

Amendment to Agreement for Purchase of Plans & Specifications

Between the City of Sacramento and Natomas Gateway LLC

1. **Parties.** In this amendatory agreement, "Sacramento" refers to the City of Sacramento, a California municipal corporation; and "Natomas" refers to Natomas Gateway LLC, a California limited-liability company.
2. **Background.** Sacramento and Natomas enter into this amendatory agreement with the following facts in mind:
 - (a) Paragraph 5 of Resolution No. 2005-515, which the Sacramento City Council adopted on June 28, 2005, authorized the City Manager to enter into an agreement with Natomas for the following: Sacramento's purchase from Natomas of plans and specifications relating to a traffic signal at the T-intersection of Arena Boulevard and El Centro Road in Sacramento's Natomas area (Traffic Signal No. 9); and Sacramento's reimbursing Natomas for other "appropriate and related expenses." According to the staff report that recommended approval of the resolution, Natomas's "appropriate and related expenses" include costs incurred for permitting, inspection, and testing in connection with the signal.
 - (b) The cost of the plans and specifications was \$12,500, and the amount to be reimbursed for permitting, inspection, testing, and other appropriate and related expenses was \$13,540.43, for a total of \$26,040.43. Yet recital G of the resolution erroneously lists the total cost as only \$12,500, an error reflected in paragraph 5.
 - (c) Subsequent to June 28, 2005, the City Manager entered into an Agreement for Purchase of Plans & Specifications with Natomas (City Agreement No. 2005-0091), under which Sacramento paid Natomas \$12,500 for the plans and specifications. But nothing in the agreement addresses the reimbursement of Natomas for its other appropriate and related expenses. Even so, Natomas delivered to Sacramento all reports and other documents associated with permitting, inspection, testing, and other necessary and appropriate services related to the signal.
 - (d) Using not just the plans and specifications but also the reports and other documents, Sacramento subsequently constructed the signal, which has been in operation since August 2005.
 - (e) The purpose of this amendment is to correct the administrative oversight that resulted in the Agreement for Purchase of Plans & Specifications failing to include reimbursement for Natomas's appropriate and related expenses, as the City Council intended when it adopted the resolution.

3. **Amendment to Section 2.** Section 2 (Background) of the Agreement for Purchase of Plans & Specifications is amended by adding the following sentence at the end:

In addition, Sacramento desires to acquire from Natomas all reports and other documents associated with permitting, inspection, testing, and other necessary and appropriate services related to the signal.

4. **Amendment to Section 3.** Section 3 (Purchase Terms) of the Agreement for Purchase of Plans & Specifications is amended to read in its entirety as follows:

Purchase Terms. Subject to subsections 3(a), 3(b), and 3(c), Natomas agrees to sell to Sacramento, and Sacramento agrees to purchase from Natomas, all rights in and to the following (collectively, "the Documents"): plans and specifications for the traffic signal at the T-intersection of Arena Boulevard and El Centro Road (Traffic Signal No. 9), including but not limited to all warranty rights; and all reports and other documents associated with permitting, inspection, materials testing, topographic surveys, and other necessary and appropriate services related to the signal. The plans and specifications are part of the "Frontage Improvement Plans for Market West (3220 Arena Boulevard)," Improvement Plan Set number 2004090, and they cover but are not limited to the installation of signal poles, mast arms, traffic-signal heads, pedestrian signals, paint striping, signage, and loop detectors.

- (a) *Condition Precedent to Purchase.* Sacramento will be obligated to purchase all rights in and to the Documents only if Psomas confirms in writing that Sacramento and its assignees will have full use of the plans and specifications and will be entitled to all associated warranties.
- (b) *Delivery.* Within 30 days after the effective date of this agreement, as shown above, Natomas will deliver the Documents to the address set forth in subsection 7(a).
- (c) *Purchase Price.* Sacramento agrees to pay Natomas **\$26,040.43** for all rights in and to the Documents (which is the sum of the \$12,500 Natomas paid Psomas for the plans and specifications plus the \$13,540.43 Natomas incurred for the necessary and appropriate related services). Payment will be due after Natomas delivers the Documents in accordance with subsection 3(b).

5. **Amendment to Section 4.** Section 4 (Warranty) of the Agreement for Purchase of Plans & Specifications is amended to read in its entirety as follows:

Warranty. Natomas warrants that it owns all rights in and to the Documents and that it is entitled to sell those rights to Sacramento. But Natomas does not warrant the content of the Documents. Instead, with this agreement Natomas assigns to Sacramento all warranty rights it has with regard to the Documents.

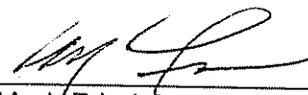
6. **All Other Terms Remain in Force.** Except as amended by sections 3, 4, and 5 above, all terms and conditions of the Agreement for Purchase of Plans & Specifications remain in full force.
7. **Effective Date.** This amendatory agreement takes effect on the date it is signed by both parties, as shown below.
8. **Entire Agreement.** This agreement sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

City of Sacramento

By _____
Ray Kerridge, City Manager
Date: June __, 2006

Natomas Gateway LLC

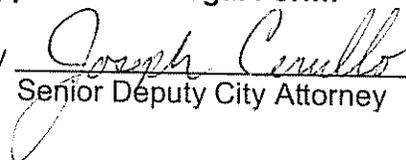
By: Fulcrum Capital Corporation,
Managing Member

By  _____
Mark Friedman, President
Date: June 12, 2006

Attest:

By _____
City Clerk

Approved for Legal Form:

By  _____
Senior Deputy City Attorney