

## **RESOLUTION NO. 2010-648**

Adopted by the Sacramento City Council

November 16, 2010

### **EXECUTING A SETTLEMENT AGREEMENT AND GENERAL RELEASE, APPROPRIATING FUNDS TO THE NORTH NATOMAS BICYCLE CONNECTIVITY PROJECT (K15115000), AND DETERMINING PROJECT EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

#### **BACKGROUND**

- A. On May 11, 2010, the City of Sacramento issued an "Order Imposing Administrative Penalty" (and an Amended Order on May 24, 2010) against Donahue Schriber in the amount of \$292,000 for Donahue Schriber's alleged violations of the Transportation Management Plans (TMPs) for the Natomas Marketplace, Park Place, Westlake Village, and Natomas Park developments.
- B. The settlement of the Administrative Order and a dispute between Donahue Schriber and the North Natomas Transportation Management Agency provides for a total of \$120,000 to be paid by Donahue Schriber to the City. The full amount of the payment will be transferred to the North Natomas Bicycle Connectivity Project (K15115000).
- C. June 15, 2010, the City Council adopted Contract 2010-0474 and Resolution 2010-336 which established K15115000, appropriated \$165,000 from the North Natomas Transportation Management Association (NNTMA), and transferred \$165,000 from the Bike Trail Repair Project (K19000200) into K15115000.
- D. The funding generated by the settlement agreement will supplement funds now held to implement the North Natomas Bicycle Connectivity project (K15115000). The project includes preliminary engineering, environmental documentation, final design, and construction for the bikeway improvements, including construction of five new mid-block crossings and twelve access paths from on-street bike lanes to Class I bike paths. Mid-street crossings require new curb cuts and striping, and in some cases installation of lights to alert motorists. Other access improvements involve minor grading and paving. The activities involved in the project would not result in any substantial air quality or noise impacts, and would not cause substantial disruption to area streets. It can be seen with certainty that the connectivity project would not result in any significant effects on the environment, and the project is therefore exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3).

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

- Section 1. The City Manager is authorized to execute a Settlement Agreement and General Release between the City of Sacramento, North Natomas Transportation Management Association, and Donahue Schriber Realty Group.
- Section 2. The project revenue and expenditure budgets for the North Natomas Bicycle Connectivity Project (K15115000) are amended as necessary by accepting \$120,000 in supplemental funding from Donahue Schriber Realty Group into Fund 3202, CIP Reimbursable Fund.
- Section 3. Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the City Council finds that the Project is exempt from review under Section 15061(b)(3) of the California Environmental Quality Act Guidelines.
- Section 4. Exhibits A and B are a part of this Resolution.

**Table of Contents:**

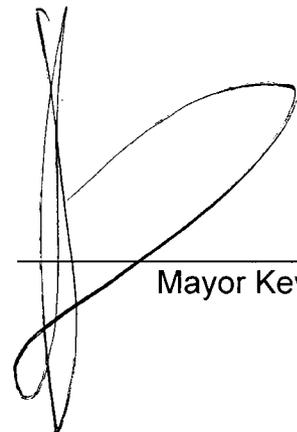
- Exhibit A: Map of North Natomas Bicycle Connectivity Project
- Exhibit B: Settlement Agreement and General Release

Adopted by the City of Sacramento City Council on November 16, 2010 by the following vote:

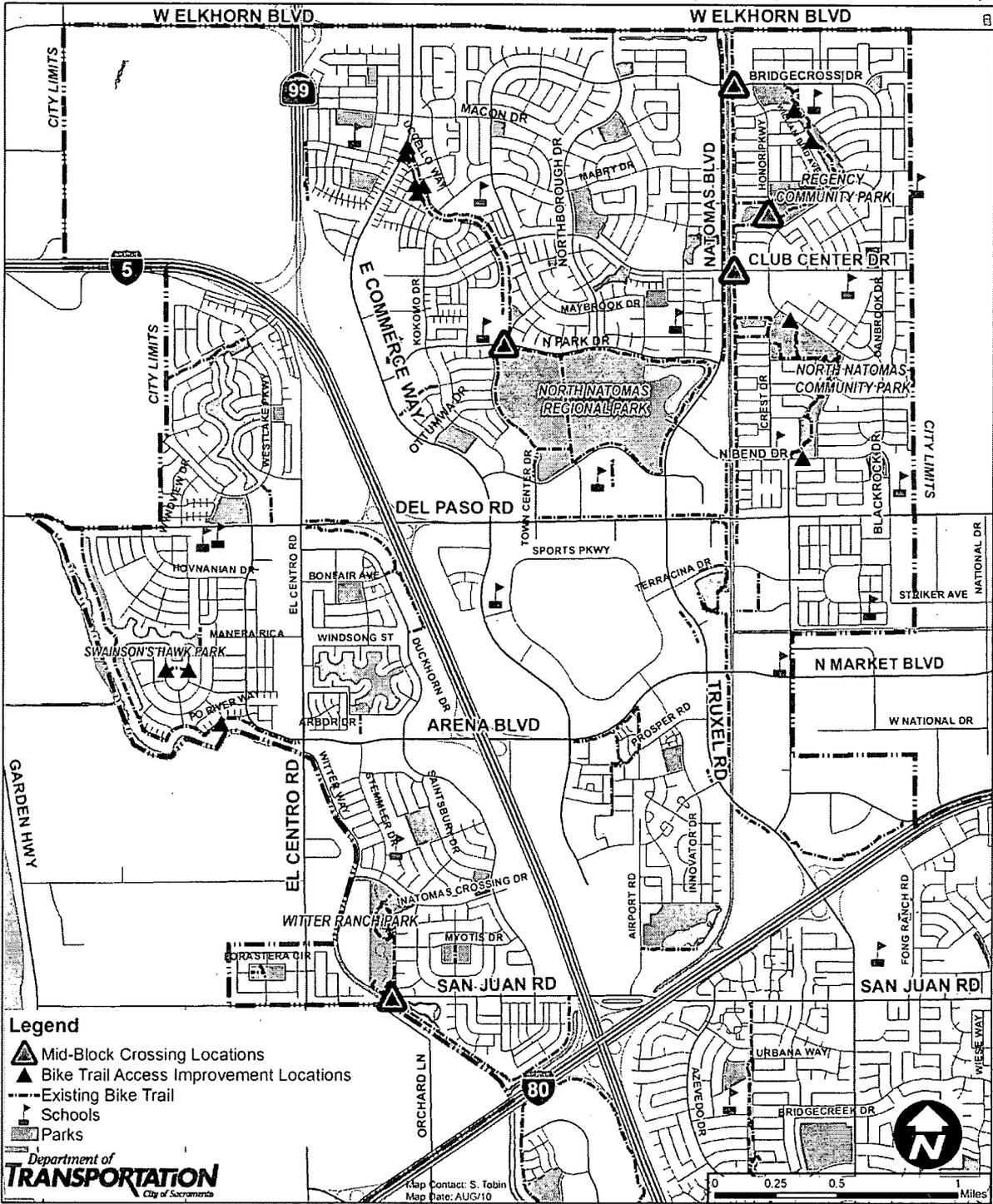
- Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.
- Noes: None.
- Abstain: None.
- Absent: None.

Attest:

  
Shirley Concolino, City Clerk

  
\_\_\_\_\_  
Mayor Kevin Johnson

# Location Map for North Natomas Bicycle Connectivity Project (K15115000)



**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release (hereinafter “Agreement”) is made and entered into by and between the CITY OF SACRAMENTO (hereinafter “City”), DONAHUE SCHRIBER REALTY GROUP, L.P., a Delaware limited partnership and its Affiliates (as defined below) (hereinafter collectively “Donahue Schriber”) and the NORTH NATOMAS TRANSPORTATION MANAGEMENT ASSOCIATION (hereinafter “NNTMA”), with reference to the following facts:

**RECITALS**

A. Whereas, Donahue Schriber is a Delaware limited partnership, doing business in the City of Sacramento, and, along with its affiliates, Park Place Market, LLC, Park Place Market II, LLC, Westlake Commercial, LLC, Natomas Park Center, LLC and Donahue Schriber Realty Group, Inc. (hereinafter “Affiliates”) has planned, developed and overseen construction of the Natomas Marketplace, Park Place, Westlake Village and Natomas Park commercial developments; and

B. Whereas, the NNTMA is a nonprofit organization with the stated mission of fostering transportation behaviors that benefit the North Natomas community through advocacy, programs, education, and services; and

C. Whereas, the City is a California charter city that has adopted, and has assumed responsibility for enforcing, Sacramento City Code Chapter 17.184, regarding the processing and recognition of Transportation Management Plans (“TMP”) consistent with the City’s Transportation Systems Management Program; and

D. Whereas, the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments each fall within the definition of a “major project” as set forth in Sacramento City Code section 17.184.030 (B), which requires that the owner of a major project in the City create and submit for City approval a TMP for each such project; and

E. Whereas, during the development and permitting process, Donahue Schriber submitted, and City approved, TMPs for each of the Natomas Marketplace, Park Place, Westlake

Village and Natomas Park developments that establish certain obligations on the part of Donahue Schriber for the continued operation of the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments (collectively the “Original TMPs”); and

F. Whereas, each of the Original TMPs approved by the City for the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments require Donahue Schriber to provide a low- or zero-emission shuttle to serve the customers of each of the four developments, both internally and for travel between the four developments; and

G. Whereas, on a date uncertain, Donahue Schriber ceased providing the low- or zero-emissions shuttle to the customers of the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments; and

H. Whereas, Donahue Schriber had provided annual monetary contributions to the NNTMA’s “shopper shuttle” program totaling approximately \$300,000.00 for the years 2003-2007; and

I. Whereas, on May 11, 2010, the City of Sacramento issued an “Order Imposing Administrative Penalty” (and an Amended Order on May 24, 2010) against Donahue Schriber in the amount of \$292,000.00 for Donahue Schriber’s alleged violations of the Original TMPs for the Natomas Marketplace, Park Place, Westlake Village, and Natomas Park developments for failing to provide a low- or zero-emission shuttle service as described in the Original TMPs for those developments; and

J. Whereas, the Parties dispute whether Donahue Schriber has violated the Original TMPs for the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments; and

K. Whereas, the Parties dispute whether Donahue Schriber has an ongoing contractual, or other, obligation to provide annual monetary support to the NNTMA for the “shopper shuttle” or other programs on behalf of the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments; and

L. Whereas, the Parties have engaged in negotiations in an attempt to resolve their differences, and throughout these negotiations all Parties were, and continue to be, represented by counsel; and

M. Whereas, the Parties wish to avoid the potential uncertainty, expense and delay of litigation, whether in civil court or through administrative processes, and have therefore, based upon their negotiations, agreed to a settlement; and

N. Whereas, as a result of their negotiations, the Parties want to settle the Parties' dispute with respect to the facts above; and

O. Whereas, the Parties want to enter into this Agreement as hereinafter set forth:

**NOW THEREFORE**, in consideration for the mutual promises and undertakings of the Parties as set forth below, the City, Donahue Schriber and NNTMA hereby enter into this Agreement and agree as follows:

1. Recitals. The recitals set forth at the beginning of this Agreement are true and correct and are hereby fully incorporated by reference into this Agreement.

2. Settlement Terms.

(a) Within 10 days of the delivery of this Agreement signed by all parties to Donahue Schriber, Donahue Schriber will pay to the City the sum of ONE HUNDRED THOUSAND DOLLARS. (\$100,000.00)

(b) In January 2011, Donahue Schriber will pay to the City the additional sum of TWENTY THOUSAND DOLLARS. (\$20,000.00)

(c) City will allocate the amounts referenced in subparagraphs 2 (a) and 2 (b) entirely to the budget for the North Natomas Bicycle Connectivity Project (K15115000). These amounts shall be treated as new funds and shall in no way supplant funds currently planned or allocated to be expended on North Natomas transportation or connectivity projects including the East Drain Canal Bike Trail.

(d) City will recognize in North Natomas and appropriate City publications the sponsorship by Donahue Schriber, the North Natomas Transportation Management Association, and the City of Sacramento, of the North Natomas Bicycle Connectivity Project.

(e) Donahue Schriber has submitted Amended TMPs for the Natomas Marketplace, Park Place, Westlake Village and Natomas Park developments. The City will approve those Amended TMPs concurrently with the execution of this Agreement.

(f) The City will accept the consideration referenced in subparagraphs 2 (a) and 2 (b) in full satisfaction of the May 11, 2010, and May 24, 2010, Orders Imposing Administrative Penalty, and will withdraw the orders, with prejudice, immediately following receipt of those funds.

3. The terms of this Agreement shall be enforceable pursuant to California Code of Civil Procedure section 664.6.

4. Except as outlined in this Agreement, the Parties shall each bear their own costs, expenses and attorneys' fees associated with the May 11, 2010, and May 24, 2010, Orders Imposing Administrative Penalty, in the negotiation of this Agreement, and in all other respects related to the disputes referenced in this Agreement.

5. The NNTMA, on behalf of itself and its representatives, executors, agents, attorneys, administrators, successors-in-interest and assigns, irrevocably and unconditionally releases and discharges Donahue Schriber and its Affiliates, including the officers, attorneys and employees of each, from any and all lawsuits, claims, actions, demands or other legal responsibilities of any kind which the NNTMA has, or may have, against Donahue Schriber and its Affiliates, including the officers, attorneys and employees of each in regard to the obligations, liabilities, or potential obligations and liabilities, associated with the Shopper Shuttle program.

6. The City, on behalf of itself and its representatives, executors, agents, attorneys, administrators, successors-in-interest and assigns, irrevocably and unconditionally releases and discharges Donahue Schriber and its Affiliates, including the officers, attorneys and employees of each, from any and all lawsuits, claims, actions, demands, or other legal responsibilities of any

kind which the City has, or may have against Donahue Schriber and its Affiliates, including the officers, attorneys and employees of each in regard to the obligations, liabilities, or potential obligations and liabilities, associated with the Original TMPs for Natomas Marketplace, Park Place, Westlake Village and Natomas Park..

7. Donahue Schriber, on behalf of itself, its Affiliates and its representatives, executors, agents, attorneys and administrators, successors-in-interest and assigns, irrevocably and unconditionally releases and discharges the NNTMA and the City, including the officers, attorneys and employees of each, from any and all lawsuits, claims, actions, demands or other legal responsibilities of any kind which Donahue Schriber and its Affiliates have, or may have, against the NNTMA and/or the City, the officers, attorneys and employees of each, in regard to the disputes referenced in this Agreement.

8. The NNTMA and Donahue Schriber hereby waive any and all rights or benefits that they may have under Section 1542 of the Civil Code of the State of California, which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

The NNTMA and Donahue Schriber each acknowledge that it understands the effect of this waiver pursuant to Civil Code Section 1542, and that they are represented and have been advised of this release by their counsel.

9. With respect to the Original TMPs, the City hereby waives any and all rights or benefits that they may have under Section 1542 of the Civil Code of the State of California, which provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**

**OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

The City acknowledges that it understands the effect of this waiver pursuant to Civil Code Section 1542, and that it is represented and has been advised of this release by its counsel.

10. The Parties understand and agree to the terms of this Agreement, and enter into this Agreement knowingly and voluntarily. The Parties have had the opportunity to consult with counsel, and have in fact consulted with counsel of their choice. The Parties have investigated the facts pertaining to the settlement and this Agreement and all matters pertaining thereto as deemed necessary. The Parties have relied upon their judgment, belief, knowledge, understanding and expertise after consultation with their counsel concerning the legal effect of the settlement and its terms. By signing this document and the documents referred to herein, the Parties signify their full understanding, agreement, and acceptance of the Agreement.

11. This Agreement contains the entire agreement of the Parties regarding the subject matter of this agreement and shall constitute the final understanding between the Parties hereto. All prior negotiations made or which have occurred prior to the date of this Agreement are merged into this Agreement.

12. The Parties have not relied upon any statement or representation, written or oral, made by any Party, or any of their respective agents, attorneys or any other person, regarding any matter. The Parties expressly acknowledge and agree that they have relied solely upon the advice of their own attorneys in deciding to sign this Agreement.

13. The Parties warrant that they have not assigned any of the claims that are the subject of this Agreement.

14. Each Party hereto warrants to the other Party or Parties that he or she has the full power and authority to execute, deliver and perform under this Agreement and all documents referred to herein, and that any needed consent or approval from any other person has been obtained.

15. The Parties understand and acknowledge that the City may be required to disclose the terms of this Agreement pursuant to the requirements of the California Public Records Act, and the provisions of any other law or regulation requiring disclosure of information by public entities.

16. The Parties shall act in good faith and use reasonable efforts after the execution of this Agreement to ensure that their respective obligations hereunder are fully and punctually performed. The Parties shall promptly perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement. Time is of the essence in this Agreement.

17. This Agreement is the result of a compromise of disputed claims. The obligations of the Parties assumed hereunder are not to be construed as an admission of liability or responsibility regarding the same.

18. This Agreement shall be interpreted in accordance with the laws of the State of California. To the extent that any Party brings an action to enforce the terms of this Agreement, such action shall be filed and prosecuted in the Sacramento County Superior Court. The parties agree that each participated equally in the negotiation and preparation of this Agreement, and that no party hereto benefited from superior bargaining power in reaching the terms contained herein.

19. In the event that any provision of this Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

20. No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party or Parties waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. The Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by all the Parties hereto or their authorized representatives.

21. This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument.

22. This Agreement shall become effective immediately following execution by all of the Parties, on the latest date appearing below.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and General Release.

DATED:

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John Dangberg  
Sacramento Assistant City Manager

DATED:

\_\_\_\_\_  
Mark L. Whitfield, Executive Vice President  
Donahue Schriber Realty Group, L.P.

DATED:

\_\_\_\_\_  
Becky Heieck  
North Natomas Transportation  
Management Association

Approved as to form:

CITY ATTORNEY'S OFFICE

DATED:

\_\_\_\_\_  
Brett M. Witter

Approved as to form:

TRAINOR, FAIRBROOK

DATED:

\_\_\_\_\_  
Candice B. Harper

Approved as to form:

BELZER and CARR

DATED:

\_\_\_\_\_  
Martin Carr