

ORDINANCE NO. 2012-030

Adopted by the Sacramento City Council

July 31, 2012

APPROVING A THIRD AMENDMENT TO CITY AGREEMENT NO. 99-162 BETWEEN THE CITY OF SACRAMENTO AND NATOMAS TOWNE CENTER LLC (APN: 201-0300-145-0000) (P12-006)

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

Section 1. Incorporation of Agreement.

This ordinance incorporates the Third Amendment to City Agreement No. 99-162 between the City and Natomas Towne Center LLC (“**Landowner**”), a copy of which is attached to this ordinance as Exhibit A.

Section 2. Hearing before the Planning Commission.

On June 14, 2012, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning Commission conducted a noticed public hearing on an application to amend City Agreement No. 99-162, a North Natomas Development Agreement (the “**Original Agreement**”). During the hearing, the Planning Commission received and considered evidence and testimony. After the hearing concluded, the Planning Commission forwarded to the City Council a recommendation to approve the proposed amendment.

Section 3. Hearing before the City Council; Findings.

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

- (a) The proposed amendment to the Original Agreement is consistent with the City’s general plan and the goals, policies, standards, and objectives of the North Natomas Community Plan.
- (b) The proposed amendment will facilitate Landowner’s development of the property subject to the amendment, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the North Natomas Community Plan.
- (c) Without the amendment, Landowner would be unlikely to proceed with development of the property subject to the amendment in the manner proposed.

(d) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.

(e) Landowner will participate in all programs established or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation-monitoring plan) and has agreed to the financial participation required under the applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public.

(f) Landowner has made commitments to a high standard of quality and has agreed to all applicable land-use and development regulations.

Section 4. Approval and Authorization.

The City Council hereby approves the Third Amendment to City Agreement No. 99-162, a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the Director of the Community Development Department to sign on the City's behalf, on or after the effective date of this ordinance, the Third Amendment to City Agreement No. 99-162.

Table of Contents:

Exhibit A: Third Amendment to City Agreement No. 99-162 – 24 pages

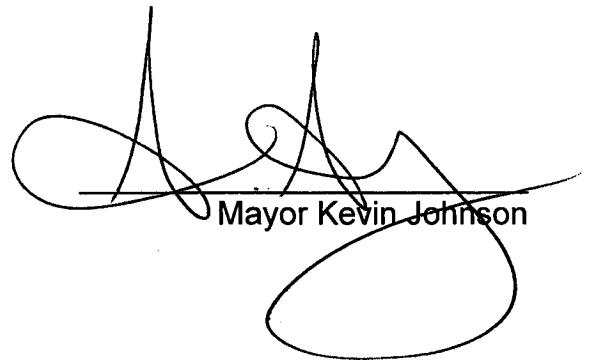
Adopted by the City of Sacramento City Council on July 31, 2012 by the following vote:

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

Noes: None.

Abstain: None.

Absent: Councilmember Schenirer.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

Effective: August 29, 2012

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

When recorded, return document to—

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Third Amendment to City Agreement No. 99-162 North Natomas Development Agreement

This amendatory agreement, dated _____, 2012, for purposes of identification, is between the CITY OF SACRAMENTO, a California municipal corporation (the "**City**"); and NATOMAS TOWNE CENTER LLC, a California limited-liability company (the "**Landowner**").

Background

- A. The City and the Landowner's predecessors (Kern W. Schumacher, et al.) are parties to a North Natomas Development Agreement that is dated September 28, 1999; is designated as City Agreement No. 99-162; and was recorded with the Sacramento County Clerk/Recorder on February 23, 2000, in Book 20000223 at Page 0364 (the "**Original Agreement**").
- B. The Landowner was assigned an interest in the Original Agreement for a portion of the Property as described in an *Assignment and Assumption Agreement* that is dated May 9, 2012, and was recorded with the Sacramento County Clerk/Recorder on May 25, 2012, in Book 20120525 at Page 0964 (the "**Assignment**").
- C. Under the Original Agreement and the Assignment, the Landowner agrees to participate in, and to faithfully and timely comply with, the North Natomas Finance Plan as it is amended from time to time (the "**Finance Plan**").
- D. On May 26, 2009, the Sacramento City Council approved the *North Natomas Nexus Study and Financing Plan 2008 Update*, which among other things establishes a new procedure for adjusting the amount of the Public Facilities Fee established by Sacramento City Code section 18.24.050. By entering into this amendatory agreement, the parties incorporate the new procedure into the Original Agreement.

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

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

North Natomas Finance Plan: the plan, as it may be amended from time to time, that establishes methods for financing Infrastructure through a combination of land transfers,

dedications, contributions, fees, assessment districts, community facilities districts, and other measures. As to the Public Facilities Fee, the North Natomas Finance Plan, as amended from time to time, will provide for adjusting the amount of the Public Facilities Fee in accordance with the principles set forth in the procedure attached hereto as Exhibit I and incorporated herein by reference.

2. **Addition of New Exhibit I.** The procedure for adjusting the Public Facilities Fee that is attached to this amendatory agreement as an exhibit is hereby added to, and made part of, the Original Agreement as Exhibit I.
3. **All Other Terms Remain in Force.** Except as amended by sections 1 and 2 above, all terms and conditions of the Original Agreement remain in full force.
4. **Effective Date.** This amendatory agreement takes effect on the effective date of the ordinance that approves it (Gov. Code, § 65868; Sacramento City Code, §§ 18.16.120 & 18.16.130).
5. **Recording.** Either party may record this amendatory agreement with the Sacramento County Clerk/Recorder.
6. **Counterparts.** The parties may execute this amendatory agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
7. **Entire Agreement.** This amendatory agreement sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all parties. This amendatory agreement will control if any conflict arises between it and the Original Agreement.

(Signature page follows)

City of Sacramento

By: _____
Max Fernandez
Director of Community Development
on behalf of John F. Shirey, City Manager
Date: _____, 2012

Approved as to Form
City Attorney

By: _____
Senior Deputy City Attorney

Natomas Towne Center 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: _____, 2012

[Attach Certificates of Acknowledgment – Civil Code § 1189]

EXHIBIT I

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

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

1. Definitions.

- (a) "Agreement" means the development agreement to which this Exhibit I is attached.
- (b) "Aggregate Costs" means the aggregate PFF Shares of PFF Facilities remaining to be completed, calculated using the then-current year's cost estimate, plus the cost to pay the administrative component of the PFF as specified in the Finance Plan.
- (c) "CalTrans Index" means the Quarterly California Highway Construction Cost Index (Price Index for Selected Highway Construction Items) published by the California Department of Transportation, Division of Engineering Services – Office Engineer.
- (d) "CEQA Mitigation Measure" means a requirement proposed, in accordance with the California Environmental Quality Act, to eliminate or substantially lessen the significant effects on the environment from the City's approval of a project on the Property.
- (e) "Effective Date of this Exhibit" means the effective date of the amendatory agreement that adds this Exhibit I to the Agreement.
- (f) "ENR Index" means the Engineering News Record Construction Cost Index for San Francisco.
- (g) "Finance Plan" means the North Natomas Finance Plan, as amended.
- (h) "Non-PFF Sources" means any funding for a Schedule One or Schedule Two Facility other than PFF funding. It includes but is not limited to federal funding, state funding, regional funding, grants, gifts, contributions, fees, reimbursements, the City's general fund, the City's Major Street Construction Tax, private funds, payments from the Greenbriar area, and payments from the Panhandle area upon annexation to the City. It does not include conditions of approval or CEQA Mitigation Measures imposed on any project the Landowner proposes for the Property, except as otherwise provided in section 7(b).
- (i) "Funding Requirement" means the amount of the PFF that must be generated from remaining development so that the City will have adequate funding to construct the PFF Facilities remaining to be completed and to administer the PFF program. It is calculated as follows: *first*, calculate the Aggregate Costs; *second*, from the Aggregate Costs, subtract both the PFF revenues then available to complete the uncompleted PFF Facilities (including any

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

- (j) "PFF" means the Public Facilities Fee established by subsection A.1 of Sacramento City Code section 18.24.050, as amended.
- (k) "PFF Funding Obligation" means the maximum funding obligation of the PFF in a given year, determined in accordance with subsection 5 below.
- (l) "PFF Share" means the portion of a PFF Facility's cost that is funded, in whole or part, by the PFF.
- (m) "Property" means the real property identified in Exhibit A to the Agreement.
- (n) "Schedule One" means the list of public improvements and segments of public improvements that is attached to, and made part of, this Exhibit I.
- (o) "Schedule One Facility" means a public improvement or segment of a public improvement that is listed on Schedule One.
- (p) "Schedule Two" means the list of public improvements and segments of public improvements that is attached to, and made part of, this Exhibit I.
- (q) "Schedule Two Facility" means a public improvement or segment of a public improvement that is listed on Schedule Two.
- (r) "Schedule Three" means the diagram of the "Boot" area that is attached to, and made part of, this Exhibit I.
- (s) "Scope" means the location or physical description, or both, of a Schedule One Facility or a Schedule Two Facility, but not the PFF funding set forth for the facility in Schedule One or Schedule Two (the actual PFF funding for a facility or portion of a facility may be higher or lower than the dollar amount set forth in Schedule One or Schedule Two).
- (t) "Transportation Facilities" means all public improvements and segments of public improvements listed in Schedule One other than the police substation, second fire station, library, freeway landscaping, and community center.
- (u) "2008 Update" means the North Natomas Nexus Study and Financing Plan 2008 Update that the Sacramento City Council approved on May 26, 2009, by adopting Resolution No. 2009-341.

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

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

- (1) the Funding Requirement for the then-current year; and
- (2) the funding that would be available, after deducting revenue on hand (which includes interest and any reductions under section 9) and adding outstanding PFF credits, if the then-existing PFF were applied to remaining development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (c) *Selection of Index.* Each year, the City shall adjust the cost of the Transportation Facilities remaining to be completed by using either the percentage change in the ENR Index or the percentage change in the CalTrans Index, according to the following criteria:
- (1) If both indexes are positive on March 1 of the year in question, then the City shall adjust the cost of the remaining Transportation Facilities using the index with the greater percentage change.
 - (2) If the change in one index is positive and the change in the other is negative on March 1 of the year in question, then the City shall adjust the cost of the remaining Transportation Facilities using the index with the positive change.
 - (3) If the change for both indexes is negative on March 1 of the year in question, then the City shall adjust the cost of the remaining Transportation Facilities using the index with the negative change that is closer to zero.
 - (4) Measurement of Percentage Change in an Index.
 - (A) The percentage change in the ENR Index is the year-over-year change as of each March.
 - (B) The percentage change in the CalTrans Index is the change between the 12-quarter average through quarter 1 of the then-current year and the 12-quarter average through quarter 1 of the prior year.
- (d) *Precision.* The City shall carry out all calculations to three decimal places.
- (e) *Sample Cost Adjustments for Uncompleted Transportation Facilities:*

Sample #1

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

Sample #2

Benchmark change of + 4.500%
 ENR Index change of + 1.000%
 CalTrans Index change of - 1.000%
Adjustment: plus 1.000%

Sample #3

Benchmark change of - 4.000%
 ENR Index change of - 0.500%
 CalTrans Index change of - 1.000%
Adjustment: minus 0.500%

Sample #4

Benchmark change of - 5.000%
 ENR change of + 0.500%
 Cal Trans Index change of + 0.000%
Adjustment: minus 5.000%

Sample #5

Benchmark change of +6.000%
 ENR Index change of +1.000%
 CalTrans Index change of -1.000%
Adjustment: plus 6.000%

Sample #6

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

4. **Cost Adjustment for Police Substation, Second Fire Station, Library, Freeway Landscaping, and Community Center.** The PFF Shares of the police substation, second fire station, library, freeway landscaping, and community center listed in Schedule One will not exceed the amount established in the 2008 Update, except as follows: the City shall adjust the PFF Shares for the police substation, second fire station, library, freeway landscaping, and community center by using only the positive change in the ENR Index from March to March, effective each July 1. If, however, there are two consecutive years of decreases in the ENR Index, then, beginning with the second year of the decrease, the City shall decrease the PFF Shares for the police substation, second fire station, library, freeway landscaping, and community center by an amount equal to the decrease in the ENR Index for that second year.
5. **Annual Determination of the PFF Funding Obligation.** The Finance Plan shows for each Schedule One Facility not just its estimated cost but also its PFF Share. Each year, after adjusting costs in accordance with sections 2 through 4 above, the City shall determine the aggregate PFF share for all PFF Facilities, and that aggregate amount will be the PFF Funding Obligation for that year.
6. **Reduction of PFF Shares.**
 - (a) The City may reduce the PFF Share of a Schedule One Facility only if one of the following events occurs:
 - (1) The PFF Share of the estimated cost to construct the facility, as set forth in Schedule One, decreases as a result of the procedure in subsection 3 or 4.
 - (2) The PFF Share of the actual cost to construct the facility is less than the PFF Share set forth for the facility in Schedule One, adjusted in accordance with the procedure in subsection 3 or 4.
 - (3) The City secures and appropriates, from Non-PFF Sources, funding to replace all or part of the facility's PFF Share.
 - (b) If the City reduces a PFF Share in accordance with subsection 6(a)(1) or 6(a)(2), then the City may use the reduced portion only to decrease the Funding Requirement.
 - (c) If the City reduces a PFF Share in accordance with subsection 6(a)(3) and the reduction does not result from payments the City receives from the Greenbriar area or the Panhandle area, then the City shall use the reduced portion of the PFF Share as follows:
 - (1) First, if there is an actual cost overrun on a completed Schedule One Facility when the PFF share is reduced, then the City shall use the reduced portion of the PFF share to reduce the cost overrun on that facility.
 - (2) Second, if a Schedule One Facility is under construction when the PFF share is reduced and the City anticipates that the actual cost to construct that facility will exceed the facility's PFF Share shown on Schedule One (as the PFF Share has been adjusted from

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

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

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

(B) to reduce the Funding Requirement.

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

7. Funding for Schedule Two Facilities.

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

(1) PFF funding available under subsection 6(c)(3)(A);

(2) funding from Non-PFF Sources; and

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

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

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

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

8. Funding from Greenbriar and the Panhandle.

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

9. Reduction of Funding Requirement.

- (a) The City, in its discretion, may reduce the Funding Requirement in accordance with subsection 6(c)(3)(B).
- (b) If the land-use designation for Sacramento County APN 225-0070-059, 225-0070-060, 225-0070-063, or 225-0070-067 (each, an "Arco Arena Parcel") is changed to allow uses different from the uses permitted for the Arco Arena Parcel under the North Natomas Community Plan as it existed on the effective date of the Agreement, then each year the City shall reduce the Funding Requirement by an amount equal to the increased portion of PFF that the City collects from the affected Arco Arena Parcel.

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

- (a) The City may increase the Scope of a Schedule One Facility in accordance with subsections 6(c)(3)(A), 8(a), and 8(b).
- (b) The City may increase the Scope of a Schedule Two Facility in accordance with subsections 6(c)(3)(A), 7(a), 8(a), and 8(b).
- (c) If the City receives development-impact fees collected under the Panhandle Finance Plan to offset the cost of PFF-funded facilities that benefit the Panhandle area, or if the City receives development-impact fees collected under the Greenbriar Finance Plan to offset the cost of PFF-funded facilities that benefit the Greenbriar area, then the City may use those fees and

any other Non-PFF Sources to fund in full a change in the Scope of a Schedule One Facility or a Schedule Two Facility.

- 11. Adequate Funding for Schedule One Facilities.** The City may not cite, as a reason for increasing the amount of the PFF Funding Obligation, the loss of potential funding from Non-PFF Sources identified in the 2008 Update.
- 12. Change in PFF Share for West El Camino/Interstate 80 Interchange Improvements.** The PFF Share for the West El Camino/Interstate 80 Interchange Improvements (the "Interchange Improvements") was determined to be 9% based upon an assumption in the City's traffic study that the area of Natomas commonly known as the "Boot," as shown on Schedule Three, would be developed with urban uses. If all urban development in the Boot ever becomes permanently prohibited by law, such as by the recording of perpetual open-space or conservation easements, then the following will apply notwithstanding anything to the contrary in this Exhibit I:
- (a) The City shall increase the entire Finance Plan area's share of the Interchange Improvements from 9% to 37% of the cost of the interchange as determined by the consultant under subsection 3(b), above.
 - (b) The City shall adjust the PFF Share for the Interchange Improvements to reflect the increase to 37%, taking into account the development that has already taken place in the entire Finance Plan area, so that remaining development in the Finance Plan area pays only its fair share of the entire Finance Plan area's new 37% share of the cost of the Interchange Improvements.
 - (c) To illustrate the adjustment described in subsections 12(a) and 12(b), the following example shows how the adjustment would be calculated if urban development becomes permanently prohibited in the Boot when the Finance Plan area is 60% built out:

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