

RESOLUTION NO. 2009-382

Adopted by the Sacramento City Council

June 16, 2009

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

BACKGROUND

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

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

- Section 1. The City Council finds and determines that the background statements A through C are true.
- Section 2. The City Manager is authorized to execute the attached agreement (entitled "Memorandum of Understanding") with the County for the City to obtain reimbursement of costs it incurs for legal consultants and staff time for preparation and completion of the Natomas Joint Vision Technical Phase III.
- Section 3. The City Manager is authorized to adjustment revenue and expense budgets up to \$170,000 to reflect the reimbursement of legal consultant costs associated with the preparation and completion of the Natomas Joint Vision Technical Phase III.

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

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

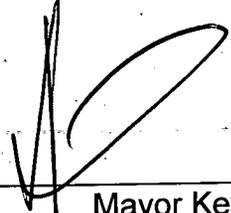
Adopted by the City of Sacramento City Council on June 16, 2009 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

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

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

RECITALS

A. City and County entered into a Memorandum of Understanding, hereinafter referred to as Joint Vision MOU, on December 10, 2002, agreeing to principles of urbanization, open space preservation and revenue sharing for unincorporated Natomas.

The City and County have determined that the Visioning Plan process provided for in the Memorandum of Understanding dated October 29, 2008 has been completed.

B. City and County desire to work cooperatively in the next phase of the planning process (the "Technical Phase III").

C. City and County are similarly interested in the completion of the Technical Phase III, and therefore City and County desire to share the cost of Technical Phase III in anticipation of having those costs paid for by the Natomas Landowners Group.

D. City, through the City Attorney's office, will retain legal consultants in the amount of up to \$100,000 to assist in the processing of the Technical Phase III.

E. City anticipates that it will incur staff costs of \$70,000 to work on the preparation and processing of the Technical Phase III over the seven month work program.

F. County has amended the September 24, 2008 Funding Agreement With The Natomas Landowners Group For County Of Sacramento Participation In The Development Of A Vision Plan For Natomas (hereafter "amended Funding Agreement"), attached hereto as Exhibit A and incorporated herein by this reference, whereby the Natomas Landowners Group will pay the County a dollar amount sufficient to pay for the City's and County's costs of the Technical Phase III.

G. City and County now desire to enter into a reimbursement agreement ("Reimbursement MOU") for the City to be reimbursed by the County for costs the City incurs for legal consultant services and staff time for the preparation and processing of the Technical Phase III.

AGREEMENT

Now, therefore, City and County agree as follows:

1. Defined Terms

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

2. Cost of Consultant.

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

3. Staff Support and Responsibilities.

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

b. County acknowledges that the cost of City staff time to assist in the preparation and processing of the Technical Phase III is estimated to be \$10,000 per month for seven months, for a total of \$70,000. City and County agree and acknowledge that the City's estimates for staff time and legal consultant are estimates only and are not binding on the City.

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

4. Payment of the Consultant by City.

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

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

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

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

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

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

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

c. Within 30 days of the end of each quarter, City and County shall reconcile the amounts paid to City based on the quarterly estimates with actual costs incurred by City. Any excess payments made to the City shall be credited against future quarterly

estimates. If after the completion or termination of the Technical Phase III, the dollar amount paid to the City pursuant to this Reimbursement MOU exceeds its actual costs, City shall re-pay the overage to County to be repaid to the Natomas Landowners Group in accordance with the amended Funding Agreement.

d. If at any time the City anticipates that its total costs are likely to exceed \$100,000 for legal consultant services or \$70,000 for staff time, it shall bring this fact to the attention of County and the parties shall negotiate as to any additional amounts that shall be paid to City, or as to what services the County and Natomas Landowners Group are willing to forego in order to avoid such additional costs. This Reimbursement MOU shall then be amended to reflect any additional reimbursement that will be allowed.

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

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

6. Amendments.

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

7. Additional Work or Changes in Work.

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

8. Notices.

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

Notices to City:

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

Notices to County:

Robert Sherry

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

9. Effective Date.

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

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

COUNTY OF SACRAMENTO

CITY OF SACRAMENTO

By: _____
County Executive

By: _____
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
County Counsel

By: _____
City Attorney

ATTEST

By: _____
City Clerk

FIRST AMENDMENT TO AGREEMENT

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

THIS FIRST AMENDMENT is made and entered into as of this _____ day of _____, 2009, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the Owners, all of whom are authorized to do business in the State of California and are members of the Natomas Landowners' Group, hereinafter referred to collectively as "Owners' Group".

RECITALS

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

WHEREAS, the County has determined that the Visioning Plan process provided for in the Agreement has been completed;

WHEREAS, on April 22, 2009 the Board of Supervisors directed County staff to continue to work cooperatively with the City and Owners' Group and associated stakeholders in (1) the preparation of a conservation strategy leading to the development of a new or amended habitat conservation plan and apply for any available grant funding, and (2) the application process leading to the submission of an application for a General Plan Amendment and Specific Plan for the Natomas Joint Vision Area, which are collectively described as "Technical Phase III";

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

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

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

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

NOW, THEREFORE, the Agreement is amended as follows:

Section 3 is amended to read:

3. Work Program. The work program for the Technical Phase III is anticipated to include environmental, habitat, species, engineering, economic, planning and other technical studies to be initiated in May 2009 and completed in December 2009. The work program for the Technical Phase III shall be primarily managed by the Owners' Group. The Owners' Group and the County shall confer regarding the details of the proposed work program submitted. In the event the County does not approve any element of the work program proposed by the Owners' Group, the County may elect to disallow any such payments made by the Owners' Group to be credited as provided in Sections 7.3 and 7.4 of the Agreement for any such specific activity so disapproved. Such election by the County shall be made in writing, and the parties shall meet and confer regarding such election by County after which County shall make the final determination as to whether or not the subject expenditures made, and/or to be made, by the Owners' Group will be credited as allowed pursuant to sections 7.3 and 7.4 of the Agreement.

At the same time, however, County commits to diligently implement the work program and schedule through to its completion. County agrees that the preparation of an EIR for subsequent General Plan Amendments, Urban Services Boundary adjustments, and Specific Plan preparation for the Joint Vision Area can and should commence at the earliest possible opportunity.

3.1 Technical Phase III. Technical Phase III shall mean those planning, engineering, environmental, habitat, and other activities that shall be necessary to establish the fundamental elements of a land use master plan for the Joint Vision Area and a conservation strategy in sufficient detail to proceed with the completion of the appropriate Habitat Conservation Plan, Amendments to the County and City General Plans, and Specific Plans or Master Plans, as appropriate. The Technical Phase III shall also include such activities, studies or other analyses necessary to initiate the CEQA process by the County. The Technical Phase III costs shall be those costs incurred after May 1, 2009 and those costs incurred prior to May 2009 as may be approved by the Parties. The Technical Phase III costs shall also include legal representation that the Owners' Group, City of Sacramento or County shall retain for the purposes of preparing the conservation strategy and the completion of the appropriate Habitat Conservation Plan (collectively the "HCP Legal Costs"). The Technical Phase III costs, including the HCP Legal Costs, shall be reimbursable costs pursuant to Section 7 of the Agreement. HCP Legal Costs shall not include specific legal advocacy for an individual land owner or group of landowners related directly to the discretionary land use approvals needed from either the County or City.

Section 4 is amended to read:

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

Notwithstanding County's discretion in the selection of consultants described in this Section, Owners' Group reserves absolute discretion as to the selection of any and all consultants and project management that may be necessary to assist them in completing studies required during the Technical Phase III. The Owners' Group will consult with the County, no less frequently than monthly, regarding the scope of the work to be done and the consultants to be hired. The County may separately retain consultants to prepare technical studies and analyses that it deems necessary or appropriate to be

done in addition to those studies and analyses completed by the Owners' Group. The County anticipates retaining the same planning consultant retained by the Owners' Group to complete land use studies of the Joint Vision Area, including lands not owned or controlled by the Owners' Group members.

Section 5 is amended to read:

5.1 Deleted

5.2 The Parties anticipate that the Technical Phase III Work Program will be initiated in May 2009 and completed in December 2009. Accordingly, the term of this Agreement shall be divided into three-month quarters for funding purposes (individually, a "Quarter") as follows: May 1, 2009 to July 31, 2009; August 1, 2009 to October 31, 2009; November 1 to December 31, 2009.

5.5 Deleted

Section 7.9 is amended to read:

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

Section 8 is amended to read:

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

III. REAFFIRMATION

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

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

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

By: _____
Susan Peters
Chairman of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST:

Clerk of the Board of Supervisors

**NATOMAS LANDOWNERS GROUP, by its
individual members (“Owners”)**

[On following pages]

ANGELO K. TSAKOPOULOS

By: _____
Angelo K. Tsakopoulos

Date: _____

NORTH NATOMAS/AIRPORT DE MATOS,
LLC, A California Limited Liability Company

By: AKT Development Corporation, A California
Corporation, Manager

By: _____
Angelo K. Tsakopoulos

Title: _____

Date: _____

Non-Member Manager(s)

1. AKT Development Corporation

GIBSON-TSAKOPOULOS, LLC, a California
Limited Liability Company

By: _____
Angelo K. Tsakopoulos, Manager

Date: _____

Non-Member Manager

1. Angelo K. Tsakopoulos

WEST LAKESIDE, LLC, A California Limited
Liability Company

By: AKT Investments, Inc., A California
Corporation, Manager

By: _____
Angelo Tsakopoulos, Chairman

Date: _____

Managing Members(s)

1. AKT Investments, Inc.

MJ 318, L.P., a California Limited Partnership

By: _____
Angelo K. Tsakopoulos, Managing Partner

Date: _____

Managing Partner(s)

1. Angelo K. Tsakopoulos

BROOKFIELD NATOMAS LLC

By: _____
John W. Norman
Title: COO

Date: _____

By: _____
Richard T. Whitney
Title: President

Date: _____

NATOMAS BOOT INVESTORS, LLC, A
California Limited Liability Company

By: **Gidaro Group, LLC, Manager**

By: _____
Steve Gidaro

Date: _____

JEFFREY S. NORTON TRUST

By: _____
C. J. Schneider

Title: Trustee

Date: _____

NATOMAS BOOT II, LLC, a California Limited
Liability Company

By: Gidaro Group, LLC, Manager

By: _____
Steve Gidaro

Date: _____

SACA DEVELOPMENT, LLC, a California
Limited Liability Company

By: _____
John Saca

Title: _____

Date: _____

OSE PROPERTIES NO. 3, a California Limited Partnership

By: Ose Properties, Inc., its General Partner

By: _____

Date: _____