

SUPPLEMENTAL*Memorandum*

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: COYOTE VALLEY SPECIFIC
PLAN FUNDING AGREEMENT

DATE: March 5, 2008

Approved

Paul Krutz

Date

3/6/08

COUNCIL DISTRICT: # 2

SNI AREA: None

SUPPLEMENTAL MEMORANDUM

REASON FOR SUPPLEMENT

This supplemental memo revises the recommendation regarding the funding agreement, as depicted in boldface type below, and clarifies the purpose and implications of the proposed Coyote Valley Specific Plan Funding Agreement between the City and Coyote Housing Group (original memorandum was distributed to the City Council on February 12, 2008).

RECOMMENDATION

Staff recommends the following actions to continue funding for the preparation of the Coyote Valley Specific Plan and the revised Environmental Impact Report (EIR) and related documents:

(a) Approval of the Comprehensive Revised, Amended and Restated Funding and Reimbursement Agreement (**known as the Funding Agreement**) with Coyote Housing Group, LLC for the work associated with the preparation of the Coyote Valley Specific Plan and revised EIR and related documents to extend the term from December 31, 2007 **until the date of the City Council consideration of the Coyote Valley Specific Plan and related documents (estimated to be in or before April 2009)** and increase the amount of funding to cover staff and consultant costs by \$2.5 million for a total of approximately \$19.7 million.

(b) Adoption of a resolution authorizing the Director of Planning, Building and Code Enforcement to accept additional funding from the Coyote Housing Group, LLC as part of a future mutually agreed upon amendment to the Funding Agreement limited to

provision of additional funding only and revision of completion date for the CVSP and related documents.

(c) Adoption of a resolution authorizing the Director of Planning, Building and Code Enforcement (**PBCE**) to negotiate and execute five individual continuation agreements between the City and Schaaf and Wheeler (Hydrologist), Hexagon Transportation Consultants, HMM Inc. (Civil Engineers), Wetlands Research Associates (Biologists), and David J. Powers & Associates, to extend the term of each of the agreements from their expiration date of June 30, 2008 (or December 31, 2007 for David J. Powers and Associates) to March 31, 2009, including a provision for the Director of PBCE to extend each term by up to six month increments beyond March 31, 2009 if necessary for project completion and to increase the total amount of compensation for each firm as follows:

(1) Increase the compensation to Schaaf and Wheeler, the project hydrologist, by an amount of \$10,000 to analyze hydrological issues and impacts resulting from the plan refinement concepts for a total amount not to exceed \$150,000.

(2) Increase the compensation to Hexagon Transportation Consultants by an amount of \$10,000 to analyze transportation issues and impacts resulting from the plan refinement concepts for a total amount not to exceed \$234,415.

(3) Increase the compensation to HMM Inc., a civil engineering firm, by an amount of \$84,000 to provide engineering support for plan refinement concepts, update infrastructure cost estimates, and provide analytical support for the financial and fiscal analyses for a total amount not to exceed \$134,000.

(4) Increase the compensation to Wetlands Research Associates (WRA), the project biologist, by an amount of \$18,980 to evaluate biological issues for a total amount not to exceed \$158,380.

(5) Increase the compensation to David J. Powers & Associates Inc. by an amount of \$1,000,000 (\$592,500 in this fiscal year and \$407,500 in FY 2008/2009) for additional services required to complete and recirculate the revised EIR for a total amount not to exceed \$3,034,570.

(d) Adoption of a resolution authorizing the Director of PBCE to negotiate and execute minor amendments to the seven individual agreements between the City and Apex Strategies, Economic & Planning Systems, Dahlin Group, KenKay Associates, Engeo Engineers, Basin Research Associates, and Lowney Associates to extend the term of each of the agreements from their expiration date of June 30, 2008 to March 31, 2009, including a provision for the Director of PBCE to extend to each term by up to six month increments beyond March 31, 2009 if necessary for project completion.

(e) Authorize the Director of PBCE to request qualifications of land use/zoning consultants to conduct peer review of the development of zoning for the Coyote Valley Specific Plan,

and adopt a resolution authorizing the Director of PBCE to negotiate and execute agreements with qualified consultants for an amount not to exceed \$85,648.

(f) Adoption of a resolution authorizing the City Attorney to negotiate and execute a continuation agreement between the City and Cox, Castle and Nicholson for consultant legal services on the Coyote Valley Specific Plan from December 31, 2007 to March 31, 2009, including a provision for the City Attorney to extend the term by up to six month increments beyond March 31, 2009 if necessary for project completion, and to increase compensation by \$75,000 for a total amount not to exceed \$345,000.

(g) Adoption of the following amendments to the 2007-2008 Appropriation Ordinance and Funding Sources Resolution in the General Fund as follows:

(1) Increase the City-Wide appropriation for the Coyote Valley Specific Plan by \$1,300,000 for FY 2007/2008; and

(2) Increase earned revenue from Other Revenue by \$1,300,000 for FY 2007/2008.

(h) Continuation of seven limit dated positions (2.0 Planner, 1.0 Senior Planner and 2.0 Principal Planner, 1.0 GIS Specialist and 1.0 Office Specialist) from December 31, 2007 through June 30, 2008. Five of these positions (2.0 Planner, 1.0 Senior Planner and 2.0 Principal Planner) will continue as full-time positions from July 1, 2008 through project completion and two of them will continue as half time positions (i.e., 0.5 GIS Specialist and 0.5 Office Specialist).

OUTCOME

The desired outcome associated with this agenda item is for Council to approve the Funding Agreement (see attachment), recognizing that the Agreement commits the City to the completion of the Coyote Valley Specific Plan (CVSP) and associated documents (including a revised program-level Environmental Impact Report) on or before April 2009 assuming no extraordinary circumstances. This commitment removes the Council's ability to defer or terminate the preparation of the specific plan prior to its completion, except if the project runs out of money.

Under all circumstances, the City Council retains its ultimate legislative authority to approve, deny or defer the CVSP at the time that environmental clearance is legally adequate to support Council consideration of adoption.

ANALYSIS

Two questions before City Council on this item are:

1. Should the Administration continue to prepare a Specific Plan and related documents for Coyote Valley at this time?
2. If yes, should the City Council approve the Funding Agreement?

Planning staff recommends “yes” to both questions; however, the Council needs to be fully aware of the obligations associated with the Funding Agreement as described below.

Continue to prepare the CVSP and related documents

Based on Council’s decision in June 2007 not to modify the General Plan triggers that prohibit residential development, staff recommends the completion of the Coyote Valley Specific Plan. By completing the Plan, the City Council will be able to consider a modern vision for sustainable development in Coyote Valley that is environmentally sensitive, economically viable, and livable. Staff estimates that the Plan would be complete and ready for consideration by the Council on or before April 2009. (Originally staff estimated March 2009 assuming that the Funding Agreement would be considered by the Council in late February 2008.) If adopted, a plan would be in place to guide the future mixed use, and transit-friendly development of Coyote Valley once the General Plan’s triggers or pre-requisite conditions for residential development in Coyote Valley are met.

The specific plan does not, by itself, create unnecessary pressure for the premature development of Coyote Valley. It is being prepared as a policy-level document, which does not entitle future development. If on or before April 2009, the City Council decided to adopt the Specific Plan, residential development would not be able to proceed immediately. In addition to the satisfaction of the existing triggers in the General Plan, a significant amount of work would be required prior to any residential development including additional environmental review (state and federal), state and federal permits, annexations, Urban Area Expansion(s), financing districts, etc.

Approve the Funding Agreement

The Funding Agreement provides \$2.5 million to complete the Specific Plan, zoning, and program-level Environmental Impact Report (EIR) on or before April 2009. This amount is estimated to cover the staff and consultant costs associated with the preparation, assuming no extraordinary circumstances. Given the magnitude of the planning effort; however, it is entirely possible that extraordinary circumstances may arise (e.g., new issues are raised on the revised EIR). Because of this, the Funding Agreement as contains a provision that would allow termination if the City and/or the Coyote Housing Group declines to fund the project to complete the unforeseen work (see Section 11 of the attached Funding Agreement).

Assuming no extraordinary circumstances, the proposed Funding Agreement contractually binds the City to complete all of the documents required for the Council to consider adoption of the Specific Plan. This means that the Council would not be able to terminate the preparation of the Plan under any circumstances, except as described in the paragraph above.

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Staff understands that this commitment is important to the Coyote Housing Group due to the investment they have made on this effort.

CONCLUSION

The Coyote Valley Specific Plan is an important plan for the future of San Jose. It contains a state of the art approach to smart planning and sustainable growth to guide the development of the Coyote Valley for the next 25 to 50 years. It is a proactive approach to dealing with Coyote Valley's future, so that when the time is right for development in the future there would be a comprehensive plan in place to guide it.

The Coyote Housing Group has voluntarily funded the CVSP since its inception, and is willing to provide an additional \$2.5 million to complete the project. Council needs to be aware that approval of the Funding Agreement contractually binds the City to complete the preparation of the Coyote Valley Specific Plan assuming the funding is available to do so. This commitment removes the Council's ability to defer or terminate the preparation of the specific plan prior to its completion, except if the project runs out of money. Under all circumstances, the City Council retains its ultimate legislative authority to approve, deny or defer the CVSP at the time that environmental clearance is legally adequate to support Council consideration of adoption.

Finally, staff suggests that future agreements for the funding of City efforts, such as future planning efforts, should be in the form of Donation Agreements. A Donation Agreement simply acknowledges receipt of a donation that would be put toward the planning effort without the limitations or constraints.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti, Assistant Director, at 535-7901.

Attachment

**REVISED, AMENDED, AND COMPREHENSIVELY
RESTATED FUNDING AND REIMBURSEMENT
AGREEMENT BY AND BETWEEN THE CITY OF SAN
JOSE AND COYOTE HOUSING GROUP, LLC
REGARDING THE COYOTE VALLEY SPECIFIC PLAN
AND RELATED ENVIRONMENTAL DOCUMENTS AND
REGULATORY PERMITS**

This Revised, Amended, and Comprehensively Restated Funding and Reimbursement Agreement ("AGREEMENT") is made and entered into as of this _____ day of March, 2008 (the "EFFECTIVE DATE"), by and between the CITY OF SAN JOSE, a municipal corporation ("CITY"), and COYOTE HOUSING GROUP, LLC, a limited liability corporation ("PARTICIPATING PROPERTY OWNERS"), jointly referred to as the "PARTIES."

RECITALS

WHEREAS, CITY's adopted General Plan, San José 2020 (the "General Plan"), identifies Mid-Coyote Valley, being that area between the Coyote Greenbelt and the North Coyote Campus Industrial Area, as the Coyote Valley Urban Reserve and sets forth the vision and parameters for the preparation of a specific plan for the Coyote Valley Urban Reserve together with North Coyote Valley; and

WHEREAS, the General Plan requires the preparation of a specific plan for the Coyote Valley Urban Reserve prior to any new development in that area; and

WHEREAS, on August 20, 2002 the City Council of CITY initiated the development of a specific plan, pursuant to Section 18.20.040 of the San Jose Municipal Code, for that certain area comprising approximately seven thousand (7,000) acres of mostly undeveloped land in the southern area of CITY (the "CVSP"), which area includes the Coyote Valley Urban Reserve, the North Coyote Campus Industrial Area, and the Coyote Greenbelt, which area is generally bounded by Tulare Hill to the north, Highway 101 and the East Foothills to the east, the City of Morgan Hill to the south, and the

Santa Teresa Hills to the west, and which area is more fully described on EXHIBIT A, entitled "Coyote Valley Area," attached to this AGREEMENT and incorporated herein by this reference (the "COYOTE VALLEY AREA"); and

WHEREAS, major features of CITY's vision for COYOTE VALLEY AREA as stated in the General Plan include urban development in the north and mid-COYOTE VALLEY AREA of approximately fifty thousand (50,000) jobs and twenty-five thousand (25,000) housing units (twenty percent [20%] of which would be affordable), in a highly livable urban mixed-use community with a variety of housing types and tenancies, schools, parkland, trails, bicycle paths, transit, commercial centers, job centers and other community services and public facilities, as well as preservation of the Coyote Greenbelt located in the southern COYOTE VALLEY AREA, sensitive habitats, and the CITY's existing urban growth boundary and implementation of other major elements of CITY's General Plan; and

WHEREAS, in June of 2001, CITY, along with the County of Santa Clara, the Santa Clara Valley Transportation Authority and Santa Clara Valley Water District (collectively, "LOCAL PARTNERS"), committed to the United States Fish & Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG") to initiate the preparation of a Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP") for the Coyote Watershed and the Uvas/Llagas Watershed in the Southern Santa Clara County region, which region includes the COYOTE VALLEY AREA; and

WHEREAS, CITY and LOCAL PARTNERS have executed a Planning Agreement, the purpose of which is to further define the goals and obligations for the development of an HCP/NCCP and that Planning Agreement designates the CVSP as an interim project that would not be delayed by the development of the HCP/NCCP and recognizes that CITY may seek approval for the CVSP pursuant to the SECTION 7 CONSULTATION PROCESS defined below; and

WHEREAS, the PARTIES, after conversations with the United States Army Corps of Engineers (“ACOE”), and USFWS each presently understand that the CVSP will require permits from the ACOE for permission to fill jurisdictional waters and wetlands for public and private development, and further understand that the CVSP shall be subject to the Federal Endangered Species Act (the “Endangered Species Act”) and may be subject to a consultation process for impacts to protected species with USFWS under Section 7 of the Endangered Species Act (the “SECTION 7 CONSULTATION PROCESS”), and that the PARTIES hereto agree that the CITY, for public infrastructure purposes, and PARTICIPATING PROPERTY OWNERS, for private development entitlements pursuant to the CVSP, may initiate and may cooperatively pursue the SECTION 7 CONSULTATION PROCESS separately from the HCP/NCCP; and

WHEREAS, PARTICIPATING PROPERTY OWNERS are property owners and developers who intend to seek governmental approvals in the COYOTE VALLEY AREA and that support the preparation and adoption by CITY of the PLAN DOCUMENTS, as defined in Section 1 of this AGREEMENT, so that appropriate development within the north and mid-Coyote Valley within the COYOTE VALLEY AREA may proceed and occur in a manner consistent with CITY’s General Plan; and

WHEREAS, CITY has determined that the costs of preparation of a specific plan, associated general plan amendments, related studies, and related environmental clearance under the California Environmental Quality Act of 1970, as amended, (CEQA) may be charged to persons seeking governmental approvals that are required to be consistent with the specific plan, and where relevant to the future development project seeking City approval, pursuant to Section 18.20.090 of the San José Municipal Code; and

WHEREAS, PARTICIPATING PROPERTY OWNERS and CITY entered into that certain “Funding and Reimbursement Agreement” dated as of June 24, 2003, which agreement was further amended by letter agreements executed by the PARTIES on January 14, 2004 and June 30, 2004, respectively (collectively, the “ORIGINAL

FUNDING AGREEMENT”), which ORIGINAL FUNDING AGREEMENT estimated the total cost of activities involved with preparation of the CVSP and related documents to be \$10,900,000, memorialized the understandings, agreements and relationships of the PARTIES thereto in connection with the funding of and the initial preparatory tasks to be performed in the development of the CVSP and related documents as defined in Section 1 of the ORIGINAL FUNDING AGREEMENT); and

WHEREAS, on June 7, 2005, the PARTIES entered into an agreement entitled “Amended and Restated Funding and Reimbursement Agreement By and Between the City of San Jose and Coyote Housing Group, LLC Regarding the Coyote Valley Specific Plan and Related Environmental Documents and Regulatory Permits” (the “Amended and Restated Agreement”) pursuant to Section 18.20.090 of the San Jose Municipal Code and under which PARTICIPATING PROPERTY OWNERS agreed to further expend and deposit with CITY certain additional funds and increased to \$12,836,630 the total cost of activities estimated to be involved with preparation of the Coyote Valley Specific Plan (CVSP) and Plan Documents as defined therein; applications for resource agency permits, including but not limited to permits from the United States Army Corps of Engineers (“ACOE”), United States Fish and Wildlife Service (“USFWS”), California Department of Fish and Game (“CDFG”) and Regional Water Quality Control Board (“RWQCB”) and collectively referred to as, “RESOURCE AGENCIES” and the related studies and other documents, including without limitation environmental clearance documents required under the requirements of the California Environmental Quality Act of 1970, as amended, and expected future funding to complete documents required under the National Environmental Policy Act, as amended, that must necessarily be prepared in conjunction therewith; and

WHEREAS, PARTICIPATING PROPERTY OWNERS and CITY further amended, restated and set forth and memorialized as of June 27, 2006 to extend the term of the Agreement and amend the funding and reimbursement mechanisms to increase to \$13,402,535 the total amount of funds expended and provided by PARTICIPATING PROPERTY OWNERS estimated to be involved with the preparation of the CVSP and

Plan Documents as defined therein, the application for regulatory permits with the Resource Agencies, and related studies and environmental and other documents for the COYOTE VALLEY AREA (the "First Amendment to Amended and Restated Funding and Reimbursement Agreement"); and

WHEREAS, on August 29, 2006, PARTICIPATING PROPERTY OWNERS and CITY entered into a SECOND AMENDMENT to the Amended and Restated Agreement to further extend the term of the Amended and Restated Agreement and increase the total estimated cost of activities involved with the preparation of the CVSP and related documents to approximately \$15,982,307; and

WHEREAS, on June 26, 2007, PARTICIPATING PROPERTY OWNERS and CITY entered into a THIRD AMENDMENT to the Amended and Restated Agreement to further extend the term of the Amended and Restated Agreement, increase the total estimated cost of activities involved with the preparation of the CVSP and related documents to \$17,192,309, and modify the list of consultants and consultant costs related to the Plan preparation; and

WHEREAS, the PARTICIPATING PROPERTY OWNERS and the CITY further amended the Amended and Restated Agreement by letter agreements executed by the PARTIES on December 19, 2007 and January 18, 2008, to extend the term of the Agreement in order for the PARTIES to negotiate this AGREEMENT and to allow for reallocation of certain consultant costs to continue their related work in the interim, respectively; and

WHEREAS, CITY has estimated the final costs necessary to complete the PLAN DOCUMENTS and has represented to PARTICIPATING PROPERTY OWNERS that the contributions set forth in this AGREEMENT from PARTICIPATING PROPERTY OWNERS to the City are estimated to be sufficient and adequate to complete the PLAN DOCUMENTS assuming no new substantive issues are raised in the comments on the CEQA document to the draft and response thereto. Thus, barring any extraordinary

circumstances, CITY expects the deposits made pursuant to this AGREEMENT to be sufficient to complete the PLAN DOCUMENTS. Therefore, PARTICIPATING PROPERTY OWNERS and CITY wish to further revise, amend, and comprehensively restate their agreement as of the EFFECTIVE DATE, entered into pursuant to Section 18.20.090 of the San Jose Municipal Code, and under which PARTICIPATING PROPERTY OWNERS agree to expend and deposit with CITY certain additional funds to support final preparation and completion of the PLAN DOCUMENTS; and

WHEREAS, PARTICIPATING PROPERTY OWNERS represent to the CITY that they intend to file an application(s) for a Development Agreement, and pay associated fees, proposing that if the CVSP were adopted, CITY would process, review, and approve or disapprove any subsequent development application(s) within the CVSP area applying the General Plan policies, CVSP, zoning and other land use regulations, in effect on the date the Development Agreement is effective for the term of the agreement(s). The PARTIES acknowledge that any such development agreement application by the PARTICIPATING PROPERTY OWNERS is subject to negotiation with the CITY and that consideration thereof is subject to the CITY Council's legislative discretion in accordance with the CITY's relevant ordinances.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed to by the PARTIES hereto, the PARTIES hereby agree as follows:

SECTION 1. Purpose.

- A. The purpose of this AGREEMENT is to provide a means for PARTICIPATING PROPERTY OWNERS to fund through completion the PLAN DOCUMENTS, and to identify for PARTICIPATING PROPERTY OWNERS, a process under which the PARTICIPATING PROPERTY OWNERS can obtain reimbursement for the costs of CITY'S preparation of the PLAN DOCUMENTS to the reasonable extent that such costs can be lawfully imposed upon and reimbursed by future development in the Coyote Valley Area.

- B. As consideration for PARTICIPATING PROPERTY OWNERS' agreement to fund CITY'S preparation of the CVSP, CITY agrees to process the CVSP, General Plan Amendments necessary to allow adoption of CVSP, associated property pre-zonings and re-zonings (including any necessary amendments to Title 20 of the San Jose Municipal Code), and program-level environmental clearance documents required under the requirements of the CEQA (jointly the "PLAN DOCUMENTS"). The intended uses of the environmental clearance documents required under CEQA include adoption of the PLAN DOCUMENTS and consideration of Urban Service Area expansions and annexations consistent with the PLAN DOCUMENTS. The term PLAN DOCUMENTS specifically excludes any applications for resource agency permits, including but not limited to permits from the United States Army Corps of Engineers ("ACOE"), United States Fish and Wildlife Service ("USFWS"), California Department of Fish and Game ("CDFG") and Regional Water Quality Control Board ("RWQCB") and the related studies and other documents including environmental clearance documents required under the National Environmental Policy Act, as amended; however, the PARTIES acknowledge that PARTICIPATING PROPERTY OWNERS have previously provided funding pursuant to this Agreement to file, but not complete, RESOURCE AGENCY PERMITS. CITY further agrees to process the PLAN DOCUMENTS in an expeditious manner using the resources provided by this AGREEMENT and, upon their completion, to expeditiously bring the PLAN DOCUMENTS before the CITY'S Planning Commission and/or CITY COUNCIL for their consideration, as appropriate. CITY and PARTICIPATING PROPERTY OWNERS agree that the PLAN DOCUMENTS shall be brought forward and considered concurrently before the CITY'S Planning Commission and/or City Council.
- C. That PARTICIPATING PROPERTY OWNERS provide adequate funding resources and for the CITY to use its best efforts for the PLAN DOCUMENTS to be considered by the City Council in or before April 2009. If the PLAN DOCUMENTS are not considered by the City Council, at or prior to April 2009,

CITY shall continue to process the PLAN DOCUMENTS expeditiously and in good faith present the PLAN DOCUMENTS for City Council consideration in an expeditious manner, with sufficient staff resources, using the funds provided by this AGREEMENT.. CITY acknowledges that preparation and completion of the PLAN DOCUMENTS shall be diligently pursued and presented to the CITY COUNCIL for action when they are completed. Any application for a Development Agreement shall be considered by the CITY in accordance with applicable state and local laws, and the PARTIES shall cooperatively and in good faith negotiate such an agreement so that it may be considered by CITY COUNCIL concurrently with the CVSP.

SECTION 2. Term.

The term of this AGREEMENT ("Term") shall be from the EFFECTIVE DATE to the date of CITY Council consideration of the CVSP and PLAN DOCUMENTS, subject to the provisions of SECTION 10 herein.

SECTION 3. Financial Contributions of PARTICIPATING PROPERTY OWNERS.

A. The PARTIES agree that the party responsible for the payment of all sums due under this AGREEMENT, and the only party to whom CITY shall have any reimbursement obligation pursuant to the terms of this AGREEMENT, is PARTICIPATING PROPERTY OWNERS. The PARTIES further agree that the financial contributions for the preparation of the PLAN DOCUMENTS by each individual member of PARTICIPATING PROPERTY OWNERS and the distribution of any reimbursement received from CITY shall be determined and governed by PARTICIPATING PROPERTY OWNERS pursuant to a separate written agreement among members of PARTICIPATING PROPERTY OWNERS. The PARTIES further acknowledge and agree that nothing contained in this AGREEMENT is intended to nor shall limit or preclude CITY from obtaining additional funding from other sources to prepare or complete the CVSP or the PLAN DOCUMENTS.

- B. The PARTIES agree that the total estimated cost of activities involved with the preparation of the PLAN DOCUMENTS as of the EFFECTIVE DATE of this AGREEMENT, which may include estimates of costs of the PARTICIPATING PROPERTY OWNERS that may not qualify for reimbursement pursuant to Section 9 of this AGREEMENT or that have not yet been verified by the CITY pursuant to Section 3 of this AGREEMENT, is approximately Nineteen Million Six Hundred Ninety Two Thousand Three Hundred Six Dollars (\$19,692,306.00). The costs and amounts are set forth in more detail in EXHIBITS B-1 and B-2, entitled "City Staff Plan Preparation Costs" and "Consultant Plan Preparation Costs," respectively, and are collectively referred to as EXHIBIT B, which costs include all of those certain consultant costs set forth in SUBSECTION 3.D below, and which EXHIBIT B is attached hereto and incorporated herein by this reference (collectively, the "PLAN PREPARATION COSTS"). The PARTIES hereto acknowledge that the "PLAN PREPARATION COSTS" set forth on EXHIBIT B may be modified as set forth in SECTION 6 herein.
- C. PARTICIPATING PROPERTY OWNERS agree to advance to CITY the PLAN PREPARATION COSTS in accordance with the timetable specified in SECTION 4 herein.
- D. Consultant Contracts for Technical Consultants.
1. The PARTIES hereto acknowledge that, as set forth in SECTION 3, PARTICIPATING PROPERTY OWNERS previously entered into agreements for initial planning work related to the preparation of the PLAN DOCUMENTS with those certain consultants identified in EXHIBIT C (the "PHASE 1 CONSULTANTS"), and that CITY may enter into agreements in connection with the further preparation and completion of the PLAN DOCUMENTS with these consultants, other consultants listed on EXHIBIT B-2, or any other consultant the CITY deems necessary in its sole discretion for the completion of the PLAN DOCUMENTS.

2. The PARTIES intend that PARTICIPATING PROPERTY OWNERS' expenditures and deposits with CITY under this AGREEMENT, including those in EXHIBIT C, shall be eligible to be considered by the City Council for reimbursement pursuant to Chapter 18.20 of the San Jose Municipal Code and any additional reimbursement mechanism established pursuant to SECTION 9 herein.

3. As a condition precedent to the CITY imposing any fee upon future development subject to the CVSP in order to reimburse PARTICIPATING PROPERTY OWNERS for their costs of CITY preparation of the PLAN DOCUMENTS, PARTICIPATING PROPERTY OWNERS shall, no later than 90 days from the date of adoption of the PLAN DOCUMENTS, provide to the DIRECTOR sufficient evidence that is reasonably satisfactory to the DIRECTOR of all agreements for related services, charges to and expenditures made and incurred directly by PARTICIPATING PROPERTY OWNERS, other than those amounts paid to the CITY pursuant to this AGREEMENT, for which PARTICIPATING PROPERTY OWNERS desire to seek reimbursement as contemplated pursuant to the provisions of this AGREEMENT.

4. CITY has represented that, as of the EFFECTIVE DATE of this AGREEMENT, the consultants and costs listed on EXHIBIT B are necessary and proper to complete the PLAN DOCUMENTS. Nothing contained in this AGREEMENT shall preclude CITY from engaging the services of any consultant needed or desired by CITY to prepare or complete the CVSP or the PLAN DOCUMENTS to replace or augment the services of those certain consultants listed on EXHIBIT B-2 to this AGREEMENT. The consultants and costs listed on EXHIBIT B are for cost estimation and illustrative purposes only and are not binding upon the CITY; however, such changes shall not result in a total cost to the PARTICIPATING PROPERTY OWNERS for the PLAN DOCUMENTS that

exceeds the costs to the PARTICIPATING PROPERTY OWNERS specified in this AGREEMENT.

SECTION 4. Deposits.

- A. On or before June 30, 2005, to December 31, 2007, PARTICIPATING PROPERTY OWNERS have deposited with CITY'S DIRECTOR periodic cash deposits for PLAN PREPARATION COSTS in the total amount of Fourteen Million Three Hundred Fifty One Thousand Four Hundred Forty Nine Dollars (\$14,351,449.00).
- B. On or before April 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least Two Hundred Fifty Thousand Dollars (\$250,000.00).
- C. On or before May 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least Two Hundred Fifty Thousand Dollars (\$250,000.00).
- D. On or before June 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least Two Hundred Fifty Thousand Dollars (\$250,000.00).
- E. On or before July 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least Five Hundred Fifty Thousand Dollars (\$550,000.00).

- F. On or before August 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- G. On or before September 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- H. On or before October 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- I. On or before November 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- J. On or before December 15, 2008, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- K. On or before January 15, 2009, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- L. On or before February 15, 2009, PARTICIPATING PROPERTY OWNERS shall

deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).

- M. On or before March 15, 2009, PARTICIPATING PROPERTY OWNERS shall deposit with DIRECTOR an additional cash deposit representing a further portion of the PLAN PREPARATION COSTS in the total amount of at least One Hundred Fifty Thousand Dollars (\$150,000.00).
- N. PARTICIPATING PROPERTY OWNERS and CITY agree that all of the deposits made by PARTICIPATING PROPERTY OWNERS to CITY pursuant to this SECTION are intended to and shall constitute advance funding to CITY for PLAN PREPARATION COSTS anticipated to be incurred by CITY.
- O. If PARTICIPATING PROPERTY OWNERS fail to timely deposit with CITY any of the cash deposits required to be made by PARTICIPATING PROPERTY OWNERS under this SECTION, then CITY at its sole option may (1) terminate all work on the PLAN DOCUMENTS during the period of default by the PARTICIPATING PROPERTY OWNERS until such default is cured by the PARTICIPATING PROPERTY OWNERS, which default may result in delay in completion of the PLAN DOCUMENTS; or (2) CITY may terminate this AGREEMENT pursuant to the provisions of SECTION 10 herein.
- P. The deposits referred to in this SECTION, together with other previous expenditures made to certain consultants by PARTICIPATING PROPERTY OWNERS under this AGREEMENT, are more particularly set forth and described on EXHIBIT D, entitled "PAYMENT SCHEDULE," attached hereto and incorporated herein by this reference.

SECTION 5. Expenditure.

CITY shall utilize and expend any funds provided by PARTICIPATING PROPERTY

OWNERS to CITY as PLAN PREPARATION COSTS only for those costs incurred or arising from or reasonably related to the costs identified in EXHIBIT B, entitled PLAN PREPARATION COSTS.

SECTION 6. SCOPE OF WORK AND BUDGET REVIEW

- A. CITY has prepared an estimate of the PLAN PREPARATION COSTS described in EXHIBIT B hereto (the PLAN PREPARATION COSTS) and has entered into consultant contracts and will enter into, or receive authority to negotiate and execute, additional consultant contracts or amendments to previously executed consultant contracts all of which provide the basis for CITY's estimate.

- B. The PARTIES hereto agree that each of the consultant contracts shall be consistent with the standard CITY format for consultant contracts, which format contains a scope of work to be completed, a detailed budget, and a performance schedule.

- C. CITY staff costs shall be funded at the rates set forth in EXHIBIT B-1, the "City Staff Plan Preparation Costs." The PARTIES agree that a "full time equivalent" staff position means a staff member exclusively dedicated to the preparation of the CVSP or the PLAN DOCUMENTS.

- D. CITY shall not charge to PARTICIPATING PROPERTY OWNERS or hold PARTICIPATING PROPERTY OWNERS responsible under this AGREEMENT for those amounts incurred or encumbered by CITY during the Term of this AGREEMENT for preparation of the PLAN DOCUMENTS that exceed the total amount for all work set forth in EXHIBIT B.

SECTION 7. Refund of Deposits.

If any portion of the deposits made by PARTICIPATING PROPERTY OWNERS under this AGREEMENT has not been expended or encumbered by CITY within sixty (60) days following final consideration of a CVSP by the City Council of CITY, such

unexpended and unencumbered sums shall be returned by CITY to PARTICIPATING PROPERTY OWNERS. CITY shall provide PARTICIPATING PROPERTY OWNERS with documentation of PARTICIPATING PROPERTY OWNERS' deposits to the CITY and of CITY's expenditures and encumbrances pursuant to this AGREEMENT within 60 days of CITY Council's final consideration of the CVSP and PLAN DOCUMENTS.

SECTION 8. Administration.

- A. Preparation of the PLAN DOCUMENTS shall be directed by CITY. CITY may at CITY's sole discretion utilize independent consultant services to replace or supplement those independent consultant services identified in EXHIBIT B-2 hereto. All consultants, including without limitation the consultants described in EXHIBIT B-2, will be selected by and report exclusively to CITY. CITY agrees to provide copies of all public work product to the PARTICIPATING PROPERTY OWNERS for their review, use and information in a manner consistent with applicable laws; provided, however, that the PARTIES hereto expressly acknowledge and agree that all of this work product remains subject to the independent review, judgment and direction of CITY and shall be completed to the satisfaction of CITY. CITY further agrees to provide to PARTICIPATING PROPERTY OWNERS, at cost, any public work product, including full scale maps, graphics, photos, and documents in paper or protected electronic form as requested by PARTICIPATING PROPERTY OWNERS. PARTICIPATING PROPERTY OWNERS and CITY agree to meet regularly to give a status report on the progress of the PLAN DOCUMENTS and to answer any questions on public work product developed to date. CITY shall also meet with other members of the public to give status reports.
- B. The PARTICIPATING PROPERTY OWNERS are entering into this AGREEMENT based upon the CITY'S representation that the scope of work and tasks described in EXHIBIT B are necessary to prepare the PLAN DOCUMENTS, including without limitation that the scope of work and tasks for consultant costs for the environmental impact report related to the CVSP are

reasonably necessary to comply with the requirements of the California Environmental Quality Act of 1970, as amended. CITY shall provide PARTICIPATING PROPERTY OWNERS with copies of any new consultant contracts executed after the EFFECTIVE DATE of this AGREEMENT and any revisions to the consultant contracts executed after the EFFECTIVE DATE of this AGREEMENT.

- C. DIRECTOR shall manage and keep an accounting of the funds deposited with and expended by CITY pursuant to this AGREEMENT.
- D. CITY agrees to closely monitor the contracts and invoices, to track expenses, to monitor the status of completion of tasks, to execute necessary contract amendments, and to ensure that no payments are made until consultant complies with the invoicing requirement of the applicable contract. CITY shall require all consultants to prepare contract amendment requests to be approved by the CITY in writing in advance of commencing work that is outside the scope of the consulting contract with the CITY. CITY acknowledges that, in accordance with Section 6.D, PARTICIPATING PROPERTY OWNERS are not responsible for any costs that exceed the total costs of services set forth in EXHIBIT B. CITY agrees to provide PARTICIPATING PROPERTY OWNERS with monthly statements in the format utilized by the CITY's Department of Planning, Building and Code Enforcement documenting the total amount of invoices paid, the percentage of work complete and the balance remaining on each consultant contract.

SECTION 9. Reimbursement to PARTICIPATING PROPERTY OWNERS.

- A. CITY and PARTICIPATING PROPERTY OWNERS recognize that property owners and/or developers who are not PARTIES to this AGREEMENT may derive benefits from the PLAN DOCUMENTS and other activities when seeking development approvals in the COYOTE VALLEY AREA pursuant to the CVSP. PARTICIPATING PROPERTY OWNERS have requested CITY to establish fees

prior to the approval of any development entitlement in accordance with the CVSP (the "CVSP PREPARATION FEES"), to be charged to such other property owners and developers when applying for development approvals pursuant to the CVSP. PARTICIPATING PROPERTY OWNERS further request reimbursement from such COYOTE VALLEY SPECIFIC PLAN FEES collected by CITY for costs advanced under this AGREEMENT to the extent reasonable, relevant, and legally authorized to result in equitable contribution to the cost of preparation of the PLAN DOCUMENTS by all PARTIES obtaining development approvals pursuant to the PLAN DOCUMENTS.

- B. CITY understands and acknowledges PARTICIPATING PROPERTY OWNERS' requests and agrees that CITY Administration shall bring forward for consideration by CITY's Council no later than the date of CITY Council consideration of the PLAN DOCUMENTS legislation of general application drafted by CITY staff clarifying Chapter 18.20 of the San José Municipal Code which would have the effect of enabling the reimbursement of PARTICIPATING PROPERTY OWNERS of those deposits and expenditures incurred by PARTICIPATING PROPERTY OWNERS under this AGREEMENT. Such proposed general legislation clarifying Chapter 18.20 of the San Jose Municipal Code is intended to authorize the reimbursement from future development in the relevant Specific Plan Area of some of the direct developer costs that are incurred in addition to the funding to the CITY for Specific Plan preparation costs and associated environmental review where appropriate and lawful; and, to enable the CITY to make periodic increases in any such Specific Plan preparation fees to account for inflation over time (the "Specific Plan Ordinance Amendment"); and
- C. The PARTIES hereto understand and acknowledge that only those deposits and expenditures for CITY staff time, consultants hired directly by the PARTICIPATING PROPERTY OWNERS, which consultants are listed on EXHIBIT C, entitled "PHASE I CONSULTANTS," attached hereto and incorporated herein and for which DIRECTOR has approved the expenditure

pursuant to SECTION 3 of this AGREEMENT, and other PLAN PREPARATION COSTS as described in this AGREEMENT, including without limitation all consultant costs included in EXHIBIT B hereto, shall be eligible for inclusion in a proposed CVSP PREPARATION FEE. CITY shall include for consideration in any CVSP PREPARATION FEE proposal, to the extent that CITY believes such inclusion is consistent with the provisions of Chapter 18.20 of CITY's Municipal Code at that time, a growth factor per annum to account for the value of money over time and, if appropriate, management fees expended by PARTICIPATING PROPERTY OWNERS claimed by PARTICIPATING PROPERTY OWNERS in accordance with the requirements of Section 3.D.3 herein. CITY further agrees to consider inclusion of, to the extent that CITY believes such inclusion is consistent with the provisions of Chapter 18.20 of CITY's Municipal Code at that time, a reimbursement mechanism that prioritizes reimbursements in the order in which such expenditures were made. The establishment of the CVSP PREPARATION FEE is at the discretion of the CITY Council as to the manner, and amount of adoption, and shall be consistent with Chapter 18.20 of the San Jose City Code.

SECTION 10. Termination.

- A. PARTICIPATING PROPERTY OWNERS may terminate this AGREEMENT upon thirty (30) days prior written notice to CITY (the "NOTICE OF TERMINATION"); provided, however, that such termination shall not be effective any earlier than the date that PARTICIPATING PROPERTY OWNERS has made payment in full to CITY of all outstanding costs and expenses incurred by or on behalf of CITY for PLAN PREPARATION COSTS. CITY may, upon receipt of a notice of termination, terminate all consultant contracts, but in any event shall not charge PARTICIPATING PROPERTY OWNERS for any PLAN PREPARATION COSTS directed to be incurred by CITY more than ten (10) days after the date that CITY receives a Notice of Termination. CITY shall provide PARTICIPATING PROPERTY OWNERS with an invoice for all outstanding costs and expenses incurred by or on behalf of CITY for PLAN PREPARATION COSTS within thirty

(30) days of receipt of PARTICIPATING PROPERTY OWNERS' termination notice. CITY shall within sixty (60) days of the effective termination date refund to PARTICIPATING PROPERTY OWNERS any funds deposited with CITY pursuant to this AGREEMENT to the extent such funds are not needed to pay for costs incurred, encumbered or committed by CITY in accordance with the terms of this AGREEMENT.

- B. If PARTICIPATING PROPERTY OWNERS or CITY in any way default or breach any of its obligations under this AGREEMENT, CITY or PARTICIPATING PROPERTY OWNERS may provide the defaulting party with a notice of default ("Default Notice"). CITY or PARTICIPATING PROPERTY OWNERS may terminate this AGREEMENT only after providing a Default Notice to the other party and such termination can be effective no earlier than thirty (30) days after the date of a Default Notice, provided that the defaulting party has not cured the default or breach.
- C. In the event of any non-payment of PLAN PREPARATION COSTS or termination of this AGREEMENT, including termination pursuant to Section 11 herein, CITY shall have no obligation to proceed with preparation of the CVSP or the PLAN DOCUMENTS.
- D. If either Party believes, in good faith, that the other Party is in default of the terms of this AGREEMENT, upon written request of either Party specifying the reasons it believes the other Party is in default, the PARTIES shall meet and confer in good faith to attempt to resolve their issues. The PARTIES acknowledge that meeting and conferring may result in delay in completion of the PLAN DOCUMENTS. However, if PARTICIPATING PROPERTY OWNERS have failed to make timely payment pursuant to this AGREEMENT, nothing shall preclude the CITY from terminating work on the PLAN DOCUMENTS pursuant to Section 4 herein.

SECTION 11. Insufficient Funding Process

The Parties acknowledge that pursuant to this AGREEMENT, CITY has agreed to use the funds provided by PARTICIPATING PROPERTY OWNERS to fund, through completion, the PLAN DOCUMENTS. This provision is available to the parties after the close of the comment period on the revised and recirculated program-level Draft Environmental Impact Report and if despite CITY's good faith and diligent efforts to complete the PLAN DOCUMENTS with the funds provided by the PARTICIPATING PROPERTY OWNERS, CITY is unable to complete the PLAN DOCUMENTS without additional funds or contributions, CITY shall notify PARTICIPATING PROPERTY OWNERS of the additional tasks required for completion, the additional funds required for completion for any consultant and/or staff work resulting from any new, substantive and unanticipated issues, and the estimated date for completion of the PLAN DOCUMENTS including any delays due to lack of sufficient funding. CITY staff shall place the consideration of further funding for completion of the PLAN DOCUMENTS on the CITY Council agenda for consideration by the CITY Council, at which time the CITY Council shall determine whether CITY will expend CITY funds for the completion of the PLAN DOCUMENTS, which additional funds expended by CITY may be recoverable from all property owners (including PARTICIPATING PROPERTY OWNERS for that portion of preparation costs) benefiting from the CVSP through the Specific Plan fee established pursuant to Chapter 18.20 of the San Jose Municipal Code. If the CITY Council determines that CITY funds shall not be used for completion of the PLAN DOCUMENTS, within 45 days of CITY Council's determination, PARTICIPATING PROPERTY OWNERS shall notify CITY in writing whether PARTICIPATING PROPERTY OWNERS intend to offer the CITY the funds to complete the PLAN DOCUMENTS, or decline to offer CITY the funds to complete the PLAN DOCUMENTS. If PARTICIPATING PROPERTY OWNERS offer CITY sufficient additional funds to enable completion of the PLAN DOCUMENTS by CITY, the PARTIES will process an amendment to this AGREEMENT by letter between the PARTICIPATING PROPERTY OWNERS and the DIRECTOR. Upon approval of said amendment, CITY will complete the PLAN DOCUMENTS. During the process described above, the PARTIES understand that the preparation of the PLAN DOCUMENTS may be suspended pending

resolution of the funding. If PARTICIPATING PROPERTY OWNERS notify the CITY in writing that PARTICIPATING PROPERTY OWNERS decline to fund the completion of the PLAN DOCUMENTS, such notice will serve as the "NOTICE OF TERMINATION" pursuant to Section 10 of this AGREEMENT, and this AGREEMENT shall terminate pursuant to Section 10 of this AGREEMENT. Nothing in this section shall preclude the CITY from obtaining funding from other sources.

SECTION 12. Notices

- A. All notices to be given hereunder shall be in writing and shall be served, either personally or by certified or registered mail, return receipt requested, postage prepaid, to the persons at the addresses set forth below or to any other address provided by one party to the other from time to time in writing in conformance with the provisions of this SECTION.
- B. Notices required to be given to CITY pursuant to this AGREEMENT shall be addressed as follows:

Director of Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

with a copy to:

City Attorney
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

- C. Notices required to be given to PARTICIPATING PROPERTY OWNERS under this AGREEMENT shall be addressed as follows:

Coyote Housing Group, LLC
Attn: Kerry M. Williams, President
700 Emerson Street
Palo Alto, CA 94301

SECTION 13. Legal Actions.

- A. In addition to any other remedies that a party may have arising out of this AGREEMENT, a party may institute proceedings for mandamus, specific performance or other injunctive or declaratory relief to enforce this AGREEMENT; provided, however, that in no event shall CITY be liable in damages for any breach or violation of this AGREEMENT. Nothing in this SECTION shall preclude PARTICIPATING PROPERTY OWNERS from enforcing their rights to any sums CITY is obligated to return to PARTICIPATING PROPERTY OWNERS under this AGREEMENT.
- B. In the event that suit shall be brought by either party hereto arising out of this AGREEMENT, the PARTIES agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or, if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 14. No Third Party Rights.

Nothing in the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third PARTIES not PARTIES to this AGREEMENT, nor in any individual member, investor, developer or homebuilder in Coyote Housing Group LLC.

SECTION 15. Roles of the PARTIES.

- A. The PARTIES hereto acknowledge that without the financial assistance of PARTICIPATING PROPERTY OWNERS pursuant to this AGREEMENT and the ORIGINAL FUNDING AGREEMENT, the preparation of the PLAN DOCUMENTS might not be possible at the present time, as no alternative source of funding for such efforts has been identified and CITY agrees that all funds it expends pursuant to this AGREEMENT shall be used exclusively for the preparation and finalization of the PLAN DOCUMENTS.

- B. PARTICIPATING PROPERTY OWNERS acknowledge that the work of any and all consultants or subconsultants listed on EXHIBIT B-1, shall each be exclusively directed by and report exclusively to CITY.
- C. PARTICIPATING PROPERTY OWNERS further agree to direct any concerns or comments regarding the work, service or analysis of any of the CVSP CONSULTANTS in connection with preparation of the CVSP or the PLAN DOCUMENTS or this AGREEMENT only through DIRECTOR or his designees.
- D. CITY and PARTICIPATING PROPERTY OWNERS acknowledge that certain CVSP CONSULTANTS have collected technical information regarding conditions in COYOTE VALLEY AREA and may currently have or have had contracts with a number of PARTIES in COYOTE VALLEY AREA, including the Santa Clara Valley Water District, the County of Santa Clara, the City of San Jose, PARTICIPATING PROPERTY OWNERS and other property owners in COYOTE VALLEY AREA. Nothing in this AGREEMENT shall preclude PARTICIPATING PROPERTY OWNERS from communicating with its own consultants regarding solely private development planning in COYOTE VALLEY AREA; provided, however, that PARTICIPATING PROPERTY OWNERS agree that in any and all such communications PARTICIPATING PROPERTY OWNERS shall in no way direct or influence, or attempt to direct or influence, the work of any CVSP CONSULTANT on work being performed on or related to the CVSP or PLAN DOCUMENTS.
- E. PARTICIPATING PROPERTY OWNERS represents to the CITY that it is comprised of and represents a group of developers and homebuilders with expertise in development of large master planned communities, all of whom have property interests in COYOTE VALLEY AREA, who are sponsoring the funding of this entitlement process to facilitate the planning of COYOTE VALLEY AREA, pursuant to the General Plan and the City Council's August 2002 memorandum. PARTICIPATING PROPERTY OWNERS members intend to apply for

development approvals consistent with the General Plan, CVSP, zoning and design guidelines, if adopted by CITY and at such time as such development is permitted by CITY. Therefore, PARTICIPATING PROPERTY OWNERS agree to consult with CITY, at CITY's request, regarding development and implementation of the CVSP.

- F. Nothing contained in this SECTION is intended to deprive PARTICIPATING PROPERTY OWNERS of the ability to participate in public meetings related to any of the CVSP or the PLAN DOCUMENTS, including without limitation task force meetings, technical advisory committee meetings, community outreach meetings, or any other public meeting to the same degree as any other member of the public.

SECTION 16. Prior Agreements and Amendments.

This AGREEMENT including any and all exhibits hereto represents the entire understanding of the PARTIES hereto as to those matters addressed herein as of the EFFECTIVE DATE. No prior oral or written understanding between the PARTIES shall be of any force or effect with respect to those matters covered hereunder. Subject to specific matters and authorities that have been expressly delegated to the DIRECTOR

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RD:VMT
03/04/2008

hereunder, this AGREEMENT may be modified only by a written amendment to this AGREEMENT duly executed by the PARTIES to this AGREEMENT.

WITNESS the execution hereof as of the date first hereinabove written.

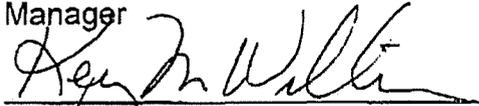
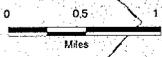
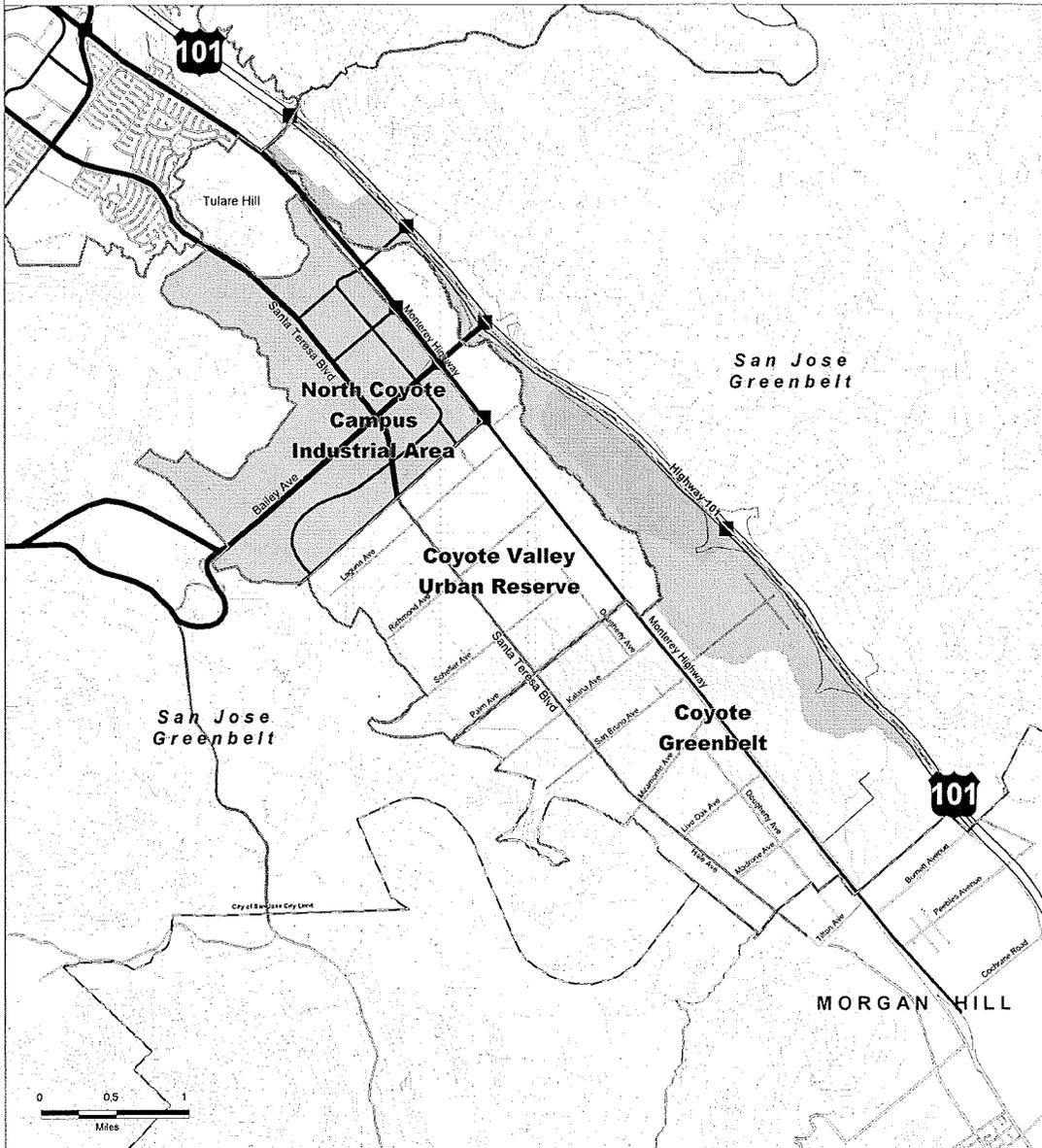
<p>APPROVED AS TO FORM:</p> <p>By: _____ VERA M. I. TODOROV Senior Deputy City Attorney</p>	<p>"CITY"</p> <p>CITY OF SAN JOSE, a municipal corporation</p> <p>By: _____ Its: _____</p>
	<p>"PARTICIPATING PROPERTY OWNERS"</p> <p>COYOTE HOUSING GROUP, LLC, a limited liability corporation</p> <p>By: _____ DANIEL W. HANCOCK Manager</p> <p>By: _____ STEPHEN E. SCHOTT Manager</p> <p>By:  KERRY M. WILLIAMS Manager</p>

EXHIBIT A
COYOTE VALLEY AREA

- A. COYOTE VALLEY AREA is generally bounded by Tulare Hill to the north, Highway 101 and the East Foothills to the east, the City of Morgan Hill to the south, and the Santa Teresa Hills to the west.

- B. The COYOTE VALLEY AREA is further depicted upon that certain boundary map attached hereto as ATTACHMENT "1" to EXHIBIT A and incorporated herein as a part of this EXHIBIT A by this reference.

Coyote Valley Area



LEGEND

- | | | | |
|---|-------------------------------------|---|--------------------------------------|
|  | North Coyote Campus Industrial Area |  | Urban Growth Boundary |
|  | Coyote Valley Urban Reserve |  | Urban Service Area |
|  | Coyote Greenbelt |  | City of San Jose Sphere of Influence |



Coyote Valley Specific Plan
Source: City of San Jose, Planning Services Division, October 2005

EXHIBIT "B-1"

ESTIMATED PLAN PREPARATION COSTS: Staff and Non-personal Costs for 9/2002 to Project Completion Comprehensive Revised, Amended and Restated Funding Agreement

The costs of preparation of the CVSP and the PLAN DOCUMENTS have been estimated by accounting for the following services at the following estimated costs:

Note: The details provided in this exhibit are illustrative only. The City reserves the right to make all staffing decisions.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
STAFF (PERSONAL & NON-PERSONAL) BUDGET	FY2002/03 9/02-6/03 (actual)	FY2003/04 7/03-6/04 (actual)	FY2004/05 7/04-6/05 (actual)	FY2005/06 7/05-6/06 (actual)	FY2006/07 7/06 - 6/07 (actual)	FY2007/08 7/07-12/07 (actual)	SUB TOTAL 9/02 - 12/07 (actual)
PERSONAL BUDGET - CVSP PLANNING SALARIES AND OVERHEAD							
Planning Staff							
1.0 FTE Principal Planner	\$29,368	\$148,958	\$151,937	\$156,913	\$162,725	\$100,981	\$750,882
1.0 FTE Senior Planner	\$0	\$87,357	\$133,555	\$137,828	\$142,932	\$86,815	\$588,487
1.0 FTE Planner I/II	\$3,307	\$0	\$110,506	\$114,024	\$118,247	\$56,774	\$402,858
0.25 FTE Analyst	\$0	\$0	\$0	\$0	\$30,000	\$0	\$30,000
0.5 FTE GIS Specialist	\$3,329	\$49,894	\$50,851	\$52,476	\$54,419	\$33,941	\$244,910
0.5 FTE Office Specialist	\$0	\$16,342	\$32,807	\$33,860	\$35,114	\$23,193	\$141,316
City Attorney - Legal Services (0.125 FTE Attorney)	\$0	\$12,049	\$25,304	\$26,900	\$27,896	\$104,000	\$196,150
Other Staff Costs	\$0	\$9,000	\$15,000	\$20,250	\$21,000	\$15,000	\$80,250
DPW & DOT Staff							
1.0 FTE Associate Civil Engineer	\$0	\$67,518	\$135,035	\$143,558	\$148,875	\$78,500	\$573,487
1.0 FTE Civil Engineer I/II	\$0	\$0	\$0	\$0	\$0	\$0	\$0
0.5 FTE Principal Engineering Tech	\$0	\$27,263	\$57,253	\$60,867	\$10,520	\$0	\$155,904
0.5 FTE Senior Civil Engineer	\$0	\$67,839	\$72,969	\$77,574	\$80,447	\$42,500	\$341,329
SUB TOTAL	\$36,004	\$486,220	\$785,217	\$824,250	\$832,176	\$541,704	\$3,505,571
PERSONAL BUDGET - CVSP EIR, REGULATORY PERMITS, NEPA, HCP/NCCP SALARIES AND OVERHEAD							
1.0 FTE Principal Planner	\$11,747	\$148,958	\$151,937	\$156,913	\$162,725	\$104,454	\$736,734
1.0 FTE Senior Planner	\$0	\$0	\$0	\$0	\$119,110	\$0	\$119,110
1.0 FTE Planner I/II	\$0	\$0	\$110,506	\$114,024	\$118,247	\$66,033	\$408,810
0.5 FTE GIS Specialist	\$0	\$49,894	\$50,851	\$52,476	\$54,419	\$33,941	\$241,581
0.5 FTE Office Specialist	\$0	\$16,342	\$32,807	\$33,860	\$35,114	\$23,193	\$141,316
City Attorney - Legal Services (0.125 FTE Attorney)	\$0	\$12,049	\$25,304	\$26,900	\$27,896	\$104,000	\$196,149
SUB TOTAL	\$11,747	\$227,243	\$371,405	\$384,173	\$517,512	\$331,621	\$1,843,700
TOTAL (PERSONAL)	\$47,751	\$713,463	\$1,156,622	\$1,208,423	\$1,349,688	\$873,325	\$5,349,271
NON-PERSONAL BUDGET - CVSP PLANNING							
Supplies/Printing/Copying/Maps	\$4,000	\$17,500	\$50,000	\$35,550	\$32,475	\$29,675	\$169,200
Outreach/Meeting Logistics	\$0	\$14,750	\$21,938	\$23,288	\$24,150	\$25,000	\$109,126
Equipment	\$0	\$22,300	\$0	\$0	\$0	\$1,000	\$23,300
SUB TOTAL	\$4,000	\$54,550	\$71,938	\$58,838	\$56,625	\$55,675	\$301,626
NON-PERSONAL BUDGET - CVSP EIR, REGULATORY PERMITS, NEPA, AND HCP/NCCP							
Supplies/Printing/Copying/Maps	\$0	\$5,750	\$7,500	\$2,430	\$2,520	\$15,000	\$33,200
Outreach/Meeting Logistics	\$0	\$7,500	\$10,000	\$6,075	\$6,300	\$15,000	\$44,875
Equipment	\$0	\$22,200	\$0	\$0	\$0	\$1,000	\$23,200
SUB TOTAL	\$0	\$35,450	\$17,500	\$8,505	\$8,820	\$31,000	\$101,275
TOTAL (NON-PERSONAL)	\$4,000	\$90,000	\$89,438	\$67,343	\$65,445	\$86,675	\$402,901
GRAND TOTAL (PERSONAL + NON-PERSONAL)	\$51,751	\$803,463	\$1,246,060	\$1,275,765	\$1,415,133	\$960,000	\$5,752,172

Revised 1/29/08

EXHIBIT "B-1"

ESTIMATED PLAN PREPARATION COSTS: Staff and Non-personal Costs for 9/2002 to Project Completion Comprehensive Revised, Amended and Restated Funding Agreement

The costs of preparation of the CVSP and the PLAN DOCUMENTS have been estimated by accounting for the following services at the following estimated costs:

Note: The details provided in this exhibit are illustrative only. The City reserves the right to make all staffing decisions.

STAFF (PERSONAL & NON-PERSONAL) BUDGET	(8)	(9)	(10)	(11)
	FY2007/08 1/08-6/08 (estimate)	FY2008/09 7/08-Project Completion (estimate)	SUB TOTAL 1/08 - Project Completion (estimate)	GRAND TOTAL 9/02 - 12/09
PERSONAL BUDGET - CVSP PLANNING SALARIES AND OVERHEAD				
Planning Staff				
1.0 FTE Principal Planner	\$100,981	\$106,030	\$207,011	\$957,893
1.0 FTE Senior Planner	\$86,815	\$91,156	\$177,971	\$766,458
1.0 FTE Planner I/II	\$56,774	\$42,500	\$99,274	\$502,132
0.25 FTE Analyst	\$0	\$0	\$0	\$30,000
0.5 FTE GIS Specialist	\$33,941	\$35,638	\$69,579	\$314,489
0.5 FTE Office Specialist	\$23,193	\$24,353	\$47,546	\$188,862
City Attorney - Legal Services (0.125 FTE Attorney)	\$41,868	\$62,132	\$104,000	\$300,150
Other Staff Costs	\$0	\$0	\$0	\$80,250
DPW & DOT Staff				\$0
1.0 FTE Associate Civil Engineer	\$0	\$0	\$0	\$573,487
1.0 FTE Civil Engineer I/II	\$0	\$0	\$0	\$0
0.5 FTE Principal Engineering Tech	\$0	\$0	\$0	\$155,904
0.5 FTE Senior Civil Engineer	\$0	\$0	\$0	\$341,329
SUB TOTAL	\$343,572	\$361,809	\$705,381	\$4,210,952
PERSONAL BUDGET - CVSP EIR, REGULATORY PERMITS AND NEPA SALARIES AND OVERHEAD				
1.0 FTE Principal Planner	\$104,454	\$109,677	\$214,131	\$950,865
1.0 FTE Senior Planner	\$0	\$0	\$0	\$119,110
1.0 FTE Planner I/II	\$66,033	\$69,335	\$135,368	\$544,177
0.5 FTE GIS Specialist	\$33,941	\$0	\$33,941	\$275,522
0.5 FTE Office Specialist	\$0	\$0	\$0	\$141,316
City Attorney - Legal Services (0.125 FTE Attorney)	\$52,000	\$161,200	\$213,200	\$409,349
SUB TOTAL	\$256,428	\$340,211	\$596,639	\$2,440,339
TOTAL (PERSONAL)	\$600,000	\$702,020	\$1,302,020	\$6,651,291
NON-PERSONAL BUDGET - CVSP PLANNING				
Supplies/Printing/Copying/Maps	\$0	\$0	\$0	\$169,200
Outreach/Meeting Logistics	\$0	\$0	\$0	\$109,126
Equipment	\$0	\$0	\$0	\$23,300
SUB TOTAL	\$0	\$0	\$0	\$301,626
NON-PERSONAL BUDGET - CVSP EIR, REGULATORY PERMITS, AND NEPA				
Supplies/Printing/Copying/Maps	\$0	\$0	\$0	\$33,200
Outreach/Meeting Logistics	\$0	\$0	\$0	\$44,875
Equipment	\$0	\$0	\$0	\$23,200
SUB TOTAL	\$0	\$0	\$0	\$101,275
TOTAL (NON-PERSONAL)	\$0	\$0	\$0	\$402,901
GRAND TOTAL (PERSONAL + NON-PERSONAL)	\$600,000	\$702,020	\$1,302,020	\$7,054,192

EXHIBIT "B-2"

**ESTIMATED PLAN PREPARATION COSTS: Consultant Costs for 7/2003 to Project Completion
Comprehensive Revised, Amended and Restated Funding Agreement**

The costs of preparation of the CVSP and PLAN DOCUMENTS have been estimated by accounting for the following services at the following estimated costs:

CONSULTANTS	(1)	(2)	(3)	(4)	(5)	(6)
	FY2003/04 7/03-6/04 (Actual)	FY2004/05 7/04-6/05 (Actual)	FY2005/06 7/05-6/06 (Actual)	FY2006/07 7/06-6/07 (Actual)	FY2007/08 7/07 - 12/07 (Actual)	SUB TOTAL 7/03 - 12/07 (actual)
1. TECHNICAL CONSULTANTS						
a. WRA (Biologist)	\$177,572	\$174,642	\$0	\$0	\$0	\$352,214.15
b. Schaaf and Wheeler (Hydrologist)	\$83,277	\$59,408	\$0	\$0	\$0	\$142,684.00
c. Hexagon (Traffic Engineer)	\$54,549	\$28,476	\$0	\$0	\$0	\$83,025.00
d. HMM (Civil/Infrastructure Engineer)	\$354,478	\$566,616	\$0	\$0	\$0	\$921,093.50
e. Geology and Soils	\$26,855	\$21,020	\$0	\$0	\$0	\$47,874.00
f. Cultural Resources	\$42,829	\$9,335	\$0	\$0	\$0	\$52,164.00
g. Hazardous Materials	\$30,528	\$875	\$0	\$0	\$0	\$31,403.00
h. Land Use and Product Coordination	\$94,380	\$62,490	\$0	\$0	\$0	\$156,869.00
Sub Total	\$864,466	\$922,861	\$0	\$0	\$0	\$1,787,327
2. OUTSIDE LEGAL						
a. * Morrison & Forrester (legal)	\$71,865	\$148,188	\$141,000*	\$24,000*	(\$48,956)**	\$336,097.00
a1.* Outside Legal Support - EIR Review	\$0	\$0	\$0.00	\$0.00	\$270,000	\$270,000.00
Sub Total	\$71,865	\$148,188	\$141,000	\$24,000	\$221,044	\$606,097
3. LAND PLANNING, ECONOMIC, AND OUTREACH						
a. Economist/ Fiscal/ Finance	\$163,240	\$416,477	\$285,000	\$240,000	\$0	\$1,104,717.02
b. Facilitator, Design & Printing Collateral	\$68,537	\$207,473	\$211,250	\$44,000	\$0	\$531,260.46
c. Printing Collateral	\$0	\$10,000	\$30,000	\$0	\$0	\$40,000.00
d. Dahlin Group	\$831,876	\$1,166,166	\$572,688	\$400,000	\$0	\$2,970,730.00
e. KenKay Associates	\$0	\$108,200	\$384,600	\$240,000	\$0	\$732,800.00
f. Ken Kay (CHG supplemental contract)	\$51,517	\$112,986	\$0	\$0	\$0	\$164,502.00
g. Crawford Multari Clark(terminated)	\$0	\$24,465	\$73,395	\$0	(\$85,643)	\$12,212.00
q1.Form-Based Zoning Consultant	\$0	\$0	\$0	\$0	\$85,648	\$85,648.00
h. Videos and Professional Rendering (assigned to KenKay Associates)	\$0	\$12,500	\$37,500	\$0	\$0	\$50,000.00
i. Schools Expert (Assigned to EPS)	\$0	\$18,750	\$56,250	\$0	\$0	\$75,000.00
j. Outside Experts Total (\$75,000.00)	\$0	\$0	\$0	\$0	\$0	\$0.00
1.Outside Experts (Assigned to EPS)	\$0	\$6,250	\$18,750	\$0	\$0	\$25,000.00
2.Outside Experts (Unassigned)	\$0	\$12,500	\$37,500	\$0	(\$21,044)	\$28,956.00
k. WRA (Biologist)	\$0	\$34,850	\$104,550	\$0	\$0	\$139,400.00
l. Schaaf and Wheeler (Hydrologist)	\$0	\$35,000	\$105,000	\$0	\$0	\$140,000.00
m. Hexagon (Traffic Engineer)	\$0	\$56,104	\$168,311	\$0	\$0	\$224,415.00
n. HMM (Civil/Infrastructure Engineer)	\$0	\$143,750	\$431,250	\$0	\$50,000	\$625,000.00
o. Geology and Soils	\$0	\$9,375	\$28,125	\$0	\$0	\$37,500.00
p. Cultural Resources	\$0	\$1,750	\$5,250	\$0	\$0	\$7,000.00
q. Hazardous Materials	\$0	\$4,500	\$13,500	\$0	\$0	\$18,000.00
Planning Sub Total	\$1,115,170	\$2,381,096	\$2,562,919	\$924,000	\$28,956	\$7,012,140
4. CEQA						
a. EIR Consultant	\$0	\$121,750	\$381,250	\$64,000	\$0	\$567,000.00
b. Cultural Resources (incl. paleontology report)	\$0	\$34,530	\$103,590	\$0	\$0	\$138,120.00
c. Air Quality	\$0	\$6,750	\$20,250	\$0	\$0	\$27,000.00
d. Geology	\$0	\$31,250	\$93,750	\$0	\$0	\$125,000.00
e. Transportation	\$0	\$75,000	\$250,200	\$100,800	\$0	\$426,000.00
f. Noise	\$0	\$12,200	\$36,600	\$0	\$0	\$48,800.00
g. Hazmat	\$0	\$24,288	\$72,863	\$0	\$0	\$97,150.00
h. Hydrology	\$0	\$25,000	\$75,000	\$0	\$0	\$100,000.00
i. Biology	\$0	\$38,250	\$114,750	\$0	\$0	\$153,000.00
j. Arborist	\$0	\$13,125	\$39,375	\$0	\$0	\$52,500.00
k. Engineering Support	\$0	\$75,000	\$225,000	\$0	\$0	\$300,000.00
m. Water Pollution Plant Capacity Study	\$0	\$0	\$0	\$0	\$0	\$0.00
n. Nitrogen Deposition Analysis (if necessary)	\$0	\$0	\$0	\$0	\$0	\$0.00
EIR Sub Total	\$0	\$457,143	\$1,412,628	\$164,800	\$0	\$2,034,570
TOTAL	\$2,051,501	\$3,909,287	\$4,116,547	\$1,112,800	\$250,000	\$11,440,134

Notes

*: Transfer of unencumbered \$30 K, unspent \$18,956 and transfer of \$21,044 from Outside Expert (unassigned) to Cox, Castle and Nicholson

** : Being transferred to Cox, Castle and Nicholson

EXHIBIT "B-2"

ESTIMATED PLAN PREPARATION COSTS: Consultant Costs for 7/2003 to Project Completion Comprehensive Revised, Amended and Restated Funding Agreement

The costs of preparation of the CVSP and PLAN DOCUMENTS have been estimated by accounting for the following services at the following estimated costs:

CONSULTANTS	(7)	(8)	(9)	(10)
	FY2007/08 1/08-6/08 (estimates)	FY2008/09 7/08-Project Completion (estimates)	SUB TOTAL 1/08 - Project Completion (estimates)	GRAND TOTAL 7/03 - 12/09
1. TECHNICAL CONSULTANTS				
a. WRA (Biologist)	\$0	\$0.00	\$0.00	\$352,214.15
b. Schaaf and Wheeler (Hydrologist)	\$0	\$0.00	\$0.00	\$142,684.00
c. Hexagon (Traffic Engineer)	\$0	\$0.00	\$0.00	\$83,025.00
d. HMH (Civil/Infrastructure Engineer)	\$0	\$0.00	\$0.00	\$921,093.50
e. Geology and Soils	\$0	\$0.00	\$0.00	\$47,874.00
f. Cultural Resources	\$0	\$0.00	\$0.00	\$52,164.00
g. Hazardous Materials	\$0	\$0.00	\$0.00	\$31,403.00
h. Land Use and Product Coordination	\$0	\$0.00	\$0.00	\$156,869.00
Sub Total	\$0	\$0	\$0	\$1,787,327
2. OUTSIDE LEGAL				
a. * Morrison & Forrester (legal)	\$0	\$0	\$0.00	\$336,097.00
a1.* Outside Legal Support - EIR Review	\$12,000	\$63,000.00	\$75,000.00	\$345,000.00
Sub Total	\$12,000	\$63,000	\$75,000	\$681,097
3. LAND PLANNING, ECONOMIC, AND OUTREACH				
a. Economist/ Fiscal/ Finance	\$0	\$0	\$0	\$1,104,717.02
b. Facilitator, Design & Printing Collateral	\$0	\$0	\$0	\$531,260.46
c. Printing Collateral	\$0	\$0	\$0	\$40,000.00
d. Dahlin Group	\$0	\$0	\$0	\$2,970,730.00
e. KenKay Associates	\$0	\$0	\$0	\$732,800.00
f. Ken Kay (CHG supplemental contract)	\$0	\$0	\$0	\$164,502.00
g. Crawford Multari Clark(terminated)	\$0	\$0	\$0.00	\$12,212.00
g1. Form-Based Zoning Consultant	\$0	\$0	\$0	\$85,648***
h. Videos and Professional Rendering (assigned to KenKay Associates)	\$0	\$0	\$0	\$50,000.00
i. Schools Expert (Assigned to EPS)	\$0	\$0	\$0	\$75,000.00
j. Outside Experts Total (\$75,000.00)	\$0	\$0	\$0	\$0.00
1. Outside Experts (Assigned to EPS)	\$0	\$0	\$0	\$25,000.00
2. Outside Experts (Unassigned)	\$0	\$0	\$0.00	\$28,956****
k. WRA (Biologist)	\$16,500	\$2,480	\$18,980	\$158,380.00
l. Schaaf and Wheeler (Hydrologist)	\$10,000	\$0	\$10,000	\$150,000.00
m. Hexagon (Traffic Engineer)	\$10,000	\$0	\$10,000	\$234,415.00
n. HMH (Civil/Infrastructure Engineer)	\$59,000	\$25,000	\$84,000	\$709,000.00
o. Geology and Soils	\$0	\$0	\$0	\$37,500.00
p. Cultural Resources	\$0	\$0	\$0	\$7,000.00
q. Hazardous Materials	\$0	\$0	\$0	\$18,000.00
Planning Sub Total	\$95,500	\$27,480	\$122,980	\$7,135,120
4. CEQA				
a. EIR Consultant	\$197,500	\$197,500	\$395,000	\$962,000.00
b. Cultural Resources	\$50,000	\$25,000	\$75,000	\$213,120.00
c. Air Quality	\$10,000	\$10,000	\$20,000	\$47,000.00
d. Geology	\$0	\$5,000	\$5,000	\$130,000.00
e. Transportation	\$100,000	\$75,000	\$175,000	\$601,000.00
f. Noise	\$5,000	\$5,000	\$10,000	\$58,800.00
g. Hazmat	\$0	\$5,000	\$5,000	\$102,150.00
h. Hydrology	\$50,000	\$50,000	\$100,000	\$200,000.00
i. Biology	\$75,000	\$25,000	\$100,000	\$253,000.00
j. Arborist	\$0	\$5,000	\$5,000	\$57,500.00
k. Engineering Support	\$5,000	\$5,000	\$10,000	\$310,000.00
m. Water Pollution Plant Capacity Study	\$50,000	\$0	\$50,000	\$50,000.00
n. Nitrogen Deposition Analysis	\$50,000	\$0	\$50,000	\$50,000.00
EIR Sub Total	\$592,500	\$407,500	\$1,000,000	\$3,034,570
TOTAL	\$700,000	\$497,980	\$1,197,980	\$12,638,114

Notes

*: Transfer of unencumbered \$30 K, unspent \$18,956 and transfer of \$21,044 from Outside Expert (unassigned) to Cox, Castle and Nicholson

**: Being transferred to Cox, Castle and Nicholson

****: Convert to Contingency Fund applicable to all land planning consultants

EXHIBIT "C"

FIRM	DISCIPLINE
Wetlands Research Associates	Biologist
Schaaf and Wheeler	Hydrologist
Hexagon Transportation	Traffic Engineer
HMH Engineers	Civil/Infrastructure Engineer
Engeo	Geology and Soils
Basin Research	Cultural Resources
Lowney Associates	Hazardous Materials
David J. Powers and Associates	Environmental and Product Coordination

EXHIBIT "D"
Comprehensive Revised, Amended and Restated Funding Agreement
Payment Schedule
9/2002 to Project Completion

DUE DATE	STAFF	CONSULTANTS						Outside Legal Support*	TOTAL
		PLANNING	EIR	TECHNICAL	KENKAY (supplement)	ECONOMICS	OUTREACH		
9/02-12/03	378,977	0	N/A	↓	N/A	N/A	N/A	↓	378,977
1/04-2/04	4,500	0	N/A	404,120**	N/A	N/A	N/A	13,677**	422,297
3/17/2004	200,000	166,667	N/A	↓	N/A	↓	↓	↓	366,667
4/30/2004	200,000	166,667	N/A	↓	N/A	↓	↓	↓	366,667
6/30/2004	199,197	366,667	N/A	↓	N/A	↓	↓	↓	565,864
8/31/2004	229,935	155,000	N/A	↓	N/A	↓	↓	↓	384,935
10/30/2004	229,935	155,000	N/A	↓	N/A	↓	↓	↓	384,935
12/31/2004	229,935	155,000	N/A	920,692**	103,033**	326,480**	137,074**	116,376**	1,988,590
2/28/2005	229,935	155,000	N/A	462,515**	61,469**	178,237**	72,186**	45,000**	1,204,342
4/30/2005	229,935	155,000	N/A	N/A	N/A	N/A	N/A	N/A	384,935
6/30/2005	211,477	403,278	365,714	228,263	N/A	60,000	53,400	36,000	1,358,132
8/31/2005	212,281	371,611	365,714	228,263	N/A	60,000	53,400	36,000	1,327,269
10/30/2005	212,281	371,611	365,714	228,263	N/A	60,000	53,400	36,000	1,327,269
12/31/2005	212,281	371,611	365,714	228,263	N/A	60,000	53,400	36,000	1,327,269
2/28/2006	56,832	248,278	365,714	228,263	N/A	60,000	53,400	36,000	1,048,487
7/31/2006	565,896	0	0	0	0	0	0	0	565,896
9/30/2006	237,755	160,000	41,200	0	0	60,000	11,000	6,000	515,955
11/31/2006	237,755	160,000	41,200	0	0	60,000	11,000	6,000	515,955
1/31/2007	237,755	160,000	41,200	0	0	60,000	11,000	6,000	515,955
3/31/2007	237,755	160,000	41,200	0	0	60,000	11,000	6,000	515,955
5/31/2007	237,755	138,956	41,200	0	0	60,000	11,000	27,044	515,955
7/31/2007	320,000	0	0	16,667	0	0	0	66,667	403,334
9/30/2007	320,000	0	0	16,667	0	0	0	66,667	403,334
11/30/2007	320,000	0	0	16,667	0	0	0	66,667	403,334
4/15/2008	100,000	23,875	126,125	0	0	0	0	0	250,000
5/15/2008	100,000	23,875	122,125	0	0	0	0	4,000	250,000
6/15/2008	100,000	23,875	122,125	0	0	0	0	4,000	250,000
7/15/2008	300,000	23,875	222,125	0	0	0	0	4,000	550,000
8/15/2008	87,753	3,435	50,938	0	0	0	0	7,875	150,000
9/15/2008	87,753	3,435	50,938	0	0	0	0	7,875	150,000
10/15/2008	87,753	3,435	50,938	0	0	0	0	7,875	150,000
11/15/2008	87,753	3,435	50,938	0	0	0	0	7,875	150,000
12/15/2008	87,753	3,435	50,938	0	0	0	0	7,875	150,000
1/15/2009	87,753	3,435	50,938	0	0	0	0	7,875	150,000
2/15/2009	87,753	3,435	50,938	0	0	0	0	7,875	150,000
3/15/2009	87,753	3,435	50,938	0	0	0	0	7,875	150,000
	7,054,192	4,020,346	2,034,570	2,978,643	164,502	1,104,717	531,260	681,098	19,692,306

* Previously "Regulatory Permits."

** Payments to certain consultants by PARTICIPATING PROPERTY OWNERS through 3/31/2005