



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel  
Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** February 11, 2008

Approved

Date

2/12/08

**COUNCIL DISTRICT:** 2  
**SNI AREA:** None

**SUBJECT: APPROVAL OF:**

- (1) A FUNDING AGREEMENT WITH COYOTE HOUSING GROUP, LLC;**
- (2) ASSOCIATED CONSULTANT AGREEMENTS; AND**
- (3) NECESSARY BUDGET ACTIONS TO COMPLETE THE COYOTE VALLEY SPECIFIC PLAN AND RELATED DOCUMENTS**

**RECOMMENDATION**

It is recommended that the City Council take 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. Approve the Comprehensive Revised, Amended and Restated Funding and Reimbursement 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 to March 31, 2009, including a provision for the Director of Planning, Building and Code Enforcement (PBCE) to extend the term in writing by up to six month increments beyond March 31, 2009 if necessary for project completion,; 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. Adopt a resolution authorizing the Director of Planning, Building and Code Enforcement 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, for a total amount of \$18,980 to evaluate biological issues for an 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.
- c. Adopt 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.
- d. 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 to adopt a resolution authorizing the Director of PBCE to negotiate and execute agreements with qualified consultants for an amount not to exceed \$85,648.
- e. Adopt 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.

- f. Adopt 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.
- g. 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 with two of them would continuing as half time positions (i.e. 0.5 GIS Specialist and 0.5 Office Specialist).

### **OUTCOME**

The desired outcomes associated with the actions listed above are the provision of additional resources for staff and consultants to continue and complete work on the preparation of the Coyote Valley Specific Plan and related documents, including the revised Environmental Impact Report (EIR). Approval of the recommendation would provide additional funding from the Coyote Housing Group for the City to continue the project through project completion, with the target being the end of March 2009. The consideration of this amendment and associated actions gives the Council an opportunity to take the necessary action to provide the required funding to complete the specific plan process.

### **EXECUTIVE SUMMARY**

Staff recommends the approval of the recommended Comprehensive Revised, Amended and Restated funding and reimbursement agreement (i.e., the Fourth Amendment to the Amended and Restated Agreement of June 7, 2005) to enable staff and consultants to complete work on the CVSP documents including the specific plan itself and its EIR. This amendment would allow the Coyote Housing Group to provide sufficient funds (\$2.5 million) to cover the plan preparation costs from December 31, 2007 through project completion.

### **BACKGROUND**

In August 2002, the Mayor and City Council initiated the preparation of a specific plan for Coyote Valley, an area of 7,000 acres of mostly undeveloped land in the southern reaches of the City of San Jose just north of the City of Morgan Hill. It is presently divided into three sub-areas according to the San Jose 2020 General Plan: the North Coyote Valley Campus Industrial area, the mid-Coyote Urban Reserve, and the Coyote Greenbelt to the south.

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With this initiation, the City Council adopted 16 vision and expected outcomes statements for the Task Force to use as its guiding principles for preparing the specific plan. These statements are consistent with the San Jose 2020 General Plan and may be found at the following website: ([http://www.sanjoseca.gov/coyotevalley/docs/Council%20Vision%20and%20Expected%20Outcomes\\_4-29-2005\\_revised.pdf](http://www.sanjoseca.gov/coyotevalley/docs/Council%20Vision%20and%20Expected%20Outcomes_4-29-2005_revised.pdf)). Pursuant to these guiding principles, the Coyote Valley Specific Plan identifies the location and intensity of land uses, plans for infrastructure and community service needs, formulates financing and implementation programs, and determines the phasing of the plan elements, as necessary. The initial draft Coyote Valley Specific Plan is available at: [http://www.sanjoseca.gov/coyotevalley/publications\\_Specific\\_Plan.htm](http://www.sanjoseca.gov/coyotevalley/publications_Specific_Plan.htm). As described in more detail below, a Draft Environmental Impact Report was circulated for public comment in spring 2007.

In February 2003, the City Council approved the Mayor's Budget Strategy memorandum, setting forth specific guidance to control costs. With respect to long-range land use planning, the direction was "to defer or suspend advance land use planning efforts without outside funding." Per this Council direction, Planning staff and the City Attorney's Office negotiated a funding agreement with self-selected Coyote Valley property owners who volunteered to finance the preparation of the Coyote Valley Specific Plan, the Environmental Impact Report as well as other documents (zoning districts, regulatory agency permits, etc.). This voluntary property owner group is called the Coyote Housing Group, LLC.

## **ANALYSIS**

### **Remaining Work on the Coyote Valley Specific Plan**

The recommended funding agreement would provide the financial resources necessary to complete the specific plan, zoning regulations, and revised EIR. In terms of the specific plan, staff has been working with the CVSP Task Force, consultants, property owners, and community to refine the Coyote Valley Specific Plan to further reduce and avoid environmental impacts. The plan refinements would become the basis for a revised project description which would be analyzed in the revised and recirculated Draft EIR. It is anticipated that the revised project description will be presented to City Council in March 2008. A second draft of the specific plan should be complete in summer 2008.

Staff will also be working with consultants, property owners, and other interested community members to create zoning regulations for Coyote Valley consistent with the draft specific plan. New Coyote Valley zoning districts would be created to ensure a mixed use, pedestrian and bicycle friendly community. Staff intends to bring these regulations to the City Council for their consideration at the same time as the specific plan and EIR.

Coyote Housing Group has indicated their interest in a Development Agreement to "vest" any approval of the specific plan and zoning. The proposed funding agreement does not cover staff costs associated with the preparation of a Development Agreement or Agreements with this group of developers, and the CHG members would need to make formal applications and pay the associated fees. Given the multiple property owners and complexity of development issues in Coyote Valley,

any Development Agreement would need to be tailored to the unique circumstances of the entitlements proposed for Coyote Valley while remaining consistent with the City's Development Agreement ordinance. To the extent possible, the Development Agreement would be considered by Council at the same time as the other Coyote Valley items (specific plan, zoning, and EIR).

### Environmental Impact Report

In March 2007, the City circulated for public comment the Coyote Valley Specific Plan Draft Environmental Impact Report (EIR). In the interest of greater outreach and public participation the Director of Planning, Building and Code Enforcement (hereafter, Director) voluntarily extended the public review period of the Draft EIR to 90 days, ending on June 29, 2007. Upon receipt and review of the public comments the Director, in his duty and responsibility to produce a legally defensible EIR, determined that the DEIR needed to be revised and recirculated rather than just respond to comments. A summary of the comments received on the Draft EIR, and the decision to revise and recirculate were previously transmitted to the City Council via two information memoranda dated July 31, 2007 and October 15, 2007 respectively. These are posted on the Coyote Valley website at [www.sanjoseca.gov/coyotevalley](http://www.sanjoseca.gov/coyotevalley). The October memorandum acknowledged that staff was discussing scope and cost estimates of this work with Coyote Housing Group (CHG) because they are currently providing financial support to the entire CVSP effort.

The existing funding agreement between the City of San Jose and the Coyote Housing Group did not specify a particular type of EIR; however, by mutual understanding, the EIR was originally intended to provide "project" level clearance (i.e., detailed analysis and mitigation that would allow pre-construction and/or construction of several aspects of the Plan). A federal Environmental Impact Statement would be prepared at a later date to meet the federal resource agency permit requirements (e.g., wetlands) prior to Coyote Valley development.

Based on the comments on the DEIR and the requirements of state and federal environmental assessment law, there are two options for revising the EIR:

- **"Project" Level EIR and Concurrent Environmental Impact Statement:** A federal Environmental Impact Statement (EIS) needs to be completed with the state EIR in order to analyze and mitigate all detailed project issues comprehensively. This level of clearance would allow construction activity.
- **"Program" Level EIR:** A program level EIR provides environmental analysis at a more general, policy level for the specific plan, General Plan amendments, and zoning. To comply with both state and federal law, subsequent environmental analysis of the project level impacts and mitigation is required prior to any residential/mixed use construction or build out of major infrastructure (e.g., the proposed lake, realignment of Fisher Creek, etc.). In other words, at a later time, an EIS would be prepared as well as supplements (at a minimum) to the EIR. Such future environmental work would be done, as is customary for all private development, by the developers/property owners. One of the primary reasons for CHG's unwillingness to do an EIR/EIS at this time is because of the time it would take to complete. However, even without the additional work entailed in doing the EIR/EIS it is still virtually impossible for the Plan to be ready for City Council consideration by December 2008.

Coyote Housing Group has indicated that they will not fund the concurrent preparation of a project level EIR and EIS. Therefore, the City is proceeding with revising the DEIR at a program level. This revised DEIR will provide environmental clearance for the adoption of the CVSP, associated General Plan amendments, zoning code amendments and pre/re-zonings, and other related actions. The revised and recirculated DEIR will, however, not provide environmental clearance for any ground disturbing activities. Such construction or development activities require further environmental review.

### Schedule

Estimated major milestones to complete the Coyote Valley planning effort include:

- March 2008: Council consideration of refinements to the CVSP land plan
- July 2008: Distribute second draft Coyote Valley Specific Plan
- August 2008: Distribute draft Coyote Valley zoning regulations
- November 2008: Recirculate the revised program level DEIR
- December 2008: Conclude Coyote Valley Specific Plan Task Force work
- March 2009: Planning Commission public hearing on Environmental Impact Report, Coyote Valley Specific Plan, General Plan amendments, zoning code changes, and related items
- March 2009: City Council public hearing and consideration of Environmental Impact Report, Coyote Valley Specific Plan, General Plan amendments, zoning code changes, and related items

This schedule assumes a 45-day public review period for the revised DEIR and 60 days for the preparation of responses to comments on the DEIR. Once comments are received, staff will be in a better position to determine the precise dates of the Planning Commission and City Council hearings. The schedule also assumes that the proposed funding agreement is approved by City Council on February 26, 2008, and that the Coyote Housing Group makes the agreed upon periodic payments per the funding agreement.

### Comprehensive Revision of Funding Agreement with Coyote Housing Group, LLC

The funding agreement for the CVSP was originally approved on June 24, 2003 and amended and restated it on June 7, 2005. Since then the City Council has approved three amendments to the Amended and Restated funding agreement, and other amendments have been executed administratively. At this time, a comprehensive revision contained in the recommended funding agreement concisely repackages all the salient provisions into a single agreement for ease of reference.

Given the progress that has been made in developing the CVSP and the DEIR, the Comprehensive Revised, Amended and Restated Funding Agreement provides \$2.5 million to complete this planning effort. The additional funds would cover staff and certain consultants. Several of the existing consultants have sufficient resources remaining in their current budgets through project completion.

For these latter consultants, the only Council action needed is a time extension of their contracts to project completion.

The extra consultant costs mostly result from the services that are required to complete the plan refinements occasioned by the comments received on the DEIR, and the revision and recirculation of the program level DEIR. In terms of staff, a majority of the costs are earmarked for the Planning staff that are managing and leading the CVSP planning effort, with some funds assigned to the Departments of Public Works and Transportation, who continue to be intimately involved throughout the planning process. In addition, participation from other City Departments is expected to continue, and funds are identified to pay for their costs as well. A schedule of payments by CHG to the City for the full payment of \$2.5 million is also included in this Agreement.

During the remainder of Fiscal Year 2007-2008, Coyote Housing Group will be making payments totaling \$1.3 million. The balance of the payments will be made in the next fiscal year. With the adoption of the Fiscal Year 2008-2009 Operating Budget, \$1.2 million will be appropriated to the Coyote Valley Specific Plan effort, consistent with the funding agreement. With this Council action, the Director of Planning, Building and Code Enforcement will be given the authority to add funds to the environmental consultant, David J. Powers & Associates, Inc. in an amount not to exceed \$407,500 for next fiscal year.

The terms of the proposed funding agreement have been discussed with the Coyote Housing Group over the last several months. Through these negotiations, CHG has indicated their understanding of the need for the additional \$2.5 million to fund the costs of consultants and staff to project completion, and consequently agreed to provide the required funds. Information provided in this memo and the provisions of the funding agreement are all consistent with discussions and verbal agreement arrived at with CHG.

A major distinction between this funding agreement and the previous amendments is that this one provides funding through project completion, thus making future amendments or funding requests from CHG unnecessary. Thus, barring any unforeseen circumstances, the staff expects this final appropriation to be sufficient to complete the CVSP project. Although staff believes that the \$2.5 million of additional funding from CHG is sufficient to complete the work outlined in this memo, in the event of unanticipated additional work (e.g. due to extreme EIR comments) staff would appropriately apprise the City Council of the situation and related expenditure to ensure that the required resources are marshaled to complete the project.

This funding agreement provides the City with the discretion to flexibly utilize the requested appropriation to complete the project as efficiently and effectively possible for staff and consultant resources. This flexibility is provided in the consultant agreements associated with this Council item. Specifically, if Council approves the consultant agreements, funds could be added to consultant(s) agreements without further Council action only if such funds are available and unencumbered within the Coyote Valley appropriation.

Given that the federal Environmental Impact Statement is not funded, no further work will be done on the federal regulatory (Army Corps of Engineers) permits or its environmental review under the National Environmental Policy Act (NEPA). This work may resume at later date after the City

Council acts on the specific plan and upon federal application by any of the developers. The work completed to date in regard to the regulatory permitting processes has, however, had some utility in informing the land planning and environmental review processes.

Finally, the requested budget augmentation assumes the revision and recirculation of a program level EIR, as described above. Without this new approach, the completion of the CVSP, its EIR and related documents would have cost much more money and taken longer.

### **POLICY ALTERNATIVES**

If the City Council wishes to continue with the Coyote Valley process, there appears not to be any practical alternative to the proposed funding agreement with the Coyote Housing Group to cover the costs of staff, consultants and related non-personal expenses for the CVSP and the related documents.

### **PUBLIC OUTREACH/INTEREST**

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Though the City is being reimbursed for the approximately \$19.7 million dollar cost of preparing the specific plan by CHG, staff has determined that the project meets the spirit of Criteria 1 because of the extraordinary complexity and high degree of public interest involved in it. For this reason all Council memoranda and project documents are posted on a dedicated CVSP website at

<http://www.sanjoseca.gov/coyotevalley/>.

The Coyote Valley Specific Plan effort involves extensive community outreach, as well as discussions with many other governmental agencies. To date, the Task Force has met more than 60 times. There have also been several well-attended community workshops, Technical Advisory Committee meetings consisting of staff from public agencies and non-governmental organizations, and various other focus group and technical sub-committee meetings.

**COORDINATION**

The preparation of this memorandum has been coordinated with the City Attorney's Office. The specific plan effort involves almost all City Departments and many outside local, state, and federal agencies, including but not limited to the Santa Clara Valley Water District, Valley Transportation Agency, California Department of Fish and Game, and the United States Fish and Wildlife Service.

**FISCAL/POLICY ALIGNMENT**

The Coyote Valley Specific Plan is intended to implement the San Jose 2020 General Plan.

**COST SUMMARY/IMPLICATIONS**

The cost of preparing the Coyote Valley Specific Plan, EIR, and other documents is entirely funded by the CHG.

**BUDGET REFERENCE**

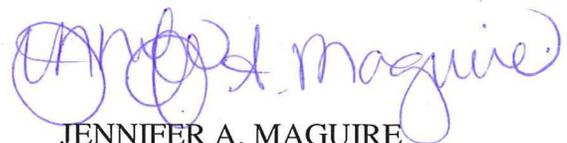
Fund #	Appn #	Appn Name	Total Appn	Last Budget Action (Date, Ord. No.)
001	3243	Coyote Valley Specific Plan and EIR	\$2,861,989	10-16-07, 28143

**CEQA**

Exemption, PP03-06-211.



JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement



JENNIFER A. MAGUIRE  
Assistant Budget Director

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For questions please contact Laurel Prevetti, Assistant Director of Planning, Building and Code Enforcement at 408-535-7901.

I hereby certify that there will be available for appropriation in the General Fund monies in Fiscal Year 2007-2008 monies in excess of those heretofore appropriated there from, said excess being at least \$1,300,000.



JENNIFER A. MAGUIRE

Assistant Budget Director

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