

ORDINANCE NO. 2012-031

Adopted by the Sacramento City Council

July 31, 2012

APPROVING A SECOND AMENDMENT TO CITY AGREEMENT NO. 97-144 A NORTH NATOMAS DEVELOPMENT AGREEMENT (GATEWAY WEST)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Incorporation of Agreement.

This ordinance incorporates the *Second Amendment to City Agreement No. 97-144* between the City and Gateway West LLC (“**Landowner**”), a copy of which is attached to this ordinance as Exhibit A.

Section 2. Hearing before the Planning Commission.

On June 28, 2012, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning Commission conducted a noticed public hearing on an application to amend City Agreement No. 97-144 (the “**Original Agreement**”) by extending its initial term. The Original Agreement is a North Natomas Development Agreement that covers the Gateway West Planned Unit Development; was approved on August 26, 1997; and became effective on September 25, 1997. During the hearing, the Planning Commission received and considered evidence and testimony. After the hearing concluded, the Planning Commission forwarded to the City Council a recommendation to approve the proposed amendment.

Section 3. Hearing before the City Council; Findings.

On July 31, 2012, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the City Council conducted a noticed public hearing on the application to amend the Original Agreement. During the hearing, the City Council received and considered evidence and testimony concerning the proposed amendment. Based on the information in the application and the evidence and testimony received at the hearing, the City Council finds as follows:

- (a) The proposed amendment to the Original Agreement is consistent with the City's general plan and the goals, policies, standards, and objectives of any applicable specific or community plan.
- (b) The proposed amendment will facilitate Landowner's development of the property subject to the amendment, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the applicable specific or community plan.

- (c) Without the amendment, Landowner would be unlikely to proceed with development of the property subject to the amendment in the manner proposed.
- (d) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.
- (e) Landowner will participate in all programs established or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation-monitoring plan) and has agreed to the financial participation required under the applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public.
- (f) Landowner has made commitments to a high standard of quality and has agreed to all applicable land-use and development regulations.

Section 4. Approval and Authorization.

The City Council hereby approves the *Second Amendment to City Agreement No. 97-144*. The City Council hereby authorizes the Director of the Community Development Department to sign on the City's behalf, on or after the effective date of this ordinance, the *Second Amendment to City Agreement No. 97-144*.

Table of Contents

Exhibit A – Second Amendment to City Agreement No. 97-144

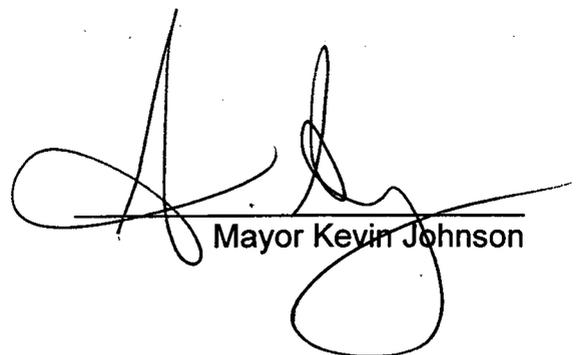
Adopted by the City of Sacramento City Council on July 31, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmember Schenirer.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

Effective: August 29, 2012

Recorded for the benefit of the City of Sacramento and thus exempt from documentary-transfer tax under Revenue and Taxation Code section 11928 and from recording fees under Government Code section 6103.

When recorded, return to—

Office of the City Clerk
Historic City Hall
915 "I" Street, First Floor
Sacramento, CA 95814

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**Second Amendment to City Agreement No. 97-144
North Natomas Development Agreement
Gateway West**

This amendatory agreement, dated July 31, 2012, for reference, is between the City of Sacramento, a California municipal corporation (the "City") and Gateway West, LLC, a California limited-liability company ("Landowner").

Background

- A. The City and Landowner are parties to a North Natomas Development Agreement that is dated August 26, 1997; designated as City Agreement No. 97-144; and recorded with the Sacramento County Clerk/Recorder in Book 19970908 at Page 0384 (the "Original Agreement").
- B. The real property covered by the Original Agreement was redefined by an agreement that is dated August 12, 1998; designated as City Agreement No. 97-144-1; and recorded with the Sacramento County Clerk/Recorder in Book 19980915 at Page 1208 (the "First Amendment").
- C. The real property covered by this amendatory agreement is identified in Exhibit A to this amendatory agreement and is only a portion of that covered by the Original Agreement as amended by the First Amendment.
- D. The effective date of the Original Agreement was September 25, 1997, and the initial fifteen-year term of the Original Agreement expires on September 25, 2012. Although section 3 in article II of the Original Agreement entitles Landowner to extend the initial term by giving the City notice at least 180 days before the initial term expires, Landowner did not exercise that right before it expired on March 29, 2012. Landowner nevertheless desires to extend the initial term as if notice had been given, and the City is willing to agree to that extension by amending section 3 in article II of the Original Agreement as set forth below.

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

- 1. **Amendment of Section 3, Article II.** Section 3 in article II of the Original Agreement is amended to read in its entirety as follows, but only with respect to the real property identified in Exhibit A to this amendatory agreement:

3. **Term.**

a. **Initial Term.** The term of this Agreement shall commence on the Effective Date, which is September 25, 1997, and shall extend for a period of twenty (20) years thereafter, that is, until September 25, 2017, unless it is sooner terminated or modified by the mutual consent of the parties.

b. **Renewal Options.** Subject to the provisions of this subparagraph, LANDOWNER shall have the right to renew this Agreement on its same terms and conditions, taking into account any amendments hereto mutually agreed upon after the Effective Date. The term of this Agreement shall mean and include the initial term, plus any renewal periods. The specific conditions for exercise of the renewal options are as follows:

(1) On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto. For purposes of this subsection, "Exercise Date" shall mean the date that LANDOWNER or LANDOWNER's successor in interest gives written notice of intention to exercise the option to renew this Agreement, in accordance with the provisions of Section 20 hereof.

(2) The option to renew shall be exercisable by giving CITY written notice of LANDOWNER's intention to exercise the option on or before the Exercise Date, which notice shall be given not later than one hundred eighty (180) days prior to expiration of the initial term or any renewal term.

(3) LANDOWNER shall be limited to two (2) renewal periods of five (5) years each; the parties specifically intend that under no circumstances shall the term of this Agreement extend beyond thirty (30) years, unless this Agreement is amended in accordance with the procedures set forth herein for Agreement amendments.

2. **All Other Terms Remain in Force.** Except as amended by section 1 above and the First Amendment, the Original Agreement remain in full force.
3. **Effective Date.** This amendatory agreement takes effect on the effective date of the ordinance that approves it (Government Code, § 65868; Sacramento City Code, §§ 18.16.120 & 18.16.130).
4. **Recording.** Either party may record this amendatory agreement with the Sacramento County Recorder.
5. **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.
6. **Entire Agreement and Modification.** This amendatory agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. 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 both parties. This amendatory agreement will control if any conflict arises between it and the Original Agreement.

(Signature Page Follows)

City of Sacramento

By: _____
Max Fernandez, Director
Community Development Department
Date: _____, 2012

Attest
Sacramento City Clerk

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Gateway West, LLC

By: _____
Signature

Name

Title
Date: _____, 2012

Approved as to Legal Form
Attorneys for Gateway West, LLC

By: _____
Signature

Name