACRAMENTO

CITY OF SACRAMENTO

By: _____
County Executive

By: _____
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
County Counsel

By: _____
City Attorney

ATTEST

By: _____
City Clerk

SECOND AMENDMENT TO AGREEMENT

Funding Agreement with the Natomas Landowners' Group for County of Sacramento Participation in the Development of a Vision Plan for Natomas

THIS SECOND AMENDMENT is made and entered into as of this ____ day of _____, 2010, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the Owners, all of whom are authorized to do business in the State of California and are current members of the Natomas Landowners' Group, hereinafter referred to collectively as "Owners' Group".

RECITALS

WHEREAS, the County and the Owners' Group have previously entered into an agreement on September 24, 2008 to provide funding for the preparation of a Vision Plan for the Natomas Joint Vision Area ("Agreement");

WHEREAS, the County and the Owners' Group have previously entered into a First Amendment to the Agreement on May 27, 2009 to provide funding for the preparation of Phase III studies for the Natomas Joint Vision Area ("First Amendment");

WHEREAS, the County has determined that the Phase III process provided for in the First Amendment has been completed;

WHEREAS, on January 13, 2010 the Board of Supervisors took formal action to commence the preparation of a habitat conservation plan ("HCP") for the entire Natomas Joint Vision Area including applying for any available grant funding; and the preparation of a Special Planning Area Zone ("SPA") for areas in the Joint Vision Area as one of the land use implementation tools of the HCP. The Board also directed County staff to continue to work cooperatively with the City of Sacramento and Owners' Group and associated stakeholders in the preparation of the HCP and the preparation of the SPA. The intent of parties is that the work programs will lead to a comprehensive overall environmentally based plan for the joint vision area including appropriate General Plan Amendments and/or Specific Plans for the Natomas Joint Vision Area, which are collectively described as "Phase IV";

WHEREAS, the cost burden of the Phase IV efforts which will be funded by the Owners' Group pursuant to this Agreement and this Amendment is disproportionately greater than the relative amount of acreage owned or controlled by members of the Owners' Group within the Joint Vision Area;

WHEREAS, it is the intent of the Parties to require reimbursement of all Visioning (Phases I and II), Phase III and Phase IV costs on a equitable pro-rata basis by non-participating property owners within the Joint Vision Area upon a decision by such property owners to participate in Phase IV as participating owners, or if and when such property owners pursue land use entitlement of their properties;

WHEREAS, the Owners Group has indicated that time is of the essence and desire that the County proceed at this time to work with the Owners' Group with the preparation and processing of Phase IV;

WHEREAS, the County and the Owners' Group desire to amend the Agreement to address the next phase in the planning process for the Natomas Joint Vision Area;

WHEREAS, in accordance with Section 5.8 of the Agreement, the County has established a trust fund (the "Fund") for the purpose of accepting advances of funds from the Owners' Group to be used for any of the authorized purposes set forth in the Agreement as it may be amended from time to time;

WHEREAS, in accordance with Section 5 of the Agreement, the County has established the Natomas Joint Vision Project Trust (the "Fund"); and in cooperation with the Owners' Group, an informal budget for the purpose of accepting advances of funds to be used for any authorized purpose related to any cost or expense incurred by the County for the Phase IV work program.

NOW, THEREFORE, the Agreement is amended as follows:

- I. In accordance with the terms of Section 6 the Agreement that provide for the termination of participation by any Owner, the following land owners have withdrawn from any further participation in Phase IV of the Agreement:
 - a. Angelo Tsakopoulos
 - b. North Natomas/Airport De Matos, LLC
 - c. Gibson-Tsakopoulos LLC
 - d. MJ 318, LP
 - e. West Lakeside, LLC
 - f. Natomas Boot Investors, LLC
 - g. Natomas Boot II, LLC

- II. The participating land owners for Phase IV ("Owners") and their respective land holding acreage percentage is shown below:

Property Owner	Acres	Percentage
Brookfield Natomas, LLC	2,461	63.8226%
Jeffery S. Norton Trust	178	4.6162%
Saca Development, LLC	135	3.5010%
Ose Properties, Inc	1,082	28.0602%
	3,882	100.00%

III. Each Section of the Agreement shall be amended as follows with regard to Phase IV:

Section 3 amended to read:

3. Work Program. The work program for Phase IV will be determined from time to time through consultation between the County and the Owners' Group. The work program is anticipated to include environmental, habitat, species, engineering, economic, planning and other technical studies to be initiated in January 2010 and pursued until completion. The work program for Phase IV shall be managed by the County with the advice and consent of the Owners' Group. The Owners' Group and the County shall confer no less frequently than monthly regarding the details of the work program for Phase IV. In the event either the County or the Owners' Group do not approve any element of the work program proposed by the Owners' Group or the County then that element of the work program shall not be subject to reimbursement as provided in Sections 7.3 and 7.4 of the Agreement, and the Owners' Group shall have no responsibility to fund such disapproved work element. Nothing in this Second Amendment shall prohibit either party from undertaking any work program element, activity or study independently. The disapproval of any proposed work program element by the County or the Owners' Group, shall require that the parties meet and confer regarding such disapproval. The Planning Department is responsible for developing the informal budget with the Owners' Group based on estimated project costs and funding from the Owner's Group. The Director of Planning and Community Development Department shall be responsible for the interpretation and administration of the provisions of the Agreement, and approving the informal budget.

The County commits to diligently implement the approved work program and schedule through to its completion. The Phase IV work program elements necessary to be prepared to commence (a) the amendment to the General Plan Urban Services Boundary including any associated components and (b) any Specific Plan(s), are anticipated to be completed on or about September 30, 2010. The County agrees that the preparation of an HCP, SPA, and EIR for the General Plan Amendments, Urban Services Boundary adjustments, and Specific Plan preparation for the Joint Vision Area can and should commence and be completed at the earliest possible opportunity.

3.1 Phase IV. Phase IV shall mean those planning, engineering, environmental, habitat, and other activities that shall be necessary for completion of the appropriate Habitat Conservation Plan, Special Planning Area, Amendments to the County and City General Plans, and Specific Plans or Master Plans, as appropriate. Phase IV shall also include such activities, studies or other analyses necessary to initiate the CEQA process by the County. The Phase IV costs shall be those costs incurred after January 14, 2010 and those costs incurred prior to January 14, 2010 as may be approved by the Parties. The Phase IV costs shall also include legal representation that the Owners' Group, City of Sacramento or County shall retain for the purposes of preparing the conservation strategy and the completion of the appropriate Habitat Conservation Plan (collectively

the "HCP Legal Costs"). The Phase IV costs, including the HCP Legal Costs, shall be reimbursable costs pursuant to Section 7 of the Agreement. HCP Legal Costs shall not include specific legal advocacy for an individual land owner or group of landowners related directly to the discretionary land use approvals needed from the appropriate jurisdiction.

Section 4 is amended to read:

4. **Selection and Retention of Consultants.** County reserves absolute discretion as to the selection of any and all consultants that may be necessary to assist them in completing studies required during Phase IV. The Parties acknowledge that Owners intend to furnish the County certain additional technical studies for consideration in Phase IV, as indicated in the approved Work Program. The Parties further agree that Owners may separately retain consultants to prepare technical studies, provide engineering services, and provide project management as identified in the Work Program.

Notwithstanding County's discretion in the selection of consultants described in this Section, Owners' Group reserves absolute discretion as to the selection of any and all consultants and project management that may be necessary to assist them in completing studies required during Phase IV. The Owners' Group will consult with the County, no less frequently than monthly, regarding the scope of the work to be done and the consultants to be hired. The County may separately retain consultants to prepare technical studies and analyses that it deems necessary or appropriate to be done in addition to those studies and analyses completed by the Owners' Group. The County anticipates retaining the same planning consultant retained by the Owners' Group to complete land use studies of the Joint Vision Area, including lands not owned or controlled by the Owners' Group members.

Section 5 is amended to read:

5.1 Deleted in accordance with First Amendment

5.2 The Parties anticipate that the Phase IV Work Program will be initiated in January 2010 and completed in an expeditious manner by the County. Accordingly, the term of this Agreement shall be divided into three-month quarters for funding purposes (individually, a "Quarter") beginning with January 2010.

5.5 Deleted in accordance with First Amendment

5.8 The second sentence of Section 5.8 shall be amended to read as follows: "All funds provided by Owners' Group under this Agreement shall be used by the County to fund or aid in the funding of the Work Program."

Section 7.8 is amended in its entirety to read as follows:

"For the purposes of Section 7 of this Agreement, interest earned on the unexpended balance of the cash advances shall be at the Treasury Pooled Interest Rate established by the Treasurer and Auditor-Controller of the County of Sacramento and paid on a quarterly basis."

Section 7.9 is amended to read:

7.9 "In the event that the County terminates the Amended Agreement, or otherwise determines not to complete the Phase IV process, Owners retain the right to submit applications for entitlements to the County, or to pursue pending or future administrative appeals relative to the submittal of entitlement applications."

Section 8 is amended to read:

8.0 "The County and Owners' Group recognize that the City is a participating agency with a role in the collaborative Phase IV process for the Joint Vision Area. The County and Owners' Group anticipate that City participation in Phase IV, as well as provisions for funding of City-managed components of the Work Program, will be addressed through a separate agreement between the County and City."

Section 17 shall be added to the Agreement to read as follows:

Section 17. Term: This Agreement shall terminate on December 31, 2010 unless extended in writing by the parties. Section 7.3 of the Agreement shall survive any termination.

III. REAFFIRMATION

In all other respects, the above referenced Agreement, as amended, remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the day and year first written above.

COUNTY OF SACRAMENTO, a
Political subdivision of the
State of California

By: _____
Roger Dickinson
Chairman of the Board of Supervisors
of Sacramento County, California

(SEAL)
ATTEST: _____
Clerk of the Board of Supervisors

NATOMAS LANDOWNERS GROUP, by its
Authorized Representative

W. J. Hatch Interests, Inc.
By: William J. Hatch