**RESOLUTION 2024-0297**

Adopted by the Sacramento City Council

October 15, 2024

**Resolution Approving the Redemption of North Natomas Public Facilities Fee Credits and the Appropriation of North Natomas Public Facilities Fee Revenues and Associated Interest**

## BACKGROUND

A. The North Natomas Finance Plan, adopted by Resolution No. 1995-0495 and updated in 1999 by Resolution No. 1999-0471, in 2002 by Resolution No. 2002-0374, in 2005 by Resolution No. 2005-0584, in 2009 by Resolution No. 2009-0341, and in 2017 by Resolution No. 2018-0058 (the "Finance Plan"), authorizes the North Natomas Public Facilities Fee Program (the "Fee Program") to provide for the timely acquisition or construction of designated Fee Program backbone infrastructure and public facilities (the "Projects") for the development of the North Natomas Community Plan and to provide equity among landowners by providing development credits ("Fee Credits") for dedicated properties and imposing North Natomas Public Facilities Fee (the "Fee") on developers with no Fee Program dedications or Fee Credits.

B. As of June 30, 2024, $30,823,027 in Fee Credits are outstanding and held by developers as compensation for the Fee funded Projects they constructed or advance funded. These Fee Credits are subject to an automatic annual adjustment to account for the inflation.

C. Developers and their successors' reimbursement and credit rights do not run with the Property. They may assign the rights to receive reimbursements and take credits against the Fee pursuant to the Reimbursement and Credit Agreement for Construction of North Natomas Backbone Infrastructure and Public Facilities (the "Credit Agreement"). Fee Credits that the Credit Holder retains and the Fee Credits it assigns have the same reimbursement priority.

D. The timing of reimbursement from the Fee Program follows the priorities and principles outlined in the Credit Agreement. The Credit Agreements prioritize redemption of Fee Credits issued for the construction of Public Safety and Gateway Projects, which are considered critical for the development of North Natomas. These credits were fully redeemed during the first redemption in 2023. The second redemption in cash will partially redeem the next priority for redemption: the Fee Credits issued via Resolution No. 1997-0662 for Projects constructed by the developer-funded Assessment District 88-03 (AD88-03 Credits). The redemption of the remainder of Fee Credits is prioritized according to the effective dates of the Credit Agreements, which won't be redeemed until the second-priority credits are fully redeemed.

E. To date, Fee revenues have been used to construct needed public facilities. The completion of the North Natomas Community Center and Aquatic Complex has freed up the capacity to redeem Fee Credits.

F. Future allocations will be made from future Fee revenue and associated interest. The City is not obligated to provide funding from any other source.

G. Fee revenues amounting to approximately $1,660,689 are available to partially redeem AD88-03 Credits in cash as allocated in Exhibit A.

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

**SECTION 1.**

The City Council finds that background statements A through G are true and correct.

**SECTION 2.**

The partial redemption of AD88-03 Credits in cash is approved.

**SECTION 3.**

The City Manager or the City Manager's designee is hereby authorized to transfer $1,660,689 from the available fund balance (Fund 3206) to the North Natomas MYOP Project (I22200100) (Fund 3206).

**SECTION 4.**

The City Manager or the City Manager's designee is hereby authorized to distribute the appropriated funds in accordance with Exhibit A. If the authorized amount to distribute is the final amount to be redeemed in cash, they are also authorized to sign the Waiver and Release Agreement provided in Exhibit B upon final redemption.

**SECTION 5.**

Exhibits A and B are part of this resolution.

**TABLE OF CONTENTS**:



Adopted by the City of Sacramento City Council on October 15, 2024, by the following vote:

| | |
|---|---|
| Ayes: | Members Guerra, Jennings, Kaplan, Maple, Talamantes, Thao, Valenzuela, Vang, and Mayor Steinberg |
| Noes: | None |
| Abstain: | None |
| Absent: | None |

Attest: Mindy Cuppy 10/17/2024

Mindy Cuppy, City Clerk

*The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.*

# Exhibit A

## Reimbursement and Reimbursement Priority

| 2nd Priority<br>Credit Holders | Amount Appropriated for 2nd Redemption |
|---|---|
| Alleghany Properties | $ 329,409.63 |
| Amrik Singh | 796.99 |
| Arena Boulevard, LLC | 78.26 |
| Beazer Homes Holding Corp. | 903.93 |
| Benefit Way, Sacramento, Inc. | 2,609.95 |
| Blue Mountain Construction Services, Inc. | 5,418.01 |
| BNN Development Inc. | 3,397.32 |
| Buzz Oates Enterprises II | 247,569.72 |
| Cari Jones | 2,807.02 |
| Carolyn Clarke | 1,335.75 |
| Coastal Star Partners, LLC. | 712.37 |
| Commercial Investments, Inc. | 1,687.15 |
| Cynthia Knudson | 30,585.31 |
| Donahue Schriber | 884.93 |
| Duckhorn Industrial Owner, LLC. | 7,231.55 |
| East Commerce Inv. LLC. | 249.61 |
| E.J. Plesko & Associates, Inc. | 48,944.55 |
| G B Commercial, LLC. | 9,057.26 |
| Gately Enterprises, LLC | 104,517.50 |
| Gateway West L.L.C. | 3,859.11 |
| Goldenland Partnership | 28,121.72 |
| Jack & Mary Meissner Trust | 50,183.17 |
| Jack W. Sellers Trust | 21,052.65 |
| JB Company Management LP | 180,224.68 |
| Kim Peterson | 534.30 |
| LDK Capital, LLC | 3,126.84 |
| Natomas Crossing Ph I, LLC. | 84.86 |
| Natomas Development Partners LLC | 22,274.67 |
| North Market II, LP | 216,654.41 |
| Pacific Bell | 4,706.36 |
| Raley's | 166,850.38 |
| Robert Brown | 616.34 |
| Ron L. Sellers Trust | 69.38 |
| Ron Sellers Childrens Trust | 7,164.01 |
| Sacramento Sports Assoc. | 4,631.70 |
| Shree Surya Hospitality, LLC | 8,147.76 |
| SRK Stock LLC | 4,304.91 |
| Stephen M. Sellers, Sr. | 21,052.65 |
| Taylor Morrison Services, Inc. | 922.69 |
| The Cambay Group, Inc. | 110,230.82 |
| The Desmond Family RE LP & Desmond Family RE LP II | 686.30 |
| The Spanos Corporation | 6,992.34 |
| | |
| Total | $ 1,660,688.86 |

# Waiver and Release Agreement

## Redemption of Fee Credits Issued Under the North Natomas Public Facilities Fee Program

This Waiver and Release Agreement, dated [ ], for reference only, is between the CITY OF SACRAMENTO (the "**City**"), a California municipal corporation and charter city; and [ ], a [ ] (the "**Credit Holder**").

### Background

A. Credit Holder is the owner and developer of property subject to the North Natomas Public Facilities Fee (the "**Fee**") of the North Natomas Finance Plan (the "Finance Plan"). The City established the Finance Plan in 1995 by adopting Resolution No. 1995-0495, and the City updated the Finance Plan in 1999 (Resolution No. 1999-0471), 2002 (Resolution No. 2002-0374), 2005 (Resolution No. 2005-0584), 2009 (Resolution No. 2009-0341), and in 2017 (Resolution 2018-0058). Article II in chapter 18.24 of the Sacramento City Code established the Fee that is an integral part of the Finance Plan; it also authorizes the City to issue credits against Fee ("Fee Credits") to developers that construct or advance fund the construction of the backbone infrastructure or public facilities (the "Projects") needed to serve the North Natomas Community Plan area. Fee Credits may be used to offset Fee owed. Alternatively, the City, in its discretion, may redeem the Fee Credits for cash using revenues generated by the Fee.

B. Developer who constructs or advance funds for the construction of the Fee funded Project enters into a Reimbursement and Credit Agreement for Construction of North Natomas Backbone Infrastructure and Public Facilities (the "Credit Agreement") with the City that identifies the Project constructed and specifies the maximum amount of Fee Credits that may be issued to that developer for the constructed Project before the Project becomes the Property of City.

C. Developer acknowledges, for itself and its successors in interest to the Property, that the reimbursement and credit rights do not run with the 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 Landowner and its successors in interest to the Property.

D. Credit Holder may assign the rights under the Credit Agreement to receive reimbursements and take credits against the Fee to be assessed against any development within the North Natomas to any person or entity, subject to City's prior written consent. The approval of City, any such assignment shall be subject to an express written assumption by the assignee, whereby the assignee agrees to be subject to all the provisions of the Credit Agreement with respect to the application and interpretation of the Fee Credits and Fee reimbursement provisions.

E. Fee Credits that the Credit Holder retains and the Fee Credits it assigns will have the same reimbursement priority. If the funds then available in the Fee accounts, as applicable, are not sufficient to redeem all tendered Fee Credits in cash of the same priority, then cash redemption of the tendered Fee Credits will be pro rata.

F. The City has committed to use the Fee revenues to redeem Fee Credits, including those owned by Credit Holder. The City's redemption of Credit Holder's Fee Credits will therefore be made according to the terms and conditions of this Agreement. The City has decided, in its discretion, to using the available Fee funds to reimburse Credit Holders of the Public Safety, Gateway, and Assessment District 88-03 (the "AD88-03) Fee Credits, with Public Safety and Gateway Improvement Fee Credits having superior priority to reimbursement over AD88-03 Fee Credits. Funds in the Fee accounts will only be available for AD88-03 reimbursement after the reimbursement obligations of the City under the Public Safety Project and Gateway Project Credit Agreement (Superior Priority Projects) have been satisfied. Due to insufficient funds in the Fee accounts, only Fee Credits associated with the Superior Priority Projects will be fully redeemed.

*G.* The City will pay each AD88-03 credit holder reimbursement proportional to its percentage of the total AD88-03 reimbursements outstanding as of the latest audited ending balance.

*H.* As the lawful owner of Fee Credits deposited in trust account ID [] with a total value of $[] as of [], the credit holder agrees to tender the Fee Credits to the City for redemption in cash, in the amount of $[].

*I.* [**Optional**: Describe here any amounts Credit Holder owes the City in connection with other obligations.

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

**1. City's Redemption of Credits.** The City shall pay $[] to the Credit Holder, by check, within 45 days after the effective date of this agreement (specified in Section 7 below). This amount represents <u>Full</u> redemption by the City of the Fee Credits issued under the Credit Agreement [**Optional**: Reference here the amounts described in Section I above].

**2. Credit Holder's Release of Liability.** The following provisions are effective when the City has fully performed its obligation under Section 1 and the Fee Credits are fully redeemed or used:

(a) **Release.** Credit Holder unconditionally and forever releases and discharges the City and the City's elected officials, officers, employees, and agents from all debts, claims, damages, and causes of action of any kind that pertain to, arise out of, or are in any way connected with, the City's obligations under the Credit Agreement. This release and discharge are to be broadly interpreted. It covers all acts, omissions, transactions, and events that relate to the City's obligations under the Credit Agreement to reimburse Credit Holder for the improvements transferred under that agreement. It also includes any claim by the Credit Holder for attorneys' fees, penalties, interest, and costs in any way connected with reimbursement for the improvements transferred under the Credit Agreement. This release and discharge—

(1) applies not just to Credit Holder but also to all persons and entities claiming by, through, under, or in concert with Credit Holder; and

(2) covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind—past, present, and future—whatever the theory of recovery, and whether known or unknown, patent, or latent, suspected, or unsuspected, fixed, or contingent, or matured or un-matured.

(b) **Waiver of Civil Code Section 1542.** The Credit Holder waives all rights and benefits that it has, and all rights and benefits that any person or entity claiming by, through, under, or in concert with it may have, under California Civil Code section 1542, which provides as follows:

> **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

This release under Civil Code section 1542 applies only to the claims the Credit Holder may have concerning reimbursement for the improvements transferred under the Credit Agreement.

(c) **Future Claims.** The Credit Holder acknowledges that after it enters into this agreement it may discover unknown or unsuspected claims or facts that are in addition to, or different from, the facts and claims it intends hereby to release fully, finally, and forever. The Credit Holder further acknowledges that those unknown or unsuspected facts and claims are covered by the release in Section 2(a) and the waiver in Section 2(b) to the extent they pertain to, or arise out of, any acts, omissions, transactions, or events that relate to any agreement or understanding the City and Credit Holder may have concerning reimbursement for the improvements transferred under the Credit Agreement.

**3. Binding Effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.

**4. Severability.** If a court of with jurisdiction rules that any provision of this agreement is invalid, unenforceable, or contrary to law or public policy, then the parties want the court to interpret this agreement as follows:

(a) by modifying the provision to the minimum necessary to make it enforceable or, if that modification is not permitted by law, by disregarding the provision;

(b) by holding that the rest of the agreement will remain in effect as written;

(c) by holding that the provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and

(d) by holding the entire agreement unenforceable if modifying or disregarding the unenforceable provision would result in the failure of an essential purpose of this agreement.

5. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in California Civil Code section 1654 will not apply.

6. **Litigation Costs and Attorneys' Fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.

7. **Effective Date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below. The parties shall sign any additional documents that are reasonably necessary to carry out the intent and purposes of this agreement.

8. **Counterparts.** The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. The parties agree that this agreement may be executed with electronic signatures.

9. **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. No waiver is binding unless set forth in a writing signed by the waiving party.

10. **Integration and Modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

(*Signature Page Follows*)

| | |
|---|---|
| **City of Sacramento,**<br>**a municipal corporation** | **[ ],**<br>**[ ]** |
| By: ______________________________<br>Name ___________________________<br>Title ____________________________<br>for [ ], City Manager | By: ______________________________<br>[ ]<br>[ ] |

Approved as to Form:

By: ______________________________
Senior Deputy City Attorney

Attest:

By: ______________________________
Assistant City Clerk