

**Meeting Date:** 4/26/2016

**Report Type:** Consent

**Report ID:** 2016-00367

**Title: Agreements with Natomas Creek, LLC and Commerce Station, LLC for the Construction of Sidewalk, Frontage, Signal, and Drainage Improvements (Two-Thirds Vote Required)**

**Location:** District 1

**Recommendation:** Pass a Resolution 1) authorizing agreements with Natomas Creek, LLC and Commerce Station, LLC for the Construction of Sidewalk, Frontage, Signal, and Drainage Improvements; and 2) and appropriating funds for that purpose.

**Contact:** Mark Griffin, Special Districts Manager, (916) 808-8788, Department of Finance

**Presenter:** None

**Department:** Finance

**Division:** Public Improvement Finance

**Dept ID:** 06001321

**Attachments:**

01-Description/Analysis

02-Background

03-Resolution

04-Master Agreement Signed [PL13-4053]

05-Exhibit A to Master Agreement

06-Exhibit B to Master Agreement

07-Exhibit C to Master Agreement

08-Exhibit E to Master Agreement

09-Third Amendment to A&S Agreement Signed [PL13-4053]

10-Public Safety R-C Agreement for Del Paso Road Signed [PL13-4053]

11-Exhibit A to Project-Safety R-C Agreement

12-Exhibit B-1 to Public-Safety R-C Agreement

13-Exhibit B-2 to Project-Safety R-C Agreement

14-Exhibit F to Reimb-Credit Agreement (Database Manual)

15-Exhibit G to Reimb-Credit Agreement (Reso # 95-620)

16-Exhibit H to Reimb-Credit Agreement (Prior Agrmts)

17-Exhibit I to Reimb-Credit Agreement (Fee Credit Policies)

18-Amendment No. 1 to Schumacher Drainage Agreement Signed [PL13-5043]

19-Exhibits A & B for First Amendment to Drainage Agreement

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**City Attorney Review**

Approved as to Form  
Joseph Cerullo  
4/20/2016 5:13:09 PM

**Approvals/Acknowledgements**

Department Director or Designee: Leyne Milstein - 4/7/2016 2:16:14 PM

## **Description/Analysis**

**Issue Detail:** The cessation of development in North Natomas from 2008 to last year has resulted in conspicuous gaps in completed roadways and adequate sidewalks for pedestrian access, affecting safety, convenience, and community aesthetics. The problems caused by these gaps are particularly noticeable along the frontage on the north side of Del Paso Road from East Commerce Way to the on-ramp to northbound Interstate 5, the adjoining intersection at Del Paso Road and East Commerce Way, and the west side of East Commerce Way to Ottumwa Drive.

Passage of the attached resolution will authorize four agreements by which Natomas Creek, LLC and Commerce Station, LLC (collectively, the Developers) will construct the needed improvements using both public and private funding:

- Master Agreement for Funding and Construction of Infrastructure Improvements in Norther Natomas
- Third Amendment to Acquisition-and-Shortfall Agreement (City Agreement No. 2006-1351)
- Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure
- First Amendment to Agreement for Construction of Drainage Improvements (City Manager Agreement No. 2003-0850)

The resolution will also appropriate funds and create a Capital Improvement Program (CIP) for these improvements. The agreements and improvements are detailed in the background section of this report.

**Policy Considerations:** All improvements are authorized by the North Natomas Financing Plan (the Plan) as public improvements but are designated as the Developers' responsibility to be funded by developer equity or by the proceeds from bonds issued in Community Facility District No. 4 (CFD 4). In the normal course of development, the improvements would be constructed before the recordation of abutting final maps or when development thresholds are reached.

The Developers will be recording a map that adjoins East Commerce Way and will be using remaining CFD 4 proceeds to fund the roadway's construction. The Developers are willing to advance the construction of the Del Paso Road improvements in conjunction with the construction of East Commerce Way so long as the City funds the Del Paso Road improvements with the Plan's already collected development-impact fees (Fees), which the Developers will repay when maps are recorded along Del Paso Road.

Entering into the Public Safety Project Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure—specifically, the Del Paso Road improvements—will require the suspension of the competitive-bidding requirement of

Chapter 3.60 in the City Code, which requires that contracts for the work on public projects be awarded through competitive bidding *unless* one of the exceptions to competitive bidding applies. Staff recommends that the City Council invoke one of those exceptions by determining, by a two-thirds vote, “that it is in the best interests of the city to suspend competitive bidding” for this agreement. (City Code § 3.60.170.D.) Suspension of bidding is in the City’s best interests for the following reasons:

- (1) The lack of sidewalks and other improvements on the streets identified above endangers pedestrians, in particular the students walking to and from Natomas Middle School and Inderkum High School from the west. If competitive bidding must be done (a two- to three-month process), then the improvements cannot be completed as early as possible in the 2016-2017 school year.
- (2) As owners of the adjacent properties, the Developers are obligated under the Plan to construct these improvements when they develop the properties or reach certain development benchmarks. In those circumstances, they would use their own funds to pay contractors and then be reimbursed when the City acquires the completed improvements. The bidding process would be more informal as well: the Developers would solicit at least three proposals from qualified contractors and submit those proposals to the City for review and approval. The Developers, however, does not plan to develop the properties adjacent to Del Paso Road for several years and thus are not yet obligated to construct the improvements. Nevertheless, the Developers are willing to construct the improvements now if the informal process is used and if the City makes progress payments from the Plan’s development-impact fees, which the Developers will repay later, when the improvements would have been required of the Developer. The Developers will also comply with the other requirements of public-works contracts, including the payment of prevailing wages and the hiring of apprentices.
- (3) Importantly, suspension of formal competitive bidding will not expose the City or the public to excessive costs. The Developers may not accept a proposal and award a construction contract without the City’s approval. Moreover, under the Plan and the four agreements, the City’s financial contribution to the cost of these improvements is capped at specific amounts, and the Developers are responsible for all costs in excess of the capped amounts. So the Developers have ample incentive to control costs.

**Environmental Considerations:** On May 3, 1994, the City Council approved an Environmental Impact Report for the construction covered by these agreements, as required by the California Environmental Quality Act (Resolution No. 94-258).

**Rationale for Recommendation:** Approval of the agreements and appropriation of funds will permit the construction of necessary improvements earlier than required, to the benefit of the neighborhood.

**Financial Considerations:** The cost of all improvements is estimated at \$4,249,283 and is limited to this amount from public funds. Any project overages are the responsibility of the Developers. The public sources are as follows:

- Fees will fund up to \$1.4 million from the North Natomas Financial Plan Public Facilities Fee Fund (Fund 3206) for improvements to Del Paso Road; the Developers will repay these fees when they record maps on their lands adjacent to Del Paso Road.
- The proceeds of CFD 4 bonds will fund \$2,849,283 of improvements to East Commerce Way, first from CFD 4, Series D, and then, if additional funds are needed, from CFD 4, Series C, up to the capped amounts.

All public funds are currently unencumbered except for the proceeds of CFD 4, Series D. The remaining balance of those proceeds has been reserved as security for the construction of drainage improvements. One of the four agreements will release that reserve in exchange for the Developers providing substitute security to the satisfaction of the Department of Utilities.

Under the City Charter, fee-funded improvements to Del Paso Road will require the creation of a CIP and an appropriation of Fund 3206 in the amount of \$1.4 million. CFD 4, Series D proceeds have an appropriation but any associated interest will need to be appropriated.

**Local Business Enterprise (LBE):** Not applicable.

## BACKGROUND

There are two improvements to be constructed under four agreements with Natomas Creek, LLC and Commerce Station, LLC (collectively, the Developers). Normally the Developers would construct these improvements when they recorded a subdivision map or when specified traffic thresholds are reached. But recordation requiring the full extent of the improvements may not occur for years, while public-safety concerns compel that these improvements be constructed now.

**Improvements to East Commerce Way Frontage (Segment A)**, as shown on the map below, will extend from Ottumwa Drive to Del Paso Road and will complete this portion of the roadway. Improvements include two south-bound lanes and the west-side curb and sidewalk. There are two agreements for the construction of Segment A:

- *First Amendment to Agreement for Construction of Drainage Improvements (City Manager Agreement No. 2003-0850)*. The first agreement will release available bond funds currently held in reserve for the construction of drainage improvements in the Developers' Commerce Station project. In return, the Developers will provide the City with substitute security to the satisfaction of the Department of Utilities. Approximately \$2.8 million will then be available to apply towards the estimated \$2,849,283 cost of Segment A, which includes contingencies. The \$2.8 million is the remaining proceeds plus interest from CFD 4, Series D, bonds, which are secured by a tax lien on the Developers' land.
- *Third Amendment to Acquisition-and-Shortfall Agreement (City Agreement No. 2006-1351)*. The second agreement for Segment A sets the maximum support from public funds at the \$2,849,283 estimate. Any costs in excess of this amount are the responsibility of the Developers and are secured by performance bonds. This agreement also requires that the Series D proceeds be used in their entirety first on Segment A. Any deficiency in the Series D proceeds will be funded, up to the total project estimate, by proceeds from CFD 4, Series C, bonds, which are secured by a tax lien on the land of an adjoining developer, Lewis Communities. The improvements to Segment A are eligible for funding from the Series C proceeds, and the taxpayers who reside on the land that secures Series C will benefit directly from the Segment A improvements. The actual operation of this provision is unlikely, however, because the available Series D proceeds are very close to, if not in excess of, the total obligation of public funds.

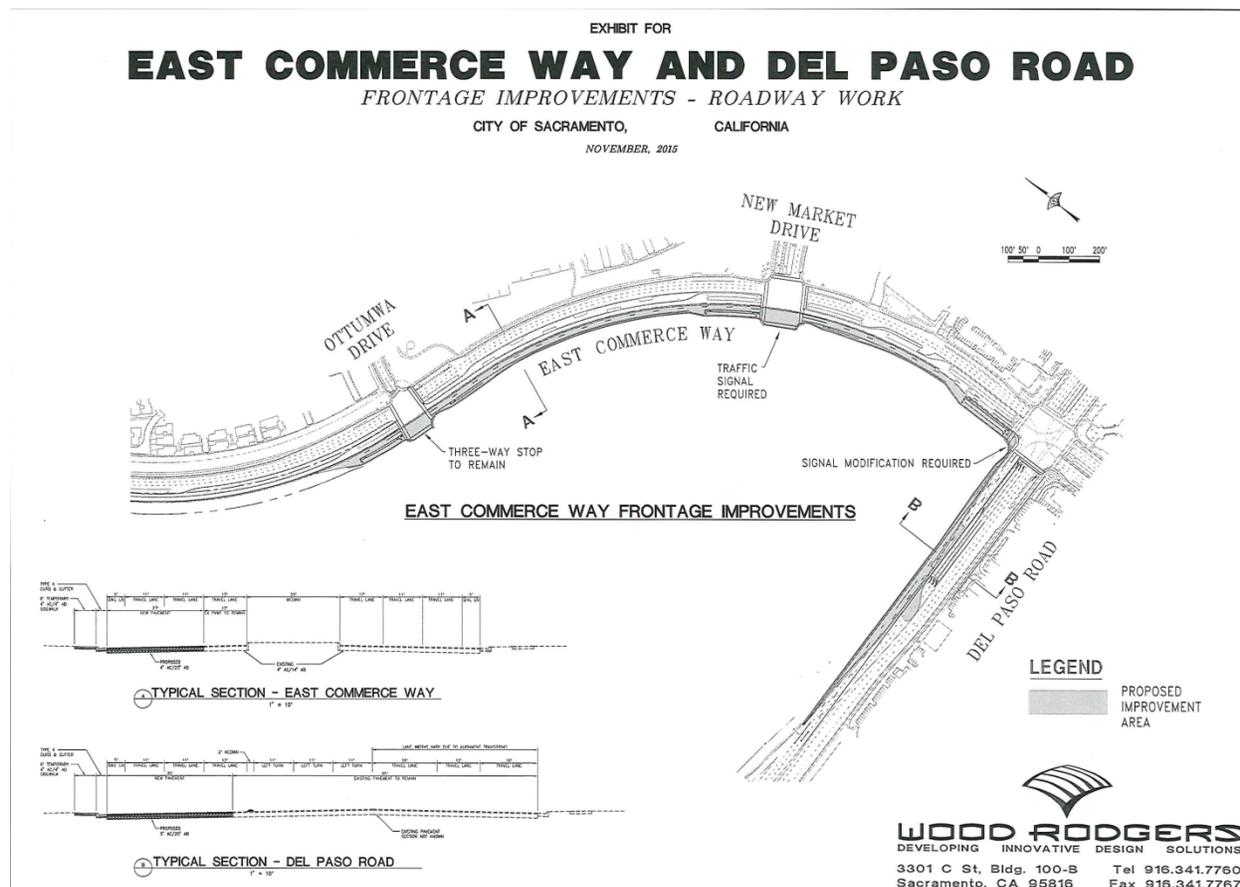
**Improvements to Del Paso Road (Segment B)** will be improved on the north side, including the median from the Caltrans right-of-way to East Commerce Way. Improvements include curb, gutter, and sidewalk; median curbs and basic landscaping; and lane realignments, paving, and signal and lane modifications to the intersection at East Commerce Way.

Under the agreement for Segment B (*Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure*), the Developers agree to construct the improvements now, and the City, in turn, agrees to reimburse the Developers through progress payments up to \$1.4 million from impact-fee

funds available under the North Natomas Financing Plan (the Plan) as the work is done, with a final reconciliation upon completion. The Developers are responsible for any overages not caused by City-requested change orders. In addition, the Developers must repay the reimbursement, without interest, at the time the Developers *would* have been required to construct the improvements—i.e., a portion is due as the Developers record maps for their Commerce Station project abutting Del Paso Road. The balance is due when the Commerce Station project reaches the point where it will generate 50% of the p.m. peak hour project traffic at full build out. Once the Plan is fully repaid, the Developers will be issued North Natomas Public Facility Fee credits in the amount authorized in the then-current Plan, which is consistent with the normal functioning of the Plan's credit programs.

All of the above agreements are organized as exhibits into the *Master Agreement for Funding and Construction of Infrastructure Improvements in North Natomas*, which summarizes the terms of the individual agreements.

The map below shows the location of all improvements.



## RESOLUTION NO.

Adopted by the Sacramento City Council

### **AUTHORIZING AGREEMENTS WITH NATOMAS CREEK, LLC AND COMMERCE STATION, LLC FOR THE CONSTRUCTION OF SIDEWALK, FRONTAGE, SIGNAL, AND DRAINAGE IMPROVEMENTS; AND APPROPRIATING FUNDS FOR THAT CONSTRUCTION**

#### **BACKGROUND**

- A. The lack of development in North Natomas since 2008 has resulted in conspicuous gaps in public improvements, affecting safety, convenience, and aesthetics.
- B. The vicinity around North Natomas Middle School and Inderkum High School lacks sidewalks from the west and south. The subject roadways of East Commerce Way and Del Paso Road also lack complete roadways, medians, and curbs.
- C. Natomas Creek LLC and Commerce Station, LLC (collectively, “**Developers**”) are willing to construct these improvements in advance of the development of their property.
- D. Agreements with the Developers to complete the construction within the next year have been completed. Financing for the construction will come from three sources: development-impact fees collected under the North Natomas Financing Plan (the “**Plan**”); proceeds from two series of Mello-Roos bonds; and, for improvement costs that exceed estimates, the Developers’ equity.
- E. Appropriation authority and a capital project are required for construction funded from the Plan. Sufficient expenditure authority already exists for the other, bond-funded projects.
- F. The City Council is fully informed on this matter.

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

Section 1. The City Manager is authorized to enter into the following four agreements with Natomas Creek, LLC and Commerce Station, LLC for the construction of improvements to Del Paso Road and E. Commerce Way with Natomas Creek, LLC and Commerce Station, LLC:

- (a) Master Agreement for Funding and Construction of Infrastructure Improvements in Norther Natomas
- (b) Third Amendment to Acquisition-and-Shortfall Agreement (City Agreement No. 2006-1351)
- (c) Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure
- (d) First Amendment to Agreement for Construction of Drainage Improvements (City Manager Agreement No. 2003-0850)

Section 2. The City Manager is authorized to establish a capital project for the construction of improvements to Del Paso Road and to appropriate \$1.4 million from the fund balance of the North Natomas Public Facilities Fee Fund (Fund 3206) for this purpose.

Section 3. The City Manager is authorized to appropriate interest earnings associated with residual proceeds from CFD 4, Series D, which together with the residual proceeds will provide total appropriations of approximately \$2,849,283.

**MASTER AGREEMENT  
FOR FUNDING AND CONSTRUCTION OF  
INFRASTRUCTURE IMPROVEMENTS IN NORTH NATOMAS**

This *Master Agreement for Funding and Construction of Infrastructure Improvements in North Natomas*, dated March 1, 2016, for reference purposes only, is between the CITY OF SACRAMENTO, a California municipal corporation (the “**City**”); and COMMERCE STATION, LLC, a California limited-liability company, and NATOMAS CREEK, LLC, a California limited-liability company (collectively, the “**Landowners**”).

**Background**

- A. The Landowners own real property in the North Natomas area as depicted on Exhibit A to this agreement (the “**Property**”).
- B. The Landowners previously obtained approvals from the City on August 12, 1999, and May 20, 2008, of the land-use entitlements that will allow the development of the Property with a mix of commercial, office, residential, park, open-space, and mixed uses commonly referred to as the Natomas Creek Project (#P98-041) and as the Commerce Station Planned Unit Development Project (#P06-018) (collectively, the “**Project**”).
- C. The City desires to accelerate construction of the following public infrastructure in the North Natomas area to benefit the existing residents and businesses and to promote the future development of the area: traffic signals, median, sidewalks, and ultimate lane-width configurations for segments of East Commerce Way and Del Paso Road. In addition, the City desires to ensure that the remaining storm-water-drainage trunk lines that will serve portions of the Property and complete the planned storm-water-drainage system in North Natomas Drainage Basin No. 1 are constructed when appropriate.
- D. To finance and fund the major common infrastructure improvements in the North Natomas area, including but not limited to East Commerce Way and Del Paso Road, the City established the North Natomas Public Facilities Fee Program (the “**PFF Program**”).
- E. The City, the Landowners, and third parties previously have taken action to include the Property and other lands within North Natomas Community Facilities District No. 4 (“**CFD 4**”), which was formed to finance and fund the construction of common storm-water-drainage infrastructure improvements as well as to fund the construction of other secondary infrastructure improvements, including but not limited to roads, traffic signals, and sidewalk improvements to East Commerce Way and Del Paso Road. Acting through CFD 4, the City has issued two series of special-tax bonds to finance the design and construction of those improvements: North Natomas Community Facilities District No. 4, City of Sacramento, County of Sacramento, State of California Special Tax Bonds, Series C (2003) (the “**Series C Bonds**”); and North Natomas Community Facilities District No. 4, City

of Sacramento, County of Sacramento, State of California Special Tax Bonds, Series D (2006) (the “**Series D Bonds**”).

- F. The City desires to accelerate the construction of improvements to Del Paso Road as a Public Safety Project under the City’s PFF Program. To that end, the City is willing to provide advance funding to the Landowners for the improvements to Del Paso Road, the construction of which would otherwise be delayed until the Landowners begin developing the Property.
- G. The City also desires to accelerate the design and construction of the remaining improvements to East Commerce Way. The Landowners are willing to design and construct those improvements if the City reimburses them (1) from the proceeds of the Series D Bonds for the costs to design and construct the improvements, and (2) from the proceeds of the Series C Bonds for any costs of the improvements that are not covered by the proceeds of the Series D Bonds (plus any interest on the proceeds).

***With these background facts in mind, the parties agree as follows:***

- 1. ***Infrastructure Improvements.*** The Landowners shall design and construct the following improvements (the “**Infrastructure Improvements**”):
  - (a) Segment 2 of East Commerce Way as shown on Exhibit B: expand to six lanes from Ottumwa Drive to Del Paso Road, a distance of approximately 2,200 feet; construct a sidewalk on the west side; install street lighting, traffic signals at the New Market Drive intersection, traffic-signal interconnect, a drain pipe, a drain inlet, manhole, a sewer-pipe extension, water pipes, water valves, fire hydrants, and median landscaping (the “**East Commerce Improvements**”).
  - (b) Segment 1 of Del Paso Road as shown on Exhibit B (the “**Del Paso Improvements**”):
    - (1) Expand to six lanes from Station 196+50 to Station 206+0, a distance of approximately 1,000 feet.
    - (2) Modify the traffic signals and intersection of Del Paso Road and East Commerce Way to accommodate the six-lane configuration.
    - (3) Construct a sidewalk and curbs and gutters on the north side from the intersection of Del Paso Road and East Commerce Way to the northbound on-ramp to Interstate 5/Highway 99; construct a bus-stop pad; install drain pipes, a drainage outfall structure, a drain inlet, two manholes, water pipes, water valves, fire hydrants, a median curb, and median landscaping.

- (c) The storm-water-drainage trunk line segments identified as TD2-11, TD2-12, and TD2-15 on Exhibit C and the channel facility identified as CH-12 on Exhibit C (the “**Remaining Drainage Improvements**”):
- (1) For storm-water-drainage trunk line Segment TD2-11 (Commerce Station North), install underground 36-inch-diameter and 42-inch-diameter drainage trunk lines.
  - (2) For storm-water-drainage trunk line Segment TD2-12 (East Commerce South), install underground 36-inch-diameter and 42-inch-diameter drainage trunk lines.
  - (3) For storm-water-drainage trunk line Segment TD2-12 (Commerce Station South), install underground 36-inch-diameter and 42-inch-diameter drainage trunk lines.
  - (4) For storm-water-drainage trunk line Segment TD2-15 (HDR Trunk System), install an underground 48-inch-diameter drainage trunk line.
  - (5) Landscaping on primary channel facility CH-12 (West Parkway to Lewis Property Line).

2. *Funding for the Infrastructure Improvements.* Funding for the actual costs of the design and construction of the Infrastructure Improvements will come from the following sources:

- (a) *East Commerce Segment 2 Improvements.* The City shall reimburse Landowners as follows for the design and construction of the East Commerce Segment 2 Improvements, up to a total reimbursement of \$2,849,283: first, from available proceeds of the Series D Bonds; and second, if costs remain to be reimbursed after available proceeds of the Series D Bonds have been exhausted, from available proceeds of the Series C Bonds. The terms and conditions of reimbursement under this Section 2(a) are set forth in the existing *Acquisition-and-Shortfall Agreement* between the City and the Landowners (City Agreement No. 2006-1351) as amended by a *First Amendment to Acquisition-and-Shortfall Agreement* (City Agreement No. 2008-0784); a *Second Amendment to Acquisition-and-Shortfall Agreement* (City Agreement No. 2010-0060); and a *Third Amendment to Acquisition-and-Shortfall Agreement*, the form of which is attached as Exhibit D, and which the City and the Landowners shall execute concurrently with their execution of this agreement. The Landowners shall pay from their own funds all costs in excess of \$2,849,283. The Landowners will receive fee credits under the PFF Program to the extent those credits are available for the East Commerce Segment 2 Improvements under their existing *Gateway Project Reimbursement/Credit Agreement for Construction of North Natomas Infrastructure (Schumacher Project – East Commerce Way)* (City Manager Agreement No. 2004-0204). Exhibit E sets forth the estimated cost of the East Commerce Segment 2 Improvements as of the Effective Date of this Agreement.

- (b) *Del Paso Improvements*. The City shall reimburse Commerce Station, LLC as follows for the costs of designing and constructing the Del Paso Improvements: first, up to \$1,400,000 from available revenues of the PFF Program; and second, for any costs exceeding \$1,400,000, from the proceeds of Series D Bonds if those proceeds are available after the City has reimbursed Commerce Station, LLC for the East Commerce Segment 2 Improvements in accordance with Section 2(a) above. The terms and conditions of reimbursement under this Section 2(b) are set forth in two separate agreements that the City and Commerce Station, LLC shall execute concurrently with their execution of this agreement: a *Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure (Del Paso Road Improvements)*, which addresses reimbursement from the PFF Program; and a *Third Amendment to Acquisition-and-Shortfall Agreement*, which addresses reimbursement from the proceeds of Series D Bonds. The forms of these two agreements are attached as Exhibits F and D respectively. Commerce Station, LLC shall pay from its own funds all costs not reimbursed by the City. Exhibit E sets forth the estimated cost of the Del Paso Improvements as of the Effective Date of this Agreement.
- (c) *Remaining Drainage Improvements*. Because proceeds from the Series D Bonds are unlikely to be available for the Remaining Drainage Improvements, and because the PFF Program cannot be used as a source of funding or fee credits for the costs to design and construct the Remaining Drainage Improvements, the Landowners shall fully fund all costs to design and construct the Remaining Drainage Improvements, with any right to reimbursement being limited solely to any remaining proceeds of the Series D Bonds. The terms and conditions of the City's reimbursement of the Landowners under this Section 2(c) are set forth in a *First Amendment to Agreement for Construction of Drainage Improvements*, the form of which is attached as Exhibit G, and which the City and the Landowners shall execute concurrently with their execution of this agreement.\*
3. *Binding on Successors*. This agreement binds and inures to the benefit of the parties' successors and assigns.
4. *Representations of the Landowners' Signatories*. Each individual who signs this agreement on the Landowners' behalf represents and warrants that he or she has been authorized to do so by the Landowners and that the Landowners will thereby be obligated to perform their obligations under this agreement.

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\* Besides the City and the Landowners, three other affiliated entities are parties to the *Agreement for Construction of Drainage Improvements* being amended (designated as City Manager Agreement No. 2003-0850): Natomas Meadows, LLC, a California limited-liability company; Natomas Towne Center, LLC, a California limited-liability company; and East Commerce Parkway, LLC, a California limited-liability company. The Landowners represent that none of these three affiliated entities owns land to be served by the Remaining Drainage Improvements.

5. *Consultation with Attorneys.* Each party to this agreement represents that it has consulted with its attorneys concerning all portions of this agreement and has been fully advised by its attorneys about its rights and obligations under this agreement.
6. *Amendments.* This agreement may be amended only by another written agreement signed by all parties.
7. *Notices.* Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section 7 to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 7.

*If to the City:*

City of Sacramento  
 Finance Department  
 Public Improvement Financing Division  
 915 I Street, Third Floor  
 Sacramento, California 95814  
 Attention: Mark Griffin

*If to the Landowners:*

Natomas Creek, LLC & Commerce Station, LLC  
 2200 East Camelback Road, Suite 101  
 Phoenix, Arizona 85016  
 Attention: Kern W. Schumacher

*with copies to—*

Brad Ross  
 P.O. Box 30076  
 Salt Lake City, Utah 84130

*and*

Law Offices of Gregory D. Thatch  
 1730 "I" Street, Suite 220  
 Sacramento, California 95811  
 Attention: Michael Devereaux, Esq.

8. *No Agency.* The Landowners and the Landowners' agents, engineers, contractors, and subcontractors are not agents of the City in connection with the performance of any of the Landowners' obligations under this agreement.
9. *Other Agreements.* This agreement does not cancel, supersede, modify, or otherwise affect any other agreements that have been or may be made by the parties regarding the subject matter of this agreement, including but not limited to development agreements, subdivision-improvement agreements, acquisition-and-shortfall agreements, and reimbursement-and-credit agreements. Nor does this agreement cancel, supersede, modify, or otherwise affect any approvals or permits the City has given or issued. By

entering into this agreement the parties contemplate that they will be entering concurrently into several other agreements concerning the subject matter of this agreement.

10. *Severability.* If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.
11. *Time of Essence.* Time is of the essence in the performance of this agreement.
12. *Assignment.* The Landowners may not assign or otherwise transfer this agreement or any interest in it without the City's prior written consent, which the City shall not withhold, delay, or condition unreasonably, although the City may condition its consent upon the acceptability of the financial condition of the proposed assignee and upon any other factor the City reasonably determines to be relevant in the circumstances.
13. *Waiver.* A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.
14. *Interpretation.* This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits A, B, C, D, E, F, and G are part of this agreement. To the extent the body of this agreement conflicts with Exhibits A, B, C, D, E, F, and G, the exhibits will control.
15. *Effective date.* This agreement is effective on the date all parties have signed it, as indicated by the dates in the signature blocks below.
16. *Counterparts.* The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Delivery of signed counterparts may be accomplished by email transmission of a pdf document.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_  
John F. Shirey  
City Manager  
Date: March \_\_, 2016

Attest  
Sacramento City Clerk

By: \_\_\_\_\_

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph Cerullo Jr.  
Senior Deputy City Attorney

**Commerce Station, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

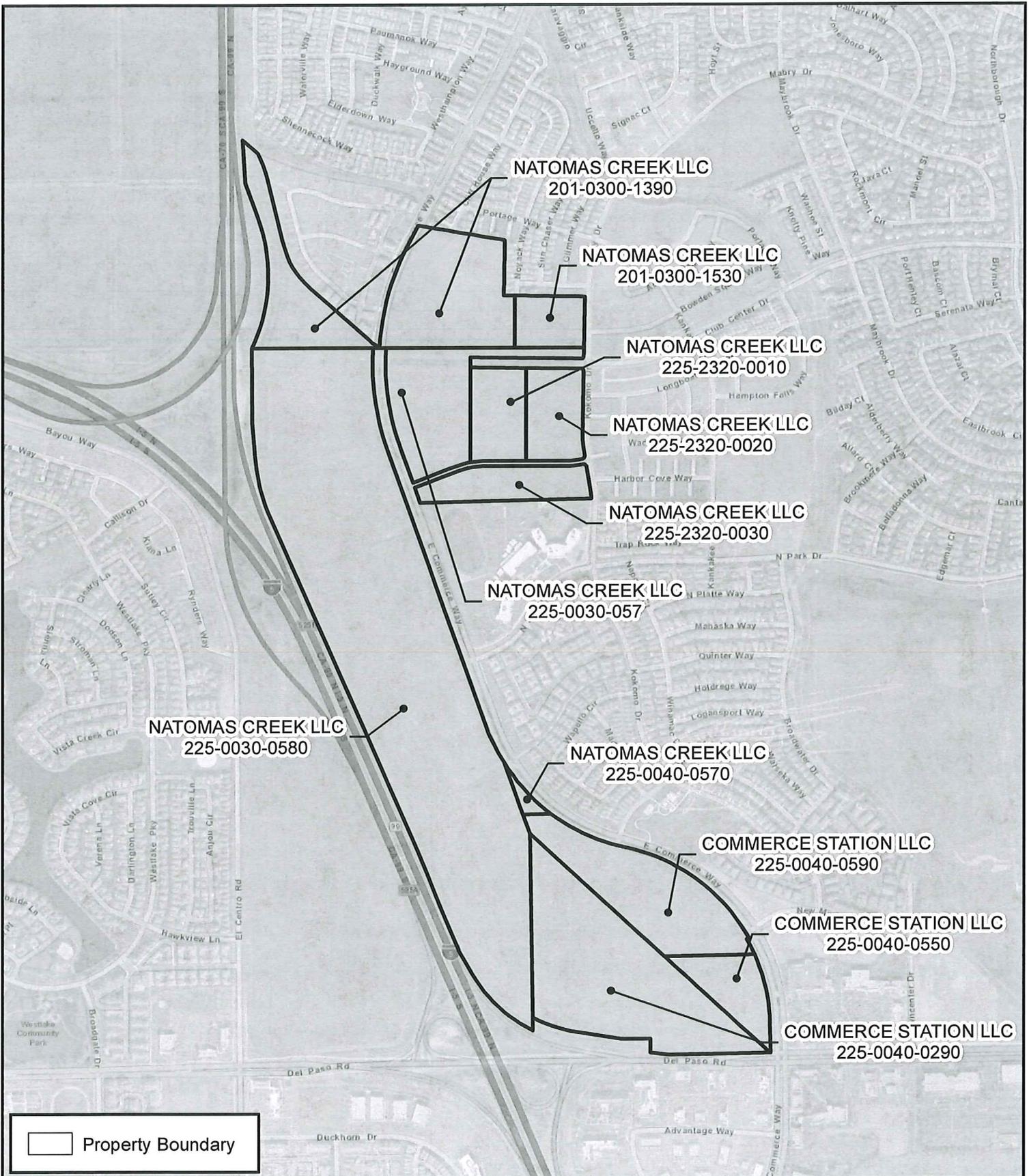
By: \_\_\_\_\_  
Kern W. Schumacher  
President  
Date: <sup>April</sup> ~~March~~ \_\_, 2016

**Natomas Creek, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

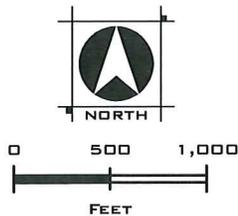
By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

By: \_\_\_\_\_  
Kern W. Schumacher  
President  
Date: <sup>April</sup> ~~March~~ \_\_, 2016



Property Boundary

Master Agreement for Funding and Construction of Infrastructure Improvements in North Natomas  
**EXHIBIT A: PROPERTY DESCRIPTION**



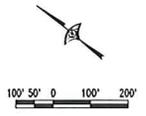
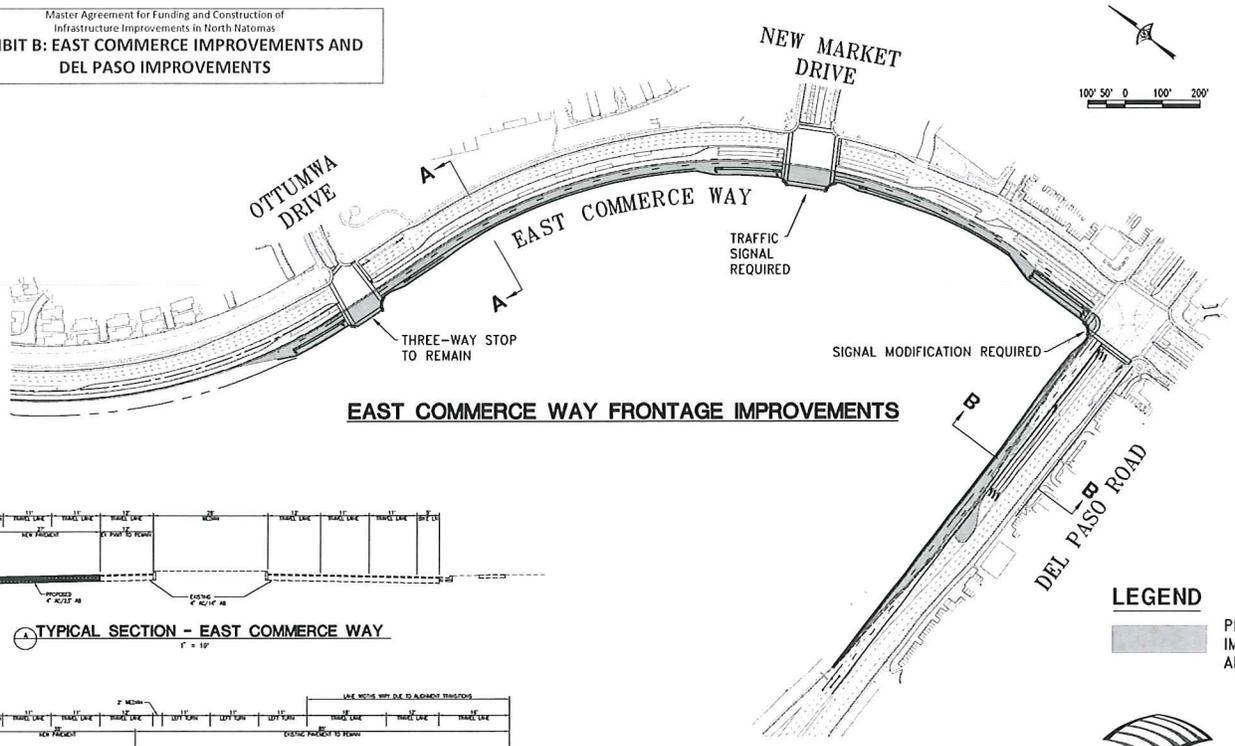
NOTES  
 Ownership current as of April 8th, 2014

**WOOD RODGERS**  
 Commerce Station - October 2014

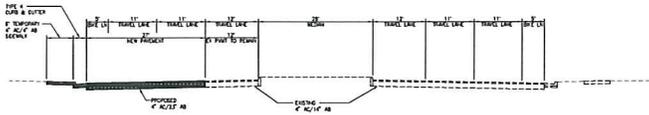
EXHIBIT FOR  
**EAST COMMERCE WAY AND DEL PASO ROAD**  
 FRONTAGE IMPROVEMENTS - ROADWAY WORK

CITY OF SACRAMENTO, CALIFORNIA  
 NOVEMBER 2015

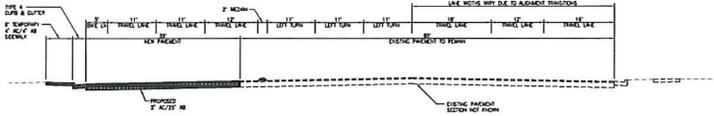
Master Agreement for Funding and Construction of  
 Infrastructure Improvements in North Natomas  
**EXHIBIT B: EAST COMMERCE IMPROVEMENTS AND  
 DEL PASO IMPROVEMENTS**



**EAST COMMERCE WAY FRONTAGE IMPROVEMENTS**



**TYPICAL SECTION - EAST COMMERCE WAY**  
 1" = 10'



**TYPICAL SECTION - DEL PASO ROAD**  
 1" = 10'

**LEGEND**  
 PROPOSED IMPROVEMENT AREA



**WOOD RODGERS**  
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 Sacramento, CA 95816 Fax 916.341.7767

Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 1 of 4  
Estimated Cost of Landowners' Responsibility

North Natomas CFD-4  
Drainage Basin No. 1  
Schumacher Property -North Natomas  
Estimated Remaining Improvements

<u>Project No.</u>	<u>Constructing Entity</u>	<u>Actual or Est. Cost</u>	<u>Reimb Request No.</u>	<u>Improvement Description</u>	<u>Total Est. Cost</u>
<b>Basin Wide Improvements</b>					
<b>Completed</b>					
<b>Remaining Primary Channel Improvements</b>					
CH-12	Schumacher	Estimated	Future	Primary Channel Lscape (West Parkway)	\$43,716
<b>Subtotal Remaining Channel Improvements</b>					<b>\$43,716</b>
<b>Trunk Drain Zone 1 Improvements</b>					
<b>Completed</b>					
<b>Remaining Trunk Drain Zone 2-Improvements</b>					
TD2-11	Schumacher	Estimated	Future	Schumacher Commerce Station North	\$242,219
TD2-12	Schumacher	Estimated	Future	Schumacher Commerce Station South	\$305,558
TD2-15	Schumacher	Estimated	Future	Schumacher Club Center/HDR/TC Trunk System	\$562,897
<b>Subtotal Remaining Trunk Drain Zone 2 Improvements</b>					<b>\$1,110,674</b>
<b>Total Estimated Remaining Improvements</b>					<b>\$1,154,390</b>

**FIGURE 4A**

**BASIN WIDE FACILITIES MAP**

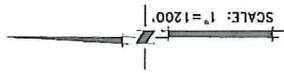
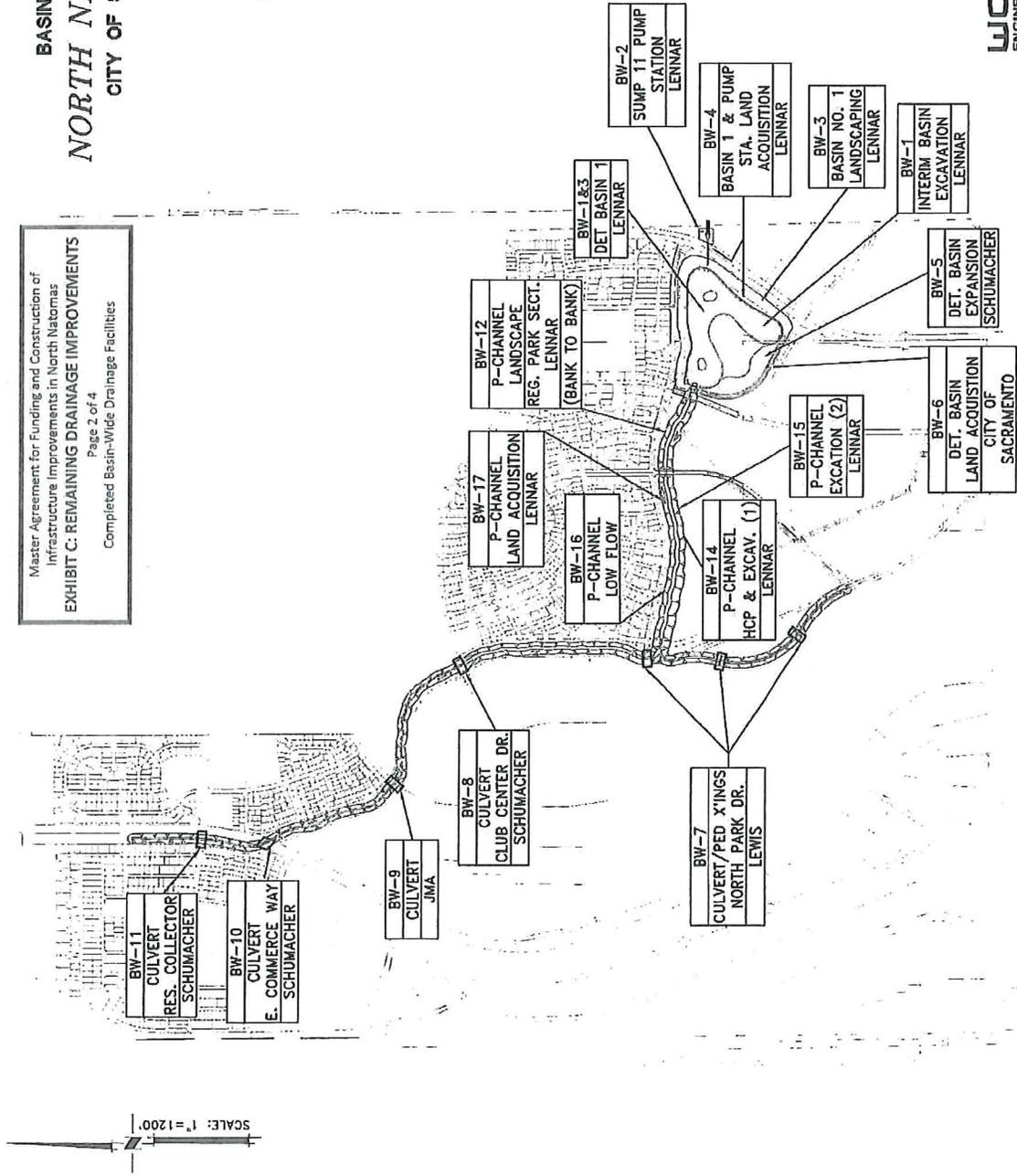
**NORTH NATOMAS CFD NO. 4**

**CITY OF SACRAMENTO, CALIFORNIA**

**APRIL 2010**

Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 2 of 4  
Completed Basin-Wide Drainage Facilities

**NOTE:**  
ALL BASIN-WIDE PROJECTS  
HAVE BEEN COMPLETED



22

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Sacramento, CA 95816 Fax 916.341.7767

H:\Drawings\North-Natomas\Winrcr\CFD\Basin-1-Tech-Supp-Update-2010\Exhibits\EXH\_FIG\_4A\_040706.dwg 5/06/10 3:25pm slve

# FIGURE 4B

## CHANNEL FACILITIES MAP

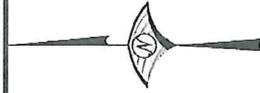
### NORTH NATOMAS

#### CFD NO. 4

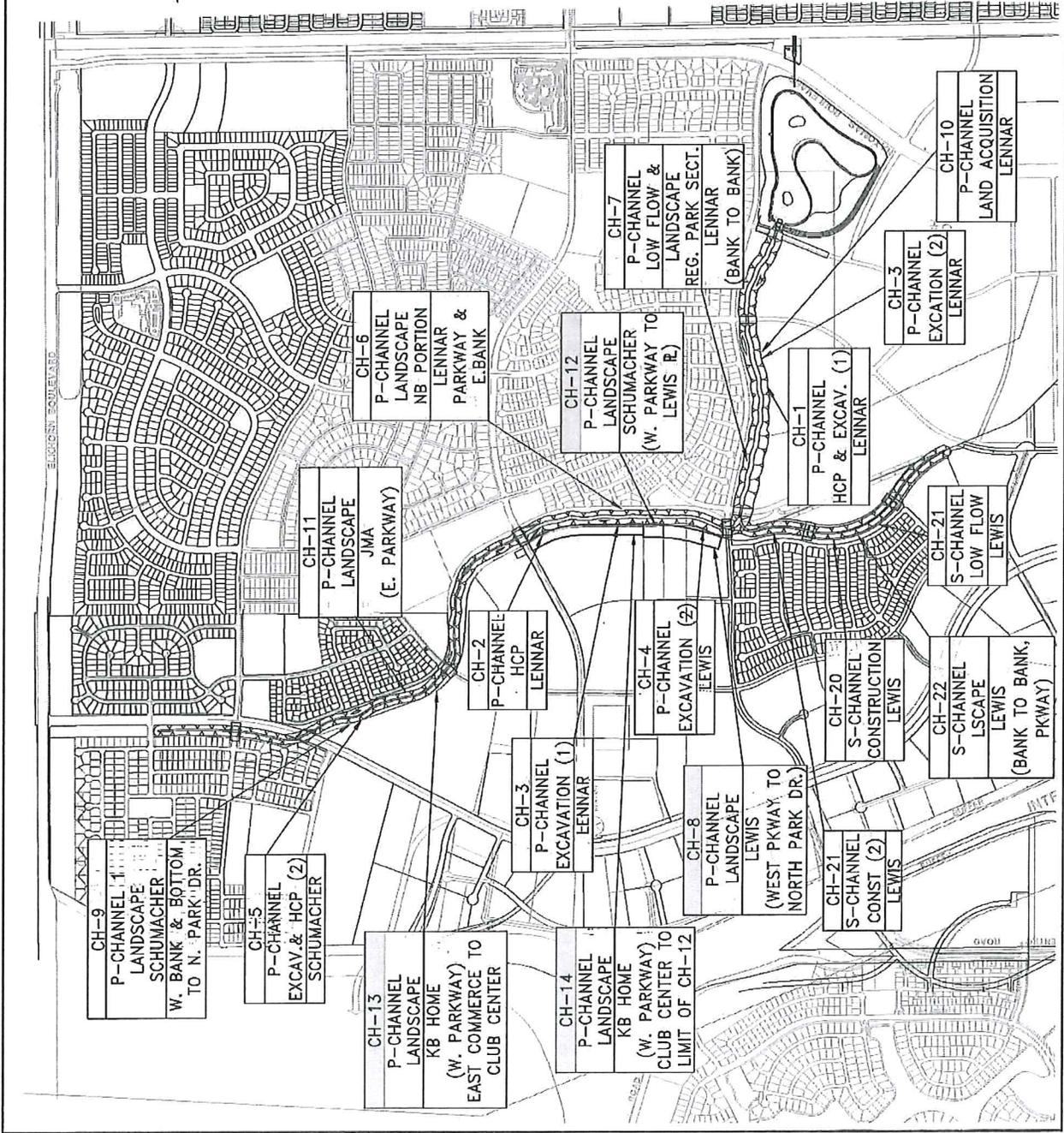
CITY OF SACRAMENTO, CALIFORNIA  
 APRIL 2010  
 REV FEBRUARY 2016

CH-XX PROJECT NOT COMPLETED  
 AS OF APRIL 2010

Master Agreement for Funding and Construction of  
 Infrastructure Improvements in North Natomas  
 EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS  
 Page 3 of 4  
 Completed and Remaining Channel Facilities  
 Remaining Facilities: CH-8, CH-12, CH-13, CH-14  
 Landowners' Responsibility: CH-12



500' 250' 0 500'  
 SCALE: 1" = 500'



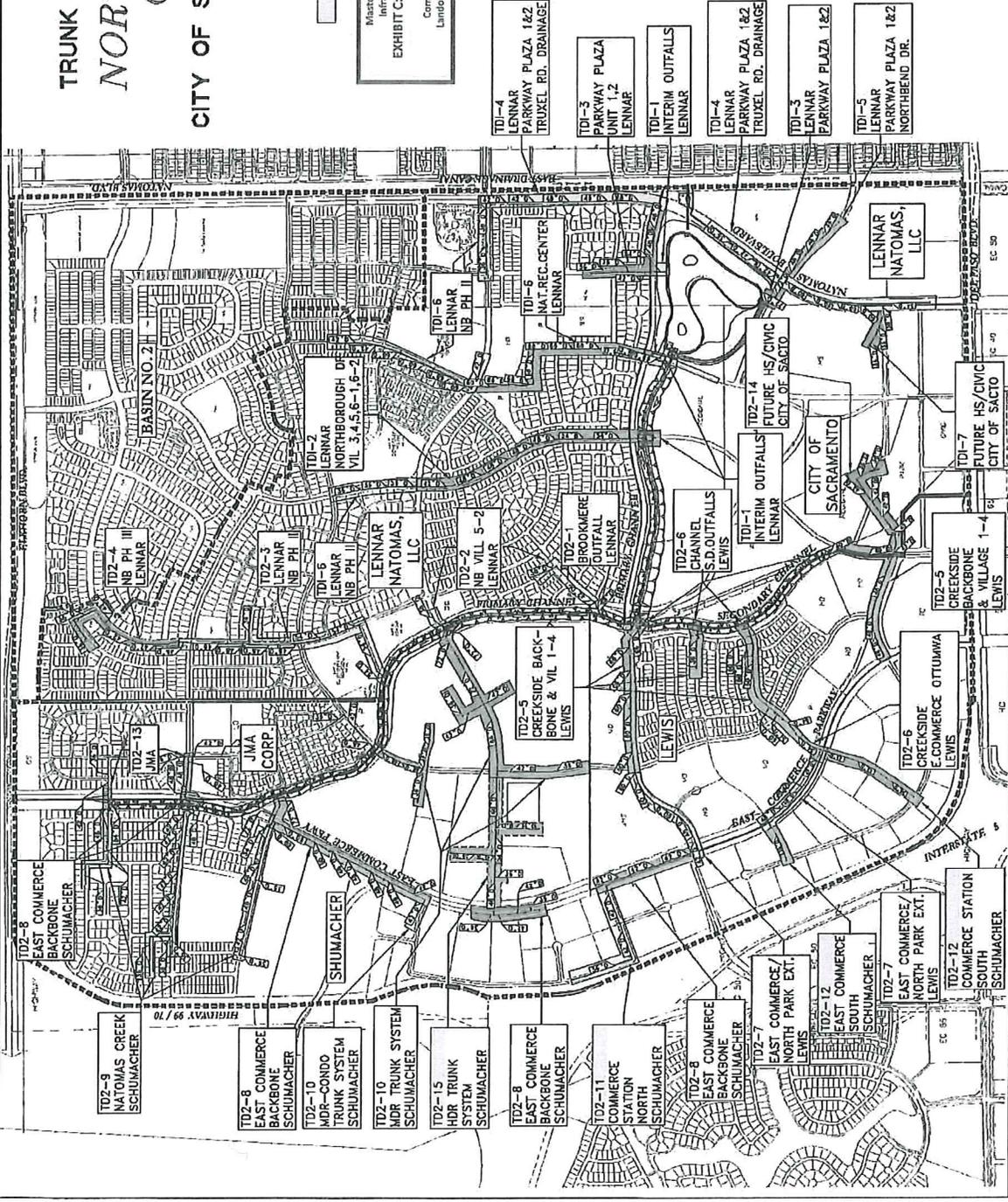
**FIGURE 4C**

**TRUNK DRAIN FACILITIES MAP  
NORTH NATOMAS  
CFD NO. 4**

**CITY OF SACRAMENTO, CALIFORNIA  
APRIL 2010**

TD2-XX PROJECT NOT COMPLETED AS OF APRIL 2010

Master Agreement for Funding and Construction of Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 4 of 4  
Completed and Remaining Trunk-Drain Facilities  
Landowners' Responsibility: TD2-11, TD2-12, TD2-15



**WOOD ROGERS**  
CIVIL ENGINEERS  
2000 O St., Suite 2000  
Sacramento, CA 95811  
Tel: 916-341-7700  
Fax: 916-341-7707

**EXHIBIT D**

**FORM OF THIRD AMENDMENT TO ACQUISITION-AND-SHORTFALL AGREEMENT**

**Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost  
 Combined Estimate  
 March 20, 2015**

Master Agreement for Funding and Construction of  
 Infrastructure Improvements in North Natomas  
**EXHIBIT E: ENGINEER'S COST ESTIMATE**  
 (Five Pages)

**OVERALL SUMMARY**

Segment Number	Item	Estimated Cost
1	<b>Del Paso Road Frontage Imps</b> (North Frontage East Commerce to I-5, approx 1,000 LF)	\$1,308,612
2	<b>East Commerce Frontage Imps</b> (West Frontage Ottumwa to Del Paso, approx 2,200 LF)	\$2,849,283
<b>Total for Improvements</b>		<b>\$4,157,895</b>

20-Mar-15

**Schumacher Property -North Natomas -Roadway and Frontage Estimates  
Engineer's Estimate of Cost**

**Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)**

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total

**1. Grading and Mobilization**

1. Clearing and Grubbing	1	LS	\$10,000.00	\$10,000
2. Grading	4,000	CY	\$12.50	\$50,000
3. Erosion Control	1	LS	\$10,000.00	\$10,000
4. Traffic Control	1	LS	\$20,000.00	\$20,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000

**Subtotal** **\$100,000**

**2. Roadway**

1. Paving 5" AC (\$0.62/insf)/25" AB (\$0.14/insf)	24,000	SF	\$7.55	\$181,200
2. 1' Sawcut of Existing Pavement	2,600	LF	\$3.00	\$7,800
3. Remove/ Dispose of Existing Pavement	7,800	SF	\$3.00	\$23,400
4. Type 4 C&G	1,100	LF	\$25.00	\$27,500
5. Median Curb	1,400	LF	\$35.00	\$49,000
6. HC Ramps	2	EA	\$1,500.00	\$3,000
7. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
7A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	6,700	SF	\$2.40	\$16,080
8. Bus Stop Pad	1	EA	\$4,000.00	\$4,000
9. Striping and signage	1,000	LF	\$20.00	\$20,000
10. Streetlight Service Point	1	EA	\$5,000.00	\$5,000
11. Street Lights, Mast Arm Type	5	EA	\$8,000.00	\$40,000
12. Survey Monuments	1	EA	\$2,000.00	\$2,000
13. Signal Modification EC at Del Paso	1	LS	\$75,000.00	\$75,000
13A. NE Curb Return Reconstruction and Signal Pole Relocation (to accommodate triple left turn)	1	LS	\$50,000.00	\$50,000

**Subtotal** **\$503,980**

**3. Drainage**

1. 12" Drain Pipe (DI Leads)	30	LF	\$80.00	\$2,400
2. 12" Drain Pipe	400	LF	\$80.00	\$32,000
3. 18" Drain Pipe	200	LF	\$100.00	\$20,000
4. 24" Drain Pipe	50	LF	\$120.00	\$6,000
5. 24" Drain Outfall Structure to Ex. Ditch	1	EA	\$5,000.00	\$5,000
6. Drain Inlet	2	EA	\$4,000.00	\$8,000
7. 48" Manhole	2	EA	\$5,000.00	\$10,000
8. 60" Manhole	1	EA	\$7,000.00	\$7,000

**Subtotal** **\$90,400**

20-Mar-15

Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total
<b>4. Sewer</b>				
1. None anticipated	0	LF		\$0
<b>Subtotal</b>				<b>\$0</b>
<b>5. Water</b>				
1. 12" Water	440	LF	\$90.00	\$39,600
2. 12" Water in existing pavement (10+90 to 13+50)	350	LF	\$120.00	\$42,000
3. 12" valve	3	EA	\$3,000.00	\$9,000
4. BO Valves	1	EA	\$4,000.00	\$4,000
5. Fire Hydrants	2	EA	\$6,500.00	\$13,000
6. Connect to Existing	1	EA	\$10,000.00	\$10,000
<b>Subtotal</b>				<b>\$117,600</b>
<b>6. Landscaping</b>				
1. Landscape - Median	3,000	SF	\$7.00	\$21,000
2. Landscape - Frontage - Assumed not included	0	SF	\$5.00	\$0
<b>Subtotal</b>				<b>\$21,000</b>
<b>7. Public Utilities</b>				
1. Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
<b>Subtotal</b>				<b>\$0</b>
<b>Del Paso Frontage Subtotal</b>				<b>\$832,980</b>
<b>Mobilization at 10%</b>				<b>\$83,298</b>
<b>Contingencies at 20%</b>				<b>\$166,596</b>
<b>Del Paso Frontage Construction Total</b>				<b>\$1,082,874</b>
<b>Plan Check at 5%</b>				<b>\$41,649</b>
<b>Engineering &amp; Staking at 12%</b>				<b>\$129,945</b>
<b>Geotechnical Engr at 2%</b>				<b>\$21,657</b>
<b>Construction Management at 3%</b>				<b>\$32,486</b>
<b>Total Estimated Del Paso Frontage Imps</b>				<b>\$1,308,612</b>

**20-Mar-15  
Schumacher Property -North Natomas -Roadway and Frontage Estimates  
Engineer's Estimate of Cost**

**East Commerce Frontage Imps  
(Ottumwa Way to DP Road 2,200 lf)**

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total
<b>1. Grading and Mobilization</b>				
1. Clearing and Grubbing	1	LS	\$30,000.00	\$30,000
2. Grading	10,000	CY	\$12.50	\$125,000
3. Erosion Control	1	LS	\$30,000.00	\$30,000
4. Traffic Control	1	LS	\$50,000.00	\$50,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000
			<b>Subtotal</b>	<b>\$245,000</b>
<b>2 Roadway</b>				
1. Paving 4" AC (\$0.62/insf)/23" AB (\$0.14/insf)	71,392	SF	\$6.50	\$464,048
2. 1' Sawcut of Existing Pavement	2,200	LF	\$3.00	\$6,600
3. Remove/ Dispose of Existing Pavement	2,200	SF	\$3.00	\$6,600
4. Type 4 C&G	2,048	LF	\$35.00	\$71,680
5. HC Ramps	13	EA	\$1,500.00	\$19,500
6. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
6A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	11,880	SF	\$2.40	\$28,512
7. Striping and signage	2,200	LF	\$10.00	\$22,000
8. Street Lights - Mast Arm Type	5	EA	\$8,000.00	\$40,000
9. Street Lights - Ornamental Type	4	EA	\$6,000.00	\$24,000
10. Street Light Service Point	1	EA	\$5,000.00	\$5,000
11. Survey Monuments	1	EA	\$2,000.00	\$2,000
12. Traffic Signalization East Commerce at New Market	1	LS	\$200,000.00	\$200,000
13. Traffic Signal Mod. East Commerce at North Park	1	LS	\$50,000.00	\$25,000
14. Traffic Signalization East Commerce at Ottumwa	1	LS	\$200,000.00	\$200,000
			<b>Subtotal</b>	<b>\$1,114,940</b>
<b>3. Drainage</b>				
1. 12" Drain Pipe (DI Leads)	210	LF	\$80.00	\$16,800
2. 21" Drain Pipe	0	LF	\$120.00	\$0
3. 36" Drain Pipe	75	LF	\$135.00	\$10,125
4. 42" Drain Pipe	85	LF	\$150.00	\$12,750
3. Remove Ex. Ditch Box	3	EA	\$1,000.00	\$3,000
5. Drain Inlet	8	EA	\$4,000.00	\$32,000
6. 60" Manhole	2	EA	\$7,000.00	\$14,000
			<b>Subtotal</b>	<b>\$88,675</b>

**20-Mar-15**  
**Schumacher Property -North Natomas -Roadway and Frontage Estimates**  
**Engineer's Estimate of Cost**

**East Commerce Frontage Imps**  
**(Ottumwa Way to DP Road 2,200 lf)**

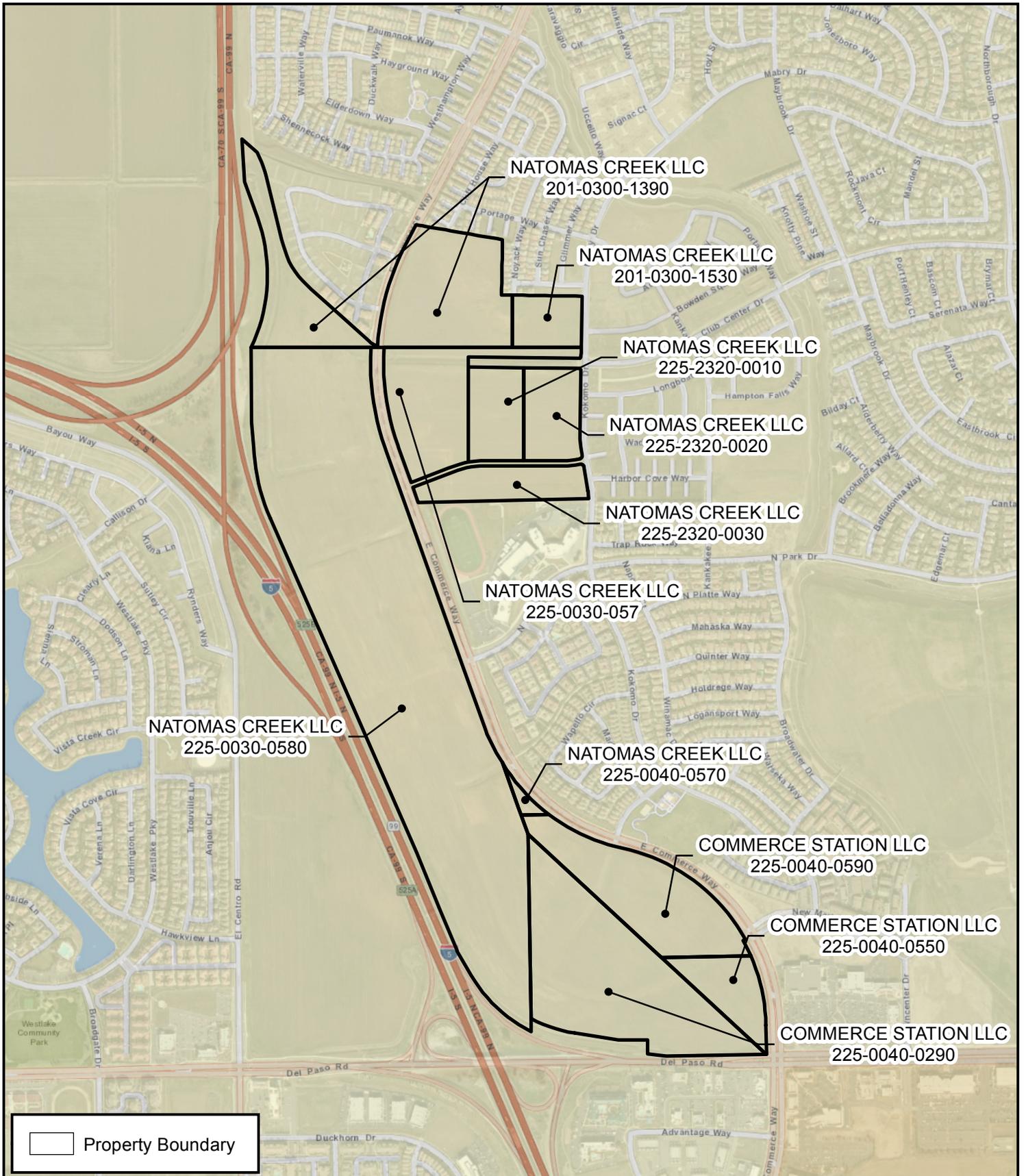
Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total
<b>4. Sewer</b>				
1. 8" Sewer Pipe Extension	0	LF	\$80.00	\$0
2. 10" Sewer Pipe Extension	60	LF	\$100.00	\$6,000
			<b>Subtotal</b>	<b>\$6,000</b>
<b>5. Water</b>				
1.12" Water (13+50 to 23+50 and New Market)	2,148	LF	\$70.00	\$150,360
2.12" Water in existing pavement (10+90 to 13+50)	260	LF	\$120.00	\$31,200
3. 12" valve	6	EA	\$2,500.00	\$15,000
4. BO Valves	1	EA	\$5,000.00	\$5,000
5. Fire Hydrants	11	EA	\$6,500.00	\$71,500
6. Connect to Existing	2	EA	\$10,000.00	\$20,000
			<b>Subtotal</b>	<b>\$293,060</b>
<b>6. Landscaping</b>				
1. Landscape - Median - Assume not included	0	SF	\$7.00	\$0
2. Landscape - Frontage - Assume not included	0	SF	\$5.00	\$0
			<b>Subtotal</b>	<b>\$0</b>
<b>7. Public Utilities</b>				
1. Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
			<b>Subtotal</b>	<b>\$0</b>
<b>8. Additional Items</b>				
1. Traffic Signal Interconnect	1	LS	\$50,000.00	\$50,000
2. Bus Stop Pad	4	EA	\$4,000.00	\$16,000
			<b>Subtotal</b>	<b>\$66,000</b>
<b>East Commerce Frontage Construction Subtotal</b>				<b>\$1,813,675</b>
<b>Mobilization at 10%</b>				<b>\$181,368</b>
<b>Contingencies at 20%</b>				<b>\$362,735</b>
<b>East Commerce Frontage Construction Total</b>				<b>\$2,357,778</b>
<b>Plan Check at 5%</b>				<b>\$90,684</b>
<b>Engineering &amp; Staking at 12%</b>				<b>\$282,933</b>
<b>Geotechnical Engr at 2%</b>				<b>\$47,156</b>
<b>Construction Management at 3%</b>				<b>\$70,733</b>
<b>Total Estimated East Commerce Frontage Imps</b>				<b>\$2,849,283</b>

**EXHIBIT F**

**FORM OF PUBLIC SAFETY PROJECT CONSTRUCTION FUNDING AND REIMBURSEMENT  
AGREEMENT FOR NORTH NATOMAS INFRASTRUCTURE (DEL PASO ROAD IMPROVEMENTS)**

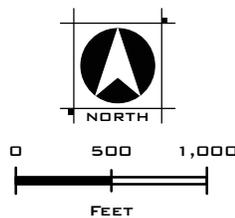
**EXHIBIT G**

**FORM OF FIRST AMENDMENT TO AGREEMENT FOR CONSTRUCTION OF DRAINAGE  
IMPROVEMENTS**



NOTES  
 Ownership current as of April 8th, 2014

**Master Agreement for Funding and Construction of  
 Infrastructure Improvements in North Natomas  
 EXHIBIT A: PROPERTY DESCRIPTION**



**WOOD RODGERS**  
 Commerce Station - October 2014

# EXHIBIT FOR

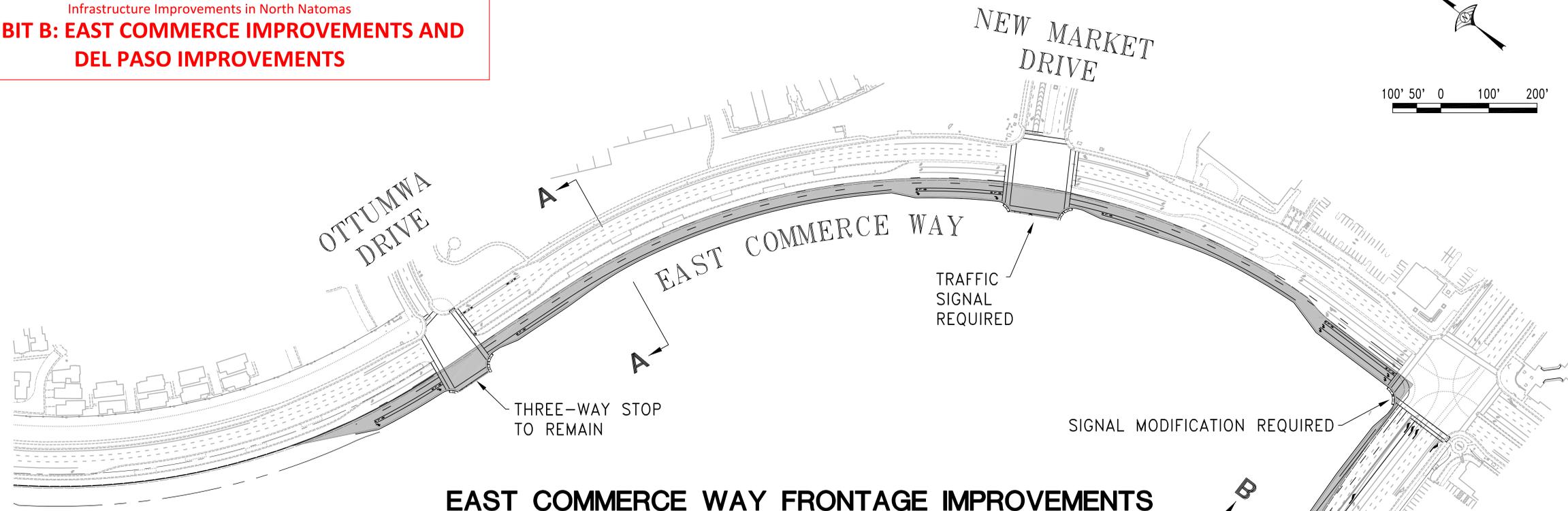
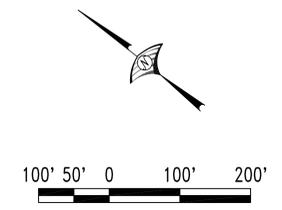
# EAST COMMERCE WAY AND DEL PASO ROAD

## FRONTAGE IMPROVEMENTS - ROADWAY WORK

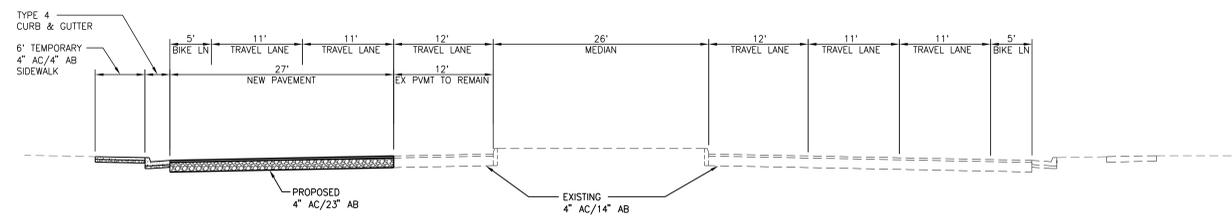
CITY OF SACRAMENTO, CALIFORNIA

NOVEMBER 2015

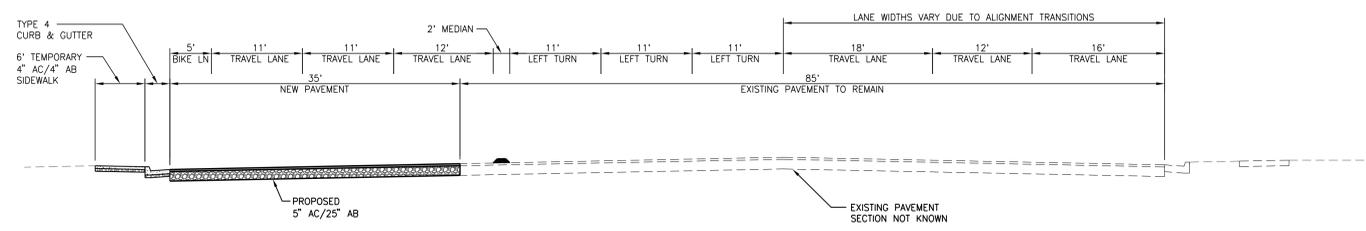
Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT B: EAST COMMERCE IMPROVEMENTS AND  
DEL PASO IMPROVEMENTS**



### EAST COMMERCE WAY FRONTAGE IMPROVEMENTS



**A TYPICAL SECTION - EAST COMMERCE WAY**  
1" = 10'



**B TYPICAL SECTION - DEL PASO ROAD**  
1" = 10'

**LEGEND**

PROPOSED IMPROVEMENT AREA

**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS

3301 C St, Bldg. 100-B      Tel 916.341.7760  
Sacramento, CA 95816      Fax 916.341.7767

A:\1000s\11217-Schumacher\CommerceStation-CA\Drawings\CommerceStation-CA\Drawings\Estimate\EstimateNovember2015-Final\Estimate\EXH-EAST-COMMERCE-IMPROVEMENTS-NOVEMBER.dwg 11/10/2015 4:58 PM Steve Eblen

Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 1 of 4  
Estimated Cost of Landowners' Responsibility

**North Natomas CFD-4**  
Drainage Basin No. 1  
**Schumacher Property -North Natomas**  
**Estimated Remaining Improvements**

<u>Project No.</u>	<u>Constructing Entity</u>	<u>Actual or Est. Cost</u>	<u>Reimb Request No.</u>	<u>Improvement Description</u>	<u>Total Est. Cost</u>
<b>Basin Wide Improvements</b>					
<b>Remaining Primary Channel Improvements</b>					
CH-12	Schumacher	Estimated	Future	Primary Channel Lscape (West Parkway)	\$43,716
<b>Subtotal Remaining Channel Improvements</b>					
<b>Trunk Drain Zone 1 Improvements</b>					
<b>Completed</b>					
<b>Remaining Trunk Drain Zone 2-Improvements</b>					
TD2-11	Schumacher	Estimated	Future	Schumacher Commerce Station North	\$242,219
TD2-12	Schumacher	Estimated	Future	Schumacher Commerce Station South	\$305,558
TD2-15	Schumacher	Estimated	Future	Schumacher Club Center/HDR/TC Trunk System	\$562,897
<b>Subtotal Remaining Trunk Drain Zone 2 Improvements</b>					
<b>Total Estimated Remaining Improvements</b>					
					<b>\$1,154,390</b>

FIGURE 4A

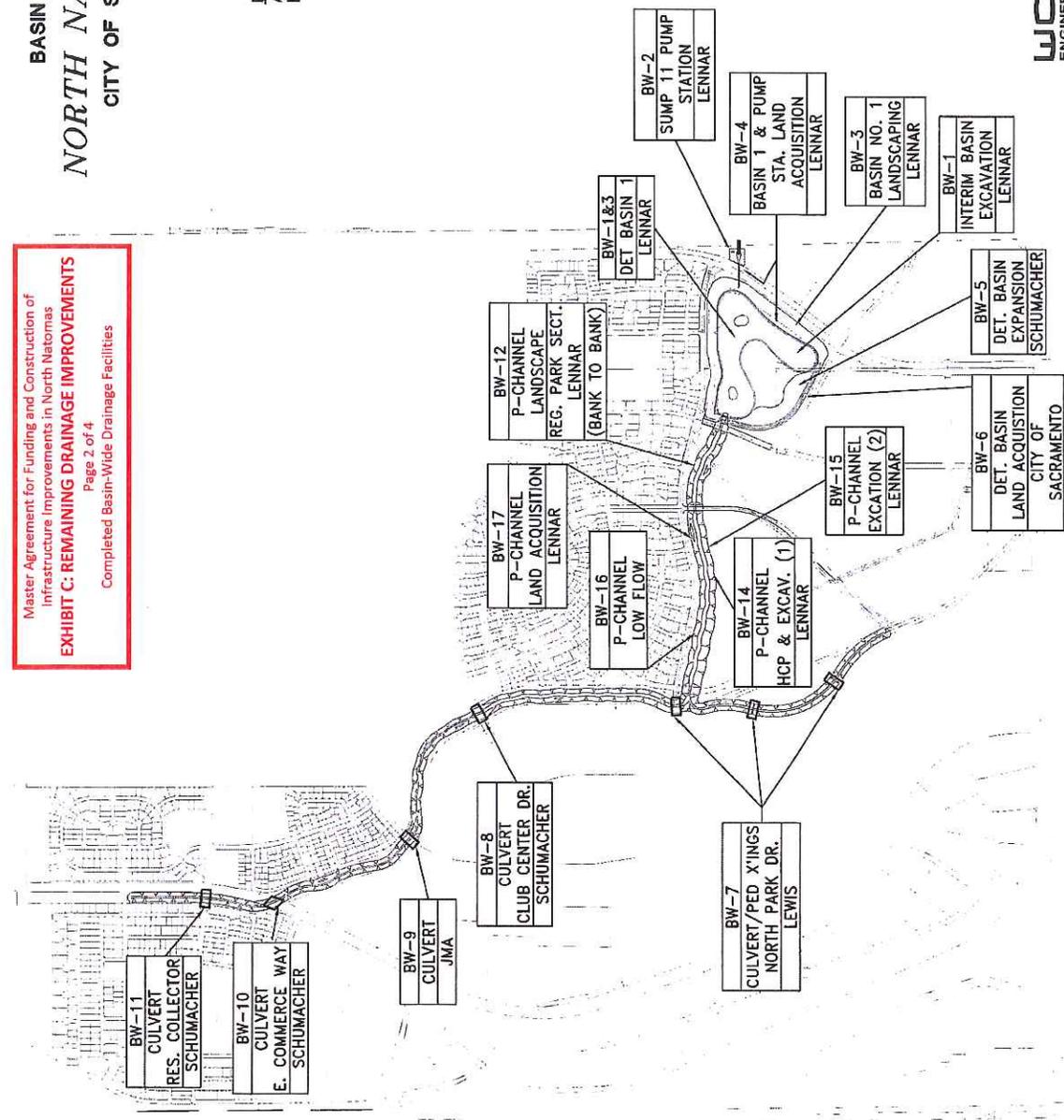
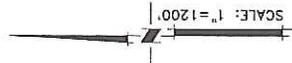
BASIN WIDE FACILITIES MAP

NORTH NATOMAS CFD NO. 4  
CITY OF SACRAMENTO, CALIFORNIA

APRIL 2010

NOTE:  
ALL BASIN-WIDE PROJECTS  
HAVE BEEN COMPLETED

Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 2 of 4  
Completed Basin-Wide Drainage Facilities



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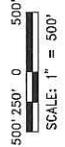
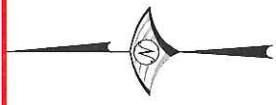
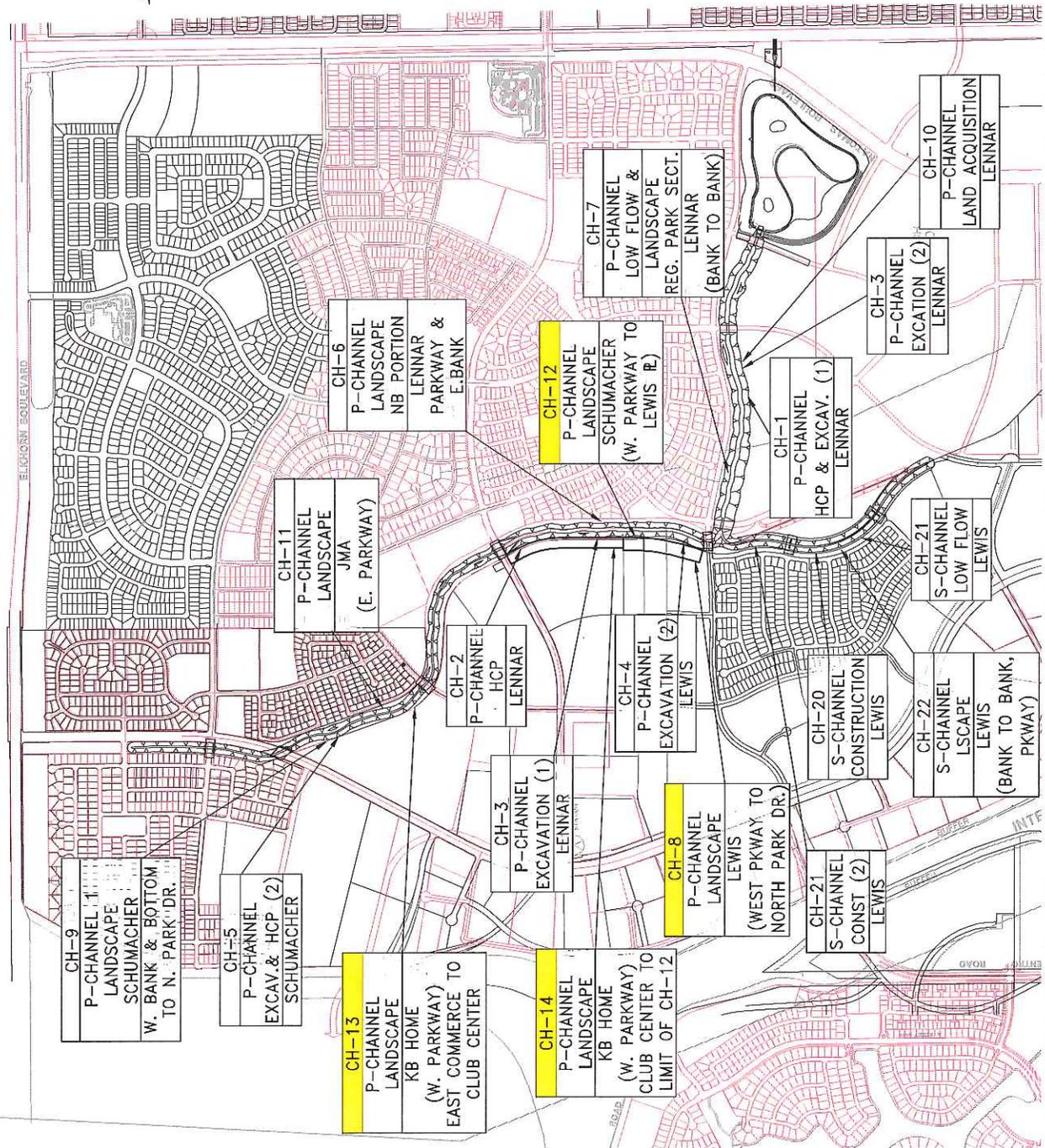
22

# FIGURE 4B CHANNEL FACILITIES MAP NORTH NATOMAS CFD NO. 4

CITY OF SACRAMENTO, CALIFORNIA  
APRIL 2010  
REV FEBRUARY 2016

CH-XX PROJECT NOT COMPLETED  
AS OF APRIL 2010

Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 3 of 4  
Completed and Remaining Channel Facilities  
Remaining Facilities: CH-8, CH-12, CH-13, CH-14  
Landowners' Responsibility: CH-12



**FIGURE 4C**

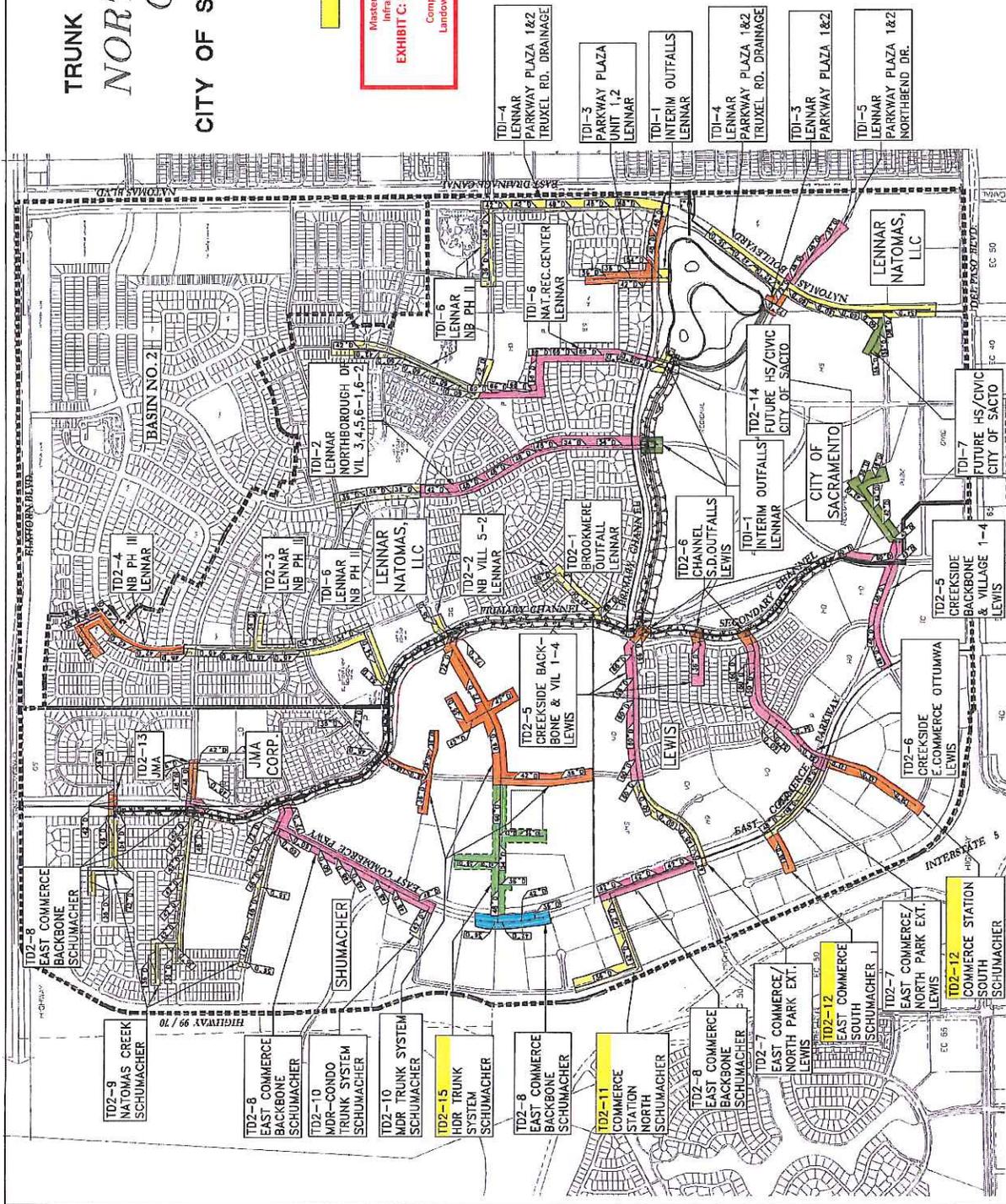
**TRUNK DRAIN FACILITIES MAP  
NORTH NATOMAS  
CFD NO. 4  
CITY OF SACRAMENTO, CALIFORNIA  
APRIL 2010**

**TD2-XX** PROJECT NOT COMPLETED  
AS OF APRIL 2010

Master Agreement for Funding and Construction of  
Infrastructure Improvements in North Natomas  
**EXHIBIT C: REMAINING DRAINAGE IMPROVEMENTS**  
Page 4 of 4  
Completed and Remaining Trunk-Drain Facilities  
Landowners' Responsibility: TD2-11, TD2-12, TD2-15



APPROX 1"=500'



**WOOD ROBBERS**  
3801 C ST, SACRAMENTO, CA 95816  
Tel 916-341-7700  
Fax 916-341-7707

**Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost  
 Combined Estimate  
 March 20, 2015**

Master Agreement for Funding and Construction of  
 Infrastructure Improvements in North Natomas  
**EXHIBIT E: ENGINEER'S COST ESTIMATE**  
 (Five Pages)

**OVERALL SUMMARY**

Segment Number	Item	Estimated Cost
1	<b>Del Paso Road Frontage Imps</b> (North Frontage East Commerce to I-5, approx 1,000 LF)	\$1,308,612
2	<b>East Commerce Frontage Imps</b> (West Frontage Ottumwa to Del Paso, approx 2,200 LF)	\$2,849,283
<b>Total for Improvements</b>		<b>\$4,157,895</b>

20-Mar-15

**Schumacher Property -North Natomas -Roadway and Frontage Estimates  
Engineer's Estimate of Cost**

**Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)**

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total

**1. Grading and Mobilization**

1. Clearing and Grubbing	1	LS	\$10,000.00	\$10,000
2. Grading	4,000	CY	\$12.50	\$50,000
3. Erosion Control	1	LS	\$10,000.00	\$10,000
4. Traffic Control	1	LS	\$20,000.00	\$20,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000

**Subtotal** **\$100,000**

**2 Roadway**

1. Paving 5" AC (\$0.62/insf)/25" AB (\$0.14/insf)	24,000	SF	\$7.55	\$181,200
2. 1' Sawcut of Existing Pavement	2,600	LF	\$3.00	\$7,800
3. Remove/ Dispose of Existing Pavement	7,800	SF	\$3.00	\$23,400
4. Type 4 C&G	1,100	LF	\$25.00	\$27,500
5. Median Curb	1,400	LF	\$35.00	\$49,000
6. HC Ramps	2	EA	\$1,500.00	\$3,000
7. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
7A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	6,700	SF	\$2.40	\$16,080
8. Bus Stop Pad	1	EA	\$4,000.00	\$4,000
9. Striping and signage	1,000	LF	\$20.00	\$20,000
10. Streetlight Service Point	1	EA	\$5,000.00	\$5,000
11. Street Lights, Mast Arm Type	5	EA	\$8,000.00	\$40,000
12. Survey Monuments	1	EA	\$2,000.00	\$2,000
13. Signal Modification EC at Del Paso	1	LS	\$75,000.00	\$75,000
13A. NE Curb Return Reconstruction and Signal Pole Relocation (to accommodate triple left turn)	1	LS	\$50,000.00	\$50,000

**Subtotal** **\$503,980**

**3. Drainage**

1. 12" Drain Pipe (DI Leads)	30	LF	\$80.00	\$2,400
2. 12" Drain Pipe	400	LF	\$80.00	\$32,000
3. 18" Drain Pipe	200	LF	\$100.00	\$20,000
4. 24" Drain Pipe	50	LF	\$120.00	\$6,000
5. 24" Drain Outfall Structure to Ex. Ditch	1	EA	\$5,000.00	\$5,000
6. Drain Inlet	2	EA	\$4,000.00	\$8,000
7. 48" Manhole	2	EA	\$5,000.00	\$10,000
8. 60" Manhole	1	EA	\$7,000.00	\$7,000

**Subtotal** **\$90,400**

20-Mar-15

Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total

**4. Sewer**

1. None anticipated	0	LF		\$0
<b>Subtotal</b>				<b>\$0</b>

**5. Water**

1. 12" Water	440	LF	\$90.00	\$39,600
2. 12" Water in existing pavement (10+90 to 13+50)	350	LF	\$120.00	\$42,000
3. 12" valve	3	EA	\$3,000.00	\$9,000
4. BO Valves	1	EA	\$4,000.00	\$4,000
5. Fire Hydrants	2	EA	\$6,500.00	\$13,000
6. Connect to Existing	1	EA	\$10,000.00	\$10,000
<b>Subtotal</b>				<b>\$117,600</b>

**6. Landscaping**

1. Landscape - Median	3,000	SF	\$7.00	\$21,000
2. Landscape - Frontage - Assumed not included	0	SF	\$5.00	\$0
<b>Subtotal</b>				<b>\$21,000</b>

**7. Public Utilities**

1. Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
<b>Subtotal</b>				<b>\$0</b>

<b>Del Paso Frontage Subtotal</b>	<b>\$832,980</b>
<b>Mobilization at 10%</b>	<b>\$83,298</b>
Contingencies at 20%	<u>\$166,596</u>
<b>Del Paso Frontage Construction Total</b>	<b>\$1,082,874</b>
Plan Check at 5%	\$41,649
Engineering & Staking at 12%	\$129,945
Geotechnical Engr at 2%	\$21,657
Construction Management at 3%	\$32,486

<b>Total Estimated Del Paso Frontage Imps</b>	<b>\$1,308,612</b>
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**20-Mar-15**  
**Schumacher Property -North Natomas -Roadway and Frontage Estimates**  
**Engineer's Estimate of Cost**

**East Commerce Frontage Imps**  
**(Ottumwa Way to DP Road 2,200 lf)**

WRI/Dokken 03-20-15 Combined Estimate			
Item	Quant	Unit	Price

**1. Grading and Mobilization**

1. Clearing and Grubbing	1	LS	\$30,000.00	\$30,000
2. Grading	10,000	CY	\$12.50	\$125,000
3. Erosion Control	1	LS	\$30,000.00	\$30,000
4. Traffic Control	1	LS	\$50,000.00	\$50,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000
<b>Subtotal</b>				<b>\$245,000</b>

**2 Roadway**

1. Paving 4" AC (\$0.62/insf)/23" AB (\$0.14/insf)	71,392	SF	\$6.50	\$464,048
2. 1' Sawcut of Existing Pavement	2,200	LF	\$3.00	\$6,600
3. Remove/ Dispose of Existing Pavement	2,200	SF	\$3.00	\$6,600
4. Type 4 C&G	2,048	LF	\$35.00	\$71,680
5. HC Ramps	13	EA	\$1,500.00	\$19,500
6. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
6A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	11,880	SF	\$2.40	\$28,512
7. Striping and signage	2,200	LF	\$10.00	\$22,000
8. Street Lights - Mast Arm Type	5	EA	\$8,000.00	\$40,000
9. Street Lights - Ornamental Type	4	EA	\$6,000.00	\$24,000
10. Street Light Service Point	1	EA	\$5,000.00	\$5,000
11. Survey Monuments	1	EA	\$2,000.00	\$2,000
12. Traffic Signalization East Commerce at New Market	1	LS	\$200,000.00	\$200,000
13. Traffic Signal Mod. East Commerce at North Park	1	LS	\$50,000.00	\$25,000
14. Traffic Signalization East Commerce at Ottumwa	1	LS	\$200,000.00	\$200,000
<b>Subtotal</b>				<b>\$1,114,940</b>

**3. Drainage**

1. 12" Drain Pipe (DI Leads)	210	LF	\$80.00	\$16,800
2. 21" Drain Pipe	0	LF	\$120.00	\$0
3. 36" Drain Pipe	75	LF	\$135.00	\$10,125
4. 42" Drain Pipe	85	LF	\$150.00	\$12,750
3. Remove Ex. Ditch Box	3	EA	\$1,000.00	\$3,000
5. Drain Inlet	8	EA	\$4,000.00	\$32,000
6. 60" Manhole	2	EA	\$7,000.00	\$14,000
<b>Subtotal</b>				<b>\$88,675</b>

**20-Mar-15**  
**Schumacher Property -North Natomas -Roadway and Frontage Estimates**  
**Engineer's Estimate of Cost**

**East Commerce Frontage Imps**  
**(Ottumwa Way to DP Road 2,200 lf)**

		<b>WRI/Dokken 03-20-15 Combined Estimate</b>			
Item		<b>Quant</b>	<b>Unit</b>	<b>Price</b>	<b>Total</b>
<b><u>4. Sewer</u></b>					
1.	8" Sewer Pipe Extension	0	LF	\$80.00	\$0
2.	10" Sewer Pipe Extension	60	LF	\$100.00	\$6,000
<b>Subtotal</b>					<b>\$6,000</b>
<b><u>5. Water</u></b>					
1.	12" Water (13+50 to 23+50 and New Market)	2,148	LF	\$70.00	\$150,360
2.	12" Water in existing pavement (10+90 to 13+50)	260	LF	\$120.00	\$31,200
3.	12" valve	6	EA	\$2,500.00	\$15,000
4.	BO Valves	1	EA	\$5,000.00	\$5,000
5.	Fire Hydrants	11	EA	\$6,500.00	\$71,500
6.	Connect to Existing	2	EA	\$10,000.00	\$20,000
<b>Subtotal</b>					<b>\$293,060</b>
<b><u>6. Landscaping</u></b>					
1.	Landscape - Median - Assume not included	0	SF	\$7.00	\$0
2.	Landscape - Frontage - Assume not included	0	SF	\$5.00	\$0
<b>Subtotal</b>					<b>\$0</b>
<b><u>7. Public Utilities</u></b>					
1.	Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
<b>Subtotal</b>					<b>\$0</b>
<b><u>8. Additional Items</u></b>					
1.	Traffic Signal Interconnect	1	LS	\$50,000.00	\$50,000
2.	Bus Stop Pad	4	EA	\$4,000.00	\$16,000
<b>Subtotal</b>					<b>\$66,000</b>
<b>East Commerce Frontage Construction Subtotal</b>					<b>\$1,813,675</b>
<b>Mobilization at 10%</b>					<b>\$181,368</b>
<b>Contingencies at 20%</b>					<b>\$362,735</b>
<b>East Commerce Frontage Construction Total</b>					<b>\$2,357,778</b>
<b>Plan Check at 5%</b>					<b>\$90,684</b>
<b>Engineering &amp; Staking at 12%</b>					<b>\$282,933</b>
<b>Geotechnical Engr at 2%</b>					<b>\$47,156</b>
<b>Construction Management at 3%</b>					<b>\$70,733</b>
<b>Total Estimated East Commerce Frontage Imps</b>					<b>\$2,849,283</b>

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 document and tax statement to—

Office of the City Clerk  
New City Hall  
915 "I" Street, Fifth Floor  
Sacramento, CA 95814

Space above this line is for recorder's use only.

**City of Sacramento**  
**North Natomas Community Facilities District No. 4**  
**Third Amendment to Acquisition-and-Shortfall Agreement**  
**(City Agreement No. 2006-1351)**

This *Third Amendment to Acquisition-and-Shortfall Agreement (City Agreement No. 2006-1351)* (the "**Third Amendment**") is dated March 1, 2016, for reference purposes only and is between the CITY OF SACRAMENTO, a California municipal corporation (the "**City**"); and NATOMAS CREEK, LLC and COMMERCE STATION, LLC, each a California limited-liability company (collectively, the "**Developers**").

**Background**

- A. In accordance with the Mello Roos Community Facilities District Act of 1982 (the "**Act**"), the City has formed the North Natomas Community Facilities District No. 4 (the "**District**") for the purpose of financing the acquisition and construction of certain public improvements to be owned and operated by the City or by other public agencies (the "**Authorized Facilities**"). Acting through the District, the City has issued four series of special-tax bonds: Series A in 1999, Series B in 2001, Series C in 2003, and Series D in 2006.
- B. In accordance with section 53313.5 of the Act, and in connection with the Series D bonds, the City and the Developers entered into an *Acquisition-and-Shortfall Agreement*, designated as City Manager Agreement No. 2006-1351, that is dated November 30, 2006, and was recorded with the Sacramento County Clerk/Recorder on December 13, 2006, in Book 20061213 at Page 1792 (the "**Original Agreement**"). Among other things, the Original Agreement lists the facilities that the City would acquire from Developers using the proceeds of the Series D bonds.
- C. On or about July 30, 2008, the City and Developers entered into a *First Amendment to Acquisition-and-Shortfall Agreement*, designated as City Agreement No. 2008-0784, that was recorded with the Sacramento County Clerk/Recorder on August 4, 2008, in Book 20080804 at Page 1529 (the "**First Amendment**").
- D. On or about December 18, 2009, the City and Developers entered into a *Second Amendment to Acquisition-and-Shortfall Agreement*, designated as City Agreement No. 2010-0060, that was recorded with the Sacramento County Clerk/Recorder on January 26, 2010, in Book 20100126 at Page 1159 (the "**Second Amendment**").

- E. The facilities listed in the Original Agreement, as amended by the First Amendment and by the Second Amendment, did not include all of the Authorized Facilities. The City and the Developers now desire to amend the list of Authorized Facilities to include the following public improvements: widening the segment of East Commerce Way between Del Paso Road and Ottumwa Drive and providing the Del Paso Road frontage improvements between Interstate 5 and East Commerce Way. In addition, the City and the Developers now desire to amend the description of the Authorized Facilities and establish the priority upon which the remaining proceeds from the sale of the Series C and Series D bonds may be expended.

***With these background facts in mind, the parties agree as follows:***

1. ***Replacement of Exhibits A and C in the Original Agreement.*** Exhibits A and C to the Original Agreement are hereby replaced with the documents attached to this Third Amendment as Exhibits A-1 and C-1. There are no changes being made to Exhibit B of the Original Agreement by this Third Amendment.
2. ***Revision to Subsection 2(b) of the Original Agreement.*** The fourth paragraph in Subsection 2(b) of the Original Agreement is hereby revised to read as follows:

City agrees to allow Improvements to be acquired incrementally, as shown on Exhibit "C," attached hereto and incorporated herein by the reference; provided, however, that no Improvement or element or increment thereof will be acquired unless the Director of Development Services, or the Director of Utilities, as applicable, certifies in writing to the City Treasurer that the Improvement, element or increment thereof proposed for acquisition is completed and constructed in accordance with the provisions of Section 3, and that the Improvement, element or increment thereof is a functional, usable unit of infrastructure capable of being incorporated into the City's infrastructure system. The Director of Development Services, or the Director of Utilities, as applicable, shall make a decision as to such certification to the City Treasurer no later than thirty (30) days after Developer has completed construction of the Improvement, element or increment thereof; has provided a notice of such completion to the Director of Development Services, or the Director of Utilities, as applicable; and has provided to the Director of Development Services, or the Director of Utilities, as applicable, a "Developer Reimbursement Request" for the Improvement, element or increment thereof in accordance with Section 6.1 of the Guidelines referred to in Section 3 .

3. ***Revision to Subsection 2(c) of the Original Agreement.*** Subsection 2(c) of the Original Agreement is hereby revised to read as follows:

(c) The monies in the Improvement Fund for the Bonds (for purposes of this Subsection 2(c), the "Series D Fund") that are available for payment to

Developer under Subsection 2(a), together with the monies in the Improvement Fund for the Series C bonds, issued and sold in 2003, that are available for payment to Developer (the "Series C Fund"), will be used in the following order of priority:

- (1) *First*, City shall reimburse Developer from the Series D Fund for the costs of widening East Commerce Way between Del Paso Road and Ottumwa Drive to its ultimate configuration as set forth in the North Natomas Finance Plan, a distance of approximately 2,200 feet. These costs include the costs of grading and mobilization; of the new roadway and permanent sidewalk on the west side; of street lights and traffic signalization at one intersection; of a traffic-signal interconnect; of a drain pipe, a drain inlet and manhole, sewer-pipe extensions, water pipes, valves, and fire hydrants; and of median landscaping (collectively, the "Remaining East Commerce Improvements"). If the monies in the Series D Fund are exhausted before City reimburses Developer as required for the Remaining East Commerce Improvements, then City shall also use the monies in the Series C Fund to reimburse Developer for the Remaining East Commerce Improvements. Developer's total reimbursement from the Series D Fund and the Series C Fund for the costs of the Remaining East Commerce Improvements will not exceed \$2,849,283. Developer shall pay all such costs in excess of \$2,849,283 and will not be entitled to any reimbursement for excess costs from the Series D Fund or the Series C Fund or from any other City source, including but not limited to the City's General Fund, except as otherwise provided in Subsection 2(d).
- (2) *Second*, City shall reimburse Developer from the monies in the Series D Fund (if any remain after Developer is reimbursed under Subsection 2(c)(1)) for the costs of constructing the segment of Del Paso Road from Interstate 5 to East Commerce Way (the "Del Paso Road Frontage Improvements") to its ultimate configuration as set forth in the North Natomas Finance Plan. The total reimbursement to Developer from the Series D Fund for the costs of the Del Paso Road Frontage Improvements will not exceed \$1,308,612. Developer shall pay all costs of the Del Paso Road Frontage Improvements in excess of \$1,308,612 and will not be entitled to any reimbursement for such excess costs from the Series D Fund or the Series C Fund or from any other City source, including but not limited to the City's General Fund, except as otherwise provided in Subsection 2(d).

**4. Addition of Subsection 2(d) of the Original Agreement.** Subsection 2(d) is hereby added to the Original Agreement, to read as follows:

(d) Fee Credits/Reimbursements. Some of the Improvements may be public facilities for which the City imposes the Public Facilities Fee established by Article II in Chapter 18.24 of the Sacramento City Code or the Park Development Impact Fee established by Chapter 18.44 of the Sacramento City Code (the "Fee Ordinances"). Developer's reimbursement under this Agreement for those Improvements will not preclude Developer's receiving fee credits or cash payments under the Fee Ordinances for those Improvements. Any fee credits may be used only to offset fees imposed on development with the District.

5. **All Other Terms Remain in Force.** Except as amended by Sections 1, 2, 3, and 4 above, all terms and conditions of the Original Agreement, as amended by the First Amendment and the Second Amendment, remain in full force.
6. **Effective Date.** This Third Amendment becomes effective when all parties have signed it, as indicated by the dates in the signature blocks below.
7. **Recording.** Either party may record this Third Amendment with the Sacramento County Clerk/Recorder.
8. **Counterparts.** The parties may execute this Third Amendment in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Delivery of signed counterparts may be accomplished by email transmission of a pdf document.
9. **Entire Agreement.** This Third Amendment 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.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_  
John Shirey  
City Manager  
Date: March \_\_, 2016

Attest  
Sacramento City Clerk

By: \_\_\_\_\_

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Joseph Cerullo Jr.  
Senior Deputy City Attorney

**Commerce Station, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

By: \_\_\_\_\_  
Kern W. Schumacher  
President  
Date: *April 8*, 2016 *KC*

**Natomas Creek, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

By: \_\_\_\_\_  
Kern W. Schumacher  
President  
Date: *April 8*, 2016 *KC*

Third Amendment to Acquisition-and-Shortfall Agreement  
(City Agreement No. 2006-1351)

**EXHIBIT A-1**  
**AMENDED EXHIBIT A**

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**EXHIBIT A**

**ADDITIONAL IMPROVEMENTS AND BUDGETED AMOUNTS**

**Note: Notwithstanding the “total estimated cost” set forth below, Developers’ total reimbursement for these improvements is limited to the net construction proceeds actually available from the sale of the CFD 4 Bonds and the interest earned thereon.**

<b>Improvements</b>		<b>Estimated Amounts</b>
1	East Commerce Way segment from Del Paso Road to Ottumwa Drive	\$2,849,283
2	Del Paso Road Frontage Improvements	1,308,612
<b>Total Estimated Cost</b>		<b>\$4,157,895</b>

**EXHIBIT C-1  
AMENDED EXHIBIT C**

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**EXHIBIT C  
ADDITIONAL INCREMENTS OF IMPROVEMENTS  
ELIGIBLE FOR ACQUISITION**

The following represents the approximate increments regarding construction of the additional improvements shown on Exhibit "A-1" as eligible for acquisition.

<b>Improvements Identified by Incremental Portions</b>		<b>Estimated Amounts</b>
1	East Commerce Way segment from Del Paso Road to Ottumwa Drive	\$2,849,283
2	Del Paso Road Frontage Improvements	1,308,612
<b>Total Estimated Cost<sup>†</sup></b>		<b>\$4,157,895</b>

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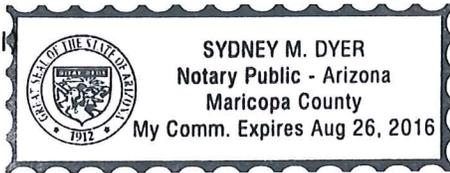
<sup>†</sup> Notwithstanding the "total estimated cost" set forth above, the Developers' total reimbursement for these improvements is limited to the remaining proceeds from the sale of the CFD 4 Series C and Series D bonds and their interest earnings.

NOTARIAL ACKNOWLEDGMENT

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me this 8<sup>th</sup> day of April,  
2016, by KERN W. SCHUMACHER.

(Notary Seal)



Sydney M. Dyer

NOTARY PUBLIC

Description of document this notarial certificate is being attached to:	
Type/Title	Third Amendment to Acquisition-and-Shortfall Agreement
Date of Doc	March 1, 2016
Number of Pages	5 (+2 pages of Exhibits)
Add'l Signers (other than those named in the notarial certificate.)	



**Public Safety Project  
Construction Funding and Reimbursement Agreement  
for Construction of North Natomas Infrastructure  
(Del Paso Road Improvements)**

This *Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure* (this “**Agreement**”) is dated March 1, 2016, for reference only and is between the CITY OF SACRAMENTO, a California municipal corporation (“**City**”), and COMMERCE STATION, LLC, a California limited-liability company (“**Landowner**”).

**Background**

- A. Landowner owns and is developing the Commerce Station Project (#P06-018) at the land shown in Exhibit A (the “**Property**”).
- B. Development of the Property is subject to payment of the North Natomas Public Facilities Fee (the “**Facilities Fee**”) in accordance with chapter 18.24<sup>1</sup> of the Sacramento City Code (the “**Fee Ordinance**”). Because the Project (defined below in Paragraph C) is designated for funding by the Facilities Fee, the Project is eligible for credits against, and reimbursement from, the Facilities Fee for Landowner’s eligible Project Costs (as determined by City in its sole discretion), in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement. “**Project Costs**” means actual costs related to all contracts for construction of the Project, including change orders thereto, and actual costs associated with all other contracts for professional and other services necessary, in City’s judgment, to implement and complete construction, together with planning-and-design costs and right-of-way-acquisition costs, if any, associated with the Project. Project Costs includes the engineering estimates and the Project elements included therein, which estimates are set forth in Exhibit B-1; construction-inspection fees; and applicable plan-check fees, inspection fees, and Habitat Conservation Fees.
- C. City desires to accelerate the construction of the improvements to Del Paso Road that are specified and depicted in Exhibit B-2 (the “**Project**”). To that end, City has designated the Project as a Public Safety Project and is willing to use the Facilities Fee to provide Landowner with advance funding for the Project, the construction of which would otherwise be delayed until Landowner begins developing the Property.
- D. Landowner is willing to accelerate the design and construction of the Project according to Project Plans (defined below in Section 1.2) if City provides advance funding for the Project from the Facilities Fee.

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<sup>1</sup> Formerly chapter 84.02. Citations to the Sacramento City Code throughout this Agreement include amendments and renumbering that occur after the effective date of this Agreement.

- E. This Agreement sets forth the terms upon which City will provide advance construction funding for the Project Costs and the terms upon which Landowner will repay that advance funding and become eligible for credits against the Facilities Fee by virtue of having constructed the Project.

***With these background facts in mind, the parties agree as follows:***

### **Article 1. Construction of Project**

- 1.1 Design and Construction.** Landowner shall design and construct the Project, or cause it to be designed and constructed, and shall convey the Project, along with all interests in real property necessary for the operation, maintenance, and ownership thereof, to City or other appropriate public entities or utilities.
- 1.2 Plans and Specifications.** Landowner shall obtain approval of the plans and specifications for the Project from all appropriate City departments and from any other public entity or public utility from which such approval must be obtained, such as the California Department of Transportation. City shall use its best efforts and due diligence to review and approve the plans or provide comments thereto regarding any necessary corrections in a prompt and timely manner. As used in this Section 1.2, “best efforts” means the diligence of a reasonable person under comparable circumstances. Landowner shall construct the Project in compliance with the approved plans and specifications and the adopted City Construction Specifications and Improvement Standards (the “**Project Plans**”), subject to minor change orders as may be required that are substantially consistent with such plans and specifications. Landowner shall provide copies of the Project Plans to City’s Director of Public Works (the “**Director**”).
  - 1.2.1 Standards and Specifications.** The City Construction Specifications and Improvement Standards will be those in effect at the time of City’s final approval of the Project Plans.
  - 1.2.2 Management.** Landowner shall provide a site-construction superintendent (the “**Site Superintendent**”) and City shall provide a City project manager (the “**City Project Manager**”) who will serve as their respective points of contact with respect to construction of the Project, who will be onsite as necessary, and who will generally be available by telephone or otherwise at all reasonable times.
    - (a) The Site Superintendent (1) has complete authority over the construction contractors and all subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans; and (2) may also, but need not have authority to, order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans.

- (b) The City Project Manager (1) has complete authority over City’s construction inspectors, with authority to determine whether the work complies with the Project Plans; (2) has authority to order stoppage of work to protect public health and safety; and (3) may also, but need not have authority to, approve minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans.
- (c) Landowner hereby designates **Doug Handen** (Handen Company, Inc. | 3250 Monier Circle, Suite D | Rancho Cordova, CA 95742 | Phone 916-635-5200) as the Site Superintendent until Landowner notifies City’s Department of Public Works of his or her replacement. City hereby designates **Nader Kamal** (Department of Public Works | 915 “I” Street, New City Hall, 2d Floor | Sacramento CA, 95814 | Phone 916- 808-7035) as the City Project Manager until the Director notifies Landowner of his or her replacement.

**1.3 Commencement and Completion of Project.** Subject to Section 7.4 below, as well as to the effect of inclement weather on Landowner’s ability to commence or proceed with construction, Landowner shall use commercially reasonable efforts to begin construction of the Project within six months after City’s final approval of the Project Plans and thereafter shall diligently work to complete the construction in a timely and efficient manner. When awarding a contract for construction of the Project, Landowner shall employ the following process:

1.3.1 Landowner shall request sealed, written proposals to construct the Project in accordance with the Project Plans from at least three contractors. The request for proposals must inform the contractors that—

- (a) the Project is to be constructed (1) in accordance with the Project Plans and any change orders that are consistent with the Project Plans and approved as required by this Agreement, and (2) in strict conformity with the City’s standard specifications and requirements unless the City has approved any exceptions in writing;
- (b) they must have a current, valid Class A license (General Engineering Contractor) from the California Contractors State License Board plus all current valid Class C licenses (Specialty Contractor) required for the Project; and
- (c) they will be required to comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices), to post performance and payment bonds, and to indemnify the City and the City’s elected or appointed boards, commissions, officers, employees, and agents as required by this Agreement.

1.3.2 The City Project Manager must be present when Landowner opens the proposals. Landowner shall provide the City Project Manager with copies of the proposals together with Landowner's written recommendation for award, which must include Landowner's signed certification that no disputes concerning the proposals are pending, that each contractor who submitted a proposal received the same request for proposal (including any addenda issued), that the contractor who submitted the recommended proposal has the required licenses, and that Landowner has complied with the requirements of this Section 1.3. In addition, if Landowner is not recommending the lowest proposal, the certification must explain Landowner's reasons for the recommendation.

1.3.3 Landowner may not award a contract for construction of the Project unless the City Project Manager has reviewed the proposals received, has concurred in Landowner's recommendation for award, and has provided Landowner with a written approval of the contract amount.

1.3.4 The contract for construction must require the contractor to comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices), to post performance and payment bonds, and to indemnify the City and the City's elected or appointed boards, commissions, officers, employees, and agents as required by this Agreement. The contract must provide for a 5% retention as required by law. The form of the contract and the contract amount for the work are subject to the City's prior review and approval, which City may not unreasonably withhold, condition, or delay. Landowner shall provide the City Project Manager and the Director with a copy of the signed contract within 10 days after Landowner has authorized the contractor to proceed.

**1.4 Inspection.** Landowner shall permit City and any other public entities or public utilities to whom any portion of the Project will be conveyed to inspect the Project. City shall make inspectors available for inspection of the Project during construction within at least 48 hours of Landowner's request therefor.

1.4.1 If a City inspector (the "**Inspector**") finds any nonconformance or noncompliance with the Project Plans, the Inspector shall notify the City Project Manager and the Site Superintendent of the nonconformance or noncompliance, and the City Project Manager and the Site Superintendent shall jointly determine the nature of the corrective action to be taken. Corrective action taken under an agreement between the City Project Manager and the Site Superintendent is deemed to be in accordance with the Project Plans.

1.4.2 If the City Project Manager and the Site Superintendent cannot agree upon the corrective action to be taken, the City Project Manager may order that work on the

nonconforming or noncomplying items or areas be stopped. If the City Project Manager orders work to stop, then—

- (a) Landowner shall comply with all requirements of any stop-work order and must obtain City's approval before work can resume on those items or in those areas; and
- (b) the City Project Manager, the Site Superintendent, and such other representatives of City and Landowner as are necessary or appropriate to evaluate, discuss, and resolve the situation shall promptly meet and confer regarding the measures necessary to correct the nonconforming or noncomplying items or areas.

**1.5 Performance and Payment Bonds.** Landowner shall comply with all applicable City performance-bond and payment-bond requirements (and such other bond requirements as may be specified by other public entities or public utilities) with respect to the construction of the Project. Landowner may satisfy the obligation to post bonds with an assignment to City of the contractor's bond or through the posting of bonds, letters of credit, or other security instruments acceptable to City, in accordance with applicable City requirements, but all such bonds, letters of credit, or other security instruments must meet all requirements that would apply for security to be posted by a contractor, quantitatively and qualitatively, if City and not Landowner were contracting to construct the Project.

**1.6 Insurance.** Landowner shall furnish to City a certificate or certificates, in a form satisfactory to City, confirming that Landowner has taken out the insurance required by this Section 1.6 for the period covered by this Agreement with an insurance carrier acceptable to City. Each certificate must bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of 30 days after City has received notification of the cancellation or reduction by registered mail. The minimum insurance coverage is as follows:

Public-liability and property-damage insurance that includes personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, and underground hazards, in the amount of not less than a combined single limit of \$1,000,000 for one or more persons injured and property damage in each occurrence. The public-liability and property-damage insurance must also name City as an additional insured. This insurance must directly protect City as well as Landowner and its agents. The insurer must assume the defense of City and City's officers, employees, and agents from suits, actions, damages, or claims of every type and description to which they may be subjected or put by reason of, or resulting from, the construction or installation of the Project. The insurance policy must expressly state that the above terms are in effect.

If Landowner fails to maintain the required insurance, then City may take out insurance to cover damages of the above-mentioned classes for which City might be held liable on account of Landowner's failing to pay damages and may recover from Landowner the amount of the premiums for the insurance or retain that amount from any monies due Landowner under this Agreement. City's failure to obtain such insurance will not relieve Landowner of its responsibilities under this Agreement.

**1.7 Contracts and Change Orders.** Landowner shall enter into all contracts and any change orders required for construction of the Project:

1.7.1 So long as the contracts and change orders are substantially consistent with the approved Project Plans and with City Standards, as determined by Landowner's project engineer, Landowner will not be obligated to obtain the approval of the Director therefor, except that any change orders that will increase the cost of the Project by more than 10% require the Director's prior approval. The City Project Manager's approval is not required for change orders that do not require the Director's approval.

1.7.2 Except as otherwise provided in Section 1.7.3, Landowner shall make changes in the construction of the Project as requested by City.

(a) Landowner shall pay for all changes that are necessary to comply with the approved Project Plans.

(b) City shall reimburse Landowner from the Facilities Fee for changes that are requested by City and not necessary to comply with the approved Project Plans, subject to the following: Landowner shall provide a written statement of the estimated cost of the change before constructing it, and if Landowner fails to provide such a statement within 15 days after receiving City's written request for such a statement (made after the nature of the change is finally determined), then Landowner shall make such change at its own cost, and City will not be required to reimburse Landowner for the change.

1.7.3 Landowner is not obligated to make changes requested by City, except for changes that are necessary to comply with the approved Project Plans, where any one of the following applies:

(a) The same would result in unreasonable delay to the Project.

(b) City has failed to approve the estimated cost before construction of the change would otherwise begin.

- (c) The change would increase the cost of the Project beyond the sum of \$1,400,000 plus the additional funds City has agreed to pay under Section 1.7.2(b) above.

## **Article 2: City Acceptance; Conveyance of Project**

- 2.1 Acceptance and Conveyance.** When Landowner completes construction of the Project and City has formally accepted the Project, the Project will automatically become City's property. Upon such completion, Landowner shall take all actions necessary to convey to and vest in City full, complete, and clear title in the Project and in all of the underlying real-property interests (easement or fee), including those necessary for maintenance and access. City need not formally accept the Project until such title has been conveyed to City. For purposes of this Agreement, City acceptance occurs when both of the following have occurred: the Project has been completed in accordance with the approved Project Plans and any agreed-upon change orders; and City has finally inspected and approved the Project for acceptance into City's infrastructure system, as evidenced by a written statement or letter to that effect signed by or on behalf of City.
  
- 2.2 Release of Liens.** Upon completion of construction of the Project, Landowner shall provide evidence, in a form satisfactory to the Director, that all of the costs of the Project have been fully paid, including all lien claims. Upon request of the Director, Landowner shall provide lien releases under California Civil Code sections 8122 through 8138 to assure that payment of any outstanding claims of Landowner's contractors, subcontractors, and suppliers have been paid.
  
- 2.3 Indemnification.** As used in this Section 2.3, "**Claims**" means any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property damage, injury to the environment, or violation of any law or regulation.
  - 2.3.1 Indemnification by Landowner.** Landowner shall fully indemnify, defend, and hold harmless City and City's elected or appointed boards, commissions, officers, employees, and agents from and against Claims to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance, or repair of the Project by any of the following: Landowner; any of Landowner's engineers, contractors, or subcontractors; or any other person or entity employed by or acting on behalf of or as the authorized agent for Landowner or any of Landowner's engineers, contractors, or subcontractors. Landowner is not obligated under this Section 2.3 to indemnify, defend, or hold harmless City and City's elected or appointed boards, commissions, officers, employees, and agents against such Claims alleging sole and active negligence of City in its functions of design review, approval, or construction inspection in connection with the Project. This Agreement does not waive any immunity or defense City may have relating to

any such Claims, including immunity or defenses relating to design review and approval and construction inspection.

2.3.2 *Indemnification Regarding Hazardous Substances.* Landowner shall fully indemnify, defend, and hold harmless City and City's elected or appointed boards, commissions, officers, employees, and agents from and against all Claims arising by reason of any death, bodily injury, personal injury, property damage, or damage to the environment to the extent arising from any use, storage, treatment, transportation, release, or disposal on, about, or around the portion of the Property on which the Project is located of any Hazardous Substances, as defined in Exhibit C, by any person or entity (except persons or entities acting on City's behalf or under City's control), occurring on or before the date the Project is conveyed to City as provided in this Agreement. Landowner's obligation under this Section 2.3.2 does not apply to the incorporation of building materials as part of the Project so long as the incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws in effect at the time of the incorporation.

2.3.3 *Indemnification Regarding Application of Credits and Reimbursements.* Landowner shall fully indemnify, defend, and hold harmless City and City's elected or appointed boards, commissions, officers, employees, and agents from and against Claims to the extent arising from any actions or omissions of Landowner or Landowner's officers, employees, agents, or contractors in connection with the application or calculation of credits or reimbursement authorized by City under this Agreement.

2.3.4 *Duration of Indemnification Obligations.*

- (a) Landowner's obligation under Section 2.3.1 with respect to the Project and each part thereof constructed by Landowner expires on the date that is one year after City's formal acceptance of the Project, except that Landowner's obligation under Section 2.3.1 will not expire and will remain in effect with respect to any Claims that are made, initiated, claimed, filed, or assessed at any time before such date or that relate (directly or indirectly) to any such Claims.
- (b) Landowner's obligation under Section 2.3.2 will survive the termination of this Agreement until the date that is two years after City's formal acceptance of the Project. Section 2.3.3 will not expire and will remain in effect with respect to any Claims that are made, initiated, claimed, filed, or assessed at any time before such date or that relate (directly or indirectly) to any such Claims.
- (c) This Section 2.3.4 applies only to the indemnification and hold harmless provisions of this Agreement and does not affect any liability Landowner might have under applicable law to the extent Landowner is a contaminator

of the Property. This Section 2.3.4 does not expire and will survive the termination of this Agreement.

*2.3.5 Additional Provisions Regarding Indemnification Obligations.*

- (a) City does not waive any rights against Landowner that it may have by reason of this Section 2.3 because of any insurance coverage provided as required by Section 1.6.
- (b) Except as may otherwise be specifically and expressly provided in Section 2.3.1 relating to Claims based upon allegations of City's sole and active negligence, Landowner's obligations under this Section 2.3 will not be limited or waived in any way because City has prepared, supplied, or approved the Project Plans or has inspected or failed to inspect the construction of the Project.
- (c) This Section 2.3 is to be construed broadly and liberally to provide the maximum coverage for City in accordance with its terms.
- (d) No specific term or word contained in this Section 2.3 is to be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided.
- (e) Landowner shall cause all engineering and construction contracts relating to the Project to require the engineer or contractor to fully and without limitation indemnify, defend, and hold harmless City and its elected or appointed boards, commissions, officers, employees, and agents from and against all Claims to the extent arising from any actions or omissions of the engineer or contractor in connection with the design, construction, maintenance, operation, or repair of the Project by the engineer or contractor or by any other person or entity employed by, or acting as the authorized agent for, the engineer or contractor, but only to the extent that the engineer or contractor or other party has contractual responsibility for a portion or aspect of the Project. For example, a contractor responsible for constructing a portion of the Project would not be held responsible for the design, nor would an engineer who designed a portion of the Project be held responsible for construction not in accordance with the design. If the construction contract contains the language contained in Exhibit D or other language approved in writing by City, and if City is satisfied in its sole judgment with the adequacy of the engineer's or contractor's insurance, then Landowner will have satisfied its obligation under this Section 2.3.5(e).

*2.3.6 Waiver by Landowner.* In addition to Landowner's obligations to indemnify, hold harmless, and defend City as set forth above, Landowner and its assigns,

transferees, and successors hereby waive and release all claims of whatever sort or nature that may arise against City or City's elected or appointed boards, commissions, officers, employees, and agents in connection with the design or construction of the Project. This Section 2.3.6 does not apply to discretionary changes to the Project that were required by City unless all of the following apply: (a) the discretionary changes required by City were approved by Landowner's engineers; and (b) Landowner's engineers have provided to Landowner, under a contract between Landowner and its engineers, errors-and-omissions insurance or similar professional-liability insurance coverage that covers the Project, including all discretionary changes required by City.

2.3.7 *Unknown Claims.* This waiver and release includes all claims arising under California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Thus, notwithstanding California Civil Code section 1542, and for the purpose of implementing a full and complete release, this Agreement is intended to release and extinguish, without limitation, all claims as described in this Section 2.3 that the parties do not know or suspect to exist. This Section 2.3 will survive termination of this Agreement.

2.3.8 *Indemnification by City.* City shall fully indemnify, defend, and hold harmless Landowner and Landowner's directors, members, shareholders, partners, officers, employees, and agents from and against all Claims—

- (a) to the extent arising from any City use, storage, treatment, transportation, release, or disposal of any Hazardous Substances, as defined above, by any person or entity (except persons or entities acting on Landowner's behalf or under Landowner's control), on, about, or around the portion of the Property on which the Project is located, that occurs at any time on or after the date the Project is conveyed to City as provided in this Agreement; or
- (b) arising from any act or omission (including those covered by Section 2.3.8(a)) by City or City's agents or employees in the use and operation of the Project; or
- (c) occurring on, or at any time arising from any entry upon, the Property by City or by City's agents, employees, or contractors under Article 1.

**2.4 Warranty.** Landowner shall warrant the Project as to materials and workmanship for one year following City's formal acceptance of the Project. If any failure of the Project or any portion thereof occurs within one year after City's formal acceptance, then Landowner shall promptly cause the needed repairs to be made without cost to City. City is authorized to make repairs if Landowner fails to make the necessary repairs or to undertake them with due diligence within 30 days after Landowner receives written notice of the failure. In an emergency when delay would cause serious hazard to the public, City may make the necessary repairs without prior notice to Landowner. In all cases of failure of the Project within the warranty period where City has taken action in accordance with this paragraph, Landowner shall reimburse City for all costs, direct and indirect, that City incurs, and City may deduct the outstanding amount of those costs from any reimbursement due to Landowner under this Agreement.

### **Article 3: Reimbursement of Project Costs**

**3.1 Reimbursement Amount.** In order to accelerate the design and construction of the Project, City shall advance up to \$1,400,000 to Landowner, exclusively from the account City maintains for the Facilities Fee, as reimbursement for the Project Costs Landowner incurs under this Agreement (the "**Advance**").

**3.1.1 Disbursements of the Advance.** Each month, City shall disburse the Advance to Landowner in an amount equal to the Project Costs Landowner actually paid during the previous month (i.e., an amount that does not include the 5% retention Landowner withholds from its contractors, as required by Section 1.3). As used in this Section 3.1.1, "**Business Day**" means any day that City's offices at 915 I Street, Sacramento, California, are open to the public.

- (a) On or before the 20th day of each month, Landowner shall submit or cause to be submitted to City a Request for Payment that is in the form attached as Exhibit E, covers Landowner's actual disbursements for work done on the Project in the previous month, and is accompanied by the following supporting documentation as appropriate:
- (1) Copies of invoices, vouchers, canceled checks, and other available documents to support all of Landowner's expenditures claimed for reimbursement.
  - (2) A statement of final quantities and final costs on each contract item, certified by the Site Superintendent to be accurate, and the total of all construction costs for the work for which reimbursement is claimed, accompanied by any other supporting documentation necessary to justify the reimbursement claimed.

- (3) A written certification by a third-party labor-compliance consultant acceptable to City that Landowner and each of Landowner's contractors and subcontractors have complied with all applicable federal, state, and City laws and regulations pertaining to public works, including those requiring the payment of prevailing wages and the employment of apprentices.
  - (4) An itemized breakdown of other reimbursable costs as delineated in this Agreement.
  - (5) Approved contract change orders that pertain to the work for which reimbursement is claimed, with final quantities and final costs.
  - (6) Copies of all recorded notices of completion that pertain to the work for which reimbursement is claimed.
  - (7) A written certification that Landowner has complied with Section 1.3.
  - (8) Copies of mechanics-lien releases for the work covered by the request.
  - (9) Documentation that any required easements have been transferred to City or that other arrangements for such transfer, as required by City, have been made.
  - (10) Documentation that any fee interests required for the work have been transferred to City or that other arrangements for such transfer, as required by City, have been made.
  - (11) Upon completion of the Project, any operations manuals for equipment installed as part of the work.
  - (13) Upon completion of the Project, any warranties relating to equipment installed as part of the work.
  - (14) When the Project is completed, a final version of the Project Plans that incorporates all approved changes (i.e., "as built").
- (b) As reimbursement for engineering costs on the Project, City shall pay Landowner an amount equal to 15% of total Project Costs. "Engineering costs" means engineering and design costs, surveying costs, construction-management costs, and any governmental fees required for the Project.
- (c) After receiving a Request for Payment, the City Project Manager shall review the Request for Payment and determine whether it is complete, i.e., whether

it is signed by the Site Superintendent and includes the required information and documents. The Request for Payment will be deemed complete on the third Business Day after receipt unless the City Project Manager notifies the Site Superintendent that it is incomplete, specifying the deficiencies in writing. The Site Superintendent may then correct the deficiencies and resubmit the Request for Payment.

- (d) Within five Business Days after a Request for Payment is deemed complete, the City Project Manager shall determine whether it is supported by the documentation submitted and City's inspection records, and whether the work identified in the Request for Payment was done in accordance with the Project Plans. The City Project Manager shall notify the Site Superintendent in writing if City disapproves the Request for Payment in whole or part, specifying the reasons for disapproval.
  - (1) If the City Project Manager does not give notice of disapproval within five Business Days, then the Request for Payment will be deemed approved as of the sixth Business Day. If the City Project Manager notifies the Site Superintendent within five Business Days that the Request for Payment is disapproved in part, then the Request for Payment will be deemed approved as of the sixth Business Day as to the items not specifically disapproved in the notice.
  - (2) If the City Project Manager notifies the Site Superintendent within five Business Days that the Request for Payment is disapproved in whole or part, then the City Project Manager's disapproval will be final and conclusive unless, within five Business Days after receiving the notice, the Site Superintendent notifies the City Project Manager in writing that Landowner disputes the disapproval, specifying the grounds of the dispute. The City Project Manager and the Site Superintendent shall meet as soon afterward as is practicable and attempt in good faith to resolve the dispute. If no resolution results from that meeting, then Landowner may proceed under Section 7.3.
- (e) City shall pay the approved amounts of each Request for Payment within 30 days after the Request for Payment is deemed approved in whole or part.
- (f) Within 60 days after City accepts the Project as complete and Landowner has provided City with proof, satisfactory to City, that Landowner has paid the 5% retainage to its contractors, City shall disburse the Advance to Landowner in an amount equal to the 5% retainage so paid (the "City Retention"), but only to the extent that the City Retention is not subject to any deductions or withholdings under this Agreement or any applicable law or regulation. Landowner's acceptance of the City Retention will be the final payment of the Advance and will constitute Landowner's waiver of all claims against City for

payment under this Agreement other than claims for amounts City has disapproved under this Section 3.1.1, which will be resolved in accordance with this Section 3.1.1 and Section 7.3. Landowner may substitute securities for the City Retention or may direct that payment of the City Retention be made into escrow, as provided in Public Contract Code section 22300, upon the execution of City's Escrow Agreement for Security Deposits in Lieu of Retention.

- (g) Notwithstanding Section 7.1, the City Project Manager and the Site Superintendent may give notices under this Section 3.1.1 by email sent to the following addresses:
  - (1) *To the City Project Manager:* [NKamal@cityofsacramento.org](mailto:NKamal@cityofsacramento.org)
  - (2) *To the Site Superintendent:* [handenco@pacbell.net](mailto:handenco@pacbell.net)
- (h) The total aggregate amount disbursed for the Advance may not exceed \$1,400,000 unless City and Landowner agree in writing on a different amount.

**3.2 Repayment of the Advance.** Landowner shall repay the Advance to City when Landowner's obligation to construct the Project is triggered by Landowner's development of the Property, as follows:

3.2.1 Landowner shall repay the portion of the Advance that relates to the Project elements described in condition of approval A9 for the Parcel Map that is part of the Commerce Station PUD Project (#P06-018) before the final Parcel Map covering the land adjacent to those elements is recorded. Condition of approval A9 reads in full as follows:

"Dedicate and Construct Del Paso Road to a North Natomas 6-lane street standard (Half Street only) to the satisfaction of the Development Engineering Division. Half Street construction will include installation of a raised center median as well as any restriping necessary for the median installation. The sidewalk on Del Paso shall be widened to 10' extending from the termination of the freeway buffer to the corner of East Commerce and Del Paso and will function as a shared ped/bike facility."

3.2.2 Landowner shall repay the portion of the Advance that relates to the Project elements described in Mitigation Measure 4.2-1(b) of the Commerce Station Project Mitigation Program (#P06-018) before Landowner is issued a building permit to complete the amount of development at the Property that will generate 50% of the p.m. peak-hour traffic. Mitigation Measure 4.2-1(b) reads in full as follows:

“MM 4.2-1(b): Del Paso [R]oad and East Commerce Way – Before completion of the amount of development that would generate 50% of the p.m. peak hour Project traffic, the Project applicant shall add a northbound and a southbound right turn signal phase at the subject intersection. The Project applicant shall also restripe the westbound approach to include an exclusive right turn lane, a shared through/right turn lane, two through lanes, and two left turn lanes.”

3.2.3 *Existing Facilities Fee Credits.* As of the effective date of this Agreement, Landowner holds a substantial number of unused credits for the Facilities Fee. Landowner shall repay the Advance in cash and may not repay the Advance using Landowner’s existing Facilities Fee credits. Notwithstanding anything to the contrary in this Agreement, express or implied, Landowner may use its existing Facilities Fee credits, subject to Section 4.6.3, to satisfy any obligations Landowner has to pay the Facilities Fee for the development of Landowner’s Property.

3.2.4 *No Interest on Advance.* Because Landowner is accelerating the construction of the Project at City’s request, and because Landowner will be incurring actual costs for the construction that substantially exceed the value of Facilities Fee credits Landowner will receive for the Project when it is accepted by City and the Advance repaid, City shall not charge Landowner interest on the Advance.

#### **Article 4: Facilities Fee Credits and Cash Reimbursements**

4.1 **Facilities Fee Credits.** Upon City’s acceptance of the Project and Landowner’s repayment in full of the Advance, Landowner will receive credits against the Facilities Fee (the “**Del Paso Credits**”) in an amount equal to the dollar amount set forth for the Project in the North Natomas Finance Plan as it reads on the date Landowner repays the Advance (the “**Reimbursement Amount**”). Landowner acknowledges that the Reimbursement Amount is likely to be substantially less than the total dollar amount of the Advance.

4.2 **Use of Facilities Fee Credits; Reimbursement Amount.** Subject to Section 3.2.3 above, which prohibits repayment of the Advance with Landowner’s existing Facilities Fee credits, Landowner may use the Del Paso Credits to pay the Facilities Fee due during Landowner’s development of the Property. The method and manner of applying the Del Paso Credits is set forth more particularly in Article 5 below. Alternatively, as provided in Sections 4.3 through 4.7, Landowner may elect to receive a cash reimbursement for the Del Paso Credits not used to pay the Facilities Fee. In accordance with section 18.24.130 of the Fee Ordinance, the Reimbursement Amount, as reduced from time to time by cash reimbursements paid to Landowner and Del Paso Credits applied against the Facilities Fee, will be subject to adjustments for inflation calculated consistent with section 18.24.140 of the Fee Ordinance but will not otherwise accrue interest.

**4.3 Sources for Cash Reimbursements.** This Agreement does not create an obligation of City’s General Fund or special funds, of any other funds in the hands of City, or of City’s accounts now and in the future, except as otherwise expressly provided in this Agreement. City’s obligation under this Agreement to provide a cash reimbursement to Landowner is limited to the following sources of funds, to the extent funds are available therefrom and not otherwise committed for reimbursement by City to others:

**4.3.1 Facilities Fee Account.** Facilities Fees paid to City under the Fee Ordinance, which fees City shall maintain in a separate Facilities Fee account (the “**Facilities Account**”) and not commingle with any other development-impact fees collected with respect to North Natomas, including any transit fees or drainage fees collected under the Fee Ordinance. City may retain up to 3% of the Facilities Fees to defer its cost to administer the North Natomas Finance Plan. In addition, City may deposit up to 7% of the Facilities Fees in an account separate from the Facilities Account for use in reimbursing costs of certain planning studies incurred by others for North Natomas under other reimbursement agreements with City until those agreements have been fully paid. Landowner acknowledges that the Facilities Fees to be paid by other landowners may be offset or reduced by credits in consideration of the construction of other Facilities Fee related improvements, which may result in no money being paid into the Facilities Account by landowners who install “**Public Safety Improvements**” (i.e., off-site improvements contained in the North Natomas Finance Plan that are a public-safety concern and are not a direct result of any one development) or “**Gateway Improvements**” (as that term is defined in the North Natomas Finance Plan and Nexus Study) or only 57% of the Facilities Fees being paid by landowners who install “**Non-gateway Improvements**” (as that term is defined in the North Natomas Finance Plan and Nexus Study), until such credits are exhausted.

**4.3.2 Other Sources.** Funds generated through public-financing mechanisms consistent with the North Natomas Finance Plan and created and implemented by City in its sole discretion, which include funds for the acquisition of the Project and the payment of reimbursement to Landowner for financing some or all of the Project Costs under this Agreement. Credits and reimbursement from any public financing mechanisms may not exceed Landowner’s eligible actual Project Costs (as determined by City in its sole discretion). This Section 4.3.2 does not affect Landowner’s right, if any, to protest or otherwise challenge such public-financing mechanisms, in whole or in part, or Landowner’s previous waiver of such rights.

**4.4 Timing of Cash Reimbursements.** Subject to the reimbursement priorities and principles set forth in Section 4.5, upon City’s acceptance of the completed Project and Landowner’s repayment in full of the Advance, City shall pay Landowner the funds then available in the Facilities Account for cash reimbursements, with the amount of payment not exceeding the Reimbursement Amount as reduced from time to time by any cash reimbursements previously paid to Landowner and the amount of any Del Paso Credits previously applied

against the Facilities Fee. Thereafter, on a quarterly basis beginning on the first of the calendar month following repayment in full of the Advance, City shall pay Landowner the amount then available in the Facilities Account for cash reimbursements. These quarterly payments will continue until the Reimbursement Amount has been reduced to zero by cash reimbursements paid to Landowner and Del Paso Credits applied against the Facilities Fee.

**4.5 Priority for Cash Reimbursements.** The timing of cash reimbursements from the Facilities Account is subject to the priorities and principles set forth below and in Exhibits F and G:

**4.5.1 Prior Agreements.** City has previously entered into Public Safety Project and Gateway Project Reimbursement-Credit Agreements with other landowners in the North Natomas Finance Plan Area for the funding of certain Facilities Fee related improvements; these agreements are listed in Exhibit H (the “**Prior Agreements**”). Under the Prior Agreements, City has committed to use the first Facilities Fee funds it receives to reimburse those landowners for the financing of such improvements to the extent such reimbursements are not otherwise satisfied by credits against fees or by other public-financing mechanisms. Accordingly, funds in the Facilities Account will not be “available” for making cash reimbursements under this Agreement until the cash-reimbursement obligations of City under the Prior Agreements are satisfied or until the priority for cash reimbursements under the Prior Agreements is adjusted in accordance with the terms of those agreements. Any Prior Agreement inadvertently not included within Exhibit H agreement will nevertheless retain its priority, if any, over this Agreement.

**4.5.2 Emergency Use of Funds.** Funds within the Facilities Account will not be “available” for making cash reimbursements under this Agreement if City determines, in its sole discretion, that the funds must be expended upon an infrastructure project in the North Natomas Finance Plan area for any one of the following limited purposes:

- (a) The project is essential to preserve public health and safety or to protect public health and safety against an immediate risk.
- (b) The project is required as a result of a federal or state mandate.
- (c) The project is required to meet federal or state air-quality requirements.
- (d) The project is required as a result of, or is needed to alleviate the effects of, an act of God or other disaster.

If City exercises its discretion under this Section 4.5.2, then City shall make reasonable efforts to replenish the Facilities Account. As used in this Section 4.5.2, “reasonable efforts” does not include replenishment using City’s General Fund.

4.5.3 *Subsequent Public Safety and Gateway Improvement Agreements.* Except as otherwise provided by Section 4.5.5 below, any agreements City enters into, or has entered into, to provide cash reimbursements for the construction of other Public Safety Improvements or Gateway Improvements will not affect the priority of cash reimbursements to Landowner for the Project.

4.5.4 *Subsequent Non-Gateway Improvements.* Any agreements City enters into, or has entered into, to provide reimbursements for the construction of Non-gateway Improvements will not affect the priority of the reimbursement to Landowner for the Del Paso Credits. If Landowner enters into a separate agreement for the reimbursement of any Non-gateway Improvements to be constructed by Landowner, then—

- (a) any reimbursement for the Non-gateway Improvements will not occur until City has made full reimbursements for all Public Safety Improvements or Non-gateway Improvements, including the Project, whether or not the agreements for such Public Safety Improvements or Non-gateway Improvements are entered into before or after the reimbursement agreement for the Non-gateway Improvements; and
- (b) any reimbursements between the Non-gateway Improvements will be on a first-agreed, first-reimbursed basis.

4.5.5 *Adjustment of Priority.* If Landowner fails to timely commence or diligently complete construction of the Project, and if Landowner does not cure that failure within 30 days after City's written demand that Landowner commence or diligently proceed with the work to completion, then City may find that Landowner is in default of this Agreement. Upon such a finding, City may elect to adjust the cash-reimbursement priority for the Del Paso Credits so that reimbursement does not occur until after full reimbursement to any other landowners who have then entered into similar reimbursement-credit agreements after the effective date of this Agreement for the construction of Non-gateway Improvements. City acknowledges that any adjustment of cash-reimbursement priority under this Section 4.5.5 will not affect Landowner's right to receive and use other Facilities Fees credits that Landowner has as a result of providing City with other public improvements in North Natomas, or Landowner's right to receive cash for such unredeemed Facilities Fee credits. The intent of this Section 4.5.5 is to encourage the timely commencement and completion of the Project.

4.5.6 *Cash Reimbursement for the Del Paso Credits.* Landowner is not entitled to receive any cash reimbursement from City for the Del Paso Credits until Landowner has repaid City the full amount of the Advance. If City has sufficient funds in the Facilities Account to make cash reimbursements to all holders of unused Facilities Fee credits other than Landowner, then City may pay itself, from the remaining

funds in the Facilities Account, any cash reimbursement that is attributable to the Del Paso Credits and would otherwise be payable to Landowner.

- (a) If the amount of the cash reimbursement City makes to itself under this Section 4.5.6 for the Del Paso Credits is less than the amount Landowner then owes City for the Advance, then Landowner shall pay City the difference between the amount of the Advance and the amount of the cash reimbursement, making this payment to City at the same time as the repayment of the Advance would have been required by this Agreement.
- (b) If the dollar amount of the cash reimbursement City makes to itself under this Section 4.5.6 for the Del Paso Credits exceeds the amount Landowner then owes City for the Advance, then City shall pay Landowner the difference between the amount of the cash reimbursement and the amount owed City for the Advance, and the Del Paso Credits will be retired.

**4.6 Agreements with Other Landowners.** To protect Landowner's credits and reimbursements under this Agreement, City shall include the following terms in all other agreements involving credits and reimbursements from the Facilities Fee:

4.6.1 The credit-reimbursement amount under the other agreements will be based on the actual costs incurred for the improvements, as reviewed and approved by City.

4.6.2 Unless Landowner defaults under this Agreement and loses its priority for reimbursement, any reimbursements to be paid from the Facilities Account to another landowner will be subject to the reimbursement priorities and principles set forth in Section 4.5 above.

4.6.3 City's provision of credits to other landowners for other public improvements will reduce the flow of funds to the Facilities Account and defer Landowner's cash reimbursement under this Agreement. So long as reimbursements are outstanding under this Agreement, City shall limit the amount of any credit that can be applied against the Facilities Fee, as and when building permits are issued within a landowner's property, as follows:

- (a) If the credits are generated by the construction of Non-gateway Improvements, then the maximum amount of credits that can be applied at the time of building-permit issuance is 43% of the then-existing Facilities Fee.
- (b) If the credits are generated by the construction of Public Safety Improvements or Gateway Improvements, then 100% of the credits can be applied at the time of building-permit issuance, subject to the landowner's payment of its fair share of City's costs to administer the Facilities Fee in an amount not exceeding 3% of the then-existing Facilities Fee (e.g., if City's

costs of administration equaled 3%, then the maximum amount of credits that could be taken would be 97% of the Facilities Fee).

- 4.7 Impact of Assignment on Credit and Reimbursement Amount.** To the extent Landowner assigns its right to cash reimbursements and credits under this Agreement in accordance with the provisions of Article 6 below, City's obligation to reimburse Landowner and the City-approved assignees will be made in proportion to the outstanding portions of the Reimbursement Amount then held by Landowner and the City-approved assignees.

#### **Article 5: Credits**

- 5.1 Against Development Fees.** Landowner will be entitled to the Del Paso Credits upon City's actual, formal acceptance of the completed Project. Landowner may not use the Del Paso Credits against the Facility Fees until Landowner has repaid the Advance to City. The fee-credit principles set forth in this Section 5.1 are to be interpreted and applied to achieve fairness and equity to all parties, including City, while not allowing a party to obtain economic or other advantage through arbitrage or otherwise.

5.1.1 Subject to the fair-share payment for City's costs to administer the Facilities Fee (described in Section 5.1.2), Landowner may apply 97% of the Del Paso Credits against the Facilities Fee that Landowner would otherwise pay with respect to the Property upon issuance of a building permit for any building within the Property, until Landowner's Del Paso Credits are exhausted.

5.1.2 Landowner's Del Paso Credits may not be applied against Landowner's fair share of City's costs to administer the Facilities Fee and the reimbursement agreements related thereto in an amount not exceeding 3% of the then-existing Facilities Fee. Landowner shall pay its fair share when it receives building permits for construction within the Property, notwithstanding any outstanding balance of the Del Paso Credits.

- 5.2 Fee Deferral.** If City adopts a plan that provides for deferral of the Facilities Fee, and if Landowner elects to participate in the plan, then Landowner's Del Paso Credits may be applied against the then-existing Facilities Fee in accordance with the foregoing provisions to determine the net outstanding fee. The fee deferral will then be applied against the net outstanding fee to determine the annual installments of principal and interest to be paid as required by the plan.

#### **Article 6: Assignments of Reimbursements**

- 6.1 Assignment of Reimbursement Rights.** Subject to, and in accordance with, the terms of this Article 6, Landowner may assign to any person or entity the rights under this Agreement to receive cash reimbursements and to apply the Del Paso Credits against the Facilities Fee. All assignments of the right to reimbursements and credits under this

Article 6 require City's prior written consent, which City may not unreasonably withhold, condition, or delay. City may deny an assignment of rights to cash reimbursements and the Del Paso Credits on the basis of excessive fractionalization of the available reimbursements and credits, except that City may not deny an assignment that represents an amount equal to at least \$50,000 of the Del Paso Credits. As a condition of its consent to an assignment, City may assess a reasonable fee for the review, approval, and administration thereof.

**6.2 Acknowledgment of Agreement; Assumption.** An assignment under this Article 6 also requires the assignee's express written assumption, by which the assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the fee-credit and fee-reimbursement provisions, including the obligation to pay the portion of the Facilities Fee required to cover City's cost of administration thereof, notwithstanding the existence of any such right to credits and reimbursements for the Del Paso Credits. The assignment agreement must contain a provision obligating Landowner and the assignee to fully and completely indemnify and defend City from any liability relating to the assignment of rights in the Del Paso Credits.

**6.3 Allocation of Reimbursements.** To the extent Landowner assigns its right to cash reimbursements for the Del Paso Credits under this Agreement in accordance with the provisions of this Article 6, City's obligation to reimburse Landowner and the assignees must be in proportion to the then-outstanding portions of the Del Paso Credits then held by Landowner and the assignees.

**6.4 Disputes between Landowner and Assignee.** If Landowner, an assignee, and City, or any of them, dispute the legal ownership of the rights to cash reimbursement under this Agreement or to the Del Paso Credits, then City may withhold any cash reimbursement and may disallow the use of any Del Paso Credits until either—

6.4.1 all parties to the dispute have executed an agreement, in a form acceptable to the City Attorney, that (a) specifies the legal ownership of the rights to the Del Paso Credits and the manner in which the rights will be exercised and (b) contains acceptable indemnification and defense provisions; or

6.4.2 one of the parties has obtained a court order determining as against the disputing parties the legal ownership of the rights to the Del Paso Credits and the manner in which the rights will be exercised.

**6.5 City Policy and Procedure.** The right to cash reimbursement under this Agreement and the right to the Del Paso Credits under this Agreement do not run with the Property. City's policies and procedures relating to assignment of cash reimbursements and Facilities Fee credits, as those policies and procedures may be amended from time to time, apply to Landowner and its successors in interest to the Property. The City policies and procedures as of the effective date of this Agreement are set forth in Exhibit I. City

shall not give any Del Paso Credits to any subsequent purchaser or encumbrancer of any portion of the Property unless the subsequent purchaser or encumbrancer has a separate, written assignment of the Del Paso Credits from Landowner (or from a previously approved assignee thereof) that City has approved in accordance with this Article 6.

## Article 7: Miscellaneous

- 7.1 Notices.** Any notice given under this Agreement must be in writing and will be effective only when mailed or delivered in the manner provided by this Section 7.1 to the persons identified below. A notice that is mailed will be effective on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice sent in any other manner will be effective when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 7.1.

*If to the City:*

City of Sacramento  
Finance Department  
Public Improvement Financing  
915 I Street, Third Floor  
Sacramento, California 95814  
Attention: Mark Griffin, Manager

*and*

City of Sacramento  
Public Works Department  
New City Hall  
915 I Street, Second Floor  
Sacramento, California 95814  
Attention: Nader Kamal

*If to Landowner:*

Commerce Station, LLC  
2200 East Camelback Road, Suite 101  
Phoenix, Arizona 85016  
Attention: Kern W. Schumacher

*and*

Commerce Station, LLC  
Attention: Brad Ross  
P.O. Box 30076  
Salt Lake City, Utah 84130

*and*

Law Offices of Gregory D. Thatch  
1730 "I" Street, Suite 220  
Sacramento, California 95811  
Attention: Michael Devereaux, Esq.

- 7.2 Effective Date.** This Agreement is effective upon its execution by all parties, as indicated by the dates in the signature blocks below.

**7.3 Mediation and Arbitration.**

7.3.1 Any dispute between all or some of the parties to this Agreement relating to the interpretation and enforcement of their rights and obligations under this Agreement is to be resolved solely by mediation and arbitration in accordance with the provisions of this Section 7.3. The mediation and arbitration procedures may be commenced by any party to this Agreement by serving by a Notice of Dispute

(“**Notice**”) on the parties as required by Section 7.1. The Notice must specify the date of its mailing; must generally describe the nature of the dispute; and must direct each party to notify the party serving the Notice, within 10 days after the date of mailing of the Notice, of its intention to participate in the mediation and arbitration procedures. The party serving the Notice and all other parties indicating an intention to participate in the mediation and arbitration procedures are the “**Disputing Parties**” and will be the only parties entitled to participate in the mediation and arbitration of the dispute described in the Notice.

7.3.2 With respect to any dispute between Disputing Parties that is to be resolved by mediation and arbitration as provided in Section 7.3.1, the Disputing Parties shall attempt in good faith first to mediate the dispute and use their best efforts to reach agreement on the matters in dispute. As used in this Section 7.3.2, “best efforts” means that each party must exercise the diligence of a reasonable person under comparable circumstances, but it does not require payment from City’s General Fund. Within 15 days after the mailing of the Notice, the party serving the Notice shall attempt to employ the services of a third person mutually acceptable to the Disputing Parties to conduct such mediation (the “**Mediator**”). The Disputing Parties shall bear the cost of the Mediator equally. The mediation must take place within 10 days after the appointment of the Mediator. If the Disputing Parties cannot agree on a Mediator, or, if on completion of mediation, the parties cannot settle the dispute, then the dispute is to be referred to arbitration in accordance with Sections 7.3.3 and 7.3.4.

7.3.3 Any dispute or controversy between Disputing Parties that is to be resolved by arbitration as provided in the Sections 7.3.1 and 7.3.2 is to be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. The arbitration must be held and conducted in Sacramento, California, before one arbitrator selected by the Disputing Parties. If the Disputing Parties cannot agree on the selection of an arbitrator within 15 days after referral to arbitration, then the Presiding Judge of the Superior Court of Sacramento County is to appoint an arbitrator as soon as is practicable.

7.3.4 The provisions of the Commercial Arbitration Rules of the American Arbitration Association will apply and govern the arbitration, subject to the following:

- (a) Any referral to arbitration will be barred after the date that institution of legal or equitable proceedings based on the subject dispute would be barred by the applicable statute of limitations.

- (b) The arbitrator appointed must be a former or retired judge or an attorney with at least 10 years' experience in real property, commercial, and municipal law.
- (c) The Disputing Parties may elect to have all arbitration proceedings reported by a certified shorthand court reporter, with written transcripts of the proceedings prepared and made available to them. If fewer than all of the Disputing Parties desire the use of a court reporter and the preparation of written transcripts, then the issue of whether to retain a court reporter is to be submitted to the arbitrator who, in his or her sole discretion, is to determine whether such use and preparation is necessary or beneficial to the proceedings and the interests of all Disputing Parties in resolving the dispute.
- (d) The arbitrator is to prepare in writing and provide to the Disputing Parties factual findings and the reasons on which the decision of the arbitrator is based.
- (e) The arbitrator is to hear the matter and render a final decision within 90 days after the date of the arbitrator's appointment. The arbitrator is to establish the hearing date, which must be within such time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.
- (f) The arbitrator is to award the prevailing party its reasonable attorney's fees and costs incurred in connection with the arbitration unless the arbitrator for good cause determines otherwise.
- (g) The Disputing Parties shall bear equally the costs and fees of the arbitrator and court reporter, if any. The cost of preparing any transcript of the proceedings is the responsibility of the Disputing Party or Parties requesting such preparation.
- (h) The arbitrator's award or decision will be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.
- (i) The provisions of title 9 of part 3 of the California Code of Civil Procedure, commencing with section 1282 and including section 1283.05, and successor statutes (permitting, among other things, expanded discovery proceedings in arbitration) apply to all disputes arbitrated under this Section 7.3.

**7.4 Extension of Times of Performance.** A party will not be in default because of a delay or failure of performance due to war, insurrection, acts of terrorism, strikes, walkouts, riots, energy rationing, fuel or materials shortages, floods, drought, rain, earthquakes, fires,

casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting federal or state laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay or failure is given to City within 30 days of the commencement of such delay or failure, then an extension of time for such cause will be granted for the period of the delay or failure or for any longer period that the parties may agree upon.

- 7.5 Waiver.** A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.
- 7.6 Severability.** If a court with jurisdiction rules that any nonmaterial part of this Agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this Agreement remains valid and fully enforceable.
- 7.7 Assignment.** Landowner may not assign or otherwise transfer this Agreement or any interest in it without City's prior written consent, which City shall not withhold, delay, or condition unreasonably, although City may condition its consent upon the acceptability of the financial condition of the proposed assignee and upon any other factor City reasonably determines to be relevant in the circumstances.
- 7.8 Amendments.** This Agreement may only be amended only by another written agreement signed by all parties to this Agreement.
- 7.9 Binding on Successors.** This Agreement binds and inures to the benefit of the parties' successors and assigns.
- 7.10 Time of Essence.** Time is of the essence in the performance of this Agreement.
- 7.11 Consultation with Attorneys.** Each party to this Agreement represents that it has consulted with its attorneys concerning all portions of this Agreement and has been fully advised by its attorneys about its rights and obligations under this Agreement.
- 7.12 Interpretation.** This Agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. "Include" and its variants are terms of enlargement rather than of limitation. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to." Exhibits A, B-1, B-2, C, D, E, F, G, H, and I are part of this Agreement.

**7.13 Entire Agreement.** This Agreement represents the entire agreement of the parties relating to the subjects it covers and is intended to be the parties' final, complete, and exclusive expression of those subjects. Oral and written statements, representations, and agreements not included within this Agreement have no force or effect whatsoever and are superseded by this Agreement.

**7.14 Attorneys' Fees.** The prevailing party in any proceedings, judicial or otherwise, brought to enforce or interpret this Agreement will be entitled to reasonable attorney's fees and costs in prosecuting or defending such proceedings.

**7.15 Counterparts.** The parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same Agreement. Delivery of signed counterparts may be accomplished by email transmission of a pdf document.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_  
John Shirey  
City Manager  
Date: March \_\_, 2016

Attest  
Sacramento City Clerk

By: \_\_\_\_\_

Approved as to Form  
Sacramento City Attorney

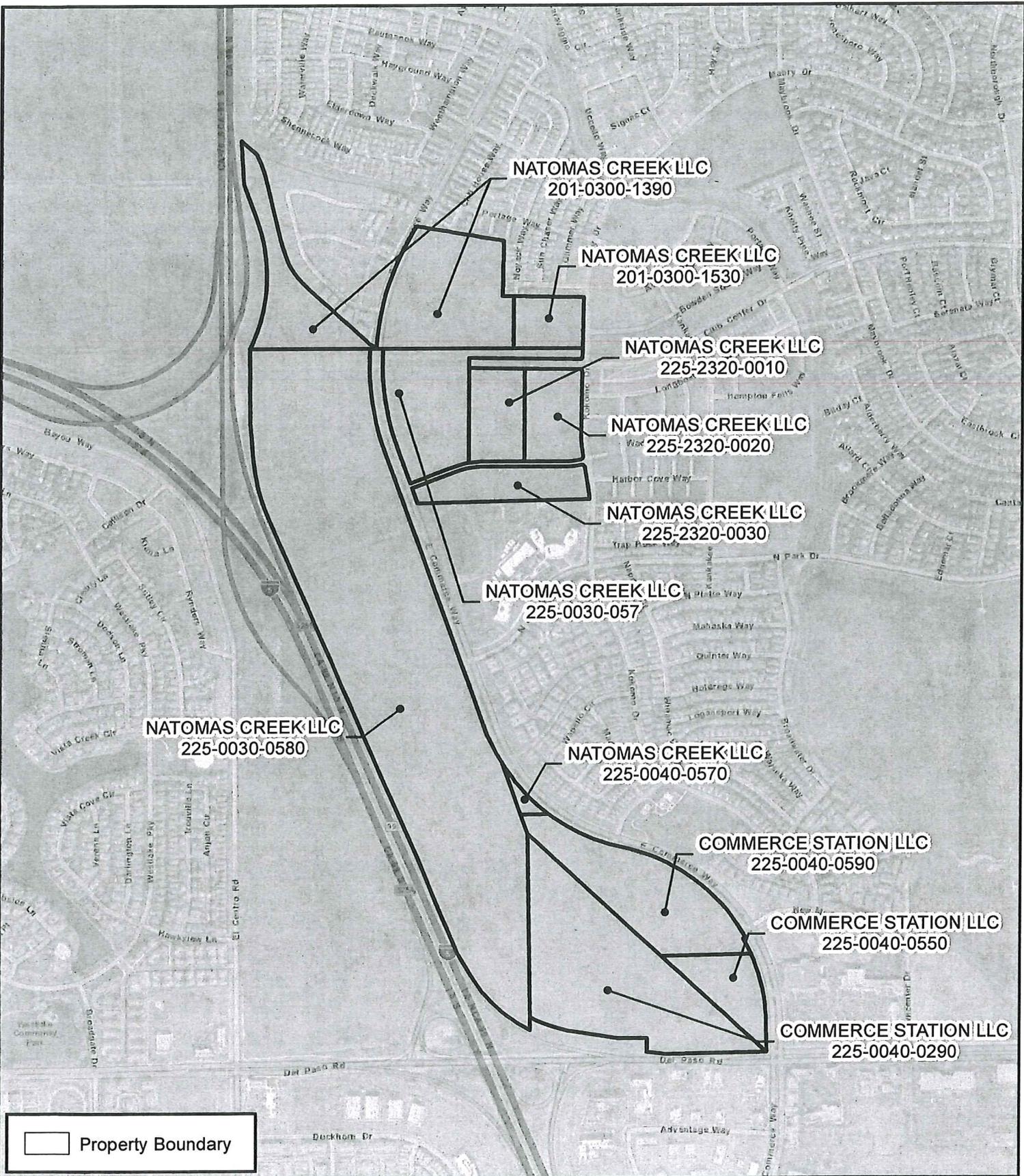
By: \_\_\_\_\_  
Joseph Cerullo Jr.  
Senior Deputy City Attorney

**Commerce Station, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

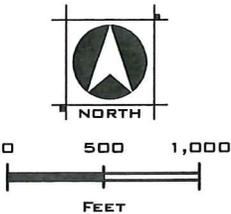
By: \_\_\_\_\_  
Kern W. Schumacher  
President  
Date: *April 8* March \_\_, 2016 *u*



**Property Boundary**

**Public Safety Project  
Construction Funding and Reimbursement Agreement  
for Construction of North Natomas Infrastructure  
(Del Paso Road Improvements)**

**EXHIBIT A: THE PROPERTY**



**NOTES**  
Ownership current as of April 8th, 2014



Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost  
 Combined Estimate  
 March 20, 2015

Public Safety Project  
 Construction Funding and Reimbursement Agreement  
 for Construction of North Natomas Infrastructure  
 (Del Paso Road Improvements)

**EXHIBIT B-1: ENGINEER'S ESTIMATE**

OVERALL SUMMARY

Segment Number	Item	Estimated Cost
1	<b>Del Paso Road Frontage Imps</b> (North Frontage East Commerce to I-5, approx 1,000 LF)	\$1,308,612
2	<b>East Commerce Frontage Imps</b> (West Frontage Ottumwa to Del Paso, approx 2,200 LF)	\$2,849,283
<b>Total for Improvements</b>		<b>\$4,157,895</b>

**Note: Only the information in this Exhibit B-1 that pertains to the Del Paso Road frontage improvements is relevant for purposes of the Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure (Del Paso Road Improvements).**

20-Mar-15

Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total

**1. Grading and Mobilization**

1. Clearing and Grubbing	1	LS	\$10,000.00	\$10,000
2. Grading	4,000	CY	\$12.50	\$50,000
3. Erosion Control	1	LS	\$10,000.00	\$10,000
4. Traffic Control	1	LS	\$20,000.00	\$20,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000
<b>Subtotal</b>				<b>\$100,000</b>

**2. Roadway**

1. Paving 5" AC (\$0.62/insf)/25" AB (\$0.14/insf)	24,000	SF	\$7.55	\$181,200
2. 1' Sawcut of Existing Pavement	2,600	LF	\$3.00	\$7,800
3. Remove/ Dispose of Existing Pavement	7,800	SF	\$3.00	\$23,400
4. Type 4 C&G	1,100	LF	\$25.00	\$27,500
5. Median Curb	1,400	LF	\$35.00	\$49,000
6. HC Ramps	2	EA	\$1,500.00	\$3,000
7. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
7A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	6,700	SF	\$2.40	\$16,080
8. Bus Stop Pad	1	EA	\$4,000.00	\$4,000
9. Striping and signage	1,000	LF	\$20.00	\$20,000
10. Streetlight Service Point	1	EA	\$5,000.00	\$5,000
11. Street Lights, Mast Arm Type	5	EA	\$8,000.00	\$40,000
12. Survey Monuments	1	EA	\$2,000.00	\$2,000
13. Signal Modification EC at Del Paso	1	LS	\$75,000.00	\$75,000
13A. NE Curb Return Reconstruction and Signal Pole Relocation (to accommodate triple left turn)	1	LS	\$50,000.00	\$50,000
<b>Subtotal</b>				<b>\$503,980</b>

**3. Drainage**

1. 12" Drain Pipe (DI Leads)	30	LF	\$80.00	\$2,400
2. 12" Drain Pipe	400	LF	\$80.00	\$32,000
3. 18" Drain Pipe	200	LF	\$100.00	\$20,000
4. 24" Drain Pipe	50	LF	\$120.00	\$6,000
5. 24" Drain Outfall Structure to Ex. Ditch	1	EA	\$5,000.00	\$5,000
6. Drain Inlet	2	EA	\$4,000.00	\$8,000
7. 48" Manhole	2	EA	\$5,000.00	\$10,000
8. 60" Manhole	1	EA	\$7,000.00	\$7,000
<b>Subtotal</b>				<b>\$90,400</b>

20-Mar-15

Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

**Del Paso Road Frontage Improvements**  
**(East Commerce Way West to I-5)**

WRI/Dokken 03-20-15 Combined Estimate			
Quant	Unit	Price	Total

Item
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**4. Sewer**

1. None anticipated	0	LF		\$0
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**Subtotal** **\$0**

**5. Water**

1. 12" Water	440	LF	\$90.00	\$39,600
2. 12" Water in existing pavement (10+90 to 13+50)	350	LF	\$120.00	\$42,000
3. 12" valve	3	EA	\$3,000.00	\$9,000
4. BO Valves	1	EA	\$4,000.00	\$4,000
5. Fire Hydrants	2	EA	\$6,500.00	\$13,000
6. Connect to Existing	1	EA	\$10,000.00	\$10,000

**Subtotal** **\$117,600**

**6. Landscaping**

1. Landscape - Median	3,000	SF	\$7.00	\$21,000
2. Landscape - Frontage - Assumed not included	0	SF	\$5.00	\$0

**Subtotal** **\$21,000**

**7. Public Utilities**

1. Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
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**Subtotal** **\$0**

<b>Del Paso Frontage Subtotal</b>	<b>\$832,980</b>
<b>Mobilization at 10%</b>	<b>\$83,298</b>
<b>Contingencies at 20%</b>	<b>\$166,596</b>
<b>Del Paso Frontage Construction Total</b>	<b>\$1,082,874</b>
<b>Plan Check at 5%</b>	<b>\$41,649</b>
<b>Engineering &amp; Staking at 12%</b>	<b>\$129,945</b>
<b>Geotechnical Engr at 2%</b>	<b>\$21,657</b>
<b>Construction Management at 3%</b>	<b>\$32,486</b>

<b>Total Estimated Del Paso Frontage Imps</b>	<b>\$1,308,612</b>
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20-Mar-15  
 Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

East Commerce Frontage Imps  
 (Ottumwa Way to DP Road 2,200 lf)

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total
<b>1. Grading and Mobilization</b>				
1. Clearing and Grubbing	1	LS	\$30,000.00	\$30,000
2. Grading	10,000	CY	\$12.50	\$125,000
3. Erosion Control	1	LS	\$30,000.00	\$30,000
4. Traffic Control	1	LS	\$50,000.00	\$50,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000
			<b>Subtotal</b>	<b>\$245,000</b>
<b>2 Roadway</b>				
1. Paving 4" AC (\$0.62/insf)/23" AB (\$0.14/insf)	71,392	SF	\$6.50	\$464,048
2. 1' Sawcut of Existing Pavement	2,200	LF	\$3.00	\$6,600
3. Remove/ Dispose of Existing Pavement	2,200	SF	\$3.00	\$6,600
4. Type 4 C&G	2,048	LF	\$35.00	\$71,680
5. HC Ramps	13	EA	\$1,500.00	\$19,500
6. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
6A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	11,880	SF	\$2.40	\$28,512
7. Striping and signage	2,200	LF	\$10.00	\$22,000
8. Street Lights - Mast Arm Type	5	EA	\$8,000.00	\$40,000
9. Street Lights - Ornamental Type	4	EA	\$6,000.00	\$24,000
10. Street Light Service Point	1	EA	\$5,000.00	\$5,000
11. Survey Monuments	1	EA	\$2,000.00	\$2,000
12. Traffic Signalization East Commerce at New Market	1	LS	\$200,000.00	\$200,000
13. Traffic Signal Mod. East Commerce at North Park	1	LS	\$50,000.00	\$25,000
14. Traffic Signalization East Commerce at Ottumwa	1	LS	\$200,000.00	\$200,000
			<b>Subtotal</b>	<b>\$1,114,940</b>
<b>3. Drainage</b>				
1. 12" Drain Pipe (DI Leads)	210	LF	\$80.00	\$16,800
2. 21" Drain Pipe	0	LF	\$120.00	\$0
3. 36" Drain Pipe	75	LF	\$135.00	\$10,125
4. 42" Drain Pipe	85	LF	\$150.00	\$12,750
3. Remove Ex. Ditch Box	3	EA	\$1,000.00	\$3,000
5. Drain Inlet	8	EA	\$4,000.00	\$32,000
6. 60" Manhole	2	EA	\$7,000.00	\$14,000
			<b>Subtotal</b>	<b>\$88,675</b>

20-Mar-15  
 Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

**East Commerce Frontage Imps**  
 (Ottumwa Way to DP Road 2,200 lf)

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total
<b>4. Sewer</b>				
1. 8" Sewer Pipe Extension	0	LF	\$80.00	\$0
2. 10" Sewer Pipe Extension	60	LF	\$100.00	\$6,000
<b>Subtotal</b>				<b>\$6,000</b>
<b>5. Water</b>				
1.12" Water (13+50 to 23+50 and New Market)	2,148	LF	\$70.00	\$150,360
2.12" Water in existing pavement (10+90 to 13+50)	260	LF	\$120.00	\$31,200
3. 12" valve	6	EA	\$2,500.00	\$15,000
4. BO Valves	1	EA	\$5,000.00	\$5,000
5. Fire Hydrants	11	EA	\$6,500.00	\$71,500
6. Connect to Existing	2	EA	\$10,000.00	\$20,000
<b>Subtotal</b>				<b>\$293,060</b>
<b>6. Landscaping</b>				
1. Landscape - Median - Assume not included	0	SF	\$7.00	\$0
2. Landscape - Frontage - Assume not included	0	SF	\$5.00	\$0
<b>Subtotal</b>				<b>\$0</b>
<b>7. Public Utilities</b>				
1. Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
<b>Subtotal</b>				<b>\$0</b>
<b>8. Additional Items</b>				
1. Traffic Signal Interconnect	1	LS	\$50,000.00	\$50,000
2. Bus Stop Pad	4	EA	\$4,000.00	\$16,000
<b>Subtotal</b>				<b>\$66,000</b>
<b>East Commerce Frontage Construction Subtotal</b>				<b>\$1,813,675</b>
<b>Mobilization at 10%</b>				<b>\$181,368</b>
<b>Contingencies at 20%</b>				<b>\$362,735</b>
<b>East Commerce Frontage Construction Total</b>				<b>\$2,357,778</b>
<b>Plan Check at 5%</b>				<b>\$90,684</b>
<b>Engineering &amp; Staking at 12%</b>				<b>\$282,933</b>
<b>Geotechnical Engr at 2%</b>				<b>\$47,156</b>
<b>Construction Management at 3%</b>				<b>\$70,733</b>
<b>Total Estimated East Commerce Frontage Imps</b>				<b>\$2,849,283</b>

EXHIBIT FOR

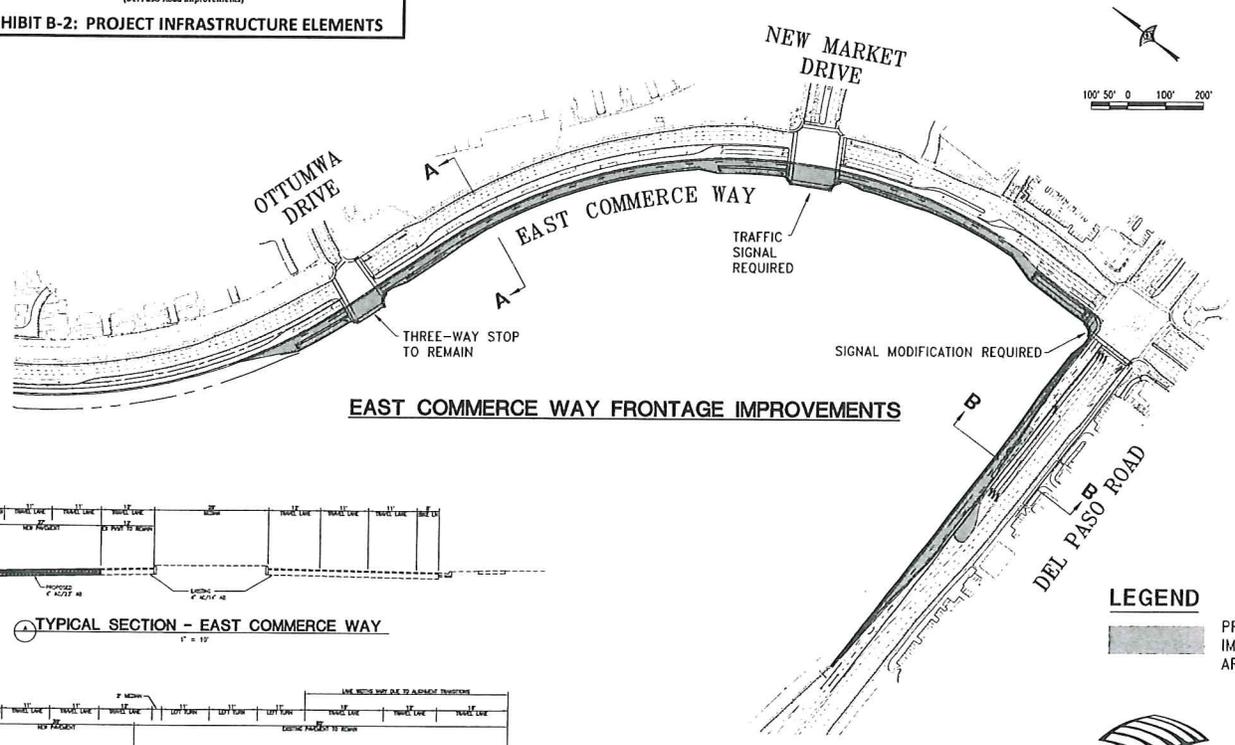
# EAST COMMERCE WAY AND DEL PASO ROAD

## FRONTAGE IMPROVEMENTS - ROADWAY WORK

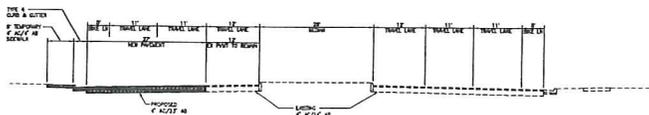
CITY OF SACRAMENTO, CALIFORNIA  
 NOVEMBER 2015

Public Safety Project  
 Construction Funding and Reimbursement Agreement  
 For Construction of North Natomas Infrastructure  
 (Del Paso Road Improvements)

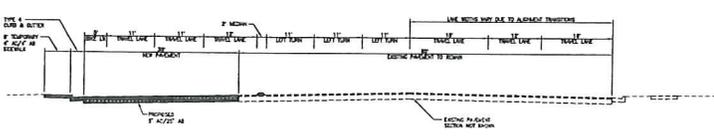
**EXHIBIT B-2: PROJECT INFRASTRUCTURE ELEMENTS**



**EAST COMMERCE WAY FRONTAGE IMPROVEMENTS**



**TYPICAL SECTION - EAST COMMERCE WAY**  
 1" = 10'



**TYPICAL SECTION - DEL PASO ROAD**  
 1" = 10'

**LEGEND**

PROPOSED IMPROVEMENT AREA



**WOOD RODGERS**  
 DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
 3301 C St, Bldg. 100-B Tel 916.341.7760  
 Sacramento, CA 95816 Fax 916.341.7767

## EXHIBIT C

### HAZARDOUS SUBSTANCES

- A. No Review, Examination, or Assessment.** The parties acknowledge and understand that City has not conducted any review, examination or assessment to assess, identify or detect the presence of any Hazardous Substances, as defined below, on, under or around the Property. As between the City and Landowner, any liability associated with the presence of any Hazardous Substances on, under or around the Property, including any interests in said property dedicated to City as provided herein, will be governed by the indemnity provisions of this Agreement, regardless of whether any such review, examination or assessment is conducted.
- B. Definitions.**
- (1) As used herein, the term “**Hazardous Substances**” means any of the following:
- (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below.
  - (b) Those substances listed in the United States Department of Transportation Table [49 C.F.R. § 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 C.F.R. Part 302].
  - (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations.
  - (d) Any material, waste, or substance that is—
    - (i) a petroleum or refined petroleum product;
    - (ii) asbestos;
    - (iii) polychlorinated biphenyl;
    - (iv) designated as a hazardous substance pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317;
    - (v) a flammable explosive; or
    - (vi) a radioactive material.
- (2) As used herein, the term “**Environmental Law**” means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the Project site or any of the easement areas which Landowner is

required to and does convey to City pursuant to this Agreement, as now or may at any later time be in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 U.S.C. § 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 U.S.C. § 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. § 1251 *et seq.*]; the Toxic Substances Control Act (TSCA) [15 U.S.C. §2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 U.S.C. § 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act (7 U.S.C. § 136 *et seq.*); the Superfund Amendments and Reauthorization Act [42 U.S.C. § 6901 *et seq.*]; the Clean Air Act [42 U.S.C. §7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. § 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. § 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. § 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. § 11001 *et seq.*]; the Occupational Safety and Health Act [29 U.S.C. §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code § 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code § 13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

## EXHIBIT D

### CONSTRUCTION CONTRACT LANGUAGE

Contractor agrees and covenants to fully indemnify, defend, and hold harmless City and City's elective and appointive boards, commissions, officers, employees, and agents from and against all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation to the extent arising from any actions or omissions by any of the following in connection with the design, construction, operation, maintenance, or repair of that portion of the Improvement designed or constructed by Contractor; any of Contractor's engineers or subcontractors; or any other person or entity employed by, or acting on behalf of or as the authorized agent for, Contractor or any of Contractor's engineers or subcontractors.

**EXHIBIT E**  
**Form of Request for Payment**

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**Public Safety Project**  
**Construction Funding and Reimbursement Agreement**  
**for Construction of North Natomas Infrastructure**  
**(Del Paso Road Improvements)**

**REQUEST FOR PAYMENT**

On behalf of Commerce Station, LLC (“Landowner”), and as its Site Superintendent under the *Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure (Del Paso Road Improvements)* designated as City Agreement No. 2016-\_\_\_\_ (the “Agreement”), I hereby request payment in the total amount of \$\_\_\_\_\_ for a portion of the Project described in Recital C of the Agreement, all as more fully described below. In connection with this Request for Payment, I hereby represent and warrant to the City of Sacramento as follows:

1. He or she is a duly authorized representative of Landowner, qualified to execute this request for payment on behalf of Landowner and knowledgeable as to the matters set forth in this Request for Payment.
2. The amount for which payment is requested represents 95% of the actual costs incurred during the previous month for the Project described in Recital C of the Agreement (i.e., it does not include the 5% retention) and has not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.
3. Supporting documentation with respect to each cost for which payment is requested (such as third-party invoices) is attached.
4. The work for which payment is requested was performed in accordance with the Project Plans described in Section 1.2 of the Agreement and with all other applicable City standards.

I hereby declare under penalty of perjury under California law that the above representations and warranties are true.

**Commerce Station, LLC**

**Work accepted and request for payment  
approved by the City of Sacramento**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

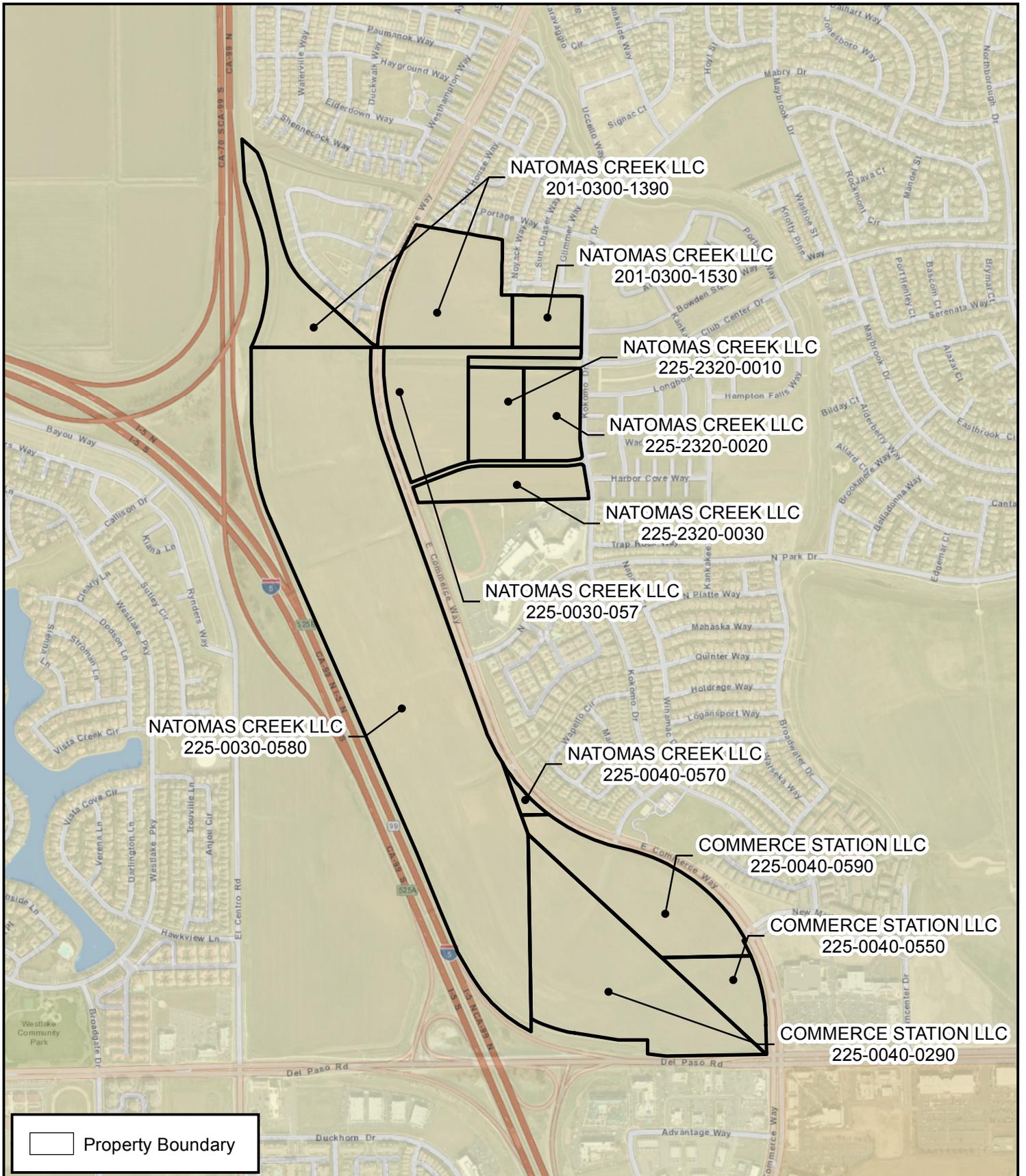
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

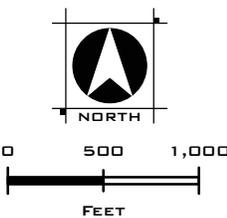
\_\_\_\_\_  
Title

Date: \_\_\_\_\_



**Public Safety Project**  
**Construction Funding and Reimbursement Agreement**  
**for Construction of North Natomas Infrastructure**  
**(Del Paso Road Improvements)**

**EXHIBIT A: THE PROPERTY**



**NOTES**  
 Ownership current as of April 8th, 2014



**Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost  
 Combined Estimate  
 March 20, 2015**

Public Safety Project  
 Construction Funding and Reimbursement Agreement  
 for Construction of North Natomas Infrastructure  
 (Del Paso Road Improvements)

**EXHIBIT B-1: ENGINEER'S ESTIMATE**

**OVERALL SUMMARY**

Segment Number	Item	Estimated Cost
1	<b>Del Paso Road Frontage Imps</b> (North Frontage East Commerce to I-5, approx 1,000 LF)	\$1,308,612
2	<b>East Commerce Frontage Imps</b> (West Frontage Ottumwa to Del Paso, approx 2,200 LF)	\$2,849,283
<b>Total for Improvements</b>		<b>\$4,157,895</b>

**Note: Only the information in this Exhibit B-1 that pertains to the Del Paso Road frontage improvements is relevant for purposes of the Public Safety Project Construction Funding and Reimbursement Agreement for Construction of North Natomas Infrastructure (Del Paso Road Improvements).**

20-Mar-15

**Schumacher Property -North Natomas -Roadway and Frontage Estimates  
Engineer's Estimate of Cost**

**Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)**

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total

**1. Grading and Mobilization**

1. Clearing and Grubbing	1	LS	\$10,000.00	\$10,000
2. Grading	4,000	CY	\$12.50	\$50,000
3. Erosion Control	1	LS	\$10,000.00	\$10,000
4. Traffic Control	1	LS	\$20,000.00	\$20,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000

**Subtotal** **\$100,000**

**2 Roadway**

1. Paving 5" AC (\$0.62/insf)/25" AB (\$0.14/insf)	24,000	SF	\$7.55	\$181,200
2. 1' Sawcut of Existing Pavement	2,600	LF	\$3.00	\$7,800
3. Remove/ Dispose of Existing Pavement	7,800	SF	\$3.00	\$23,400
4. Type 4 C&G	1,100	LF	\$25.00	\$27,500
5. Median Curb	1,400	LF	\$35.00	\$49,000
6. HC Ramps	2	EA	\$1,500.00	\$3,000
7. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
7A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	6,700	SF	\$2.40	\$16,080
8. Bus Stop Pad	1	EA	\$4,000.00	\$4,000
9. Striping and signage	1,000	LF	\$20.00	\$20,000
10. Streetlight Service Point	1	EA	\$5,000.00	\$5,000
11. Street Lights, Mast Arm Type	5	EA	\$8,000.00	\$40,000
12. Survey Monuments	1	EA	\$2,000.00	\$2,000
13. Signal Modification EC at Del Paso	1	LS	\$75,000.00	\$75,000
13A. NE Curb Return Reconstruction and Signal Pole Relocation (to accommodate triple left turn)	1	LS	\$50,000.00	\$50,000

**Subtotal** **\$503,980**

**3. Drainage**

1. 12" Drain Pipe (DI Leads)	30	LF	\$80.00	\$2,400
2. 12" Drain Pipe	400	LF	\$80.00	\$32,000
3. 18" Drain Pipe	200	LF	\$100.00	\$20,000
4. 24" Drain Pipe	50	LF	\$120.00	\$6,000
5. 24" Drain Outfall Structure to Ex. Ditch	1	EA	\$5,000.00	\$5,000
6. Drain Inlet	2	EA	\$4,000.00	\$8,000
7. 48" Manhole	2	EA	\$5,000.00	\$10,000
8. 60" Manhole	1	EA	\$7,000.00	\$7,000

**Subtotal** **\$90,400**

20-Mar-15

Schumacher Property -North Natomas -Roadway and Frontage Estimates  
 Engineer's Estimate of Cost

Del Paso Road Frontage Improvements  
(East Commerce Way West to I-5)

Item	WRI/Dokken 03-20-15 Combined Estimate			
	Quant	Unit	Price	Total

**4. Sewer**

1. None anticipated	0	LF		\$0
<b>Subtotal</b>				<b>\$0</b>

**5. Water**

1. 12" Water	440	LF	\$90.00	\$39,600
2. 12" Water in existing pavement (10+90 to 13+50)	350	LF	\$120.00	\$42,000
3. 12" valve	3	EA	\$3,000.00	\$9,000
4. BO Valves	1	EA	\$4,000.00	\$4,000
5. Fire Hydrants	2	EA	\$6,500.00	\$13,000
6. Connect to Existing	1	EA	\$10,000.00	\$10,000
<b>Subtotal</b>				<b>\$117,600</b>

**6. Landscaping**

1. Landscape - Median	3,000	SF	\$7.00	\$21,000
2. Landscape - Frontage - Assumed not included	0	SF	\$5.00	\$0
<b>Subtotal</b>				<b>\$21,000</b>

**7. Public Utilities**

1. Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
<b>Subtotal</b>				<b>\$0</b>

<b>Del Paso Frontage Subtotal</b>	<b>\$832,980</b>
<b>Mobilization at 10%</b>	<b>\$83,298</b>
Contingencies at 20%	<u>\$166,596</u>
<b>Del Paso Frontage Construction Total</b>	<b>\$1,082,874</b>
Plan Check at 5%	\$41,649
Engineering & Staking at 12%	\$129,945
Geotechnical Engr at 2%	\$21,657
Construction Management at 3%	\$32,486

<b>Total Estimated Del Paso Frontage Imps</b>	<b>\$1,308,612</b>
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**20-Mar-15**  
**Schumacher Property -North Natomas -Roadway and Frontage Estimates**  
**Engineer's Estimate of Cost**

**East Commerce Frontage Imps**  
**(Ottumwa Way to DP Road 2,200 lf)**

WRI/Dokken 03-20-15 Combined Estimate				
Item	Quant	Unit	Price	Total

**1. Grading and Mobilization**

1. Clearing and Grubbing	1	LS	\$30,000.00	\$30,000
2. Grading	10,000	CY	\$12.50	\$125,000
3. Erosion Control	1	LS	\$30,000.00	\$30,000
4. Traffic Control	1	LS	\$50,000.00	\$50,000
5. Prepare and Administer SWPPP	1	LS	\$10,000.00	\$10,000
<b>Subtotal</b>				<b>\$245,000</b>

**2 Roadway**

1. Paving 4" AC (\$0.62/insf)/23" AB (\$0.14/insf)	71,392	SF	\$6.50	\$464,048
2. 1' Sawcut of Existing Pavement	2,200	LF	\$3.00	\$6,600
3. Remove/ Dispose of Existing Pavement	2,200	SF	\$3.00	\$6,600
4. Type 4 C&G	2,048	LF	\$35.00	\$71,680
5. HC Ramps	13	EA	\$1,500.00	\$19,500
6. Sidewalk - 6' Wide, 4" Concrete/12" AB	0	SF	\$7.00	\$0
6A. Temp Sidewalk - 2"AC/6"AB over Filter Fabric	11,880	SF	\$2.40	\$28,512
7. Striping and signage	2,200	LF	\$10.00	\$22,000
8. Street Lights - Mast Arm Type	5	EA	\$8,000.00	\$40,000
9. Street Lights - Ornamental Type	4	EA	\$6,000.00	\$24,000
10. Street Light Service Point	1	EA	\$5,000.00	\$5,000
11. Survey Monuments	1	EA	\$2,000.00	\$2,000
12. Traffic Signalization East Commerce at New Market	1	LS	\$200,000.00	\$200,000
13. Traffic Signal Mod. East Commerce at North Park	1	LS	\$50,000.00	\$25,000
14. Traffic Signalization East Commerce at Ottumwa	1	LS	\$200,000.00	\$200,000
<b>Subtotal</b>				<b>\$1,114,940</b>

**3. Drainage**

1. 12" Drain Pipe (DI Leads)	210	LF	\$80.00	\$16,800
2. 21" Drain Pipe	0	LF	\$120.00	\$0
3. 36" Drain Pipe	75	LF	\$135.00	\$10,125
4. 42" Drain Pipe	85	LF	\$150.00	\$12,750
3. Remove Ex. Ditch Box	3	EA	\$1,000.00	\$3,000
5. Drain Inlet	8	EA	\$4,000.00	\$32,000
6. 60" Manhole	2	EA	\$7,000.00	\$14,000
<b>Subtotal</b>				<b>\$88,675</b>

**20-Mar-15**  
**Schumacher Property -North Natomas -Roadway and Frontage Estimates**  
**Engineer's Estimate of Cost**

**East Commerce Frontage Imps**  
**(Ottumwa Way to DP Road 2,200 lf)**

Item		<b>WRI/Dokken 03-20-15 Combined Estimate</b>			
		<b>Quant</b>	<b>Unit</b>	<b>Price</b>	<b>Total</b>
<b><u>4. Sewer</u></b>					
1.	8" Sewer Pipe Extension	0	LF	\$80.00	\$0
2.	10" Sewer Pipe Extension	60	LF	\$100.00	\$6,000
<b>Subtotal</b>					<b>\$6,000</b>
<b><u>5. Water</u></b>					
1.	12" Water (13+50 to 23+50 and New Market)	2,148	LF	\$70.00	\$150,360
2.	12" Water in existing pavement (10+90 to 13+50)	260	LF	\$120.00	\$31,200
3.	12" valve	6	EA	\$2,500.00	\$15,000
4.	BO Valves	1	EA	\$5,000.00	\$5,000
5.	Fire Hydrants	11	EA	\$6,500.00	\$71,500
6.	Connect to Existing	2	EA	\$10,000.00	\$20,000
<b>Subtotal</b>					<b>\$293,060</b>
<b><u>6. Landscaping</u></b>					
1.	Landscape - Median - Assume not included	0	SF	\$7.00	\$0
2.	Landscape - Frontage - Assume not included	0	SF	\$5.00	\$0
<b>Subtotal</b>					<b>\$0</b>
<b><u>7. Public Utilities</u></b>					
1.	Joint Trench - Assumed Not Required	0	LF	\$200.00	\$0
<b>Subtotal</b>					<b>\$0</b>
<b><u>8. Additional Items</u></b>					
1.	Traffic Signal Interconnect	1	LS	\$50,000.00	\$50,000
2.	Bus Stop Pad	4	EA	\$4,000.00	\$16,000
<b>Subtotal</b>					<b>\$66,000</b>
<b>East Commerce Frontage Construction Subtotal</b>					<b>\$1,813,675</b>
<b>Mobilization at 10%</b>					<b>\$181,368</b>
<b>Contingencies at 20%</b>					<b>\$362,735</b>
<b>East Commerce Frontage Construction Total</b>					<b>\$2,357,778</b>
<b>Plan Check at 5%</b>					<b>\$90,684</b>
<b>Engineering &amp; Staking at 12%</b>					<b>\$282,933</b>
<b>Geotechnical Engr at 2%</b>					<b>\$47,156</b>
<b>Construction Management at 3%</b>					<b>\$70,733</b>
<b>Total Estimated East Commerce Frontage Imps</b>					<b>\$2,849,283</b>

# EXHIBIT FOR

# EAST COMMERCE WAY AND DEL PASO ROAD

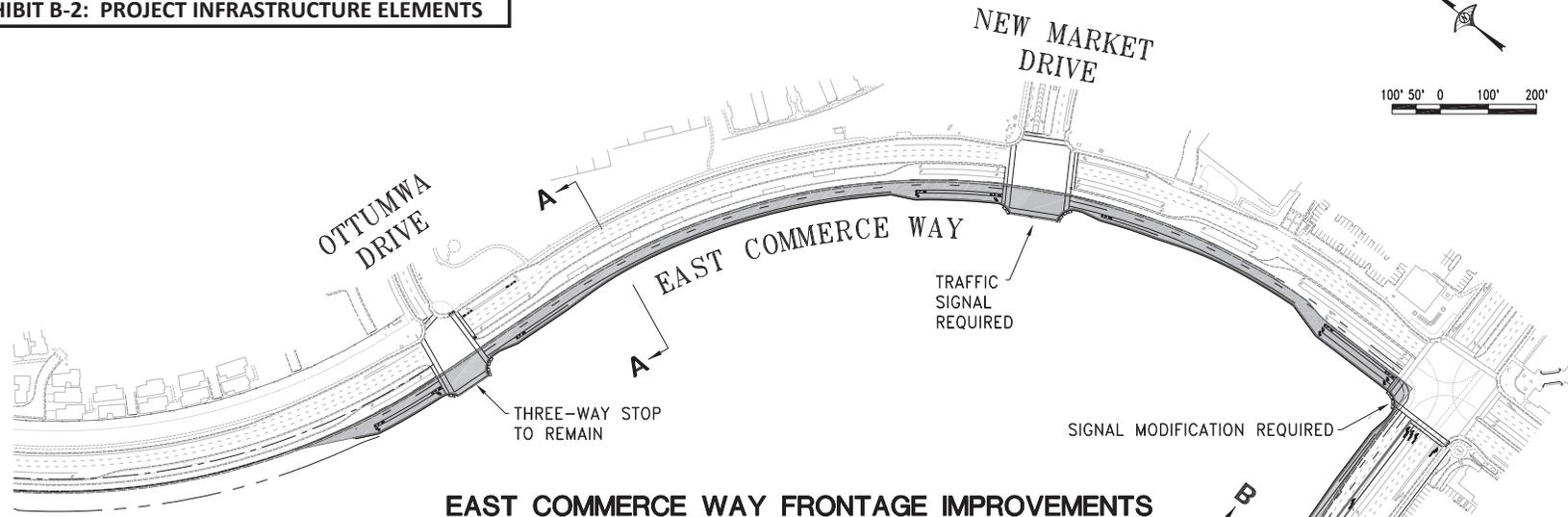
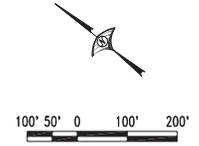
## FRONTAGE IMPROVEMENTS - ROADWAY WORK

CITY OF SACRAMENTO, CALIFORNIA

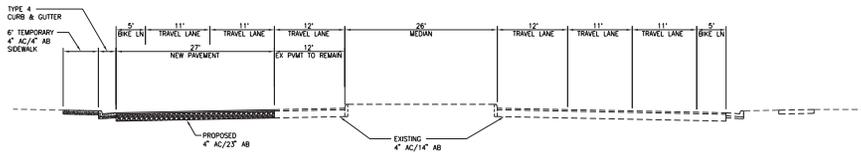
NOVEMBER 2015

Public Safety Project  
Construction Funding and Reimbursement Agreement  
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(Del Paso Road Improvements)

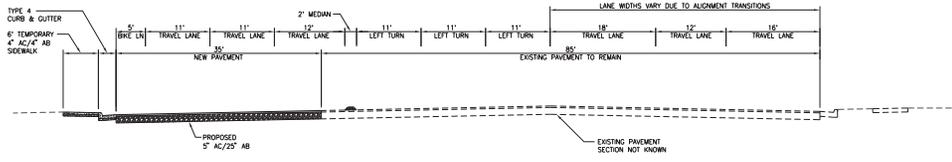
**EXHIBIT B-2: PROJECT INFRASTRUCTURE ELEMENTS**



### EAST COMMERCE WAY FRONTAGE IMPROVEMENTS



**A TYPICAL SECTION - EAST COMMERCE WAY**  
1" = 10'



**B TYPICAL SECTION - DEL PASO ROAD**  
1" = 10'

**LEGEND**

PROPOSED IMPROVEMENT AREA

**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS

3301 C St, Bldg. 100-B    Tel 916.341.7760  
Sacramento, CA 95816    Fax 916.341.7767

## ECONOMIC &amp; PLANNING SYSTEMS

▪ *Land Economics* ▪ *Real Estate* ▪ *Public Finance*

Public Safety Project  
Construction Funding and Reimbursement Agreement  
for Construction of North Natomas Infrastructure  
(Del Paso Road Improvements)

**EXHIBIT F: EXCERPTS FROM NORTH NATOMAS CREDIT AND  
REIMBURSEMENT DATABASE MANUAL**

NORTH NATOMAS CREDIT AND REIMBURSEMENT  
DATABASE MANUAL

Prepared for:

City of Sacramento

Prepared by:

Economic & Planning Systems, Inc.

May 2, 1997

EPS #6186

# NORTH NATOMAS CREDITS/REIMBURSEMENT PROCEDURES

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## PROCEDURES FOR EACH ACCOUNT TYPE

**PFF C/R:** This account is used to track credits and reimbursements due to landowners who have provided advance funding for infrastructure that is scheduled for funding through the North Natomas Public Facilities Fee (PFF). Each account is established by parcel. The reimbursement amount in each account may be increased for additional reimbursable costs, decreased for reimbursement payments from the City PFF revenue, or decreased due to allowable PFF credits (transaction types: Expenditure, Reimbursement-City, and Reimbursement-Fee Credit). The amount in each account also may be increased due to transfer of reimbursements from another account or decreased due to transfer of reimbursements to another account (transaction types: Transfer In and Transfer Out).

**Truxel Interchange C/R:** This account is used to track credits and reimbursements due to landowners who have provided advance funding for construction of the Truxel Interchange. Each account is established by landowner. The reimbursement amount in each account may be increased for additional Truxel interchange costs, decreased for reimbursement payments from the City PFF revenue, or decreased due to allowable PFF credits (transaction types: Expenditure, Reimbursement-City, and Reimbursement-Fee Credit). The amount in each account also may be increased due to transfer of reimbursements from another account or decreased due to transfer of reimbursements to another account (transaction types: Transfer In and Transfer Out).

**NNLAP C/R:** This account is established by landowner and is used to track credits and reimbursements due to landowners who have provided more than their fair share of land for public use. Fair share is defined as the average amount of public land required per acre of developable land for the entire North Natomas area. The initial reimbursement amount for each account is the amount required for the City to acquire the land a landowner provided above the fair share (these accounts can be set up using the Expenditure transaction type). This amount may be decreased due to reimbursement payments from the City using revenue from the Public Land Acquisition Fee (PLAF) which is paid at building permit by landowners providing less than their fair share of public land (transaction type: Reimbursement-City).

**PLAF Deferment:** This account is used to track deferments of the PLAF when a property owner uses the deferred payment program. The amount in this account is increased when a property owner defers payment of the PLAF and is decreased when the property owner pays deferred fees (transaction types: Deferment Addition and Deferment Payment). Property owners who elect to defer PLAF payments must establish a payment agreement with the City Attorney which determines the amount of the PLAF deferment and the schedule by which payments must be made.

Regional Park Deferment: This account is used to track deferments of the regional park fee. The amount in this account is increased when a property owner defers payment of the regional park component of the PLAF and is decreased when the property owner pays deferred fees for the regional park (transaction types: Deferment Addition and Deferment Payment). Property owners who elect to defer regional park fees must establish a payment agreement with the City Attorney which determines the amount of the deferment and the schedule by which payments must be made.

## PRIORITY OF PAYMENT OF REIMBURSEMENTS FROM PUBLIC FACILITY FEE REVENUE

The City may use available PFF revenue to pay reimbursements due to landowners who have provided advance funding for infrastructure that is scheduled for funding through the PFF. The order of priority for reimbursement payments is given below.

1. Truxel Interchange reimbursements  
If there is not sufficient revenue to pay all reimbursements due, then each account will be paid reimbursements proportional to its percentage of the total Truxel Interchange reimbursements outstanding.
2. Truxel Gateway reimbursements  
If there is not sufficient revenue to pay all reimbursements due, then each account will be paid reimbursements proportional to its percentage of the total Truxel Gateway reimbursements outstanding.
3. Other reimbursement accounts totaling less than \$25,000 for any one landowner  
These accounts will be paid in order of the age of the account (oldest accounts paid first)
4. All other reimbursement accounts  
If there is not sufficient revenue to pay all reimbursements due, then each account will be paid reimbursements proportional to its percentage of the total reimbursements outstanding.

## TIMING OF ASSIGNMENT OF FEE CREDITS

Fee credits will be assigned to specific parcels at final map recording. The credit/reimbursement account will be reduced by the amount of the credit. For all reimbursements other than Truxel Interchange, a landowner may receive a fee credit of up to 43% of the fee owed to reduce the amount in the reimbursement account. For Truxel Interchange reimbursements owed to a landowner, the landowner may receive a fee credit of up to 97.5% of the fee owed. These 43% and 97% fee credits are assigned differently, as demonstrated by the following examples.

### Examples for Assigning Fee Credits:

1. 43% credits

The credit must be assigned equally across all units. If there are \$100,000 dollars available for credits for a 100 unit project, then the credit equals \$1,000 per unit.

2. 97% credits

The credits are assigned to the first developed dwelling units unless otherwise specified by the developer.

EXHIBIT G: REIMBURSEMENT

**RESOLUTION NO. 95-620**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF OCT 31 1995

**A RESOLUTION ESTABLISHING AS AN URGENCY  
MEASURE THE AMOUNTS OF FEES AND PROVIDING FOR  
CREDITS, REIMBURSEMENTS, AND OTHER MATTERS  
RELATIVE TO THE PUBLIC FACILITIES FEE, DRAINAGE  
FEE, AND TRANSIT FEE FOR DEVELOPMENT WITHIN  
THE NORTH NATOMAS FINANCE PLAN AREA**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:**

**WHEREAS,**

- A. By separate resolutions referenced below, the City Council adopted and approved the following items:
- (1) The North Natomas Community Plan, by resolution number 94-259, dated May 3, 1994.
  - (2) The North Natomas Financing Plan, by resolution number 94-495, dated August 9, 1994, which plan describes the financing methodologies for providing facilities, infrastructure, public lands, and other improvements to meet the needs of and mitigate the impacts caused by development within the North Natomas Finance Plan Area.
  - (3) The report entitled "North Natomas Nexus Study, dated October 17, 1995, by resolution number 95-619, including other studies, reports, and data referred to and relied upon in said study which are integral to the conclusions reached therein.
- B. On October 31, 1995, the City Council of the City of Sacramento adopted Ordinance No. 95-058 (the "Ordinance") creating and establishing the authority for imposing and charging development impact fees, i.e. Public Facilities Fee, Drainage Fee, and Transit Fee, which ordinance establishes the development impact fees and their various component parts and specifically enables and directs the City Council, by resolution, to set forth the specific

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RESOLUTION NO. \_\_\_\_\_

DATE ADOPTED: OCT 31 1995

amounts of the fees, to describe the benefit and impact areas on which the development impact fees are imposed, to list the specific Public Infrastructure to be financed, and to describe their estimated cost.

- C. The North Natomas Community Plan, the North Natomas Financing Plan, and the Nexus Study, along with the studies and reports each may reference or be based upon in whole or in part, and together with any amendments thereto made after their initial adoption, establish the need, costs, and financing of Public Infrastructure arising out of development within the North Natomas Finance Plan Area and present a reasonable basis on which to establish fees under the Ordinance. The foregoing items, and all other additional studies and reports, including, without limitation, drainage reports and proposals, transportation studies, and housing studies presented to the Council now or in the past for Council's approval of the same or for informational or other purposes, along with the studies, reports, and data each may reference or be based upon in whole or in part, and any and all amendments thereto made after their initial adoption, together with staff reports and other matters presented to the Council by City staff or interested parties, whether in writing or orally, constitute the record before the City Council for purposes of the adoption of this Resolution ("Legislative Record").
- D. The Nexus Study analyzes the impacts of contemplated future development in the North Natomas Finance Plan Area and the need for new Public Infrastructure required by such development. The Nexus Study sets forth a reasonable relationship between new development, the needed facilities, their estimated costs, and the amounts of the development impact fees.
- E. The Ordinance further provides that the City Council may, by resolution, set forth specific limitations which will apply to credits, reimbursements, and deferral in payment relating to such development impact fees.
- F. The Ordinance further provides that this resolution shall become effective immediately upon its adoption based upon the interim authorization set forth in Government Code section 66017(b). The City Clerk shall schedule a public hearing before the Council within thirty (30) days after the adoption of this resolution to consider extending the interim authorization for an additional thirty (30) days. The Clerk shall publish notice of said hearing ten (10) days before the hearing. In any event, this resolution will become effective permanently after sixty (60) days following its adoption.
- G. A public hearing on adoption of this Resolution and the Ordinance was heretofore set as part of a regularly scheduled meeting of the Sacramento City Council for October 31, 1995, at

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7:00 p.m., in the Council Chamber located at City Hall, 915 I Street, Second Floor, Sacramento, California 95814.

- H. The Nexus Study was available for public inspection and review at the Office of the City Clerk, City Hall, for a period of at least ten (10) days prior to said public hearing. Materials supplementing the Nexus Study and all background data referenced in the Nexus Study was made available to interested parties upon request made to the City Department of Public Works at least ten (10) days prior to said public hearing.
- I. The public hearing was also noticed pursuant to and in compliance with Government Code sections 66018 and 6062a, and was held as part of a regularly scheduled meeting of the City Council of the City.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO, CALIFORNIA, AS FOLLOWS:**

**SECTION 1. Findings.**

The City Council hereby finds as follows:

- (a) All provisions set forth above are true and correct and are hereby incorporated herein by reference as findings.
- (b) The City Council approved the Nexus Study following a public hearing on the matter, and the contents of said report are incorporated herein.
- (c) The purpose of the Public Facilities Fee, Drainage Fee and Transit Fee set forth herein is to finance Public Infrastructure to meet the needs of people living and employed in the North Natomas Finance Plan Area now and in the future, and to reduce the impacts on public services and infrastructure caused by development in said area.
- (d) The Public Facilities Fee, Drainage Fee, and Transit Fee collected pursuant to this resolution shall be used to finance only the Public Infrastructure, which Public Infrastructure are required to meet the needs of and mitigate the impacts caused by development within the North Natomas Finance Plan Area. The Nexus Study, with reference to other documents contained in the Legislative Record, identifies said Public Infrastructure and such identification is incorporated herein by this reference.
- (e) The various types of development in the North Natomas Finance Plan Area generates and will generate a need for the Public Infrastructure which have not been constructed

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and are required to be consistent with the City's General Plan and North Natomas Community Plan, and to protect the public's health, safety and general welfare.

- (g) The Legislative Record establishes a reasonable relationship between the need for the Public Infrastructure, and the impacts of the various types of development contemplated in the North Natomas Finance Plan Area, for which the corresponding fee is charged.
- (h) There is a reasonable relationship between the fee's use and the type of development for which the fee is charged, as these reasonable relationships or nexuses are in more detail described in the Legislative Record, including, without limitation, the Nexus Study.
- (i) The cost estimates set forth in the Legislative Record are reasonable cost estimates for constructing the Public Infrastructure, and the fees expected to be generated by new development will not exceed the total of these estimated costs.
- (j) The Legislative Record demonstrates a reasonable relationship between the amount of the fees set hereby, the costs of the Public Infrastructure financed by such fees, and the various types of development on which the fees are imposed.
- (k) The fees set forth and adopted herein are consistent with the City's General Plan and the North Natomas Community Plan, and the Council has considered the effects of the fees with respect to the City's housing needs and the regional housing needs.

**SECTION 2. Definitions.**

Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this Resolution:

**Chapter 84.02** means that certain portion of the Sacramento City Code relating to the creation and imposition of development impact fees, which chapter was adopted by the City Council pursuant to Section 4 of the Ordinance.

**Development** means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements. **Development Project** means any project undertaken for the purpose of development, exclusive of projects undertaken by or for public agencies, including, without limitation, schools and parks.

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**Fee and Impact Fee and Development Impact Fee** means the monetary exaction as defined by subsection (b) of Government Code section 66000 and shall include, but not be limited to, the fees established pursuant to the Ordinance.

**Government Code** means the Government Code of the State of California and any provision thereof cited in this Resolution, as such provision exists as of the date of the adoption of this Resolution, or as may thereafter be amended or renumbered from time to time.

**Nexus Study** means the report entitled "North Natomas Nexus Study," dated October 17, 1995, approved by the City Council on October 31, 1995, by resolution number 95-619, including the other studies, reports, and all supporting data referred to and relied upon in said study, as such study exists as of the date of the adoption of this Resolution, or as may thereafter be amended or supplemented from time to time.

**North Natomas Community Plan** means the community plan adopted by the City Council, by resolution number 94-259, dated May 3, 1994, as such plan exists as of the date of the adoption of this Resolution, or as may thereafter be amended or supplemented from time to time.

**North Natomas Financing Plan** means the financing plan adopted by the City Council by resolution 94-495, dated August 9, 1994, as such plan exists as of the date of the adoption of this Resolution, or as may thereafter be amended or supplemented from time to time.

**North Natomas Finance Plan Area** carries with it the same definition set forth in the North Natomas Financing Plan, as such area may exist from time to time.

**Public Infrastructure** means the public improvements, infrastructure, and facilities to be designed, constructed, installed and acquired to serve the North Natomas Finance Plan Area, which improvements, infrastructure, and facilities are described in the North Natomas Community Plan, North Natomas Financing Plan, and the Nexus Study, and the costs of the design, construction, installation, and acquisition of which are to be financed by the development impact fee program set forth within the North Natomas Financing Plan. Where applicable under the North Natomas Financing Plan, the term "Public Infrastructure" shall include the acquisition of public land relating to such improvements, infrastructure and facilities, but shall exclude land acquired under the North Natomas Land Acquisition Program described in Chapter 84.03. The term "Public Infrastructure" shall mean a specific public improvement, infrastructure, and facility where the context requires a singular meaning.

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**SECTION 3. Development Impact Fees.**

The amounts of the Public Facilities Fee, Drainage Fee, and Transit Fee created and imposed pursuant to the Ordinance are hereby established for each of the referenced categories of Public Infrastructure at the levels established in the Nexus Study. A summaries the amounts of said development impact fees, by land use categories, which the City Council hereby adopts are attached hereto as Exhibits "A-1" and "A-2" and incorporated herein by reference as though set forth in full.

**SECTION 4. Credits and Reimbursements.**

Pursuant to Section 84.02.210 of Chapter 84.02, credits against and reimbursements of the Public Facilities Fee shall be calculated pursuant to and in accordance with the provisions of the Nexus Study. A summary of such credits, reimbursements, and policies and priorities of the same is attached hereto as Exhibits "B-1," "B-2" and "B-3," the terms of which are incorporated herein by this reference.

**SECTION 6. Construction of Resolution.**

The provisions of this resolution are subject and subordinate to the provisions of the Ordinance and shall at all times be construed and applied consistent therewith as the same presently exist or may from time to time hereafter be amended.

**SECTION 7. Judicial Action to Challenge This Resolution.**

Any judicial action or proceeding to attack, review, set aside or annul this resolution shall be brought within 120 days of its adoption.

**SECTION 8. Effective Date.**

This resolution shall be effective immediately upon its adoption based upon the interim authorization set forth in Government Code section 66017(b). The City Clerk shall schedule a public hearing before the Council within thirty (30) days after the adoption of this resolution to consider extending the interim authorization for an additional thirty (30) days. The Clerk shall publish notice of said hearing ten (10) days before the hearing. In any event, this resolution will become effective permanently after sixty (60) days following its adoption.

**SECTION 9. Severability.**

- (a) If any section, phrase, sentence, or other portion of this Resolution for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of

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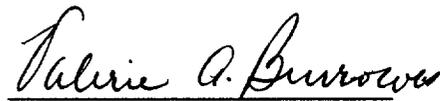
DATE ADOPTED:

competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

- (b) If any fee set by this Resolution for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such fee shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the remaining fees set by this Resolution.
- (c) If any fee set by this Resolution is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction based upon an insufficient relationship or nexus to a specific Public Infrastructure for which the revenue generated from such fee may be expended pursuant to Chapter 84.02 or any resolution adopted pursuant to said Chapter, said fee as it relates to such specific Public Infrastructure shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the fee as it relates to other Public Infrastructure.

  
MAYOR

ATTEST:

  
CITY CLERK

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Exhibit A-1 to Resolution 95-620

**Figure ES-2  
North Natomas Nexus Study  
Total Public Facilities and Transit Fee  
After Light Industrial and Residential Lot Size & Density Adjustment**

	Public Facility Fee	Transit Fee
	<i>Includes 2.5% Administration Allowance</i>	
<b>RESIDENTIAL</b>	<b>Fee per Unit</b>	
<i>Single Family Detached/Attached</i>		
Rural Estates	\$0	\$0
Lot Size > 5,000 s.f.	\$3,365	\$127
Lot Size 3,250 - 5,000 s.f.	\$2,969	\$117
Lot Size < 3,250 s.f.	\$2,574	\$106
<i>Multi-Family (&gt;2 attached units)</i>		
8-12 units per net acre	\$2,574	\$106
>12 - 18 units per net acre	\$2,263	\$95
> 18 units per net acre	\$1,951	\$84
<b>NON-RESIDENTIAL</b>	<b>Fee per Building Sq. Ft.</b>	
Convenience Commercial	\$11.10	\$0.73
Community Commercial	\$5.98	\$0.38
Village Commercial	\$8.70	\$0.56
Transit Commercial	\$6.97	\$0.45
Highway Commercial =< 10 acres	\$11.27	\$0.73
Highway Commercial > 10 acres	\$8.17	\$0.52
EC 30/Office	\$2.99	\$0.16
EC 40	\$2.96	\$0.17
EC 45	\$3.37	\$0.20
EC 50/Hospital	\$3.31	\$0.19
EC 65	\$3.92	\$0.24
EC 80	\$3.79	\$0.23
<i>Light Industrial</i>		
Light Industrial with <20% Office	\$0.89	\$0.04
Light Industrial with 20% - 50% Office	\$1.19	\$0.05
	<b>Fee per Net Acre</b>	
Golf Course	\$6,011	\$40
Arena	\$44,437	\$2,706
Stadium	\$69,636	\$4,446

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Exhibit A-2 to Resolution 95-620

**Figure ES-3  
North Natomas Nexus Study  
Total Drainage Fee by Drainage Basin  
After Residential Lot Size & Density Adjustment**

	Basin 1	Basin 2	Basin 3	Basin 4	Basin 5	Basin 6	Basin 7	Basin 8
<i>Includes 2.5% Administrative Allowance</i>								
<i>Fee per Net Acre</i>								
<b>RESIDENTIAL</b>								
<i>Single Family Detached/Attached</i>								
Rural Estates	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Lot Size > 5,000 s.f.	\$13,318	\$15,494	\$22,625	\$15,844	\$0	\$16,027	\$11,999	\$11,263
Lot Size 3,250 - 5,000 s.f.	\$15,316	\$17,818	\$26,019	\$18,221	\$0	\$18,431	\$13,798	\$12,952
Lot Size < 3,250 s.f.	\$17,314	\$20,142	\$29,412	\$20,597	\$0	\$20,835	\$15,598	\$14,642
<i>Multi-Family (&gt;2 attached units)</i>								
8-12 units per net acre	\$17,314	\$20,142	\$29,412	\$20,597	\$0	\$20,835	\$15,598	\$14,642
>12 - 18 units per net acre	\$18,646	\$21,692	\$31,675	\$22,182	\$4,465	\$22,438	\$16,798	\$15,768
> 18 units per net acre	\$19,978	\$23,241	\$33,937	\$23,766	\$8,930	\$24,040	\$17,998	\$16,894
<b>NON-RESIDENTIAL</b>								
<i>Fee per Net Acre</i>								
Convenience Commercial	\$21,310	\$24,791	\$36,200	\$25,351	\$9,525	\$25,643	\$19,198	\$18,020
Community Commercial	\$21,310	\$0	\$0	\$0	\$0	\$0	\$0	\$18,020
Village Commercial	\$0	\$24,791	\$36,200	\$0	\$9,525	\$0	\$19,198	\$0
Transit Commercial	\$21,310	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Highway Commercial =< 10 acres	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Highway Commercial > 10 acres	\$0	\$0	\$0	\$0	\$10,120	\$0	\$0	\$19,147
EC 30/Office	\$19,978	\$23,241	\$0	\$0	\$0	\$24,040	\$0	\$0
EC 40	\$19,978	\$0	\$0	\$0	\$8,930	\$24,040	\$17,998	\$16,894
EC 45	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
EC 50/Hospital	\$19,978	\$0	\$0	\$0	\$8,930	\$0	\$17,998	\$16,894
EC 65	\$19,978	\$0	\$0	\$0	\$8,930	\$24,040	\$0	\$16,894
EC 80	\$19,978	\$0	\$0	\$0	\$8,930	\$0	\$0	\$0
Light Industrial	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,768
Golf Course (1)	\$0	\$0	\$2,262	\$1,584	\$0	\$0	\$0	\$0
Arena	\$0	\$0	\$0	\$0	\$10,120	\$0	\$0	\$0
Stadium	\$0	\$0	\$0	\$0	\$10,120	\$0	\$0	\$0

"res\_adj\_drainage"

(1) Only for drainage improvements, the costs are allocated to the entire course and the fees are collected from all of the golf course acres.  
For other improvements, the costs are allocated to only 10 acres of the clubhouse site and the fees are collected from the clubhouse site.

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## **Reimbursement Program Relating to North Natomas Public Facilities Fee (PFF)**

The following points describe the process for handling reimbursements for advance funding of infrastructure and credit reductions from North Natomas Public Facilities Fees.

**1. Existing Reimbursements -**

Eligible reimbursements are presentable identified for the following items:

Planning / Studies	
City	\$2.8 Million
NNLA	\$2.2 Million
Truxel Interchange	\$4.5 Million
AD 88-03	
Roads	\$16.6 Million
Freeways	\$0.6 Million
Landscaping	\$1.2 Million
Planning / Studies	\$4.0 Million
East Loop Road	\$0.8 Million
<b>TOTAL</b>	<b>\$32.7 Million</b>

The priority for repayment of these reimbursements is based on agreements associated with each reimbursement item paid.

**2. Future Reimbursements -**

Developers may be required to provide advance funding for infrastructure items that are scheduled for funding through the Public Facilities Fees. The most likely items would be for major roads necessary to serve a development project.

These future reimbursements would be added to the list of eligible reimbursements at the time the costs are approved by the City.

**3. Reimbursement Account**

A reimbursement account will be established for each party (either a property owner, developer, or parcel) which has eligible reimbursement costs. This account would be

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adjusted for existing reimbursement payments, fee credits or additional reimbursable costs.

The reimbursement account will be reduced through the use of fee credits or direct reimbursements from the collection of the PFF.

**4. Public Facilities Fees -**

Public Facilities Fees (PFFs) would be divided into three components - City Component, Credit Component and the Administrative Component.

The **City Component** is the share of the PFF required to fund infrastructure and facilities which the City is required to construct. These items include freeway interchanges, auxiliary lanes, overcrossings, police substation, fire station, park development, community center, library, and shuttle buses. Each time a builder/developer paid the PFF, the City would collect at least the City Component.

The **Credit Component** is the share of the fee which may be used as a credit against reimbursement held by a developer or builder. When a builder/developer pays the PFF, the fee is reduced by any reimbursements owed up to the credit amount. The bulk of the credit component is for existing reimbursements and construction of future roads, landscaping, and bikeways which will be the responsibility of developing property to construct as a condition of the tentative map. See note below on Truxel Interchange reimbursement.

The **Administrative Component** is the share of the fee used to fund administration of the fee program. The City will always collect this portion of the fee.

The PFF components are allocated as follows:

City Component	54.5%
Credit Component	43.0%
Administrative Component	2.5%

Once the City facilities are built or the cash flow hurdles removed, additional fee revenues will be available to accelerate reimbursements and credits.

Holders of **Truxel Interchange** reimbursements will be able to receive a credit up to 97.5% of their fees until the Truxel Interchange portion of their reimbursement account is paid off. City will pay Truxel reimbursements subject to the terms of the Truxel Agreement.

**5. Priority for Repayment of Reimbursement Accounts for PFF Revenues**

If the City has funds available from the collection of PFF revenues, reimbursements will be paid to reduce the account balances in the Reimbursement Accounts. Funds may be available from collection of the Credit Component of the fee from developers not entitled to reimbursements or if the City determines that it has adequate balances in the City

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Component of the fee to make reimbursement payments without jeopardizing the construction program.

First Priority will be to reduce on a pro-rata basis, the Truxel Interchange portion of the Reimbursement Accounts.

Second Priority will be to reduce on a pro-rate basis, any advance funding provided for a "gateway project" serving the initial development in Quadrant 2. The funding advance will not exceed the final amount of the Truxel Interchange funding advance.

Third Priority will be to reduce on a pro-rata basis all other outstanding reimbursements.

Pro-rata reimbursements will be calculated by dividing each Account's balance for specific priority of reimbursement by the total of all reimbursements outstanding for a specific reimbursement priority. The funds will be distributed to each Reimbursement Account based on the calculated shares.

**6 Prepayment of Fees to Lock-In Fees at Current Levels**

A holder of reimbursements may prepay the Credit Component of the fees using the reimbursement account in order to lock in fees at the current level. The City Component of the fees may also be prepaid to lock the fees at a specific level, but the reimbursement account balance may not be used for this prepayment.

**7. Transfer of Reimbursements**

An owner of reimbursements may transfer the reimbursements to any other party. The City must be notified and will make the appropriate adjustments in the reimbursement accounts. It is the responsibility of the owner of the reimbursements to make sure that the accounts have been properly adjusted after a transfer. The transfer of the reimbursements from one account to another will be at face value regardless of the discounting that may have occurred.

**8. Inflation Adjustment on Reimbursement Accounts**

Reimbursement Accounts will be adjusted for inflation at the same annual inflation rate as applied to adjustments in the Public Facilities Fee.

**9. Annual Review**

City will annually review status of Fee Credits and Reimbursements. Necessary adjustments will be made to the program.

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**Figure B-2**  
**North Natomas Nexus Study**  
**A.D. 88-03 Reimbursable Expenditures**

Item Description	Cost	Reimbursement Category	NN Financing Programs		
			PFF	Mello-Roos CFD	NNLAP
<b>Assessment District No. 88-03</b>					
Contract No.					
1 Stadium Blvd. West from N. Market to E. Commerce Way, E. Commerce Way North from Stadium Blvd to Del Paso Rd., Arco Arena Blvd South from Del Paso Rd. To I-80	\$85,994	Roads	\$85,994		
2 Install street lighting and street light signalization on Stadium Blvd., East Commerce Way, and Arco Arena Blvd, including interconnect conduits	\$1,009,251	Roads	\$1,009,251		
3 Arco Arena Blvd. bridge and Stadium Blvd. bridge over East drain	\$890,000	Roads	\$890,000		
4 Del Paso Road widening	\$359,054	Roads	\$359,054		
5 Del Paso Rd. southerly improvements from the junction with I-5 to the city limits of Sacramento	\$1,860,887	Roads	\$1,860,887		
6 Widening of the East off-ramp of I-5 at Del Paso Rd.	\$537,641	Freeways	\$537,641		
7 Water mains and fire hydrants for East Commerce Way, Stadium Blvd., and Arco Arena Blvd.	\$1,236,723	Roads	\$1,236,723		
8 Improvements for East Commerce Way, Stadium Blvd., and Arco Arena Blvd.	\$7,974,302	Roads	\$7,974,302		
9 Del Paso widening	\$272,000	Roads	\$272,000		
11 Pacific Bell	\$261,300	Roads	\$261,300		
12 SMUD	\$439,410	Roads	\$439,410		
15 Del Paso Bridge at the Crossing of the East Drain	\$283,304	Roads	\$283,304		
16 Del Paso Waterline Station	\$266,011	Roads	\$266,011		
17 I-5 & I-80 Landscape Corridor Imp.	\$1,091,848	Landscaping	\$1,091,848		
18 C-1 Canal Pump Station Improvements	\$357,530	Drainage		\$357,530	
<b>Total Construction Costs</b>	<b>\$16,925,255</b>		<b>\$16,567,725</b>	<b>\$357,530</b>	<b>\$0</b>
<b>Right of Way &amp; Easement Acquisition</b>					
Overwidth Road Right of Way	\$5,736,000	Land Acq.			\$2,846,745
Light Rail Right of Way	\$810,000	Land Acq.			\$270,459
Del Paso/I-5 Off Ramp Right of Way	\$254,000	Land Acq.			\$60,507
Easements for Bridges from RD-1000	\$12,500				\$0
<b>Total Right of Way &amp; Easement Acquisition</b>	<b>\$6,812,500</b>		<b>\$0</b>	<b>\$0</b>	<b>\$3,177,711</b>
<b>Payment of Prior Liens (C-1 canal)</b>	<b>\$513,326</b>	Drainage		<b>\$513,326</b>	
<b>Incidental Expenses</b>					
Design Engineering, Soils Engineering, Surveying & Inspection	\$1,412,841	Roads	\$1,412,841		
Assessment District Engineering	\$64,000				
Assessment District Administration (City Staff)	\$10,000				
Assessment District Appraisal	\$37,000				
Assessment District Fiscal Feasibility Study	\$50,000				
Construction Management Costs	\$290,000				
Developer Interest Costs	\$2,524,537				
Developer Settlement Agreement Costs	\$279,049				
City Engineering & Environmental Costs (Interchanges & Drainage)	\$681,952	Planning	\$681,952		
Developer Engineering & Study Costs (Interchanges)	\$564,468	Planning	\$564,468		
City Planning Costs (NNCP)	\$1,530,594	Planning	\$1,530,594		
Developer Planning Costs (NNCP)	\$408,754				
City Financing & Related Studies	\$495,180	Planning	\$495,180		
Developer Fees to City Through 4/22/88	\$327,035	Planning	\$327,035		
Developer Fees to City 1/23/88 - 12/31/88	\$400,000	Planning	\$400,000		

**RESOLUTION 95-620**

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**Figure B-2**  
**North Natomas Nexus Study**  
**A.D. 88-03 Reimbursable Expenditures**

Item Description	Cost	Reimbursement Category	NN Financing Programs		
			PFF	Mello-Roos CFD	NNLAP
Bond Counsel Fee	\$226,890				
Bond Printing Costs	\$24,000				
Bond Registration & Administration	\$110,000				
California Debt Advisory					
Commission Fee	\$1,500				
SDIRS Fees	\$81,512				
Capitalized Interest	\$2,970,000				
<b>Total Incidental Expenses</b>	<b>\$12,489,312</b>		<b>\$5,412,070</b>	<b>\$0</b>	<b>\$0</b>
<b>Total Costs</b>	<b>\$36,740,393</b>		<b>\$21,979,795</b>	<b>\$870,856</b>	<b>\$3,177,711</b>
Less Estimated Interest Earnings	\$210,000		\$0	\$0	\$0
<b>Total Estimated Costs less Interest Earnings</b>	<b>\$36,530,393</b>		<b>\$21,979,795</b>	<b>\$870,856</b>	<b>\$3,177,711</b>
Bond Discount - 3%	\$1,245,354		\$0	\$0	\$0
Bond Special Reserve Fund - 9%	\$3,736,063		\$0	\$0	\$0
<b>Total Amount of Bond Issue</b>	<b>\$41,511,810</b>		<b>\$21,979,795</b>	<b>\$870,856</b>	<b>\$3,177,711</b>

'A.D.'

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**Figure B-3**  
**North Natomas Nexus Study**  
**Summary of Reimbursements to A.D. Participants**  
**by Contract**

	Percent Share	Total Cost 1989\$ a	Less MSCT Reimb. 1989\$ b	Net Cost 1989\$ c = a - b	Share of all Facilities		Share of all Facilities		
					Quad 1 Share d	Other Quad. Share e = 1 - d	Quad 1 Cost 1989\$ f = c * d	Other Quad's Cost 1989\$ g = c * e	
<b>Road Contract</b>									
1 E. Commerce	29.9%	\$25,676	\$2,965	\$22,712	37.1%	62.9%	\$8,423	\$14,288	
Stadium	22.3%	\$19,197	\$2,216	\$16,981	37.1%	62.9%	\$6,298	\$10,683	
Truxel	47.8%	\$41,120	\$4,748	\$36,372	37.1%	62.9%	\$13,490	\$22,883	
<b>Total</b>	<b>100.0%</b>	<b>\$85,994</b>	<b>\$9,929</b>	<b>\$76,065</b>			<b>\$28,211</b>	<b>\$47,854</b>	
2 E. Commerce	29.9%	\$301,346	\$34,793	\$266,553	37.1%	62.9%	\$98,858	\$167,695	
Stadium	22.3%	\$225,305	\$26,014	\$199,292	37.1%	62.9%	\$73,912	\$125,379	
Truxel	47.8%	\$482,600	\$55,721	\$426,879	37.1%	62.9%	\$158,319	\$268,560	
<b>Total</b>	<b>100.0%</b>	<b>\$1,009,251</b>	<b>\$116,527</b>	<b>\$892,724</b>			<b>\$331,089</b>	<b>\$561,635</b>	
7 E. Commerce	29.9%	\$369,265	\$42,635	\$326,630	37.1%	62.9%	\$121,139	\$205,491	
Stadium	22.3%	\$276,086	\$31,877	\$244,209	37.1%	62.9%	\$90,571	\$153,638	
Truxel	47.8%	\$591,371	\$68,279	\$523,092	37.1%	62.9%	\$194,002	\$329,090	
<b>Total</b>	<b>100.0%</b>	<b>\$1,236,723</b>	<b>\$142,791</b>	<b>\$1,093,932</b>			<b>\$405,712</b>	<b>\$688,220</b>	
8 E. Commerce	29.9%	\$2,380,997	\$274,908	\$2,106,088	37.1%	62.9%	\$781,096	\$1,324,992	
Stadium	22.3%	\$1,780,184	\$205,539	\$1,574,645	37.1%	62.9%	\$583,997	\$990,648	
Truxel	47.8%	\$3,813,121	\$440,260	\$3,372,861	37.1%	62.9%	\$1,250,911	\$2,121,950	
<b>Total</b>	<b>100.0%</b>	<b>\$7,974,302</b>	<b>\$920,708</b>	<b>\$7,053,595</b>			<b>\$2,616,004</b>	<b>\$4,437,591</b>	
11 E. Commerce	29.9%	\$78,020	\$9,008	\$69,012	37.1%	62.9%	\$25,595	\$43,417	
Stadium	22.3%	\$58,333	\$6,735	\$51,598	37.1%	62.9%	\$19,136	\$32,461	
Truxel	47.8%	\$124,947	\$14,426	\$110,521	37.1%	62.9%	\$40,990	\$69,532	
<b>Total</b>	<b>100.0%</b>	<b>\$261,300</b>	<b>\$30,170</b>	<b>\$231,130</b>			<b>\$85,721</b>	<b>\$145,410</b>	
12 E. Commerce	29.9%	\$131,201	\$15,148	\$116,052	37.1%	62.9%	\$43,041	\$73,011	
Stadium	22.3%	\$98,094	\$11,326	\$86,768	37.1%	62.9%	\$32,180	\$54,588	
Truxel	47.8%	\$210,115	\$24,260	\$185,856	37.1%	62.9%	\$68,929	\$116,926	
<b>Total</b>	<b>100.0%</b>	<b>\$439,410</b>	<b>\$50,734</b>	<b>\$388,676</b>			<b>\$144,150</b>	<b>\$244,526</b>	
3 Stadium	50.0%	\$445,000	\$0	\$445,000	37.1%	62.9%	\$165,039	\$279,961	
Truxel	50.0%	\$445,000	\$0	\$445,000	37.1%	62.9%	\$165,039	\$279,961	
		<b>\$890,000</b>	<b>\$0</b>	<b>\$890,000</b>	37.1%		<b>\$330,079</b>	<b>\$559,921</b>	
<b>Contracts 4, 5, 9, 15 &amp; 16</b>									
Del Paso Road		\$3,041,256	\$351,141	\$2,690,115	37.1%	62.9%	\$997,697	\$1,692,418	
<b>City Inspection &amp; Engineering</b>									
E. Commerce	21.8%	\$281,301	\$0	\$281,301	37.1%	62.9%	\$104,328	\$176,974	
Stadium	19.6%	\$299,319	\$0	\$299,319	37.1%	62.9%	\$111,010	\$188,309	
Truxel	38.2%	\$539,499	\$0	\$539,499	37.1%	62.9%	\$200,087	\$339,412	
Del Paso	20.4%	\$292,722	\$0	\$292,722	37.1%	62.9%	\$108,563	\$184,159	
		<b>\$1,412,841</b>	<b>\$0</b>	<b>\$1,412,841</b>			<b>\$523,988</b>	<b>\$888,853</b>	
<b>Total Roads</b>		<b>\$16,351,077</b>	<b>\$1,622,000</b>	<b>\$14,729,077</b>			<b>\$5,462,650</b>	<b>\$9,266,427</b>	
6 Del Paso & I-5		\$537,641	\$0	\$537,641	37.1%	62.9%	\$199,398	\$338,243	
17 I-5 & I-80 Landscaping		\$1,091,848	\$0	\$1,091,848	29.3%	70.7%	\$319,494	\$772,354	
Planning / Studies		\$3,999,229	\$0	\$3,999,229	29.3%	70.7%	\$1,170,244	\$2,828,985	
Land Acquisition		\$3,177,711	\$0	\$3,177,711	29.3%	70.7%	\$929,854	\$2,247,857	
Drainage		\$870,856	\$0	\$870,856	36.7%	63.3%	\$319,630	\$551,226	
						(Q.2 only)			
<b>Subtotal</b>		<b>\$9,677,285</b>	<b>\$0</b>	<b>\$9,677,285</b>			<b>\$2,938,620</b>	<b>\$6,738,665</b>	
<b>TOTAL COSTS</b>		<b>\$26,028,362</b>	<b>\$1,622,000</b>	<b>\$24,406,362</b>			<b>\$8,401,270</b>	<b>\$16,005,092</b>	
<b>Per Acre</b>									

(1) The Fong property represents 4.8% of Quadrant 1 trips and 9.2% of Quadrant 1 acres and is responsible for 4.8% of roads & freeways and 9.2% of City inspection & engineering, landscaping and planning/studies.

**Figure B-3**  
**North Natomas Nexu:**  
**Summary of Reimbu**  
**by Contract**

	Share of Quad 1. Facilities		Share of A.D. Facilities			A.D. Reimbursements			Total Reimb.
	Fong Cost (1)	A.D. Cost	Fong Cost	Other Quad's Cost	A.D. Participants	PFF Reimb.	CFD Reimb.	NNLAP Reimb.	
	1989\$ h	1989\$ i = f - h	1993\$ j = h * (1.03^4)	1993\$ k = g * (1.03^4)	1993\$ l = i * (1.03^4)	1993\$ m = j + k + l	1993\$ n	o	1993\$ p = m + n + o
<b>Road Contract</b>									
1 E. Commerce Stadium	\$407	\$8,016	\$459	\$16,132	\$9,051	\$25,642	\$0	\$0	\$25,642
Truxel	\$304	\$5,994	\$343	\$12,061	\$6,767	\$19,171	\$0	\$0	\$19,171
<b>Total</b>	<b>\$651</b>	<b>\$12,838</b>	<b>\$736</b>	<b>\$25,835</b>	<b>\$14,494</b>	<b>\$41,065</b>	<b>\$0</b>	<b>\$0</b>	<b>\$41,065</b>
2 E. Commerce Stadium	\$1,362	\$26,848	\$1,538	\$54,028	\$30,312	\$85,878	\$0	\$0	\$85,878
Truxel	\$4,774	\$94,084	\$5,390	\$189,329	\$106,221	\$300,941	\$0	\$0	\$300,941
<b>Total</b>	<b>\$3,569</b>	<b>\$70,343</b>	<b>\$4,030</b>	<b>\$141,555</b>	<b>\$79,418</b>	<b>\$225,002</b>	<b>\$0</b>	<b>\$0</b>	<b>\$225,002</b>
7 E. Commerce Stadium	\$7,646	\$150,673	\$8,632	\$303,207	\$170,112	\$481,951	\$0	\$0	\$481,951
<b>Total</b>	<b>\$15,989</b>	<b>\$315,100</b>	<b>\$18,052</b>	<b>\$634,091</b>	<b>\$355,751</b>	<b>\$1,007,894</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,007,894</b>
8 E. Commerce Stadium	\$5,850	\$115,289	\$6,605	\$232,001	\$130,162	\$368,769	\$0	\$0	\$368,769
Truxel	\$4,374	\$86,197	\$4,938	\$173,459	\$97,318	\$275,715	\$0	\$0	\$275,715
<b>Total</b>	<b>\$9,369</b>	<b>\$184,633</b>	<b>\$10,578</b>	<b>\$371,546</b>	<b>\$208,452</b>	<b>\$590,576</b>	<b>\$0</b>	<b>\$0</b>	<b>\$590,576</b>
11 E. Commerce Stadium	\$19,593	\$386,119	\$22,121	\$777,007	\$435,932	\$1,235,060	\$0	\$0	\$1,235,060
Truxel	\$37,722	\$743,374	\$42,588	\$1,495,929	\$839,277	\$2,377,794	\$0	\$0	\$2,377,794
<b>Total</b>	<b>\$28,203</b>	<b>\$555,794</b>	<b>\$31,842</b>	<b>\$1,118,452</b>	<b>\$627,497</b>	<b>\$1,777,790</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,777,790</b>
12 E. Commerce Stadium	\$60,411	\$1,190,500	\$68,204	\$2,395,702	\$1,344,086	\$3,807,992	\$0	\$0	\$3,807,992
<b>Total</b>	<b>\$126,335</b>	<b>\$2,489,668</b>	<b>\$142,634</b>	<b>\$5,010,083</b>	<b>\$2,810,859</b>	<b>\$7,963,576</b>	<b>\$0</b>	<b>\$0</b>	<b>\$7,963,576</b>
3 Stadium	\$1,236	\$24,359	\$1,396	\$49,018	\$27,501	\$77,915	\$0	\$0	\$77,915
Truxel	\$924	\$18,212	\$1,043	\$36,649	\$20,562	\$58,254	\$0	\$0	\$58,254
<b>Total</b>	<b>\$1,980</b>	<b>\$39,010</b>	<b>\$2,235</b>	<b>\$78,502</b>	<b>\$44,043</b>	<b>\$124,779</b>	<b>\$0</b>	<b>\$0</b>	<b>\$124,779</b>
12 E. Commerce Stadium	\$4,140	\$81,581	\$4,674	\$164,169	\$92,106	\$260,949	\$0	\$0	\$260,949
Truxel	\$2,079	\$40,962	\$2,347	\$82,431	\$46,247	\$131,024	\$0	\$0	\$131,024
<b>Total</b>	<b>\$1,554</b>	<b>\$30,626</b>	<b>\$1,755</b>	<b>\$61,630</b>	<b>\$34,577</b>	<b>\$97,962</b>	<b>\$0</b>	<b>\$0</b>	<b>\$97,962</b>
3 Stadium	\$3,329	\$65,600	\$3,758	\$132,011	\$74,063	\$209,833	\$0	\$0	\$209,833
<b>Total</b>	<b>\$6,961</b>	<b>\$137,189</b>	<b>\$7,860</b>	<b>\$276,072</b>	<b>\$154,887</b>	<b>\$438,819</b>	<b>\$0</b>	<b>\$0</b>	<b>\$438,819</b>
3 Stadium	\$7,970	\$157,069	\$8,999	\$316,078	\$177,333	\$502,409	\$0	\$0	\$502,409
Truxel	\$7,970	\$157,069	\$8,999	\$316,078	\$177,333	\$502,409	\$0	\$0	\$502,409
<b>Total</b>	<b>\$15,941</b>	<b>\$314,138</b>	<b>\$17,997</b>	<b>\$632,156</b>	<b>\$354,665</b>	<b>\$1,004,819</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,004,819</b>
<b>Contracts 4, 5, 9, 15</b>									
Del Paso Road	\$48,182	\$949,515	\$54,398	\$1,910,756	\$1,072,011	\$3,037,165	\$0	\$0	\$3,037,165
<b>City Inspection &amp; Engr</b>									
E. Commerce Stadium	\$9,680	\$94,648	\$10,929	\$199,805	\$106,858	\$317,592	\$0	\$0	\$317,592
Truxel	\$10,300	\$100,710	\$11,628	\$212,603	\$113,703	\$337,934	\$0	\$0	\$337,934
Del Paso	\$18,564	\$181,522	\$20,959	\$383,200	\$204,940	\$609,099	\$0	\$0	\$609,099
<b>Total</b>	<b>\$10,073</b>	<b>\$98,491</b>	<b>\$11,372</b>	<b>\$207,917</b>	<b>\$111,197</b>	<b>\$330,486</b>	<b>\$0</b>	<b>\$0</b>	<b>\$330,486</b>
<b>Total Roads</b>	<b>\$287,121</b>	<b>\$5,175,529</b>	<b>\$324,162</b>	<b>\$10,461,885</b>	<b>\$5,843,222</b>	<b>\$16,629,269</b>	<b>\$0</b>	<b>\$0</b>	<b>\$16,629,269</b>
6 Del Paso & I-5	\$9,630	\$189,768	\$10,872	\$381,880	\$214,250	\$607,001	\$0	\$0	\$607,001
17 I-5 & I-80 Landscap	\$29,643	\$289,851	\$33,468	\$871,995	\$327,244	\$1,232,707	\$0	\$0	\$1,232,707
Planning / Studies	\$108,578	\$1,061,667	\$122,585	\$3,193,951	\$1,198,632	\$4,515,168	\$0	\$0	\$4,515,168
Land Acquisition	\$86,274	\$843,580	\$86,274	\$2,247,857	\$843,580	\$0	\$0	\$3,177,711	\$3,177,711
Drainage	\$0	\$319,630	\$0	\$622,339	\$360,866	\$0	\$983,205	\$0	\$983,205
<b>Subtotal</b>	<b>\$234,124</b>	<b>\$2,704,496</b>	<b>\$253,198</b>	<b>\$7,318,022</b>	<b>\$2,944,572</b>	<b>\$6,354,876</b>	<b>\$983,205</b>	<b>\$3,177,711</b>	<b>\$10,515,792</b>
<b>TOTAL COSTS</b>	<b>\$521,245</b>	<b>\$7,880,024</b>	<b>\$577,361</b>	<b>\$17,779,907</b>	<b>\$8,787,793</b>	<b>\$22,984,146</b>	<b>\$983,205</b>	<b>\$3,177,711</b>	<b>\$27,145,062</b>
<b>Per Acre</b>						<b>\$20,833</b>	<b>\$891</b>	<b>\$2,880</b>	<b>\$24,604</b>

55-620

"A.D. Credit"

**RESOLUTION**

**OCT 31 1995**

Public Safety Project  
Construction Funding and Reimbursement Agreement  
for Construction of North Natomas Infrastructure  
(Del Paso Road Improvements)

## EXHIBIT H: PRIOR AGREEMENTS

City Agreement No. 2002-797 (Natomas Blvd. Frontage Improvements, Segments 23C & 23D Reimbursement Agreement)

City Agreement No. 2002-798 (Gateway Park Blvd. / Del Paso Rd., Traffic Signal Reimbursement Agreement)

City Agreement No. 2002-799 (Natomas Blvd. Frontage Improvements, Segments 23A & 23B Reimbursement Agreement)

City Agreement No. 2003-311 (Westlake East / West Bike Trail, Segment 16 Fig. B-66 Reimbursement Agreement)

City Agreement No. 2003-458 (Northpointe South Bike Trail, Segment 1 Fig. B-66 Reimbursement Agreement)

City Agreement No. 2004-0087 (Natomas Blvd. / North Park Dr., Traffic Signal 46 Reimbursement Agreement)

City Agreement No. 2004-0088 (Natomas Blvd. / Northbend Dr., Traffic Signal 45 Reimbursement Agreement)

City Agreement No. 2004-0089 (Del Paso Rd. / East Drain Canal to Gateway Park Blvd., Segment 7C)

City Agreement No. 2004-0090 (Elkhorn Blvd / Northborough Dr., Traffic Signal 40 Reimbursement Agreement)

City Agreement No. 2004-0091 (Sageview Dr / Elkhorn Blvd., Traffic Signal 41 Reimbursement Agreement)

City Agreement No. 2004-0108 (Truxel / Arena Commons Dr., Traffic Signal 6 Reimbursement Agreement)

City Agreement No. 2004-0204 (East Commerce Way, Segments 8 & 9 Reimbursement Agreement)

City Agreement No. 2004-0312 (Natomas Blvd. / Club Center Drive, Traffic Signal 43 Reimbursement Agreement)

City Agreement No. 2004-0347 (Truxel Rd. / Prosper St., Traffic Signal 55 Reimbursement Agreement)

City Agreement No. 2004-0348 (East Drain Canal / Truxel & Arena Blvd., Bike Trail B-9 Reimbursement Agreement)

City Agreement No. 2004-0577 (El Centro Rd., Roadway Improvements, Segment 13 Reimbursement Agreement)

City Agreement No. 2005-0151 (Riverview Bike Trail, Bike Trail B-14 Reimbursement Agreement)

City Agreement No. 2005-0292 (Natomas Blvd., Frontage Improvements, Segment 24b Reimbursement Agreement)

City Agreement No. 2005-0374 (Freeway Landscaping, Bayou Rd. Reimbursement Agreement)

City Agreement No. 2005-0411 (Gateway Park Blvd / Del Paso, Median Landscaping Reimbursement Agreement)

City Agreement No. 2006-0017 (East Commerce Way, Segments 8 Reimbursement Agreement)

City Agreement No. 2006-0750 (East Commerce Way, Median Landscaping Improvements Reimbursement Agreement)

City Agreement No. 2006-0786 (East Commerce Way, Segment 7 Reimbursement Agreement)

City Agreement No. 2006-0787 (JMA Bike Trail, Segment 20 Reimbursement Agreement)

City Agreement No. 2006-1443 (Del Paso Road, Drainage Pipe Reimbursement Agreement)

City Agreement No. 2007-0241 (The Hamptons, KB Home Bike Trail B20 & B23 Reimbursement Agreement)

City Agreement No. 2007-0243 (The Hamptons, KB Home, East Commerce Way, portion of Segment 8, Reimbursement Agreement)

City Agreement No. 2007-0267 (Terraces @ Commerce Station, Shea Homes, East Commerce Way, portion of Segment 8, Reimbursement Agreement)

Note: This list may not be complete. This agreement is subject to all prior reimbursement agreements whether listed here or not.

Updated 12/18/07

**EXHIBIT I: ASSIGNMENT POLICIES AND PROCEDURES**

## FEE CREDIT ADMINISTRATION POLICY AND PROCEDURE

The first step in the fee credit process is the establishment of entitlement to credits through a City of Sacramento Reimbursement/Credit Agreement or a Public Land Acquisition Reimbursement/Credit Agreement. Once credits are established through one of these means, a reimbursement account is established for the owner of the credits and will be maintained by the Funding and Priorities unit of the Public Works Department, Technical Services Division. The mailing address is: 927 10<sup>th</sup> Street, Sacramento, CA 95814.

### Use of Fee Credits - Residential

In order to utilize credits, a Use of Fee Credit Certificate (Use Certificate, Schedule A to Exhibit H) must be executed by the credit owner or by an officer, agent, or manager of the owner with the authority to execute the Use Certificate. The Use Certificate identifies the Planned Unit Development (PUD) name, village and lot number against which the credits will be used. The Use Certificate must be transmitted to the City of Sacramento, Public Works Department, Technical Services Division (that has responsibility for credit administration) two business days prior to paying fees and receiving building permits.

### Use of Fee Credit - Non-Residential

The property owner/developer must first have their project identified and square footage verified by the Building Official (or representative). After the project fees and credits have been calculated and verified by the Development Services Division, the developer may submit a Use of Fee Credit Certificate (Use Certificate) to the Department of Public Works, Technical Services Division for verification of the amount and type of credits. The Use Certificate must also identify the PUD project name, and square footage of the project for which the credits are to be used. Once verified and initialed, the appropriate Technical Services personnel will email the Building Official (or representative) and followed by a fax copy of the verified Use Certificate. Prior to paying fees and receiving building permits, the developer need to make sure the credits have been taken off from the gross fees. Verify by calling 264-8971.

### Assignment/Transfer of Fee Credits

Credits may also be assigned to other parties. The assignment process starts with a credit holder notifying the City's Technical Services Division that an assignment and transfer is desired. The City will provide the credit holder and assignee with a letter verifying the amount and type of credits to be transferred. After receipt of the City acknowledgement letter, the credit holder, or authorized officer, manager or agent must execute an Assignment and Transfer of Fee Credit Certificate (Transfer Certificate, Schedule B to Exhibit H) and transmit the certificate to the City's Technical Services Division. The Technical Services Division will update the credit holder's reimbursement account to reflect the transfer and establish or update the reimbursement account of the assignee that receives the credit. Credit statement will then be issued to the parties reflecting the transfer of credits. The use of transferred credits is done in accordance with the Use of Fee Credit Certificate procedure, described above.

### Quarterly Account Status

The Public Works Technical Services Division will mail to all developers, property owners and builders with credit balances a quarterly account status and transaction report in ten days after each quarter end.

CITY OF SACRAMENTO  
NORTH NATOMAS FEE CREDIT  
USE OF FEE CREDIT CERTIFICATE

The undersigned as the holder of certain fee credits related to the \_\_\_\_\_ project in Sacramento, California is using them for building permit # 1) \_\_\_\_\_

APN#(s) \_\_\_\_\_

Credit Type

Amount

Truxel Credit

\$ \_\_\_\_\_

Gateway Credit

\$ \_\_\_\_\_

AD 88-03 Credit

\$ \_\_\_\_\_

Other PFF Credit

\$ \_\_\_\_\_

Land Acquisition Program Credit

\$ \_\_\_\_\_

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_\_

2) \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

- 1) Insert Building Permit # (Slab or Foundation Permit #)
- 2) Insert name and location of party or company who is using fee credits .

CITY OF SACRAMENTO  
NORTH NATOMAS FEE CREDIT  
ASSIGNMENT AND TRANSFER OF FEE CREDIT CERTIFICATE

The undersigned as the holder of certain fee credits related to the  
(1) \_\_\_\_\_  
project in Sacramento, California hereby assigns, transfers and conveys to (2)  
\_\_\_\_\_

the following fee credits in the following amounts:

<u>Credit Type</u>	<u>Amount</u>
PFF Non-Gateway Credit	\$ _____
PFF Gateway Credit	\$ _____
PFF AD 88-03 Non-Gateway Credit	\$ _____
NN Land Acquisition Program Credit	\$ _____
AD88-03 Land Acquisition Program Credits	\$ _____
Water Development Fee Credits	\$ _____
Other Credits	\$ _____

The granting of these credits does not constitute acceptance of improvements by the City.

INDEMNIFICATION CLAUSE:

For purposes of this certificate, the term "Developer" shall mean and refer to a land developer, land owner, or other assignor of credits and/or reimbursements. Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer and/or any assignee and/or the City regarding the legal ownership of the rights to credits and reimbursements hereunder, City may withhold any cash reimbursement and may disallow the use of any credits unless and until either (i) all parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing parties the legal ownership of such rights and the manner in which such rights will be exercised.

Developer, for itself and its successors in interest to the Property, acknowledges that the reimbursement and credit rights hereunder do not run with Developer's property and that adopted City policies and procedures relating to assignment of fee credits and reimbursements, as such policies and procedures may be amended from time to time, shall apply to Developer and its successors in interest to the Property. City agrees that it shall not allow the use of any Fee Credits by any subsequent purchaser or encumbrancer of any portion of Developer's property unless such subsequent purchaser or encumbrancer has a separate, written assignment of these Fee credits from Developer (or a previously approved assignee thereof), which written assignment has been approved by the City.

In the event of any litigation (whether administrative or judicial) with respect to the credits and reimbursements specified in this certificate, as between Developer and an assignee or other third person or entity, and irrespective of whether City is named as a party to such litigation, Developer and the assignee, and their respective heirs, assignees and successors in interest shall indemnify, defend and hold City, and its officers, employees, agents, consultants and contractors harmless from any and all liability or costs of any sort or nature (including, without limitation, attorney fees and costs), arising from or in any way related to the fee credits and reimbursements specified in this certificate.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

(3) \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

BY: \_\_\_\_\_

Its: \_\_\_\_\_

- 1) Insert name of PUD or project.
- 2) Insert name of party to whom fee credits are being transferred.
- 3) Insert name of party or company who is transferring fee credits to 2) above.

Recorded for the benefit of—

When recorded, return to—

Space above this line is for recorder's use only.

**FIRST AMENDMENT TO  
AGREEMENT FOR CONSTRUCTION OF DRAINAGE IMPROVEMENTS  
(City Manager Agreement No. 2003-0850)**

This *First Amendment to Agreement for Construction of Drainage Improvements (City Manager Agreement No. 2003-0850)* is dated March 1, 2016, for purposes of identification only and is between the CITY OF SACRAMENTO, a California municipal corporation (the “**City**”); and NATOMAS CREEK, LLC, a California limited-liability company, and COMMERCE STATION, LLC, a California limited-liability company (collectively, the “**Remaining Landowners**”).

**Background**

- A. The City and the Remaining Landowners are parties to an *Agreement for Construction of Drainage Improvements* that is dated September 15, 2003, identified as City Manager Agreement No. 2003-0850, and recorded in the Sacramento County Recorder’s Office at Book 20030924, Page 0156 (the “**Agreement**”). The Remaining Landowners currently own the real property depicted and described in Exhibit A to this First Amendment (the “**Remaining Property**”), which is a portion of the “**Landowner Property**” described in Recital A of the Agreement. The City has not yet approved any final subdivision map or final parcel map for the Remaining Property. Three other limited-liability companies named as parties in the Agreement—Natomas Towne Center, LLC, Natomas Meadows, LLC, and East Commerce Parkway, LLC—have no interest in the Remaining Property. Those three companies, together with the Remaining Landowners, are referred to in the Agreement and in this First Amendment as “**Landowner.**”
- B. The Remaining Landowners are developing the Remaining Property with a mix of commercial, office, residential, park, open space, and mixed-uses commonly referred to as the Natomas Creek Project (P98-041) and as the Commerce Station Planned Unit Development Project (P06-018).
- C. Various infrastructure facilities are required for the development of the Landowner Property, including the storm-water drainage improvements and facilities shown on the “**Drainage Plans**” described in Recital G of the Agreement. These storm-water drainage improvements and facilities are referred to in the Agreement and in this First Amendment as the “**Drainage Facilities.**” Exhibit B to this First Amendment (1) describes the Drainage Facilities that have been completed in accordance with the Agreement to serve development of those portions of the Landowner Property for which the City has approved final subdivision maps or final parcel maps; (2) describes and depicts the Drainage Facilities that have not been completed and are

required to serve development of the Property for which the City has not yet approved any final subdivision or parcel maps (the “**Remaining Drainage Facilities**”); and (3) shows the engineer’s estimated total cost of construction of the Remaining Drainage Facilities. The Drainage Facilities needed to serve the portion of the Property that Natomas Meadows, LLC owns have been completed as required by the Agreement, and that portion will not be served by the Remaining Drainage Facilities.

- D. Landowner previously took action to include the Landowner Property within the boundaries of North Natomas Community Facilities District No. 4 (“**CFD 4**”) to fund the Landowner’s construction of the Drainage Facilities, as well as other infrastructure facilities within the boundaries of CFD 4. Acting through CFD 4, the City has issued two series of special-tax bonds to finance the design and construction of those improvements: North Natomas Community Facilities District No. 4, City of Sacramento, County of Sacramento, State of California Special Tax Bonds, Series C (2003); and North Natomas Community Facilities District No. 4, City of Sacramento, County of Sacramento, State of California Special Tax Bonds, Series D (2006) (collectively, the “**CFD 4 Bonds**”).
- E. Section 7.A of the Agreement requires Landowner to post security to assure performance of Landowner’s obligations under the Agreement with respect to the Drainage Facilities, in the form of a standby letter of credit or an alternate form of security if proposed by Landowner and approved by the City. As of the effective date of this First Amendment, proceeds of the CFD-4 Bonds are designated as the security to fund the Remaining Drainage Facilities. The Remaining Landowners have proposed that these proceeds be reallocated to other permissible uses. The City is willing to approve this reallocation so long as the Remaining Landowners provide adequate assurances, satisfactory to the City’s Director of Utilities, that there will be sufficient funding for the Remaining Landowners’ completion of the Remaining Drainage Facilities before the City’s approval of any final subdivision map or final parcel map for any portion of the Property that will be served by the Remaining Drainage Facilities.
- F. This First Amendment amends the Agreement so that the Remaining Landowners may provide the alternate form of security (i.e., the “adequate assurances”) described in paragraph E above.

***With these background facts in mind, the parties agree as follows:***

- 1. ***Security for Remaining Drainage Facilities.*** As of the effective date of this First Amendment, the following provisions and not Section 7.A of the Agreement will govern as to security for construction of the Remaining Drainage Facilities:
  - (a) Before approval of a final parcel map or a final subdivision map for any portion of the Remaining Property (each portion, a “**Mapped Portion**”), the Remaining Landowners shall secure the performance of all of their obligations under the Agreement and this First Amendment with respect to the Remaining Drainage Facilities serving that Mapped Portion, as determined by the City’s Director of Utilities, by delivering to City a standby letter of credit that is acceptable in form to the City Attorney and is in the amount

specified in Section 1(b) below (the “**Initial Drainage Security**”), except that the Remaining Landowners need not deliver such a letter of credit if, as authorized by Government Code section 66462, the Remaining Landowners and the City have entered into a subdivision-improvement agreement that includes security covering the Remaining Drainage Facilities serving that Mapped Portion. In its sole and absolute discretion, the City may approve another form of security proposed by the Remaining Landowners.

- (b) The Initial Drainage Security must be in an amount equal to the total cost of construction of the Remaining Drainage Facilities serving the Mapped Portion, as shown in the engineer’s cost estimate set out in Exhibit B to this First Amendment. The City has the unconditional right to draw upon or use the Initial Drainage Security to pay any and all costs the City incurs to perform or cause to be performed any of the Remaining Landowners’ obligations with respect to the Remaining Drainage Facilities that are not performed by the Remaining Landowners as required by the Agreement or this First Amendment.
- (c) As and when the City approves the improvement plans for the Remaining Drainage Facilities serving a Mapped Portion (the “**Approved Plans**”) and authorizes the commencement of construction of those Remaining Drainage Facilities as shown on the Approved Plans (the “**Approved Facilities**”), the Remaining Landowners shall replace the Initial Drainage Security with respect to the Approved Facilities with one of the following in the amount customarily required by the City in connection with subdivision improvements, based upon the estimated cost of completing the Approved Facilities (the “**Construction Security**”): (1) a Payment Bond and a Performance Bond, both acceptable in form to the City Attorney; or (2) alternative security as may be approved by the City in its sole and absolute discretion.
- (d) Once the Remaining Landowners have furnished the City with the Construction Security, the City shall reduce and release the Initial Drainage Security with respect to those amounts secured by the Construction Security. If the Remaining Drainage Facilities are completed before the entire Initial Drainage Security has been released, then the City shall release the then-remaining Initial Drainage Security when the Remaining Landowners furnish the security required by Section 7.B of the Agreement.

- 2. *The Agreement Remains in Effect.* Except as amended by this First Amendment, all terms and conditions of the Agreement remain in full force and effect, and the Remaining Landowners shall perform all of the services, duties, obligations, and conditions imposed on them under the Agreement as amended by this First Amendment.
- 3. *The Remaining Landowners’ Representations.* The Remaining Landowners represent that they own full legal title to the Property. Each individual executing this First Amendment on behalf of a corporation, joint venture, partnership, limited-liability company, or other business represents and warrants that he or she has been authorized to do so by the entity on whose

behalf he or she executes this First Amendment and that the entity will thereby be obligated to perform the terms of the Agreement as amended by this First Amendment.

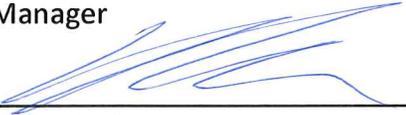
4. *Consultation with Attorneys.* Each party to this First Amendment represents that it has consulted with its attorneys concerning all portions of this First Amendment; that it has been fully advised by its attorneys about its rights and obligations under this First Amendment; and that, relying on its consultation with its attorneys, it has voluntarily entered into this First Amendment.
5. *Interpretation; Exhibits Incorporated; Recording.* This First Amendment is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits A and B described above are part of this First Amendment. Any party may record this First Amendment in the office of the Sacramento County Clerk/Recorder.
6. *Effective date.* This First Amendment is effective on the date all parties have signed it, as indicated by the dates in the signature blocks below.
7. *Counterparts.* The parties may sign this First Amendment in counterparts, each of which will be considered an original, but all of which will constitute the same document. Delivery of signed counterparts may be accomplished by email transmission of a pdf document.

*(Signature Pages Follow)*

**Commerce Station, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

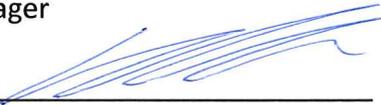
By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

By:   
Kern W. Schumacher  
President  
Date: ~~March~~ <sup>April 8</sup> \_\_, 2016 

**Natomas Creek, LLC**

By: KWS California LLC  
A Nevada limited liability company  
Its Sole Member

By: KWS Companies Management Inc.  
A Nevada corporation  
Its Manager

By:   
Kern W. Schumacher  
President  
Date: ~~March~~ <sup>April 8</sup> \_\_, 2016 

**[Attach Notary Acknowledgments]**

**City of Sacramento**

By: \_\_\_\_\_

John F. Shirey  
City Manager

Date: March \_\_, 2016

Attest  
Sacramento City Clerk

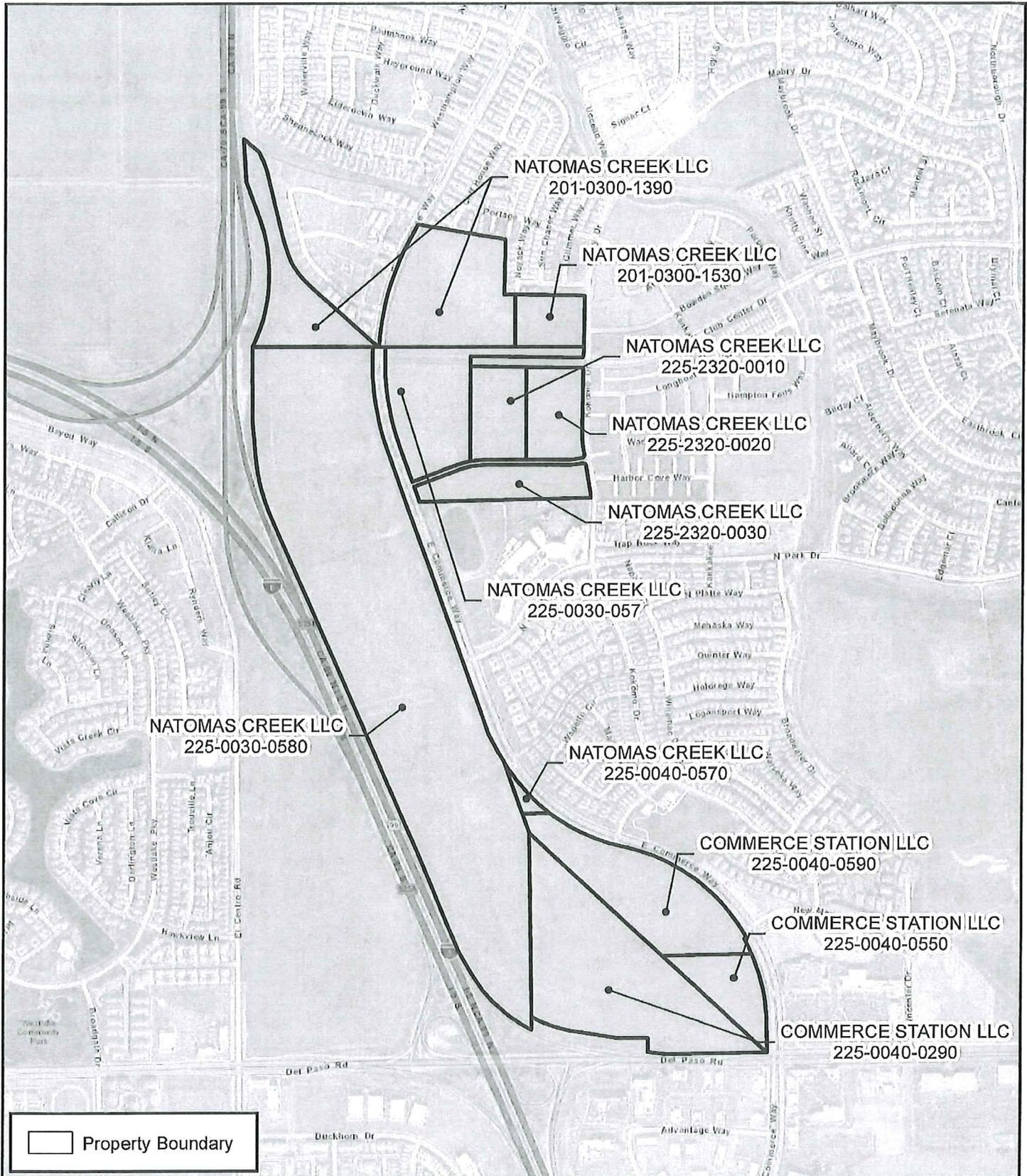
By: \_\_\_\_\_

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_

Joseph Cerullo Jr.  
Senior Deputy City Attorney

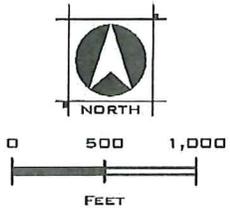
**[Attach Notary Acknowledgment]**



Property Boundary

First Amendment to Agreement for Construction of Drainage Improvements (City Manager Agreement No. 2003-0850)

**EXHIBIT A: PROPERTY DESCRIPTION**



NOTES  
Ownership current as of April 8th, 2014



First Amendment to  
 Agreement for Construction of Drainage Improvements  
 (City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE FACILITIES**  
 Page 1 of 4  
 Estimated Cost of Remaining Landowners' Responsibility

North Natomas CFD-4  
 Drainage Basin No. 1  
 Schumacher Property -North Natomas  
 Estimated Remaining Improvements

<u>Project No.</u>	<u>Constructing Entity</u>	<u>Actual or Est. Cost</u>	<u>Reimb. Request No.</u>	<u>Improvement Description</u>	<u>Total Est. Cost</u>
<b>Basin Wide Improvements</b>					
<b>Completed</b>					
<b>Remaining Primary Channel Improvements</b>					
CH-12	Schumacher	Estimated	Future	Primary Channel Lscape (West Parkway)	\$43,716
<b>Subtotal Remaining Channel Improvements</b>					<b>\$43,716</b>
<b>Trunk Drain Zone 1 Improvements</b>					
<b>Completed</b>					
<b>Remaining Trunk Drain Zone 2-Improvements</b>					
TD2-11	Schumacher	Estimated	Future	Schumacher Commerce Station North	\$242,219
TD2-12	Schumacher	Estimated	Future	Schumacher Commerce Station South	\$305,558
TD2-15	Schumacher	Estimated	Future	Schumacher Club Center/HDR/TC Trunk System	\$562,897
<b>Subtotal Remaining Trunk Drain Zone 2 Improvements</b>					<b>\$1,110,674</b>
<b>Total Estimated Remaining Improvements</b>					<b>\$1,154,390</b>

**FIGURE 4A**

**BASIN WIDE FACILITIES MAP**

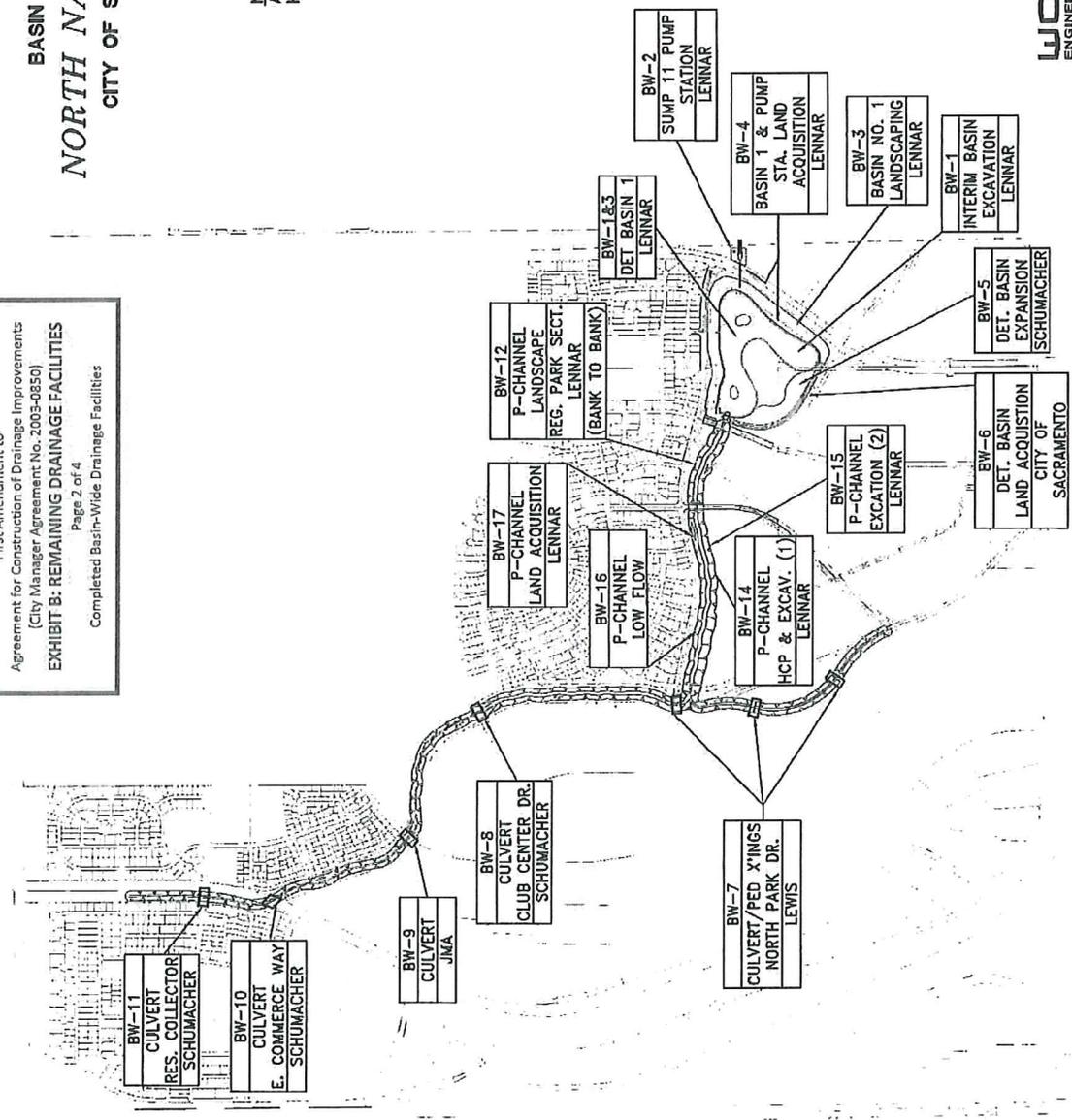
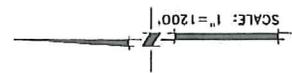
**NORTH NATOMAS CFD NO. 4**

**CITY OF SACRAMENTO, CALIFORNIA**

**APRIL 2010**

**NOTE:**  
ALL BASIN-WIDE PROJECTS  
HAVE BEEN COMPLETED

First Amendment to  
Agreement for Construction of Drainage Improvements  
(City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE FACILITIES**  
Page 2 of 4  
Completed Basin-Wide Drainage Facilities



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ENGINEERING • MAPPING • PLANNING • SURVEYING  
3301 C St. Bldg. 100-B Tel 916.341.7760  
Sacramento, CA 95816 Fax 916.341.7767

# FIGURE 4B

## CHANNEL FACILITIES MAP

### NORTH NATOMAS

#### CFD NO. 4

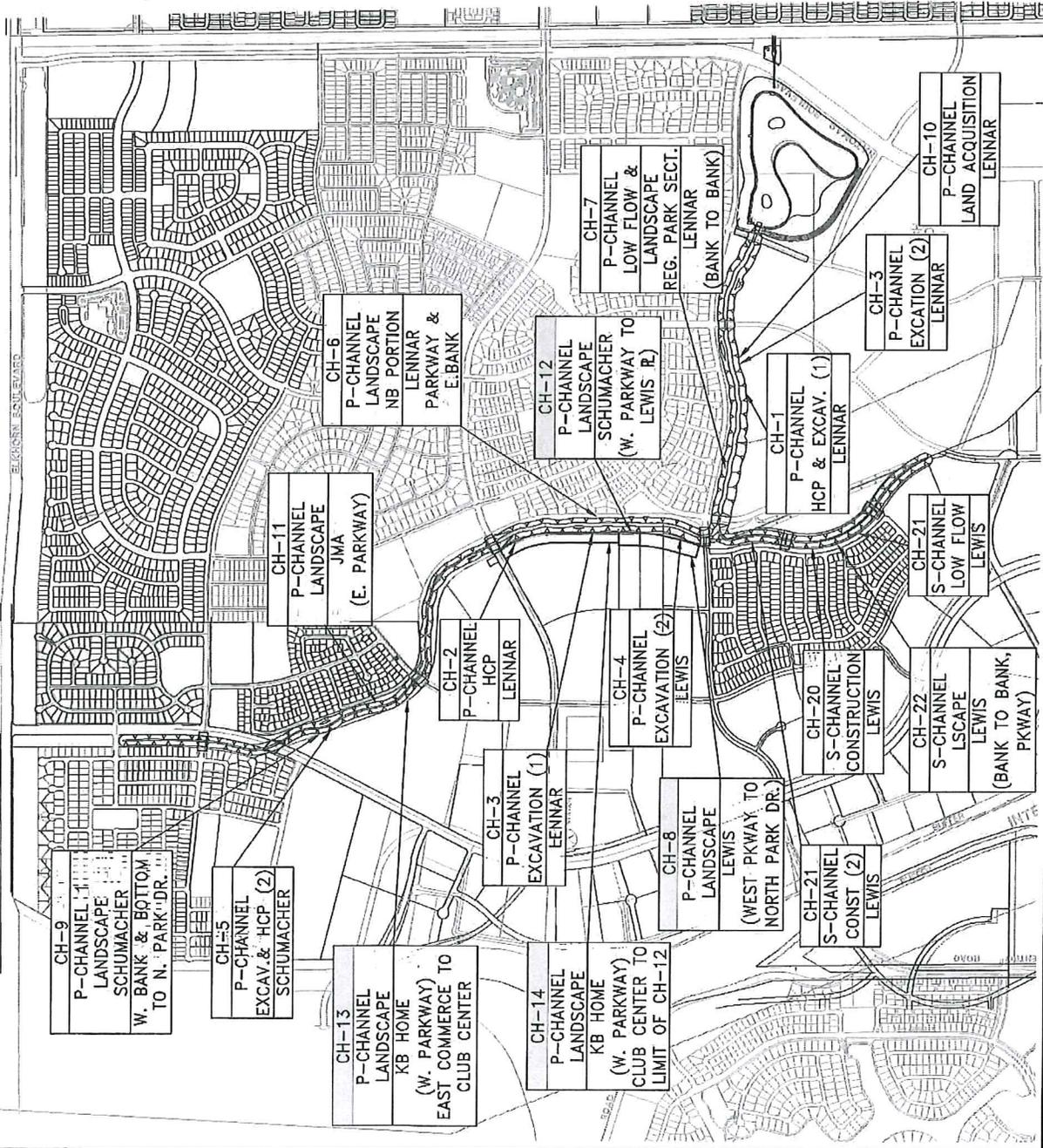
CITY OF SACRAMENTO, CALIFORNIA  
 APRIL 2010  
 REV FEBRUARY 2016

CH-XX PROJECT NOT COMPLETED  
 AS OF APRIL 2010

First Amendment to  
 Agreement for Construction of Drainage Improvements  
 (City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE IMPROVEMENTS**  
 Page 3 of 4  
 Completed and Remaining Channel Facilities  
 Remaining Facilities: CH-8, CH-12, CH-13, CH-14  
 Remaining Landowners' Responsibility: CH-12



500' 250' 0 500'  
 SCALE: 1" = 500'



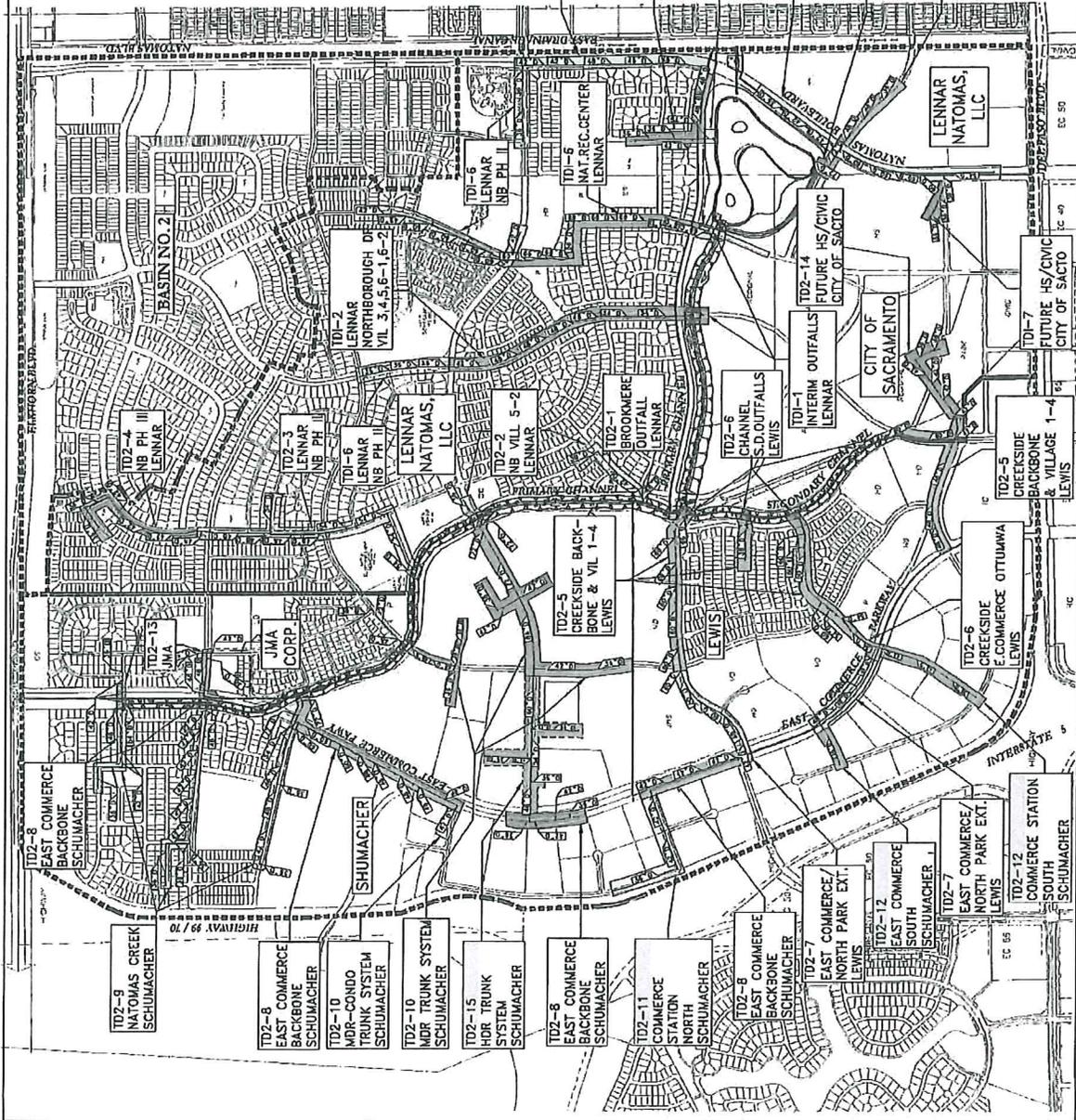
**FIGURE 4C**

**TRUNK DRAIN FACILITIES MAP  
NORTH NATOMAS  
CFD NO. 4**

**CITY OF SACRAMENTO, CALIFORNIA  
APRIL 2010**

TD2-XX PROJECT NOT COMPLETED AS OF APRIL 2010

First Amendment to Agreement for Construction of Drainage Improvements (City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE FACILITIES**  
Page 4 of 4  
Completed and Remaining Trunk-Drain Facilities  
Remaining Facilities: TD2-11, TD2-12, TD2-15

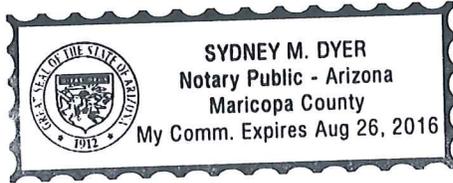


**NOTARIAL ACKNOWLEDGMENT**

STATE OF ARIZONA            )  
   ) ss.  
 COUNTY OF MARICOPA        )

This instrument was acknowledged before me this 8<sup>th</sup> day of April,  
 2016, by KERN W. SCHUMACHER.

(Notary Seal)

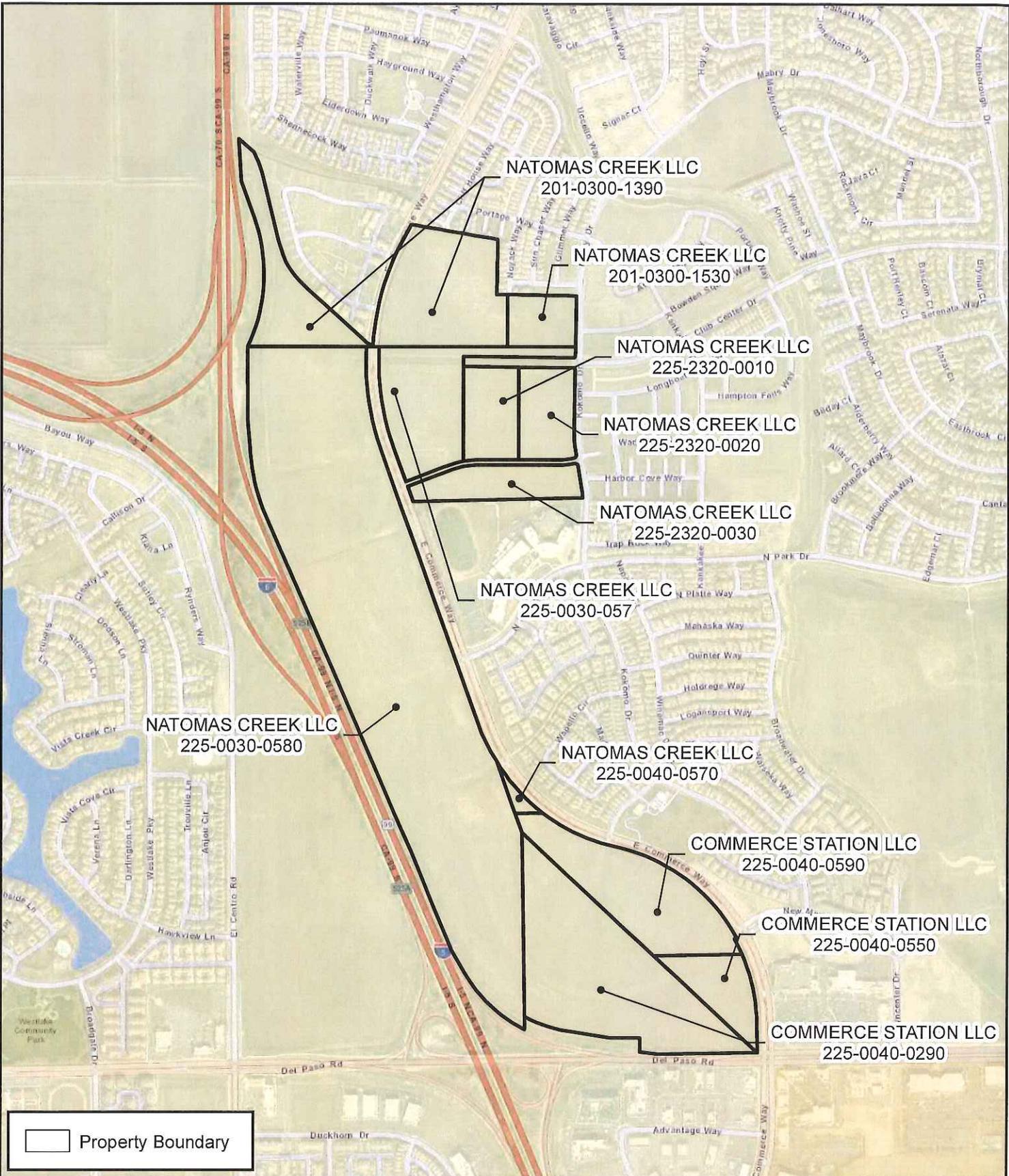


Sydney M. Dyer

NOTARY PUBLIC

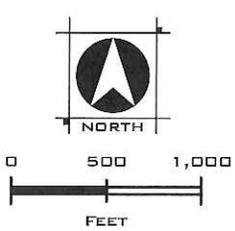
Description of document this notarial certificate is being attached to:	
Type/Title	First Amendment to Agreement for Construction of Drainage Improvements
Date of Doc	March 1, 2016
Number of Pages	6 (+5 pages of Exhibits)
Add'l Signers (other than those named in the notarial certificate.)	





First Amendment to  
 Agreement for Construction of Drainage Improvements  
 (City Manager Agreement No. 2003-0850)

**EXHIBIT A: PROPERTY DESCRIPTION**



NOTES  
 Ownership current as of April 8th, 2014



First Amendment to  
 Agreement for Construction of Drainage Improvements  
 (City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE FACILITIES**  
 Page 1 of 4  
 Estimated Cost of Remaining Landowners' Responsibility

North Natomas CFD-4  
 Drainage Basin No. 1  
 Schumacher Property -North Natomas  
 Estimated Remaining Improvements

<u>Project No.</u>	<u>Constructing Entity</u>	<u>Actual or Est. Cost</u>	<u>Reimb Request No.</u>	<u>Improvement Description</u>	<u>Total Est. Cost</u>
<b>Basin Wide Improvements</b>					
<b>Remaining Primary Channel Improvements</b>					
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<b>Subtotal Remaining Channel Improvements</b>					
<b>Trunk Drain Zone 1 Improvements</b>					
<b>Completed</b>					
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TD2-12	Schumacher	Estimated	Future	Schumacher Commerce Station South	\$305,558
TD2-15	Schumacher	Estimated	Future	Schumacher Club Center/HDR/TC Trunk System	\$562,897
<b>Subtotal Remaining Trunk Drain Zone 2 Improvements</b>					
<b>Total Estimated Remaining Improvements</b>					
					<b>\$1,154,390</b>

**FIGURE 4A**

**BASIN WIDE FACILITIES MAP**

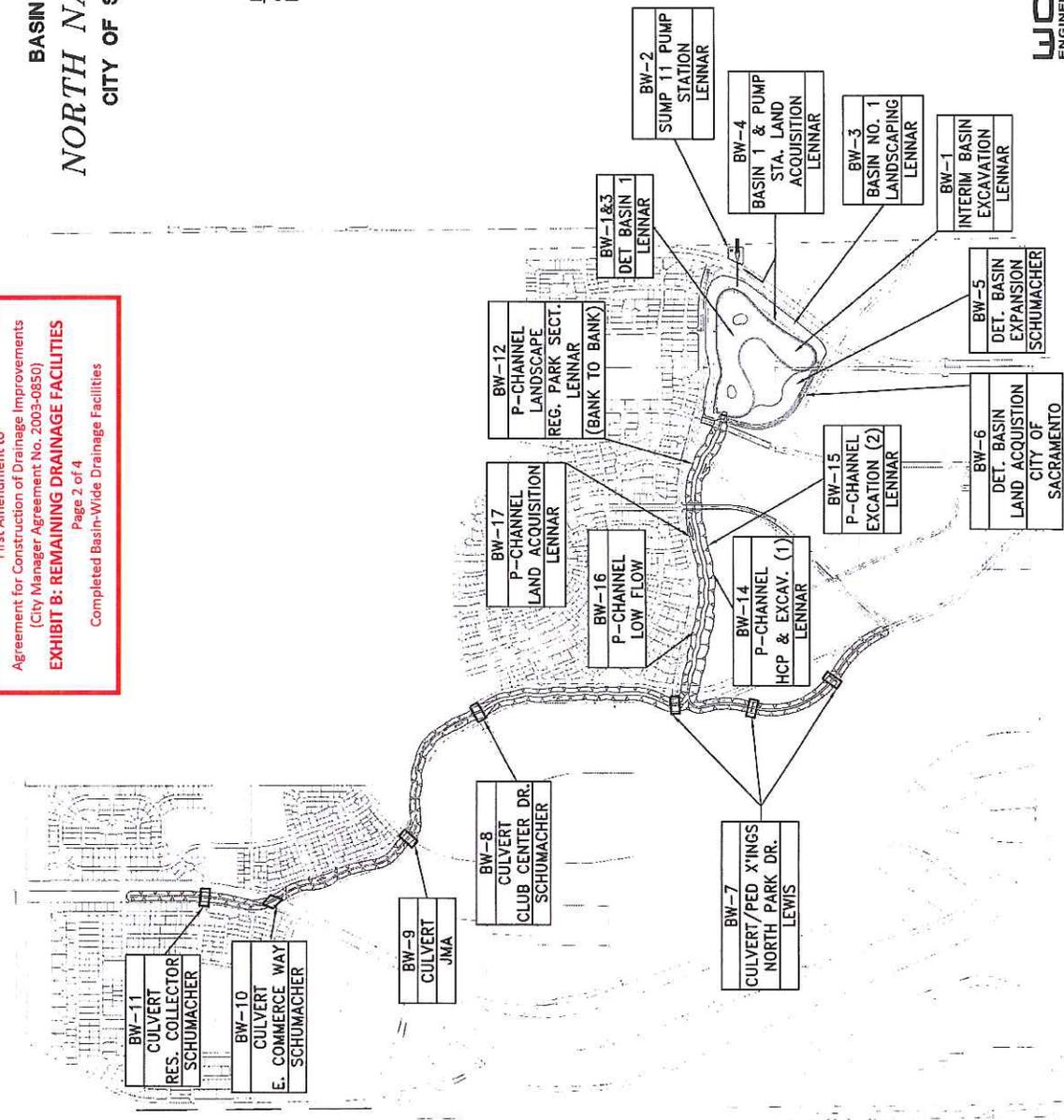
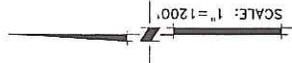
**NORTH NATOMAS CFD NO. 4**

**CITY OF SACRAMENTO, CALIFORNIA**

**APRIL 2010**

NOTE:  
ALL BASIN-WIDE PROJECTS  
HAVE BEEN COMPLETED

First Amendment to  
Agreement for Construction of Drainage Improvements  
(City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE FACILITIES**  
Page 2 of 4  
Completed Basin-Wide Drainage Facilities



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Sacramento, CA 95816 Fax 916.341.7767

# FIGURE 4B

## CHANNEL FACILITIES MAP

### NORTH NATOMAS

#### CFD NO. 4

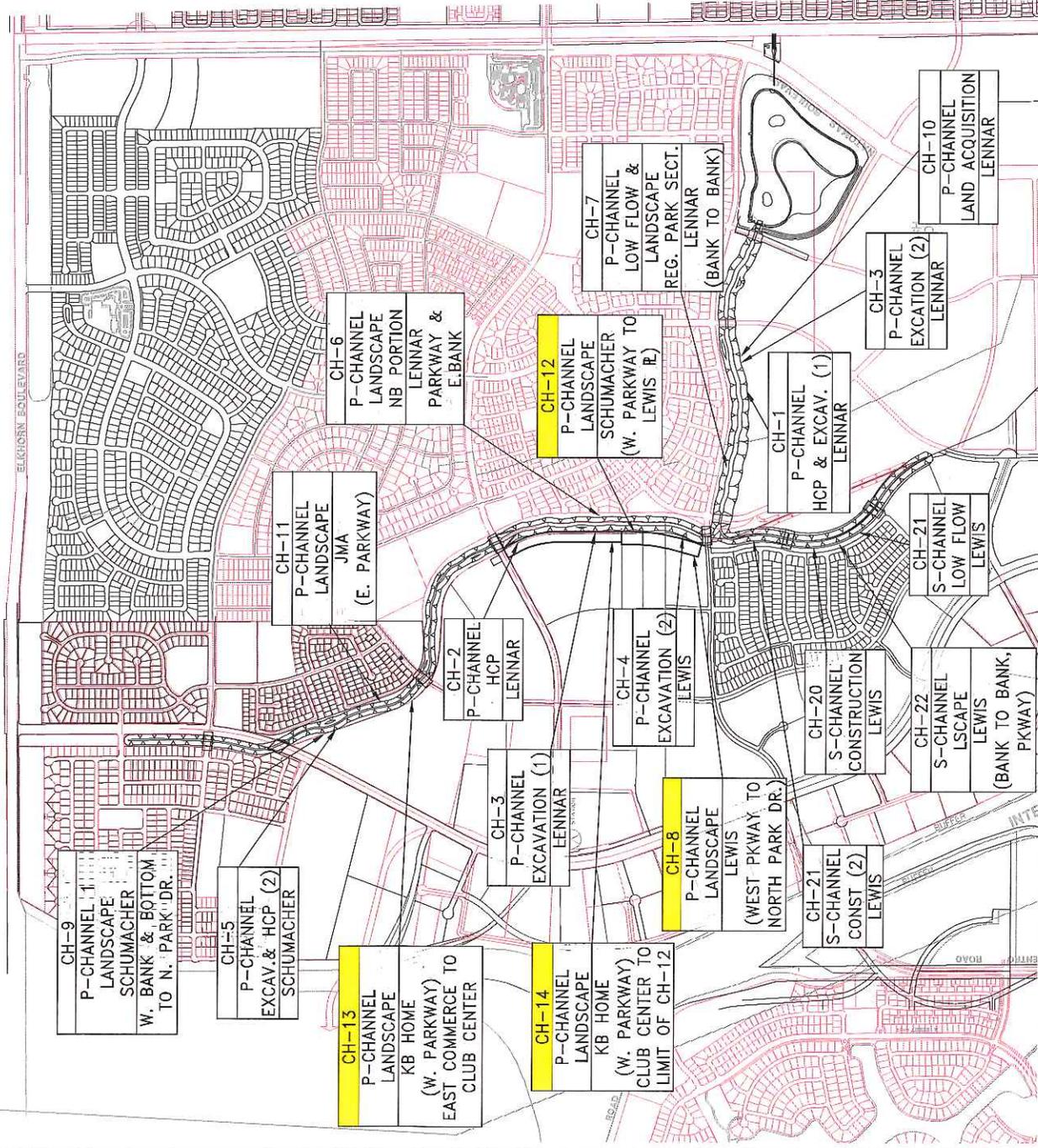
CITY OF SACRAMENTO, CALIFORNIA  
 APRIL 2010  
 REV FEBRUARY 2016

CH-XX PROJECT NOT COMPLETED  
 AS OF APRIL 2010

First Amendment to  
 Agreement for Construction of Drainage Improvements  
 (City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE IMPROVEMENTS**  
 Page 3 of 4  
 Completed and Remaining Channel Facilities  
 Remaining Facilities: CH-8, CH-12, CH-13, CH-14  
 Remaining Landowners' Responsibility: CH-12



500' 250' 0 500'  
 SCALE: 1" = 500'

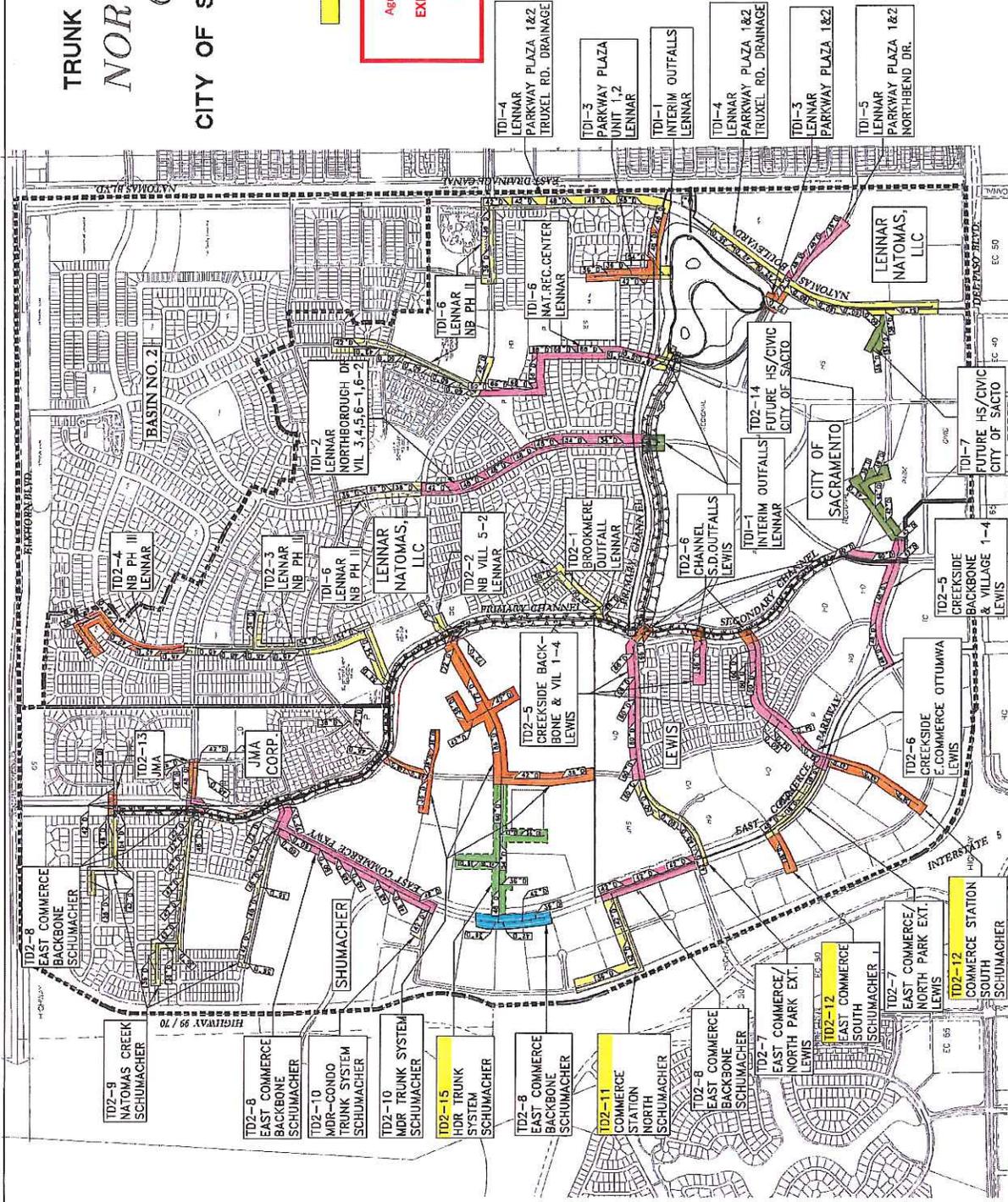


# FIGURE 4C

## TRUNK DRAIN FACILITIES MAP NORTH NATOMAS CFD NO. 4 CITY OF SACRAMENTO, CALIFORNIA APRIL 2010

TD2-XX PROJECT NOT COMPLETED  
AS OF APRIL 2010

First Amendment to  
Agreement for Construction of Drainage Improvements  
(City Manager Agreement No. 2003-0850)  
**EXHIBIT B: REMAINING DRAINAGE FACILITIES**  
Page 4 of 4  
Completed and Remaining Trunk-Drain Facilities  
Remaining Facilities: TD2-11, TD2-12, TD2-15



**WOOD-RODGERS**  
3001 C St., Suite 3008  
Sacramento, CA 95816  
Tel: 916-341-7295  
Fax: 916-341-7297