



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Submitted on:
(COB Stamp)

Department Name: County Executive Office
Department No.: 990
For Agenda Of: October 24, 2006
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director: Michael F. Brown, County Executive Officer
Contact Info: John McInnes, Director of Long Range & Strategic Planning
568-3552

Stephen Peterson, Supervising Planner
884-6836

SUBJECT: Agreement for Los Alamos Community Plan Update Funding

County Counsel Concurrence:

As to form/legality: Yes No N/A

Auditor-Controller Concurrence:

As to form: Yes No N/A

Recommended Action(s):

That the Board of Supervisors:

Approve an agreement between the County of Santa Barbara and a private developer regarding participation in the funding of the Los Alamos Community Plan Update, and direct the Chair to execute.

Summary:

To complete funding for the recent Board initiated update to the Los Alamos Community Plan, the County is entering into an agreement with a developer who has offered to contribute 50% of the cost. In order to enter into this agreement, approval and execution by the Board of Supervisors is required.

Background:

The Los Alamos Community Plan (LACP) was adopted by the Board of Supervisors in 1994. Recently, interest in developing beyond the current urban boundary has provided the impetus to update the LACP. However, the County's ability to proceed with an update at this time is limited by the need to fund other long range planning activities. In order to proceed with an update to the LACP, including consideration of a development project on property located in the vicinity of Los Alamos but outside its urban boundary, a developer has offered to provide matching funds as set forth in the attached agreement.

On June 16, 2006, the Board approved the Comprehensive Planning Division's budget which included an allocation of \$75,000 for an update of the LACP. This funding covers 50% of the \$150,000 total first phase cost of the Community Plan update effort. A private landowner interested in developing a project on property contiguous with but outside the urban boundary limit of the community agreed to provide the remaining 50% of the funding, constituting the additional \$75,000. Should the update proceed to Phase II including preparation of an environmental impact report, the developer has agreed to contribute an additional \$127,500 which represents 50%

of the Phase II costs. Finally, the developer has also agreed to pay up to an additional \$200,000 in the event that costs are greater than currently anticipated.

To formalize the above terms, an agreement between the County and the developer was prepared. The general purposes of the funding relationship are also set forth in the agreement as follows: (1) provide funding so that an update to the Los Alamos Community Plan can be considered by the community without having to wait until full funding for such project would otherwise be available; (2) allow for developer assistance in the financing of the proposed update; and (3) establish the parameters of the roles and responsibilities of the developer and County in the proposed update. It should be noted that the County is not obligated to proceed to Phase II or complete the update process. The County has the option of discontinuing work on the Community Plan update at any time. The agreement also does not require the County to approve the updated Community Plan nor does it otherwise bind the police power of the County. Similarly, the developer has the option of withdrawing from the process and not participating in the Phase II funding if the County is notified prior to April 1, 2007. If the developer opts out of funding Phase II, the estimated cost to the County of the environmental review for the Community Plan update is approximately \$255,000.

Execution of this agreement does not meet the definition of a project under the California Environmental Quality Act (CEQA) and is therefore not subject to environmental review.

Fiscal and Facilities Impacts:

Current fiscal year costs were approved by the Board of Supervisors on June 16, 2006. There are no anticipated fiscal impacts in the current year beyond the \$75,000 that was budgeted for this project for Fiscal Year 2006-2007. There are anticipated fiscal impacts for Fiscal Year 2007-2008 as indicated by the Fiscal Analysis below.

Budgeted: Yes No

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized Cost:</u>	<u>Total Project Cost</u>
General Fund	\$ 75,000.00	\$ 127,924.00	\$ 202,924.00
State			
Federal			
Fees			
Other:	\$ 75,000.00	\$ 127,500.00	\$ 202,500.00
Total	\$ 150,000.00	\$ 255,424.00	\$ 405,424.00

Staffing Impact(s):

Legal Positions: **FTEs:**
0

Special Instructions:

Attachment:

Cooperative Agreement Regarding Los Alamos Community Plan Costs

Authored by: Claudia Sigona, Senior Planner, Comprehensive Planning

cc: Travis C. Logue, Esq., 142 E. Carrillo Street, Santa Barbara, CA 93101
Richard C. Monk, Esq., Hollister & Brace, 1126 Santa Barbara Street, Santa Barbara, CA 93101

Attachment No. 1

**“Cooperative Agreement Regarding Los Alamos
Community Plan Costs”**

**COOPERATIVE AGREEMENT REGARDING
LOS ALAMOS COMMUNITY PLAN COSTS**

THIS AGREEMENT is made by and between the COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "County," and Charles Logue, hereinafter referred to as "Developer," with reference to the following:

WHEREAS, in March 1994 the County Board of Supervisors adopted the Los Alamos Community Plan ("LACP"); and

WHEREAS, the LACP sets forth certain Goals, Policies, Programs, Actions and Development Standards which provide the framework for all development in Los Alamos; and

WHEREAS, Population growth and the need for housing has caused the County to consider updating the LACP, including possibly expanding the boundaries thereof; and

WHEREAS, The Developer is interested in exploring at this time a development project ("Proposed Development") on property located partially in Los Alamos but partially outside of the boundaries of the LACP; and

WHEREAS, approval of the Proposed Development would require changes to the LACP and County zoning ordinance including an expansion of the boundaries of the Community Plan Area to include the area bordered by the Community Service District Property on the Northwest, Highway 101 to the Northeast, and Highway 135 to the Southwest and the existing urban development to the Southeast; and

WHEREAS, the proposed Development Project, if approved, would be an important part of the Los Alamos community and would benefit and impact that community; and

WHEREAS, good planning principals including the importance of community involvement and the desire to proceed in an orderly fashion, are forwarded by the review of development projects through a community plan process and through periodic updates to existing community plans; and

WHEREAS, the Los Alamos Community would benefit from an update to the LACP ("LACP Update"); and

WHEREAS, the County's ability to proceed at this time with an update to the Los Alamos Community Plan is limited by the need to fund other long range planning activities; and

WHEREAS, In order to proceed with citizen consideration of an update to the Los Alamos Community Plan, including the Proposed Project, at this time, the Developer is willing to provide funds as set forth herein to facilitate consideration of a LACP Update; and

WHEREAS it is the intent of the parties that this agreement not impose upon the County the obligation to proceed with development or adoption of the LACP Update; and

WHEREAS, the purpose of this Agreement is to set forth the terms of a cooperative relationship between Developer and County for purposes of (1) providing funding so that an update to the Los Alamos Community Plan can be considered by the community without having to wait until full funding for such project would otherwise be available; (2) allowing for developer assistance in the financing of the proposed update; (3) establishing the parameters of the roles and responsibilities of the Developer and County in the proposed update; and

WHEREAS, it is the intent of the parties that developer contribution be limited to 50% of the cost of the LACP Update.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is mutually agreed and understood as follows:

1. **RECITALS.** The parties hereby find and agree that the above recitals are true and correct.
2. **PHASE I.** Within 10 calendar days of County execution of this Agreement, Developer shall deposit with the County the sum of \$75,000 to be used for Phase I tasks as outlined below ("Phase I Funds"). Phase I Funds may be used only to pay actual direct and indirect costs and expenses incurred by County in the performance of the tasks outlined in subsection 2A below. County agrees that County will perform or cause to have performed only work that is, in its determination, reasonable and necessary to accomplishing the tasks identified in this Section 2.
 - A. Activities to be funded. Phase I activities that may be paid for with Phase I Funds include the following:
 1. County staff time setting up a general plan advisory committee to oversee and assist with a LACP Update.
 2. County staff time planning, drafting, reviewing and finalizing components of the LACP Update.
 3. County staff time working with the Los Alamos Planning Advisory Committee.

4. In the event that the County in its discretion elects to hire one or more consultants to perform any of the above tasks, that consultant time may be paid for out of the Phase I deposit.
3. **PHASE II.** Upon 15 days of County written notice to Developer that County is ready to commence environmental review of the LACP Update, the Developer will deposit with the County an additional sum of \$127,500. The deposit of Phase II funds in the amount of \$127,500 will be used exclusively for costs associated with intermediate steps of updating the LACP as set forth below (“Phase II Funds”). The Phase II funds on deposit may be used only to pay actual direct and indirect costs and expenses incurred by County in the performance of the tasks outlined in subsection 3A below. County agrees that County will perform or cause to have performed only work that is, in its determination, reasonable and necessary to accomplishing the tasks identified in this Section 3
 - A. Activities to be funded. Phase II activities that may be paid for with Phase II Funds under this Section include the following:
 1. Staff or consultant time reviewing and finalizing components of the LACP Update.
 2. All aspects of environmental review of the LACP Update.
 3. County staff time working with the Los Alamos Planning Advisory Committee.

4. County staff time bringing the LACP Update to the Planning Commission and Board of Supervisors, including any revisions to the LACP Update and the environmental review for it.
5. In the event that the County in its discretion elects to hire one or more consultants to perform any of the above tasks, that consultant time may be paid for out of the Phase II Funds.

4. **COUNTY NOT OBLIGATED TO CONTINUE WITH, COMPLETE OR ADOPT LACP UPDATE.** The County may at any time in its sole and absolute discretion elect to discontinue work on the LACP update, on environmental review for the LACP Update, to decline to consider or adopt the LACP Update, or to substantially revise the LACP.

5. **ADDITIONAL COSTS.** The County and the Developer acknowledge and agree that Developer's monetary contribution for Phase I and Phase II work is limited to the amount of his deposits as set forth in Section 2 and Section 3 of this Agreement plus an additional \$200,000 in the event that costs are greater than currently anticipated. In addition, Developer's contribution shall not exceed 50% of the cost of each phase unless upon mutual written agreement of the parties. In the event costs of one or both phases exceed current estimates, County shall bill Developer on a monthly basis which bill shall include an accounting of all funds spent and received on the project and the Developer shall pay County within 10 days of receiving such accounting from County.

6. **DEVELOPER NOT OBLIGATED TO PROCEED TO PHASE II.** The Developer's primary purpose in entering into this Agreement is to determine whether the Los Alamos community will be receptive to a revision of the LACP that would include an extension of the existing urban boundary to include within the urban area the property that is bordered by the Community Services District Property on the Northwest, Highway 101 to the Northeast and Highway 135 to the Southwest and the existing urban development to the Southeast. At any time prior to April 1, 2007, or a later date mutually agreed to in writing by the County Executive Officer and Developer, Developer may in his sole and absolute discretion elect not to proceed with funding Phase II of the Project.

7. **TERMINATION AND REIMBURSEMENT.**

- A. Termination by County. In the event that the County in its discretion elects to discontinue work on the LACP Update and there are remaining funds on deposit under either Phase I or Phase II, after payment of all outstanding costs set forth in Sections 2 and 3 above, the County shall refund remaining funds to Developer and upon such payment County and Developer shall have no further obligations under this Agreement. In calculating the amount to be refunded, County shall ensure that Developer's contribution equals no more than 50% of the total costs.
- B. Termination by Developer. Developer may elect not to proceed with Phase II funding prior to April 1, 2007. In such event, County and Developer shall have no further obligations under this Agreement. Once Developer elects to proceed

with Phase II funding, he shall be entitled to no reimbursement unless the County elects to discontinue work on Phase II as set forth above.

8. **EXERCISE OF DISCRETION.** Nothing in this Agreement shall obligate or bind the County, the Las Alamos Planning Advisory Committee, the Santa Barbara Planning Commission, the Santa Barbara County Board of Supervisors, or any county agencies, departments, commissions, agents, officers, or employees to exercise its/his/her discretionary authority in any particular way or fashion, take or consider a particular legislative action, or to delegate any discretionary authority, to issue any county discretionary land use entitlement, or issue any County approvals in regard to any project of the Developer or other project, or in any proceedings related to such project or on any application for such project.
9. **DEVELOPER'S CONTRIBUTION LIMITED TO 50% OF TOTAL COSTS.** It is the intent of the parties that Developer's payments hereunder be limited to no more than 50% of the total costs of drafting and processing the LACP Update, including all direct and indirect costs including but not limited to staff time. In the event that Developer's Phase I or Phase II Deposits equal more than 50% of the total cost of either Phase I or Phase II respectively, then County shall refund Developer the difference between the Deposit and 50% of the total costs for the phase.
10. **ACCOUNTING.** County shall provide Developer with periodic accountings of (1) funds withdrawn from Deposit, and (2) funds remaining on Deposit, with County. County shall provide Developer an accounting no less frequently than once per fiscal quarter. The

accountings shall identify the work performed by or on County's behalf, and shall contain sufficient specificity to indicate the nature of the work performed.

11. **SUPPLEMENTAL DOCUMENTATION.** Each party hereto shall execute or cause to be executed any and all documents and perform such acts as are reasonably necessary to carry out the terms of this Agreement.

12. **NOTICES.** Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by mail to the following:

COUNTY: County of Santa Barbara
County Executive Office
105 East Anapamu Street #201
Santa Barbara, CA 93101
With a copy to
and Mary L. McMaster
Office of the County Counsel
105 East Anapamu Street Suite 201
Santa Barbara CA 93101

DEVELOPER: Travis C. Logue, Esq.
142 E. Carrillo Street
Santa Barbara, CA 93101
With a copy to
and Richard C. Monk, Esq.
Hollister & Brace
1126 Santa Barbara Street
Santa Barbara, CA 93101

or at such other address the respective party may designate in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail or by personal delivery. The date of mailing, or in the event of personal delivery the date of delivery, shall constitute the date of service.

13. **DEFAULT AND REMEDIES.**

A. Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” for purposes of this Agreement: (1) failure of Developer to fund the Deposits within the time periods required under Sections 2 and 3 above, (2) failure of County to provide timely accounting to Developer as set forth in Section 10 above.

B. Notice of Default and Opportunity to Cure. For all Events of Default (as the term is defined in this Agreement), the non-defaulting party shall give written notice to the defaulting party of the event by specifying the following: (1) the nature of the event or deficiency giving rise to the default, (2) the action required to cure the deficiency, and (3) a date which shall not be less than 5 calendar days, by which such action to cure must be taken.

14. **SEVERABILITY.** If any one (1) or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provisions or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and the

Agreement shall be construed as if such invalid, illegal, or unenforceability provision had never been contained herein.

15. **ENTIRE CONTRACT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreement, warranties, or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver, or estoppel.
16. **NO WAIVER OR DEFAULT.** No delay or omission of either party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the parties shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of the parties.
17. **CONFLICT OF INTEREST.** Developer agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices

Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including Developer for this purpose, from the making of any decision on behalf of County in which such officer, employee or Developer has a direct or indirect financial interest. A violation can occur if the public officer, employee or Developer participates in or influences any County decision which has the potential to confer any pecuniary benefit on Developer or any business firm in which Developer has an interest, with certain narrow exceptions. Developer agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the County designated representative and provide all information needed for resolution of this question.

18. **TIME OF ESSENCE.** Time is of the essence of this Agreement. Each of the parties will diligently and faithfully carry out all of the terms and conditions of this Agreement and will take all necessary action in order that the transactions contemplated by this Agreement may be consummated in a timely and efficient manner.
19. **CONSTRUCTION.** This Agreement has been reviewed and revised by legal counsel for both Developer and County, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement, which shall be interpreted and enforced according to the plain meaning thereof.
20. **NO THIRD PARTY BENEFICIARY.** This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other party shall have any right of action based upon any provisions of this Agreement.

21. **RELATIONSHIP OF PARTIES.** It is understood that Developer is not an agent of the County and County is not an agent of Developer.
22. **CERTIFICATION OF SIGNATORY(IES).** Developer represents and warrants that the person(s) signing this Agreement on that party's behalf has the authority to execute this Agreement and that no additional signatures are required to bind that party to obligations contemplated herein.
23. **AGREEMENT APPROVAL.** This Agreement is subject to the approval of the County's Board of Supervisors. Execution of this Agreement by the chairperson, or designee of the Board of Supervisors, shall evidence said approval by the Board.
24. **GOVERNING LAW.** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this Agreement is made in and shall be performed in the Santa Barbara County, California.
25. **EXECUTION IN SEVERAL COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute but one and the same instrument.
26. **ASSIGNABLE BY DEVELOPER.** This Agreement is assignable by Developer so long as the assignee assumes all responsibilities and duties of Developer contained herein and upon written notice of such assignment to County.

IN WITNESS WHEREOF, County and Developer have executed this Cooperative Agreement by the respective authorized officers as set forth below to be effective as of the date executed by the County.

"County"
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

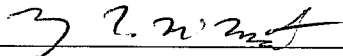
By: _____
Chair, Board of Supervisors

By _____
Deputy

Date: _____


APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy

By: 

APPROVED:
MANAGEMENT SPECIALIST,
RISK MANAGER

By: 
RAY AROMATARIO

"Developer"

By: 