23-2

Supplemental Material

For

City of Sacramento

City Council
Financing Authority
Housing Authority
Redevelopment Agency

Agenda Packet

Submitted: May 21, 2009

For the Meeting of: May 26, 2009

☐ Additional Material

XXX Revised Material

TITLE: **North Natomas Financing Plan 2008 Update – Approving Development Fees and Nexus Study and Amending the North Natomas Development Agreement**

Replacement Report (Attachment 2 –"TBD" – was distributed as Supplemental Material 23-1).

Contact Information: Mark Griffin, Fiscal Manager, 808-8788

Please include this supplemental material in your agenda packet. This material will also be published to the City's Internet. For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604, (916) 808-7200.

REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.cityofsacramento.org

PUBLIC HEARING
May 26, 2009

Honorable Mayor and
Members of the City Council

Title: North Natomas Financing Plan 2008 Update – Approving Development Fees and Nexus Study and Amending the North Natomas Development Agreement

Location/Council District: Council District 1.

Recommendation: Adopt a **Resolution** approving the North Natomas Nexus Study and Financing Plan 2008 Update, including an increase in the development impact fees for the Public Facilities Fee, and amending the standard-form North Natomas Development Agreement to implement changes in the procedure for adjusting the amount of the Public Facilities Fee and the mix of public facilities financed by that fee.

Contact: Mark Griffin, Fiscal Manager, 808-8788; John Dangberg, Assistant City Manager, 808-1222

Presenters: John Dangberg

Department: City Manager

Divisions: Executive Office

Organization No.: 02001011

Description/Analysis:

Issue: The North Natomas Financing Plan requires periodic updating to reflect changes in land uses, infrastructure costs and priorities and to implement fee and policy changes. The changes recommended in this report are the product of many meetings over eighteen months between staff, developers, members of the community, consultants, and other interested parties. This update makes changes in the list of facilities funded through the fee program; increases fees; and implements policy, agreement, and procedural changes that are designed to secure the City's ability to build the facilities and adapt to changing priorities required by development patterns and community needs. In addition, the recommended revisions to the Development Agreement provide a more

predictable and reliable method for adjusting fees for construction inflation into the future.

Policy Considerations: Adoption of the resolution is consistent with the 1994 Financing Plan and Nexus Study, as amended in 1999, 2002, and 2005. The resolution is also consistent with the City's Strategic Plan 3-Year Goal to "achieve sustainability and enhance livability." Because this resolution increases a fee, a public hearing is needed.

Environmental Considerations: Adoption of the proposed resolution is not a project for the purpose of the California Environmental Quality Act, as it concerns a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs., § 15378 [CEQA Guidelines].)

Sustainability Considerations: The update of the North Natomas Finance Plan fosters sustainability by facilitating the buildout of North Natomas in accordance with the North Natomas Community Plan, a jobs/housing balance, and a walkable and transit-oriented community.

Committee/Commission: None

Rationale for Recommendation: Periodic updating is required for development fee programs to accurately reflect needs, costs, and land uses. Fee changes that result must be adopted by resolution in a public hearing. The resolution also implements the cost and facility changes as well as policy, agreement, and procedural changes. As a matter of good management practice, appropriate fees and policy changes preserve the city's ability through the Finance Plan to fund infrastructure needed to preserve and protect the public health, safety, and welfare.

Financial Considerations: There is no impact to the General Fund. The North Natomas Public Facilities Fee (PFF) is paid by landowners and developers. Approval of the proposed resolution will authorize the city to collect a PFF that is appropriate to costs, land uses, and need. The proposed resolution will also address the long-term viability of the North Natomas Financing Plan by implementing policy, agreement, and procedural changes that are designed to provide assurance to developers about fee burdens and the facilities to be built and to preserve the City's ability to build the facilities and adapt to changing priorities required by development patterns and the needs of the community.

Emerging Small Business Development (ESBD): Council approval of this item is not affected by city policy related to the ESBD Program.

Respectfully Submitted by: _____
Mark Griffin
Fiscal Manager, Finance Department

Approved by: _____
Leyne Milstein
Director, Finance Department

Recommendation Approved:

_____
Ray Kerridge
City Manager

Table of Contents:

Attachment 1

BACKGROUND

The North Natomas Financing Plan and Nexus Study require periodic updating to reflect changes in land uses and infrastructure costs and to set the appropriate fees. Three previous updates were done in 1999, 2002, and 2005.

In 1994, the City Council adopted the North Natomas Financing Plan (the "Financing Plan") and the North Natomas Nexus Study (the "Nexus Study"). These documents are the key components of the North Natomas Development Fee Program (the "Fee Program"), which supports infrastructure needed to develop the land uses envisioned in the North Natomas Community Plan (the "Community Plan"). The Financing Plan specifies needed infrastructure, financing mechanisms, and fees. The Nexus Study ensures statutory compliance of the fees by allocating infrastructure costs equitably among the Community Plan's various land uses pursuant to the Mitigation Fee Act (Government Code section 66000 et seq.), as implemented through chapter 18.24 of the City Code. For purposes of this update, both the Financing Plan and Nexus Study are combined as one document.

In anticipation of a 2008 Update, North Natomas landowners, developers, and residents have been meeting with city staff and consultants since December 2007 to review and discuss proposed revisions. The recommended changes reflect the results of this process.

Summary of Considerations and Results

The changes proposed in this update consist of fee changes, facility changes, and policy changes to adapt to changing conditions as the Financing Plan evolves. The fee changes affect the Public Facilities Fee (the "PFF"), with the proposed fees by land use shown on Exhibit A. The average fee increase is 15.02%. Facility changes have been done strategically to reflect changes in facilities given changes in land use as the community has developed. The facility changes result in reductions in fee support where appropriate but also increases as well, most notably for a fire station and two overcrossings of Interstate 5.

There is general consensus in support of the fees and facility changes with the condition that future fee increases and facility changes be procedurally defined and amended into all North Natomas Development Agreements. These amendments are an advantage to both the City and the developers.

Detail of Main Considerations and Results

During the course of this update, developers, staff, and residents have grappled with several key issues:

- Costs increased by 74% between 2005 and 2008, making it impossible for fees to keep pace with the existing (and commonly used) automatic annual adjustment procedure. These costs increases affected everyone, including all other cities, developers, and the state. These increases in cost would have required a 54% increase in fees.
- The automatic adjustment mechanism needed revision to avoid similar problems in the future.
- Facilities that were underfunded even after accounting for inflation.
- Community needs for a fire station and adequate funding for all facilities.
- Developer concerns about adding or removing facilities or increasing the scope of facilities.
- The need to keep fees competitive with the region while, at the same time, funding needed infrastructure.
- How to integrate new fee revenues from the adjacent development areas of Greenbriar and Panhandle.
- How to prioritize the use of available cash.

The following steps have been taken in this update to address the key issues:

Facility Review

The community, developers, staff, and consultants reviewed all facilities for scope, cost, need, and the relationship to actual development in North Natomas. The review shows that adjustments can be made to reduce fee support for some facilities and to increase support for underfunded but high-priority projects. In particular, some roadway facilities can be shifted to non-fee sources because traffic analysis and nexus criteria indicate that traffic volumes and development patterns do not support the share of fee support currently in the plan. For example, the interchange at West El Camino and Interstate 80 has had a 50% allocation of costs to the fee program. Consultant review found the correct fair share to be 9%. As another example, Natomas Crossing Drive west of Duckhorn Drive would serve areas now in the County but has been funded entirely by the fee program. This facility was removed from fee support and would be a condition on any future development on land currently in the County.

The Snowy Egret Overcrossing was designed to accommodate a baseball stadium on the City's "100 Acre" site. This facility is unnecessary unless there is a use on the 100 Acre site or a re-use of the Arco Arena parcels. Accordingly, the facility is removed from the fee program and would be subject to an EIR traffic analysis with the use of the 100 Acre site or a reuse of the Arco Arena parcels.

Importantly, in the above examples and in all cases, no facilities were removed from the Community Plan. The only change is to the method of financing.

High-priority projects were increased to reflect true costs and with funding provided entirely by the fee program. The prime examples of these instances are two of the three over crossings of I-5 and SR99.

Automatic Adjustment Mechanism

Under the current edition of the Financing Plan, fees and costs are automatically adjusted annually in accordance with a commonly accepted index, the Engineering News Record Cost Construction Index (the "ENR Index"). The ENR Index has proven to be highly unreliable for everyone in California over at least the last four years. It measures material costs but not gross margins in construction contracts. In a booming economy with too few contractors, actual contract cost changes far exceeded material cost changes. This has been true for governments and developers alike. Between the beginning of 2005 and the beginning of this year, the ENR Index increased 10%. For the same period, contract costs for roadways, as measured by CalTrans, increased 74%. Both developers and government agencies acknowledge, based on their own experience, that this large magnitude of change is reasonably accurate.

To make automatic adjustments more accurate, this update proposes a structure that staff believes should work in all but the most unusual circumstances. The structure utilizes the CalTrans Cost Construction Index in combination with the ENR Index and annual reviews by our engineering consultant. In recognition that the period since 2005 may have been an historic aberration, the adjustment procedure allows fees to decline if appropriate. Details of the procedure are provided on Exhibit D.

This structure is one of the first of its kind. Until now, nothing more sensitive to changes in actual costs than the ENR Index has been used, but many governments around the state are looking at doing something similar.

Fire Station

This update includes $9.6 million in funding from fees for a second fire station and equipment. The fire station would be located on the west side of I-5.

With the approval of this update, the process to begin construction of the Fire Station can begin immediately. Staff will be retuning in the very near future to establish the CIP.

Facility Changes

Developer concerns over adding or removing facilities and over changing the scopes of facilities that are PFF funded in this and future updates have prompted a change that affects all future updates. No new facilities can be added to PFF funding (the PFF Program) regardless of whether they are in the Community Plan. Facilities can only be removed when funding is secured through another source and appropriated.

The scope of facilities is also fixed except as follows. PFF funding that is displaced because of an appropriation from a source other than the PFF can be used to increase the scope of facilities or to fund the removed facilities of the Snowy Egret overcrossing and westerly Natomas Crossing Drive. Such displaced funding can also be used to reduce fees or to limit fee increase.

Details of the provisions affecting facility changes are included in Exhibit D.

Fee Comparisons With Other Jurisdictions

The Financing Plan incorporates the necessary balance between the fee rates and the overall long-term feasibility of development. If the fees are too high, development may be slowed, and the City will not benefit from the growth of a new community. If the fees are too low, the City may be compelled to find other funding sources to cover the cost of infrastructure necessary in later years.

The proposed fees will fund needed infrastructure while at the same time remaining competitive with fee burdens elsewhere in the region. This balance is demonstrated on the Single Family and Office Fee comparative charts that are attached as Exhibits B and C respectively.

Other Considerations and Results

New Fee Revenues from the Greenbriar and Panhandle Areas

The Greenbriar and Panhandle areas will generate fees for facilities built in the North Natomas Financing Plan area that benefit these new areas. Future revenues from these areas are not being used to balance this Update because of their speculative nature. When these fees begin to be realized, they will be available: for any authorized facility in the PFF Program; for enhanced scopes of those facilities; for removed facilities as a result of this update; or, to reduce fees or to limit fee increases.

Changes in Land-Use Designations

Changes in Community Plan land-use designations present unique problems for the Fee Program when a change would result in reduced revenue and/or increased infrastructure requirements. Because fees vary by land use, a change in land use that causes actual revenue to be less than expected would under fund the infrastructure program. Similarly, a change in land use that requires new infrastructure would require additional revenue.

The change proposed in this update will formalize the policy that any change in land use designation cannot result in increased costs or reduced revenues to the Fee

Program. To implement this policy, each proposed change will be evaluated as a whole for its impact on the Fee Program. As appropriate, conditions of approval will be placed on a project stating that the applicant is subject to the North Natomas fee rates applicable under the original Community Plan land-use designation and/or is obligated to pay for certain infrastructure improvements.

Use of Available Cash

The PFF has a current balance of $31.4 million in cash. There is consensus among the participants in this update that this cash be used as follows:

PFF Proposed Projects With Current Funds	Allocation	Running Balance
Current Fund Balance	$ -	$ 31.4
Debt Service Reserve	$ 6.9	$ 24.5
2nd Fire Station	$ 9.6	$ 14.9
W. El Camino Signalization	$ 1.2	$ 13.7
El Centro Overcrossing	$ 7.7	$ 6.0
Community Center*	$ 6.0	$ -
* There is an additional $1.2 already appropriated for design		

The Debt Service Reserve represents 5 years of future debt service on bonds issued in 2002 and 2003 for the first Fire Station, the Library and the Arena Interchange. This is a prudent reserve to insure funds are available even in protracted periods of little development. If funds are not available, the debt service becomes an obligation of the General fund.

Staff will be returning soon to establish appropriations for the Fire Station and the West El Camino improvements. The West El Camino improvements are for signalization of the off and on ramps at the I-80 Interchange. Funds will also be available for the El Centro Overcrossing. This overcrossing has been determined by the Department of Transportation to be the highest priority overcrossing. The community center already has funds for design. Staff will return to Council for additional appropriations for the Community Center when funds are needed.

Implementation – Financing Plan and Development Agreements

The updated Financing Plan and Nexus Study will contain all of the changes discussed above. The attached resolution implements these changes and directs staff to amend the North Natomas Development Agreements (the "Amendment") to include the new automatic-adjustment procedure and the limits on facility changes (Exhibit D). Essentially, with the Amendment, the City acquires the ability to automatically adjust fees to levels adequate to fund a defined set of facilities. The developers acquire more

certainty with the PFF Program with limits on the addition, removal or modification of facilities funded by the PFF.

Future Challenges

The Financing Plan is the mechanism that funds needed capital improvements as the North Natomas Community Plan area develops. The Financing Plan has been successfully modified in the past as conditions have changed. The update before you now addresses changes that should be made now. The proposed changes balance the interests of residents, developers, and the City; provides funding for needed facilities now; and creates a highly viable plan when the area emerges from the FEMA restrictions and the severe economic downturn.

Draft and Final Report

Ten days prior to this Council Hearing, key tables from the draft Financing Plan and Nexus Study, indicating the amount of cost, or estimated cost, required for which the fee is levied as well as the revenue sources anticipated to fund the facilities, was made available on file with the City Clerk. The Nexus Study contains an overview of the history of the Financing Plan and details the basis for, and the necessity of, the proposed fee and policy revisions. The Nexus Study amends the Financing Plan. There is no stand-alone Financing Plan report with this update. Upon City Council action the Nexus Study will be finalized and made available to the public under the title "North Natomas Nexus Study and Financing Plan 2008 Update".

Effective Date

Fee changes will become effective 60 days following adoption. Policy changes will become effective immediately. Fee adjustments will be collected back to April 11 of last year in accordance with "catch up" agreements entered into under Ordinance No. 2008-017 adopted on April 10, 2008, and Ordinance No. 2008-047 adopted on October 7, 2008.

Attachment 2

North Natomas Financing Plan and Nexus Study 2008 Update

To Be Delivered (Delivered as Supplemental Material 23-1)

RESOLUTION NO.

Adopted by the Sacramento City Council

ADOPTING THE NORTH NATOMAS NEXUS STUDY AND FINANCING PLAN 2008 UPDATE AND AMENDING THE FORM OF THE NORTH NATOMAS DEVELOPMENT AGREEMENT

BACKGROUND

A. On May 3, 1994, the City Council approved and adopted the North Natomas Community Plan by Resolution No. 94-259;

B. On August 9, 1994, the City Council approved and adopted the North Natomas Financing Plan ("NNFP") by Resolution No. 94-495. The Financing Plan set forth the methods by which infrastructure required by the North Natomas Community Plan will be funded.

C. In Resolution 94-495, the City Council acknowledged that the completion of additional studies and measures was required prior to implementation of the NNFP, including, without limitation, studies and measures which would refine the cost of necessary public infrastructure and the allocation of said cost among the various land uses within the NNFP Area.

D. On August 9, 1994, the City Council also adopted Resolution No. 94-496, which directed City staff to: (1) conduct further analysis and studies relating to the NNFP; (2) conduct a nexus study to analyze the development impact fee program set forth in the NNFP, identify the cost of the required public infrastructure, and allocate those costs to the various land uses within the Community Plan area; and (3) follow specified guidelines for the preparation of a nexus study that would support the development impact fee program. The portion of the development impact fee program analyzed by the study relates to the Public Facilities Fee and Transit Fee.

E. On October 31, 1995, the City Council approved the North Natomas Nexus Study ("Nexus Study") dated October 31, 1995, by Resolution No. 95-619, and established development impact fees for the North Natomas area by adoption of Ordinance No. 95-058 and Resolution No. 95-620. The development impact fees adopted included a Public Facilities Fee and Transit Fee.

F. Review and revision of the Nexus Study and the development impact fees is legally appropriate and was contemplated by the City Council at the time of its approval of the Nexus Study and the impact fees. Section 1(e) of Resolution No.

95-619 provides: "The Nexus Study may be revised over time and under future circumstances in order to achieve the purposes and policies of the North Natomas Community Plan and the NNFP." Since 1994 the City Council has revised the NNFP in 1999, 2002, and 2005.

G. In connection with the 2008 revision of the NNFP, the City undertook an update of the Nexus Study and Financing Plan, taking into account current development conditions within the North Natomas Community and NNFP area, as well as modifications to the financing programs and policies that are appropriate to the achievement of the purposes of the North Natomas Community Plan.

H. To implement the modifications to the financing programs and policies, the North Natomas Development Agreement must be amended by adding a revised procedure for (1) adjusting the amount of the Public Facilities Fee and (2) changing the mix of public improvements financed by the fee.

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

SECTION 1. Findings.

The City Council hereby finds as follows:

(a) The recitals set forth above are true and correct and are incorporated herein by reference as findings.

(b) The North Natomas Nexus Study and Financing Plan 2008 Update (the "Update") sets forth a rational, fair, and equitable method by which the cost of necessary public infrastructure in the NNFP area is to be allocated to the various land uses.

(c) The Update properly and reasonably allocates the burden of financing NNFP public infrastructure among development projects within the NNFP Area. The burden is allocated in a manner that achieves proper proportionality in light of those impacts that may reasonably be anticipated from those projects.

(d) The Update (1) properly and reasonably identifies the purpose of the fees and their intended use; (2) establishes a reasonable relationship between the fee and the development on which the fee is imposed; (3) establishes a reasonable and rational relationship between the need for the public infrastructure and the type of development activity on which the fee is imposed; and (4) forms the basis for the further finding that the imposition of the fees described therein is necessary in order to protect the public health, safety, and welfare within the NNFP Area and the city.

(e) The Nexus Study and Financing Plan may be revised over time under future circumstances in order to achieve the purposes and policies of the North Natomas Community Plan.

(f) The findings, conclusions, and methodologies set forth in the Update are consistent with the North Natomas Community Plan.

SECTION 2. Adoption of Nexus Study and Financing Plan 2008 Update

The North Natomas Nexus Study and Financing Plan 2008 Update and other supporting data referred to in the Update are integral to the conclusions reached therein and are hereby approved and adopted. A copy of the North Natomas Nexus Study and Financing Plan 2008 Update shall remain on file with the City Clerk.

SECTION 3. Approval of New Fee-Adjustment Procedure

The City Council hereby approves the new procedure for adjusting development fees that is attached to this resolution as Exhibit E.

SECTION 4. Amendment of Resolution No. 94-494

The standard form of the North Natomas Development Agreement was approved on August 9, 1994, by Resolution No. 94-494 (the "1994 Resolution"). Section 2 of the 1994 Resolution provides, among other things, that "[n]o change to the form of agreement adopted by the [1994 Resolution] shall be made without specific advance approval by the City Council, which approval shall be in the form of an amendment to [the 1994 Resolution]."

(a) The City Council hereby amends the 1994 Resolution by revising the definition of "North Natomas Finance Plan" in the standard-form North Natomas Development Agreement, which is attached as Exhibit A to the 1994 Resolution, so that it reads as follows:

> "**North Natomas Finance Plan:** the plan, as it may be amended from time to time, which establishes methods for financing required Infrastructure and public facilities through a combination of land transfers, dedications, contributions, fees, assessment districts, community facilities districts, and other measures. As to development fees, the North Natomas Finance Plan, as amended from time to time, will provide for adjustment of fee amounts in accordance with the principles set forth in the procedure attached hereto as Exhibit I and incorporated herein by reference."

The Exhibit I referred to in the amended definition is the new procedure for adjusting development fees that is attached to this resolution as Exhibit D.

(b) The City Council hereby directs staff to offer the foregoing amendment to all landowners that are already parties to a North Natomas Development Agreement.

(c) Except as amended by Subsection 4(a) above, the 1994 Resolution remains in full effect.

Table of Contents:

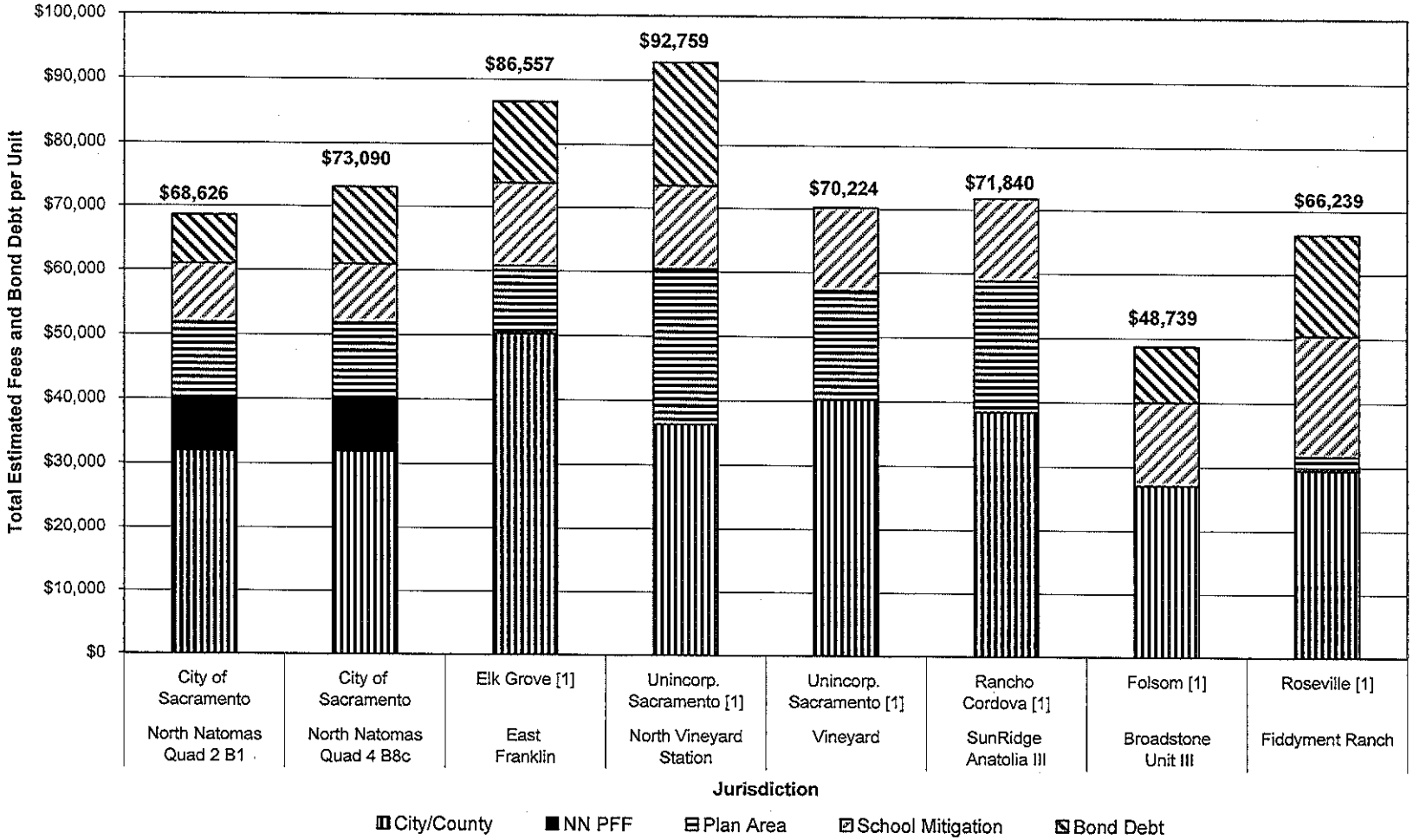
Exhibit A
North Natomas Nexus Study 2008 Update
Total Public Facilities Fee

Land Use	2008 Current Fee Rate	2008 Proposed Fee Rate	2008 Percent Increase
RESIDENTIAL [2]	*Fee per Unit*	*Fee per Unit*	
Single-Family Detached/Attached			
Rural Estates [3]	*See Note [3]*	*See Note [3]*	
Lot Size > 5,000 Sq. Ft.	$6,812	$8,466	24.3%
Lot Size 3,250 - 5,000 Sq. Ft. [4]	$5,975	$7,155	19.8%
Lot Size < 3,250 Sq. Ft.	$5,136	$5,845	13.8%
Age-Restricted	$5,723	$6,744	17.8%
Multifamily (>2 attached units)			
8-12 units per acre	$5,136	$5,845	13.8%
12 - 18 units per acre [5]	$4,408	$5,087	15.4%
> 18 units per acre	$3,680	$4,330	17.7%
Age-Restrict. Apartments	$2,295	$2,822	23.0%
Age-Restrict. Congregate Care	$1,053	$1,379	31.0%
NONRESIDENTIAL	*Fee per Net Acre*	*Fee per Net Acre*	
Convenience Commercial	$209,901	$238,272	13.5%
Community Commercial	$121,069	$140,361	15.9%
Village Commercial	$168,261	$192,376	14.3%
Transit Commercial	$169,405	$194,636	14.9%
Highway Commercial	$122,702	$141,161	15.0%
Regional Commercial	$109,670	$127,541	16.3%
EC Commercial	$121,069	$140,361	15.9%
EC 30 - Office	$63,117	$75,669	19.9%
EC 40 - Office	$80,182	$95,765	19.4%
EC 50 - Office/Hospital	$93,512	$110,918	18.6%
EC 65 - Office	$116,203	$136,519	17.5%
EC 80 - Office	$137,064	$160,944	17.4%
Lt. Industrial w/ < 20% Office	$37,649	$49,752	32.1%
Lt. Ind. w/ 20% - 50% Office [6]	$45,290	$57,527	27.0%
Age-Restricted Convalescent Care/Skilled Nursing	$39,009	$49,563	27.1%
Arena [7]	*See Note [7]*	*See Note [7]*	
Stadium	$113,808	$129,458	13.8%
Average Increase			15.0%

[1] Includes 3.0% administrative allowance.
[2] Residential fees are charged on a per unit basis. However, North Natomas Public Facilities Fees are allocated on a net acre basis assuming target densities.
[3] Currently, no land is designated as Rural Estates in the Finance Plan Area. In the event that such a land use is approved for development, the fee program will be updated to include a fee for Rural Estates.
[4] SFR - 3,250-5,000 sq. ft = 50% Low-Density and 50% Medium-Density.
[5] MFR 12-18 dwelling units/acre = 50% Medium-Density and 50% High-Density.
[6] Modified Light Industrial PFF equals 1.35 times Road portion of PFF for Light Industrial plus 70% of the non-Road PFF for Light Industrial and 30% of the non-Road PFF for EC-30.
[7] Arena site is already developed. The City of Sacramento and Arco Arena owners have an agreement regarding PFF and Transit Fees and deferred payments.

Exhibit B
Infrastructure Burden Comparison for Single-Family Development
(2,200-Sq. Ft. Unit, 5 Units per Acre)

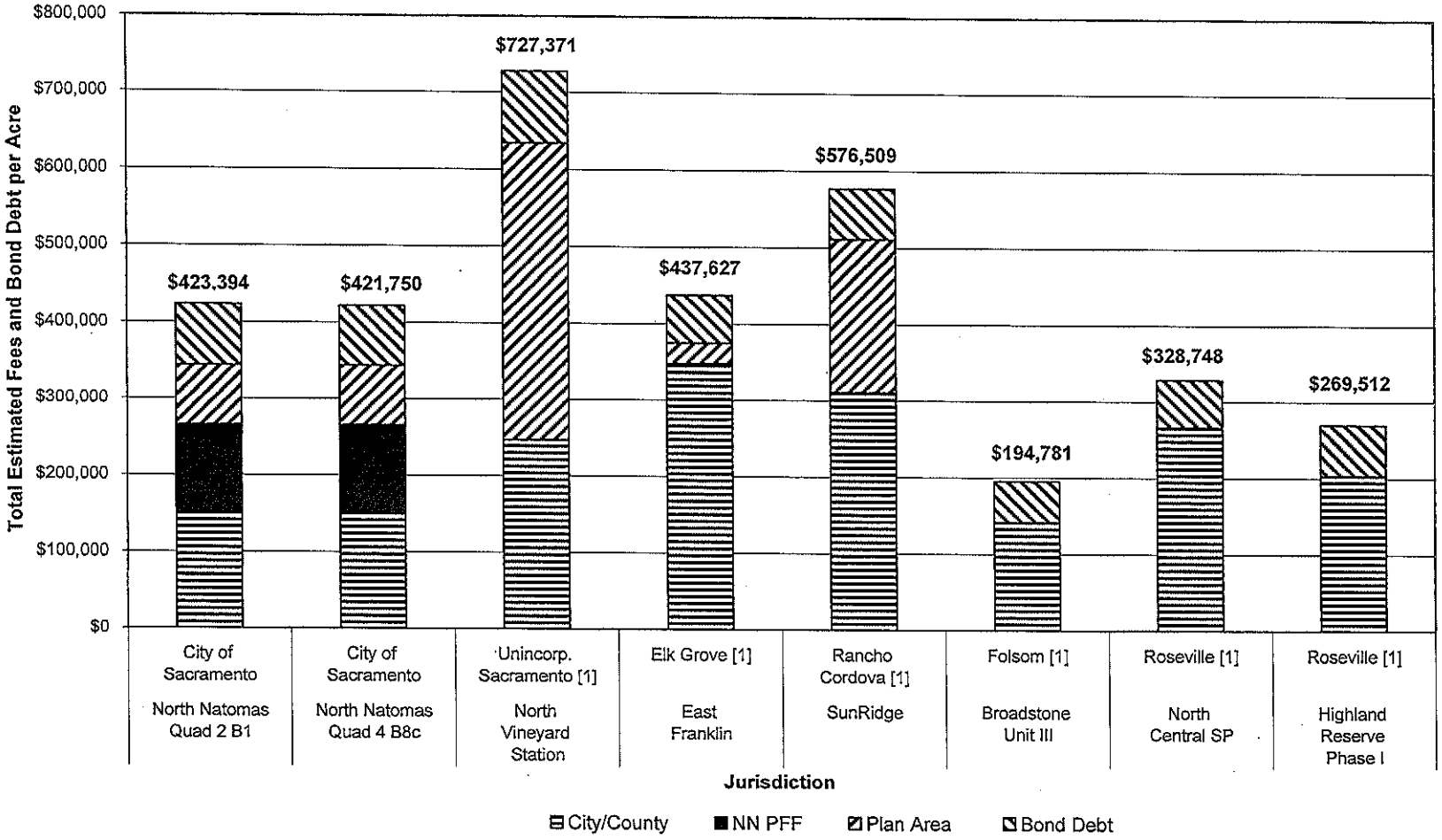
Single-Family Development



[1] All competitive fee comparisons are as of January 2008.

Exhibit C
Infrastructure Burden Comparison for Office Building
74,923 Sq. Ft. building and 5 Acre Site

Office Building



[1] Fee comparison is as of January 2008.

No fee required, as recording benefits the City of Sacramento, a government entity (Gov. Code, §§ 6103 & 27383).

Recording requested by, and when recorded return to—

City Clerk
City of Sacramento
915 "I" Street (Historic City Hall)
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

First Amendment to City Agreement No. XXXX-XXX
North Natomas Development Agreement

This amendatory agreement, dated _____, 20__, for purposes of identification, is between the **City of Sacramento**, a California municipal corporation (the "City"); and [**Landowner's name**], a [Landowner's status, e.g., California corporation] (the "Landowner").

Background

A. The City and the Landowner are parties to a North Natomas Development Agreement that is dated _____, ____; designated as City Agreement No. ____-___; and recorded in the Official Records of Sacramento County at Page ____ of Book ____ (the "Original Agreement").

B. Under the Original Agreement, the Landowner agrees to participate in, and to faithfully and timely comply with, the North Natomas Finance Plan as it is amended from time to time (the "Finance Plan").

C. On May 26, 2009, the Sacramento City Council approved the *North Natomas Nexus Study and Financing Plan 2008 Update*, which among other things establishes a new procedure for adjusting the amount of the Public Facilities Fee established by Sacramento City Code section 18.24.050. By entering into this amendatory agreement, the parties incorporate the new procedure into the Original Agreement.

With these background facts in mind, the City and the Landowner agree as follows:

1. **Amendment to Definition of "North Natomas Finance Plan."** The definition of "North Natomas Finance Plan" in article I of the Original Agreement is amended to read as follows in its entirety:

   North Natomas Finance Plan: the plan, as it may be amended from time to time, that establishes methods for financing Infrastructure through a combination of land transfers, dedications, contributions, fees, assessment districts, community facilities districts, and other measures. As to the Public Facilities Fee, the North Natomas Finance Plan, as amended from time to time, will provide for adjusting the amount of the Public Facilities Fee in accordance with the principles set forth in the procedure attached hereto as **Exhibit I** and incorporated herein by reference.

2. **Addition of New Exhibit I.** The procedure for adjusting the Public Facilities Fee that is attached to this amendatory agreement as an exhibit is hereby added to, and made part of, the Original Agreement as Exhibit I.

3. **All Other Terms Remain in Force.** Except as amended by sections 1 and 2 above, all terms and conditions of the Original Agreement remain in full force.

4. **Effective Date.** This amendatory agreement takes effect on the effective date of the ordinance that approves it (Gov. Code, § 65868; Sacramento City Code, §§ 18.16.120 & 18.16.130).

5. **Recording.** Either party may record this amendatory agreement with the Sacramento County Recorder.

6. **Counterparts.** The parties may execute this amendatory agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

7. **Entire Agreement.** This amendatory agreement sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all parties. This amendatory agreement will control if any conflict arises between it and the Original Agreement.

City of Sacramento

By: _____
John Dangberg, Assistant City Manager, for Ray Kerridge, City Manager
Date: _____, 20__

Approved as to Form
City Attorney

By: _____
Senior Deputy City Attorney

[Landowner's Name]

By: _____
[Name]
[Title]

Date: _____, 20__

[Attach Certificate of Acknowledgment – Civil Code § 1189]

EXHIBIT I

Procedure for Adjusting the Public Facilities Fee and Revising the Inventory of Remaining Infrastructure to be Financed by that Fee

When amending the North Natomas Finance Plan, the City shall set the amount of the Public Facilities Fee (subsection A.1 in Sacramento City Code section 18.24.050) in accordance with the following procedure by using the estimated cost of the remaining facilities to be financed:

1. **Definitions.**

   (a) "Agreement" means the development agreement to which this Exhibit I is attached.

   (b) "Aggregate Costs" means the aggregate PFF Shares of PFF Facilities remaining to be completed, calculated using the then-current year's cost estimate, plus the cost to pay the administrative component of the PFF as specified in the Finance Plan.

   (c) "CalTrans Index" means the Quarterly California Highway Construction Cost Index (Price Index for Selected Highway Construction Items) published by the California Department of Transportation, Division of Engineering Services – Office Engineer.

   (d) "CEQA Mitigation Measure" means a requirement proposed, in accordance with the California Environmental Quality Act, to eliminate or substantially lessen the significant effects on the environment from the City's approval of a project on the Property.

   (e) "Effective Date of this Exhibit" means the effective date of the amendatory agreement that adds this Exhibit I to the Agreement.

   (f) "ENR Index" means the Engineering News Record Construction Cost Index for San Francisco.

   (g) "Finance Plan" means the North Natomas Finance Plan, as amended.

   (h) "Non-PFF Sources" means any funding for a Schedule One or Schedule Two Facility other than PFF funding. It includes but is not limited to federal funding, state funding, regional funding, grants, gifts, contributions, fees, reimbursements, the City's general fund, the City's Major Street Construction Tax, private funds, payments from the Greenbriar area, and payments from the Panhandle area upon annexation to the City. It does not include conditions of approval or CEQA Mitigation Measures imposed on any project the Landowner proposes for the Property, except as otherwise provided in section 7(b).

   (i) "Funding Requirement" means the amount of the PFF that must be generated from remaining development so that the City will have adequate funding to construct the PFF Facilities remaining to be completed and to administer the PFF program. It is calculated as follows: *first*, calculate the Aggregate Costs; *second*, from the Aggregate Costs, subtract both the PFF revenues then available to complete the uncompleted PFF Facilities (including any

interest earned on those PFF revenues) and the amount of any reduction under section 9; and *third*, add the amount of outstanding PFF credits.

(j) "PFF" means the Public Facilities Fee established by subsection A.1 of Sacramento City Code section 18.24.050, as amended.

(k) "PFF Funding Obligation" means the maximum funding obligation of the PFF in a given year, determined in accordance with subsection 5(a) below.

(l) "PFF Share" means the portion of a PFF Facility's cost that is funded, in whole or part, by the PFF.

(m) "Property" means the real property identified in Exhibit A to the Agreement.

(n) "Schedule One" means the list of public improvements and segments of public improvements that is attached to, and made part of, this Exhibit I.

(o) "Schedule One Facility" means a public improvement or segment of a public improvement that is listed on Schedule One.

(p) "Schedule Two" means the list of public improvements and segments of public improvements that is attached to, and made part of, this Exhibit I.

(q) "Schedule Two Facility" means a public improvement or segment of a public improvement that is listed on Schedule Two.

(r) "Schedule Three" means the diagram of the "Boot" area that is attached to, and made part of, this Exhibit I.

(s) "Scope" means the location or physical description, or both, of a Schedule One Facility or a Schedule Two Facility, but not the PFF funding set forth for the facility in Schedule One or Schedule Two (the actual PFF funding for a facility or portion of a facility may be higher or lower than the dollar amount set forth in Schedule One or Schedule Two).

(t) "Transportation Facilities" means all public improvements and segments of public improvements listed in Schedule One other than the police substation, second fire station, library, freeway landscaping, and community center.

(u) "2008 Update" means the North Natomas Nexus Study and Financing Plan 2008 Update that the Sacramento City Council approved on May 26, 2009, by adopting Resolution No. 2009-XXX.

2. **Annual PFF Adjustment for Schedule One Facilities.**

(a) Each July 1, the City shall adjust the PFF in accordance with the difference between—

(1) the Funding Requirement for the then-current year; and

(2) the funding that would be available, after deducting revenue on hand and adding outstanding PFF credits, if the then-existing PFF were applied to remaining development.

In other words, the City shall adjust the PFF in accordance with the difference between the then-current year's cost estimate and an amount calculated by applying the then-existing PFF to remaining development.

(b) Example of an annual PFF adjustment for Schedule One Facilities:

As of April 1, 2010	Percentage Cost Changes		
	+3.257%	–6.000%	+6.000%
Costs Comparison			
Remaining Costs from April 1, 2009, Estimate	200,000,000	200,000,000	200,000,000
Aggregate Costs and Administration	206,514,000	188,000,000	212,000,000
	+3.257%	–6.000%	+6.000%
Funding Requirement Calculation			
Aggregate Costs and Administration	206,514,000	188,000,000	212,000,000
Less Cash on Hand April 1, 2010	–30,000,000	–30,000,000	–30,000,000
Plus Credits Outstanding April 1, 2010	25,000,000	25,000,000	25,000,000
2010 Funding Requirement	201,514,000	183,000,000	207,000,000
Existing Fee Calculation			
Revenue From Remaining Development Using 2009 Fees	200,000,000	200,000,000	200,000,000
Less Cash on Hand April 1, 2010	–30,000,000	–30,000,000	–30,000,000
Plus Credits Outstanding April 1, 2010	25,000,000	25,000,000	25,000,000
Resources Based with 2009 Fees	195,000,000	195,000,000	195,000,000
Fee Change Effective July 1, 2010			
Resources Based on 2009 Fees	195,000,000	195,000,000	195,000,000
2010 Funding Requirement	201,514,000	183,000,000	207,000,000
Fee Change $	+6,514,000	–12,000,000	+12,000,000
Fee Change %	+3.341%	–6.154%	+6.154%

(c) Unless the City determines that prevailing market conditions do not justify doing so (e.g., if development is lacking or the remaining development is limited), at least once every three years the City shall perform a comprehensive review and nexus study for the PFF, using the cost-adjustment procedures in subsections 3 and 4 to reallocate costs to remaining undeveloped land uses in accordance with "nexus" principles.

3. **Procedure for Adjusting Costs of Uncompleted Transportation Facilities.** The City shall use the following procedure to adjust the PFF Shares for all uncompleted Transportation Facilities:

(a) *Method of Adjustment.* Each year, the City shall determine the cost adjustment for uncompleted Transportation Facilities using either the Benchmark Change determined under subsection 3(b) or the percentage change in the index selected under subsection 3(c). If, for the year in question, the difference between the Benchmark Change and the percentage change in the selected index is five or more percentage points, then the City shall use the Benchmark Change to adjust costs for uncompleted Transportation Facilities. Otherwise, the City shall adjust costs for those facilities using the percentage change in the selected index.

(b) *Determination of Benchmark Change.* The City shall follow the following steps to determine the "Benchmark Change" for each year:

(1) *Step 1.* Before April 1, have a third-party professional engineering consultant who is under contract to the City estimate the cost to construct all uncompleted Transportation Facilities. The cost estimate will anticipate cost changes to the next July 1.

(2) *Step 2.* Determine the "Benchmark Estimate" of the cost to construct all uncompleted Transportation Facilities by adding an estimated contingency to the cost estimate from Step 1. The estimated contingency may not exceed 26% of the cost estimate.

(3) *Step 3.* Divide the Benchmark Estimate from Step 2 by previous year's adjusted cost estimate for uncompleted Transportation Facilities (which was determined in accordance with this section 3) and express the resulting quotient as a decimal.

Illustration: If, for example, the Benchmark Estimate from Step 2 is $206,514,000 and the previous year's cost estimate for uncompleted Transportation Facilities is $188,275,000, then the resulting quotient (to nine decimal places) is 1.094258842 (i.e., $206,514,000 ÷ $188,725,000 = 1.094258842).

(4) *Step 4.* Subtract 1.0 from the resulting quotient in Step 3.

Illustration: If, for example, the quotient from Step 3 is 1.094258842, then subtracting 1.0 from that quotient yields a difference of 0.094258842 (i.e., 1.094258842 – 1.0 = 094258842).

(5) *Step 5.* Express the difference from Step 4 as a percentage by multiplying it by 100 and adding a percentage sign, and then round the percentage to the nearest thousandth. This rounded percentage is the Benchmark Change for the year.

Illustration: If, for example, the difference from Step 4 is 0.094258842, then multiplying that difference by 100 and rounding the product to the nearest thousandth yields a Benchmark Change of 9.426%.

(c) *Selection of Index.* Each year, the City shall adjust the cost of the Transportation Facilities remaining to be completed by using either the percentage change in the ENR Index or the percentage change in the CalTrans Index, according to the following criteria:

(1) If both indexes are positive on March 1 of the year in question, then the City shall adjust the cost of the remaining Transportation Facilities using the index with the greater percentage change.

(2) If the change in one index is positive and the change in the other is negative on March 1 of the year in question, then the City shall adjust the cost of the remaining Transportation Facilities using the index with the positive change.

(3) If the change for both indexes is negative on March 1 of the year in question, then the City shall adjust the cost of the remaining Transportation Facilities using the index with the negative change that is closer to zero.

(4) Measurement of Percentage Change in an Index.

(A) The percentage change in the ENR Index is the year-over-year change as of each March.

(B) The percentage change in the CalTrans Index is the change between the 12-quarter average through quarter 1 of the then-current year and the 12-quarter average through quarter 1 of the prior year.

(d) *Precision.* The City shall carry out all calculations to three decimal places.

(e) *Sample Cost Adjustments for Uncompleted Transportation Facilities*:

Sample #1
Benchmark change of + 4.000%
ENR Index change of + 2.000%
CalTrans Index change of + 3.100%
Adjustment: plus 3.100%

Sample #2
Benchmark change of + 4.500%
ENR Index change of + 1.000%
CalTrans Index change of – 1.000%
Adjustment: plus 1.000%

Sample #3
Benchmark change of – 4.000%
ENR Index change of – 0.500%
CalTrans Index change of – 1.000%
Adjustment: minus 0.500%

Sample #4
Benchmark change of – 5.000%
ENR change of + 0.500%
Cal Trans Index change of + 0.000%
Adjustment: minus 5.000%

Sample #5
Benchmark change of +6.000%
ENR Index change of +1.000%
CalTrans Index change of –1.000%
Adjustment: plus 6.000%

Sample #6
Benchmark change of +6.000%
ENR change of +3.500%
CalTrans Index change of +7.000%
Adjustment: plus 7.000%

4. **Cost Adjustment for Police Substation, Second Fire Station, Library, Freeway Landscaping, and Community Center.** The PFF Shares of the police substation, second fire station, library, freeway landscaping, and community center listed in Schedule One will not exceed the amount established in the 2008 Update to the Finance Plan, except as follows: the City shall adjust the PFF Shares for the police substation, second fire station, library, freeway landscaping, and community center by using only the positive change in the ENR Index from March to March, effective each July 1. If, however, there are two consecutive years of decreases in the ENR Index, then, beginning with the second year of the decrease, the City shall decrease the PFF Shares for the police substation, second fire station, library, freeway landscaping, and community center by an amount equal to the decrease in the ENR Index for that second year.

5. **Annual Determination of the PFF Funding Obligation.** The Finance Plan shows for each Schedule One Facility not just its estimated cost but also its PFF Share. Each year, after adjusting costs in accordance with sections 2 through 4 above, the City shall determine the aggregate PFF share for all PFF Facilities, and that aggregate amount will be the PFF Funding Obligation for that year.

6. **Reduction of PFF Shares.**

   (a) The City may reduce the PFF Share of a Schedule One Facility only if one of the following events occurs:

      (1) The PFF Share of the estimated cost to construct the facility, as set forth in Schedule One, decreases as a result of the procedure in subsection 3 or 4.

      (2) The PFF Share of the actual cost to construct the facility is less than the PFF Share set forth for the facility in Schedule One, adjusted in accordance with the procedure in subsection 3 or 4.

      (3) The City secures and appropriates, from Non-PFF Sources, funding to replace all or part of the facility's PFF Share.

   (b) If the City reduces a PFF Share in accordance with subsection 6(a)(1) or 6(a)(2), then the City may use the reduced portion only to decrease the Funding Requirement.

   (c) If the City reduces a PFF Share in accordance with subsection 6(a)(3) and the reduction does not result from payments the City receives from the Greenbriar area or the Panhandle area, then the City shall use the reduced portion of the PFF Share as follows:

      (1) First, if there is an actual cost overrun on a completed Schedule One Facility when the PFF share is reduced, then the City shall use the reduced portion of the PFF share to reduce the cost overrun on that facility.

      (2) Second, if a Schedule One Facility is under construction when the PFF share is reduced and the City anticipates that the actual cost to construct that facility will exceed the facility's PFF Share shown on Schedule One (as the PFF Share has been adjusted from

year to year), then the City shall use the reduced portion of the PFF share to reduce the anticipated cost overrun on that facility.

(3) Third, if there are no actual or anticipated cost overruns on a Schedule One Facility when the PFF Share is reduced, then the City may use the reduced portion of the PFF Share either—

(A) to fund or to increase the Scope of Schedule One or Schedule Two Facilities; or

(B) to decrease the Funding Requirement.

(d) The City shall determine the reduced amount of a PFF Share in accordance with subsection 3 or 4 above, as appropriate.

7. Funding for Schedule Two Facilities.

(a) Except as provided in subsection 7(b), the only funding available for Schedule Two Facilities is—

(1) PFF funding available under subsection 6(c);

(2) funding from Non-PFF Sources; and

(3) fee revenues available under subsections 8(a) and 8(b).

(b) If, when approving a project on the Property, the City requires the construction or funding of a Schedule Two Facility, in whole or part, as a CEQA Mitigation Measure or a condition of approval, then the City shall timely construct or fund that facility at no cost to the Landowner, subject to the following: the City may require, as a CEQA Mitigation Measure or a condition of approval, that the Landowner construct or fund the overcrossing for Snowy Egret Way described in Schedule Two if—

(1) the Property consists of one or more of Sacramento County APNs 225-0070-059, 225-0070-060, 225-0070-063, 225-0070-067, and 225-0070-076; and

(2) the mitigated negative declaration, the environmental impact report, or any other relevant environmental document prepared for the Landowner's project proposes the construction or funding of the Snowy Egret Way as mitigation for the traffic impacts that will result from approval of the project

8. **Funding from Greenbriar and the Panhandle.**

(a) When the City begins to receive development-impact fees collected under the Panhandle Finance Plan to offset the cost of PFF-funded facilities that benefit the Panhandle area, the City may use those fees for Schedule One Facilities and Schedule Two Facilities .

(b) When the City begins to receive development-impact fees collected under the Greenbriar Finance Plan to offset the cost of PFF-funded facilities that benefit the Greenbriar area, the City may use those fees for Schedule One Facilities and Schedule Two Facilities.

9. **Reduction of Funding Requirement.**

(a) The City, in its discretion, may decrease the Funding Requirement in accordance with subsection 6(c).

(b) If the land-use designation for Sacramento County APN 225-0070-059, 225-0070-060, 225-0070-063, or 225-0070-067 (each, an "Arco Arena Parcel") is changed to allow uses different from the uses permitted for the Arco Arena Parcel under the North Natomas Community Plan as it existed on the effective date of the Agreement, then each year the City shall reduce the Funding Requirement by an amount equal to the increased portion of PFF that the City collects from the affected Arco Arena Parcel.

10. **Scope of Schedule One and Schedule Two Facilties.** The Scope of each Schedule One Facility is as described in Schedule One and the Finance Plan. The City may not revise the Scope except as provided in subsections 10(a), 10(b), and 10(c), or as required to comply with federal or state law. With respect to freeway overcrossings (unless sufficient PFF funding has been allocated already), the physical appearance, design enhancements, and landscaping must be substantially comparable to the freeway overcrossings and freeway interchanges at Truxel Road and Interstate 80, Arena Boulevard and Interstate 5, and Del Paso Road and Interstate 5 as they existed on the Effective Date of this Exhibit. With respect to other public roadways and streets, the scope must be based on the City's street-design standards that apply to the roadway or street under the Agreement.

(a) The City may increase the Scope of a Schedule One Facility in accordance with subsections 6(c)(2), 8(a), and 8(b).

(b) The City may increase the Scope of a Schedule Two Facility in accordance with subsections 6(c)(2), 7(a), 8(a), and 8(b).

(c) If the City receives development-impact fees collected under the Panhandle Finance Plan to offset the cost of PFF-funded facilities that benefit the Panhandle area, or if the City receives development-impact fees collected under the Greenbriar Finance Plan to offset the cost of PFF-funded facilities that benefit the Greenbriar area, then the City may use those fees and any other Non-PFF Sources to fund in full a change in the Scope of a Schedule One Facility or a Schedule Two Facility.

11. **Adequate Funding for Schedule One Facilities.** The City may not cite, as a reason for increasing the amount of the PFF Funding Obligation, the loss of potential funding from Non-PFF Sources identified in the 2008 Update.

12. **Change in PFF Share for West El Camino/Interstate 80 Interchange Improvements.** The PFF Share for the West El Camino/Interstate 80 Interchange Improvements (the "Interchange Improvements") was determined to be 9% based upon an assumption in the City's traffic study that the area of Natomas commonly known as the "Boot," as shown on Schedule Three, would be developed with urban uses. If all urban development in the Boot ever becomes permanently prohibited by law, such as by the recording of perpetual open-space or conservation easements, then the following will apply notwithstanding anything to the contrary in this Exhibit I:

    (a) The City shall increase the entire Finance Plan area's share of the Interchange Improvements from 9% to 37% of the cost of the interchange as determined by the consultant under subsection 3(b), above.

    (b) The City shall adjust the PFF Share for the Interchange Improvements to reflect the increase to 37%, taking into account the development that has already taken place in the entire Finance Plan area, so that remaining development in the Finance Plan area pays only its fair share of the entire Finance Plan area's new 37% share of the cost of the Interchange Improvements.

    (c) To illustrate the adjustment described in subsections 12(a) and 12(b), the following example shows how the adjustment would be calculated if urban development becomes permanently prohibited in the Boot when the Finance Plan area is 60% built out:

		Current Finance Plan Share Scenario	Revised Finance Plan Share Scenario (if Development of the Boot is Prohibited)	
a	Interchange Cost	$22,465,000	$22,465,000	
b	Finance Plan Fair Share	9%	37%	
c	PFF Allocated Share of Cost	$2,021,850	$8,312,050	*(a*b)*
d	Base Share	$2,021,850	$2,021,850	
e	Incremental Share	N/A	$6,290,200	*(c-d)*
f	% Development Remaining	N/A	40%	
g	Incremental Adjusted Share	N/A	$2,516,080	*(e*f)*
h	PFF Funding Obligation	$2,021,850	$4,537,930	*(d+g)*