



REPORT TO COUNCIL City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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Staff Report
May 13, 2008

Honorable Mayor and Members of the City Council

Title: Railyards: City Funding Agreement

Location/Council District: Sacramento Railyards/Council District 1

Recommendation: Adopt a **Resolution:** Approving the Sacramento Railyards Project Funding Agreement

Contact: Dave Harzoff, Economic Development Manager, 808-5385

Presenters: Dave Harzoff

Department: Economic Development Department

Division: Downtown

Organization No: 4451

Description/Analysis

Issue: The Railyards Specific Plan and related entitlements, including a Development Agreement were approved by the City Council on December 11, 2007. As part of the Railyards project approvals Resolution No. 2007-916, Approving the Business Terms for the Sacramento Railyards Project Funding Agreement, was also approved and included as an exhibit to the Development Agreement.

These business terms were the product of negotiations with Thomas Enterprises (Developer), along with the terms of the Development Agreement and redevelopment agency business terms. This package of business terms were developed to help incentivize and support the project which faces significant financial feasibility challenges particularly related to the huge infrastructure and public facilities costs. The City prepared a Public Facilities Financing Plan and pro forma analysis of the project that concluded that the public infrastructure and facilities costs for Phase 1 were approximately \$290 million and the proposed development in that phase could only support \$49 million of that cost. In addition the analysis said that over the life of the project it faces a projected \$860 million

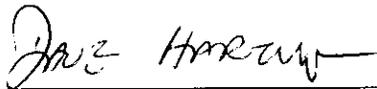
financial feasibility gap just for the private development, exclusive of the approximately \$750 million total infrastructure and facilities costs. The latter phases of the project that are planned for the majority of the dense, infill urban housing that the City finds attractive are the least feasible portions of the project, with Sacramento's current real estate economics. The attached Funding Agreement includes terms and conditions that are consistent with the approved business terms and its contents are summarized in Attachment A.

Environmental Considerations: The improvements to be subsidized under the Funding Agreement are consistent with the Railyards Specific Plan and the impacts of the Railyards development was evaluated in the Railyards Specific Plan Final Environmental Impact Report which was certified by the City Council on December 11, 2007. At the time of approval of each public improvement or affordable housing project the City will evaluate whether additional environmental review is required to support the approval, in accordance with CEQA Guidelines Section 15162.

Rationale for Recommendation: The recommended actions in this report will help advance the Railyards Project by forming a public-private partnership. Redevelopment of the Railyards has been a long term City goal and supports the City's infill development policies and will produce substantial public benefits.

Financial Considerations: The funding commitments included in the agreement draw from multiple funding sources. The Richards Blvd/I-5 access improvements will be funded from \$8.9 million in federal earmark funds and local match funds and \$1.7 million in New Measure A funds. The I-5/Richards freeway interchange improvements will be funded from \$17,750,000 in New Measure A funds, unallocated state and federal funds being sought and the remainder will have to be shouldered by new development. The \$600,000 in Parks and Open Space funding for Market Plaza is coming from a portion of the reserves of Park Impact Fees paid from Central City development. Housing Trust Fund revenues will come from fees charged to commercial development in the Railyards. Funding for the 5th/6th Street Public Parking Garage will come from \$2 million in annual debt service from the Off-Street Parking Fund and the remainder will come from user fees or the Developer if he chooses to seek accelerated completion of the garage prior to the development of adequate market demand.

Emerging Small Business Development (ESBD): No ESBD issues are associated with this action.

Respectfully Submitted by: 
Dave Harzoff
Economic Development Manager

Approved by: 
Marty Hanneman
Assistant City Manager

Recommendation Approved:


Ray Kerridge
City Manager

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Attachment 1

**Sacramento Railyards
Summary of City Funding Agreement
Business Terms**

- 1) City funding and for **access improvements to the Richards Blvd./I-5 Interchange**:
 - o \$8,900,000 federal funding (part of N. CBD Access Study earmark)
 - o \$1,700,000 local New Measure A funds
 - o Developer dedicates R/W for Jibboom, Bercut and Railyards Blvd.
- 2) City provides local match funding of **\$17,750,000 in New Measure A funds** towards the **reconstruction of the Richards/I-5 Interchange** (State and Federal funds being sought and remainder to be funded by new development)
- 3) **City provides \$600,000 in funding towards the development of the Market Plaza** between two of the historic shops buildings. This plaza is a major public space and the northern surface point for the Intermodal tunnel and access to the planned 5th Street Public Parking Garage. Funds come from a portion of park improvement fees collected from development projects in the Central City. Developer provides public use and maintenance easement to City.
- 4) City commits to **providing an amount equal to all Housing Trust Fund fees** generated by Railyards commercial development back to Railyards housing projects affordable to very low and low income households.
- 5) City commits to **design and construct the 5th Street Public Parking Garage** when it has determined that demand will be sufficient to make the garage financially feasible. Developer to be included in design development process.
 - o **City commits to providing up to \$2,000,000 in annual debt service** (anticipated from the Off-Street Parking Fund) towards the design and construction of the currently estimated \$80 million garage. Remainder will come from user fees.
 - o Developer may assist with debt service to accelerate garage.
 - o Any extraordinary costs that benefit developer to be paid by Developer.
 - o Developer has right to master lease retail space at market rates.
- 6) Funding Agreement is subject to the provisions of the Development Agreement.

Attachment 2

RESOLUTION NO. 2008- ____

Adopted by the Sacramento City Council

**APPROVING THE SACRAMENTO RAILYARDS PROJECT
FUNDING AGREEMENT**

BACKGROUND

- A. On December 11, 2007, the City of Sacramento ("City") approved a Development Agreement, with S. Thomas Enterprises of Sacramento, LLC ("Developer") for the Sacramento Railyards Project. The Development Agreement was approved in furtherance of the Railyards Specific Plan, which Specific Plan and related entitlements specifies the required public facility and infrastructure improvements necessary for implementation of the Specific Plan consistent with the Railyards Specific Plan Public Facilities Financing Plan and Tentative Subdivision Map.
- B. On November 20, 2007, December 4, 2007 and December 11, 2007, the City Council conducted noticed public hearings in accordance with Government Code Sections 65867 regarding approval of the Development Agreement for the Sacramento Railyards Project. In accordance with Government Code Section 65865.2, a development agreement can contain terms and conditions relating to public financing of the necessary backbone infrastructure and related public facilities for a development project and can provide for subsequent reimbursement of the applicant's advancement of costs for such infrastructure and public facilities in accordance with applicable public financing laws.
- C. As part of the evaluation of the Sacramento Railyards Project, a Pro Forma Analysis was prepared to assess the capacity of the Project to incur the costs for the required public facility and infrastructure improvements. This Analysis demonstrated that the Developer can only pay up to \$49 million towards the \$290 million estimated costs for the public facilities and infrastructure necessary to develop Phase 1, and there is a projected cumulative financial feasibility gap for this Project of approximately \$860 million for the private development, exclusive of infrastructure costs, under current market conditions,.
- D. Based on the Pro Forma Analysis indicating a significant financial feasibility gap for the Developer to fund the public facilities and infrastructure necessary to

- implement the Project, the City adopted as part of the Development Agreement a set of Business Terms to guide preparation of a Funding Agreement to pledge certain City funds for certain public facilities and infrastructure improvements.
- E. The Business Terms approved by the City as part of the Development Agreement also pledged that the City would apply all of the Housing Trust Funds generated from the Project to help subsidize the affordable housing obligations of the Developer as set out in the Project's Inclusionary Housing Plan.
 - F. The total amount of City funding, which includes federal, state and local funds, that may be expended in accordance with the Business Terms for the Sacramento Railyards Project was approximately \$117 million dollars. The City has also pledged to fund the first \$40 million of the track relocation project and to share any costs with the Developer above that amount under a separate agreement, which also directly benefits Developer's Project .
 - G. On December 11, 2007, the City adopted the Final Environmental Impact Report for the Railyards Specific Plan and the Mitigation Monitoring Program, which analyzed the impacts of the development of the Project, including the public facility and infrastructure improvements and affordable housing that would be funded by the actions contemplated by the City as set out in the Business Terms.
 - H. The Funding Agreement has been prepared in accordance with the Business Terms set out in the Development Agreement and is an agreement that is proposed in furtherance of the Railyards Specific Plan to assist the Developer to implement the Sacramento Railyards Project.

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

Section 1. Based on the verbal and documentary evidence received at the hearings on the Sacramento Railyards Specific Plan, the Specific Plan Public Facilities Financing Plan, and the Development Agreement for the Sacramento Railyards Project; the City Council finds that the Funding Agreement for the Sacramento Railyards Project between the City and S. Thomas Enterprises of Sacramento, LLC, which specifies the public financing of backbone infrastructure and other public facilities, and the financing of affordable housing within the Railyards, would benefit the City by facilitating implementation of the Railyards Specific Plan and the Railyards Inclusionary Housing Plan.

Section 2. The City Council in a prior action approved the Development Agreement for the Sacramento Railyards Project. The City Council finds that the Funding Agreement for the Sacramento Railyards Project is consistent with the Funding Agreement Business Terms, which were an exhibit to the Development Agreement.

Section 3. The City Council hereby approves the Funding Agreement for the Sacramento Railyards Project, which is set out as an attachment to the accompanying staff report.

Railyards Funding Agreement

FUNDING AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

FOR THE

SACRAMENTO RAILYARDS PROJECT

This FUNDING AGREEMENT (hereinafter "Agreement") is made and entered into as of this ___ day of _____, 2008 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and S. THOMAS ENTERPRISES OF SACRAMENTO, LLC, a Delaware Limited Liability Company (hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires. This Agreement uses capitalized terms which, if not defined below, are defined in the Development Agreement for the Railyards Project dated January 10, 2008 (Ordinance No. 2007-104, Agreement No. 2008-0150) (hereinafter "Development Agreement").

RECITALS

WHEREAS, the Parties entered into the Development Agreement to establish the permitted land uses and applicable development regulations for the Property; and

WHEREAS, the Development Agreement provided for the Parties to negotiate the terms for providing specified funding for development of certain portions of the Project, as set out in Exhibit P of the Development Agreement; and

WHEREAS, the purpose of this Funding Agreement is to further define the scope, timing and allocation of CITY funding for development of certain portions of the Project consistent with the terms of the Development Agreement.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 **TRANSPORTATION FUNDING.**

1.1 **Richards Boulevard and I-5 Interchange Access Improvements.** CITY will undertake the design and construction of the access improvements from the I-5 freeway and Richards Blvd interchange along Bercut and Jibboom Streets, between Richards Blvd and the future alignment of Railyards Blvd. This project includes: (i) minor freeway ramp improvements to expand capacity at both the northbound and southbound freeway off-ramps by adding additional lanes on the off-ramps (the exact number and configuration of the additional lanes is to be determined through the project development process); (ii) minor widening and improvements to Bercut and Jibboom Streets; and (iii) constructing a portion of Railyards Blvd underneath the I-5 freeway between Bercut and Jibboom Streets to create an access loop connection to the freeway ramps (collectively the "Richards Blvd/I-5 Access Improvement Project"¹). The Richards Blvd/I-5 Access Improvement Project is needed to serve the Initial Phase of development of the Sacramento Railyards Project.

1.1.1 **Design and Environmental Review.** The Richards Blvd/I-5 Access Improvement Project was included as part of the Railyards Specific Plan Environmental Impact Report. Design and construction of the Richards Blvd/I-5 Access Improvement Project must be coordinated with the California State Department of Transportation (Caltrans). A Project Study Report to initiate project design with Caltrans has already been prepared. Final design and construction of the Richards Blvd/I-5 Access Improvement Project cannot be initiated until after the project has received project-level environmental clearance under both CEQA and NEPA by Caltrans.

1.1.2 **Funding.** The Richards Blvd/I-5 Access Improvement Project is to be funded as part of the North CBD Access Study improvements, with \$8,900,000 in federal funding and \$1,700,000 in local New Measure A funds under the current funding plan, for a total project funding of \$10,600,000. The total project costs may or may not exceed the funding currently programmed, and the allocation of costs between the federal and local funding sources may change in the future. If additional funding is needed, CITY will make a good faith effort to secure such funding to complete the Richards Blvd/I-5 Access Improvement Project.

1.1.3 **Schedule.** Construction of the Richards Blvd/I-5 Access Improvement Project is currently anticipated to be completed by 2010.

1.1.4 **Right of Way.** LANDOWNER shall cooperate with CITY by dedicating right of way and granting construction access easements along Bercut and Jibboom Streets and the Railyards Blvd. alignment as needed for

1 The formal project name as approved by Caltrans and City is "Access Improvements from the Railyards to Richards Boulevard and Interstate 5 Interchange Project"

CITY to construct the Richards Blvd/I-5 Access Improvement Project, consistent with the Tentative Map conditions for the Sacramento Railyards Project.

1.2 **I-5 Freeway Richards Boulevard Interchange**. CITY has proposed expanding the capacity of the I-5 freeway interchange at Richards Boulevard (I-5/Richards Blvd Interchange Project²). The current design concept for this improvement is to create a “split diamond” configuration, although other configurations will be considered during the design process. The I-5/Richards Blvd Interchange Project is anticipated to increase the existing capacity of this interchange to accommodate the anticipated additional traffic demand from build-out of the Railyards and River District³ areas. The I-5/Richards Blvd Interchange Project is needed to serve development of the Sacramento Railyards Project after the Initial Phase.

1.2.1 **Design and Environmental Review**. The I-5/Richards Blvd Interchange Project was included as part of the Railyards Specific Plan Environmental Impact Report. Design and construction of the I-5/Richards Blvd Interchange Project must be coordinated with the California State Department of Transportation (Caltrans) and the Federal Highways Administration (FHWA). Final design and construction of the I-5/Richards Blvd Interchange Project cannot be initiated until after the project has received project-level environmental clearance under both CEQA and NEPA by Caltrans and FHWA.

1.2.2 **Funding**. The I-5/Richards Blvd Interchange Project is included in the SACOG Metropolitan Transportation Plan (MTP) and is currently programmed as costing \$45 million. The cost of this project could increase significantly once it is designed, especially if existing developments must be acquired to provide the additional right of way.

CITY intends to seek federal and state funding for the I-5/Richards Blvd Interchange Project. Based on funding one-third of the total cost, the New Measure A Transportation Plan adopted by the Sacramento Transportation Authority included \$17,750,000 as the local share for the I-5/Richards Blvd Interchange Project cost.

A portion of the cost of the I-5/Richards Blvd Interchange Project has been included in the development impact fees for the Railyards, Downtown and River District areas. After completion of the River District Specific Plan, which includes an update of the Richards Boulevard Area Plan Facility Element and Financing Plan, the fair share allocation of the costs of the

2 The formal project name as approved by Caltrans and City is “Richards Boulevard and Interstate 5 Ultimate Interchange Improvement Project.”

3 The Richards Boulevard area has been renamed to the River District.

I-5/Richards Blvd Interchange Project will be included in the Railyards, Downtown and the River District development impact fees.

- 1.2.3 **Schedule.** Next year, CITY expects to initiate the I-5/Richards Blvd Interchange Project through preparation and submittal of a Project Study Report (PSR) to Caltrans after completion of the River District Specific Plan. The PSR process will define scope of work, schedule, cost and funding. The MTP scheduled construction of this improvement to commence by 2014; however, the actual construction initiation and completion dates are uncertain at this time.

2.0 **PARKS AND OPEN SPACE FUNDING – MARKET PLAZA**

As set out in the Railyards Specific Plan, Market Plaza is an open space area located just north of the realigned Union Pacific Railroad tracks. Market Plaza extends between the Car Shop #3 building and the Paint Shop Building within the Central Shops area, and between the Paint Shop building and the future extension of 5th Street and the 5th Street Steps, which is one of the pedestrian entry points into the Central Shops area. Market Plaza encompasses lots 21a and part of lot 21b, and is approximately 2.5 acres in size. Market Plaza provides a pedestrian connection between Camille Lane on the north, the 5th Street Steps and the 5th/6th Street Garage on the east, and the tunnel entrance to the passenger train platforms on the south.

- 2.1 **Environmental Review.** Market Plaza was included as part of the Railyards Specific Plan Environmental Impact Report. No further environmental review is anticipated to be required.
- 2.2 **Design.** The Railyards Design Guidelines provide that Market Plaza is intended to serve pedestrians and visitors to the Central Shops area. The pavement, light fixtures and other materials would be consistent with the historical use and character of the Central Shops. Site furnishings would include benches, tables, shade structures, chairs, bike racks and trash receptacles. The design of Market Plaza would be subject to the approval, pursuant to Chapter 17.124 of Title 17 of the City Code, the Sacramento Railyards Special Planning District, of the CITY's Preservation Commission and Parks and Recreation Commission.
- 2.3 **Ownership.** As set out in the Railyards Tentative Map conditions and the Development Agreement, LANDOWNER shall retain fee ownership of Market Plaza and grant CITY a public access and maintenance easement over the entire plaza, and shall receive Quimby credit for this public open space area.
- 2.4 **Funding.** CITY has committed \$600,000 of its park improvement fees collected within the Central City to help fund the costs of construction of Market Plaza. In order to receive this funding, LANDOWNER must (i) prepare design plans and specifications for Market Plaza that are approved by CITY, (ii) enter into the

CITY's standard Park Improvement Reimbursement/Credit Agreement, the form of which has been provided to LANDOWNER, which specifies the scope, cost, schedule and conditions for reimbursement, and (iii) undertake construction of Market Plaza.

- 2.5 **Schedule.** Pursuant to the Development Agreement, LANDOWNER shall undertake improvements to develop Market Plaza and the gateway structure on lot 22 that is intended to serve Intermodal passengers so that such improvements are completed and open to the public no later than at the time of opening of the 5th/6th Street Garage.

3.0 **HOUSING TRUST FUND.**

Chapter 17.188 of the City Code sets out the requirement that all non-residential development projects (and the non-residential portion of mixed use projects) must pay a housing impact fee (Housing Trust Fee). The Housing Trust Fee is paid at the time of issuance of building permits and placed in the CITY's low income housing fund. The Housing Trust Fees are used to subsidize the costs of construction or rehabilitation of housing affordable to very low and low income households who are reasonably expected to come from the labor force in the area. The Sacramento Housing and Redevelopment Agency (SHRA) administers use of the Housing Trust Fees fund on behalf of CITY. The affordable housing projects that may be funded with Housing Trust Fees are to be located within a specified commuting distance of the non-residential projects that paid the fee, with an emphasis on projects located within a quarter mile of existing or planned public transit routes. Nothing in this Funding Agreement is intended to alter or modify the provisions of Chapter 17.188 of the City Code.

- 3.1 **Railyards Housing Trust Fees.** It has been estimated that if all of the office and retail commercial development permitted within the Railyards Specific Plan area (Railyards Boundary) was constructed, the total amount of Housing Trust Fees paid by Railyards developers would be approximately \$8,000,000. This figure is based on LANDOWNER's phasing plan and assumes that the Housing Trust Fees are increased by a 5% annual inflation factor.
- 3.2 **Railyards Affordable Housing Projects.** Subject to the provisions of Chapter 17.188 of the City Code and the terms of this Funding Agreement, CITY commits to LANDOWNER that all Housing Trust Fees paid by developers for non-residential projects located within the Railyards Boundary (Railyards Housing Fees) will be invested in housing projects affordable to very low and low income households that are also located within the Railyards Boundary (Railyards Housing Projects) to assist LANDOWNER in complying with its obligations under the Inclusionary Housing Ordinance.
- 3.3 **Schedule.** Because the timing of payment of Railyards Housing Fees and

development of Railyards Housing Projects is uncertain, and because the amount of Railyards Housing Fees collected may not be sufficient to fund the amount of subsidy needed for a particular Railyards Housing Project; CITY may use Housing Trust Fees collected from projects outside of the Railyards Boundary for Railyards Housing Projects. In that event, the amount of such Housing Trust Fees shall constitute a debit against Railyards Housing Fees subsequently collected by CITY. All expenditures of Housing Trust Fees are subject to compliance with Chapter 17.88 of the City Code.

- 3.4 **Funding Leveraging.** The Railyards project is located within a redevelopment project area and tax increment housing funds will also be available for Railyards Housing Projects, subject to the approval of the Redevelopment Agency of the City of Sacramento. In addition, federal and state affordable housing funds may be available for Railyards Housing Projects. CITY's obligation to invest Railyards Housing Fees in Railyards Housing Projects is contingent on each affordable housing project maximizing funding from other available funding sources, providing verification of the need for the Housing Trust Fees to subsidize the project funding gap, compliance with SHRA's underwriting guidelines, and the developer entering into SHRA's loan and regulatory agreements for receipt of such funds. CITY agrees to cooperate with LANDOWNER to secure affordable federal and state housing funds for Railyards Housing Projects, subject to CITY's (and SHRA's) right to prioritize all eligible projects for such funding.

4.0 5TH/6TH STREETS PUBLIC PARKING GARAGE.

CITY has commissioned a feasibility study to determine if there will be sufficient demand to generate the parking revenue required for issuance of revenue bonds to fund construction of a prototypical 1,948 space parking garage underneath the 5th and 6th Street overcrossings of the realigned Union Pacific Railroad (UPRR) tracks (5th/6th Streets Garage). The 5th/6th Street Garage is to be located between the UPRR tracks and Stevens Street and extend from the 5th Street Steps on the west to east of 6th Street (tentative map parcels 18, 17a and 47b). The feasibility study, prepared by Walker and Associates dated April, 2008 (Walker Study), has determined that if certain conditions are met, the parking demand would be sufficient to justify proceeding with construction of the 5th/6th Street Garage. The total cost for the 5th/6th Street Garage has been estimated at \$80,000,000.

The Walker Study assumed full build out of LANDOWNER's proposed Phases 1A and 1B.1 by 2012 as those phases are defined in the Development Agreement, as well as (i) replacement of 320 spaces for County employees in the 5th/6th Street Garage, (ii) County jury parking payments, (iii) 150 spaces used by Intermodal passengers, (iv) no discounts for parking validations, (v) no surface parking lots within a 1,200 ft. walking distance radius from the garage, and (vi) competitive parking rates for surface lots and garage facilities constructed and operated by LANDOWNER within the Railyards. In addition, monthly parking demand was based in part on build-out of the 492,000 sq. ft.

of office space in Phase 1A, but those parcels are designated as flexible mixed use. For these and other reasons, the Parties agree that the demand for the 1,948 spaces in the 5th/6th Street Garage may need further refinement and that the garage may need to be built in phases.

- 4.1 **Funding.** CITY has committed to allocating \$2,000,000 annually to pay for a portion of the debt service for financing the 5th/6th Street Garage. This funding was anticipated to be allocated from the surplus operating revenue in the CITY's parking fund. The remaining debt service must be funded through parking revenues generated from operation of the 5th/6th Street Garage. The future refinement of the Walker Study will establish the level of debt service that parking revenues can support.
- 4.2 **Cost.** The cost to construct the 5th/6th Street Garage has not yet been determined with any certainty because it has not yet been designed. The Parties anticipate that it may be costly to construct this garage due to its location underneath and around the street overcrossings, the potential integration of retail space and the 5th Street steps in lot 18, integration of retail space along the elevated portions of 5th and 6th Streets, and the potential need for additional foundation support to accommodate development within the airspace above the garage on lots 17a and 47b.

The Parties also acknowledge that the costs to construct any retail space or other improvements that will be owned by LANDOWNER within lot 18, the steps from 5th Street into Market Plaza that may be integrated into the garage structure, and the foundation support for LANDOWNER's vertical private development must be funded by LANDOWNER (or public financing mechanisms for the 5th Street steps) and are not a part of the CITY's 5th/6th Street Garage cost estimate or funding obligation.

CITY is considering constructing all or a portion of the 5TH/6TH Street Garage with precast modular components to reduce costs, which may limit the design and size of the retail space, the garage access entry locations, and possibly other garage features. The Parties acknowledge the CITY's design of the 5th/6th Street Garage may limit the amount of LANDOWNER development currently envisioned for integration into the garage structure.

- 4.3 **Size and Phasing.** Due to cost considerations and the uncertainty as to the amount of parking that may be required to serve LANDOWNER's development project and the adjacent developments, CITY may phase construction of the 5th/6th Street Garage. In particular, if the 5th Street Garage can be constructed in phases without significantly increasing the total project cost, the Parties anticipate that the phase of the garage over lot 47b would be constructed at a later time and possibly in coordination with construction of the office building that is anticipated to be developed by LANDOWNER within the airspace over that portion of the garage.

- 4.4 **Schedule.** CITY's tentative project schedule is to complete construction of the 5th/6th Street Garage so that it is operational by 2012 in order to serve LANDOWNER's development of Project Phases 1A and 1B1, which are to be completed and operational by 2012. CITY's decision to proceed with the financing and construction of the 5th/6th Street Garage will be contingent upon LANDOWNER entering into an agreement which includes binding commitments to construct a certain quantity and type of development sufficient to generate the parking demand necessary to make the 5th/6th Street Garage financially feasible in regard to meeting debt service payments.

Construction of the 5th/6th Street Garage cannot commence until after the supports for the 5th and 6th Street overcrossings are constructed as part of the Track Relocation Project. Therefore, and without limitation of the terms of the Track Relocation Agreement, garage construction shall be coordinated with the design and construction of the 5th and 6th Street overcrossings, for which LANDOWNER is responsible. LANDOWNER shall be entitled to provide comments on CITY's garage design in furtherance of such coordination. The 2012 schedule assumes that it is feasible to construct the 5th/6th Street Garage concurrently with LANDOWNER's construction of the extensions of 5th and 6th Streets between H Street and Camille Lane, and construction of Stevens Street, all of which must be completed to access the 5th/6th Street Garage and before it can be opened to the public. In addition, construction of the 5th/6th Street Garage may be built in phases due to cost considerations and parking demand, among other reasons. Therefore, the Parties acknowledge that only a portion of the 5th/6th Street Garage may be completed by 2012, and that such portion is assumed to be on lot 17a.

- 4.5 **Land Dedication, Airspace Rights and Master Retail Lease.** The terms and conditions for LANDOWNER's dedication of land to CITY for the 5th/6th Street Garage, LANDOWNER's contingent rights to develop within the airspace above and within the garage subject to funding the additional costs, and CITY's obligation to allow LANDOWNER to master lease all of the retail space within the garage funded by CITY is set forth in the Development Agreement, which terms and conditions remain unchanged and shall control.
- 4.6 **Garage Design and Airspace Development Feasibility.** The Parties agree to cooperate in the design of the 5th/6th Street Garage by undertaking the tasks as specified for each Party that are set out in Exhibit 1, (5th/6th Street Garage Conceptual Design Study). Upon completion of the Conceptual Design Study, the Parties agree to meet and negotiate in good faith to develop the terms of the 5th/6th Street Garage Public Improvement and Lease Agreement (Garage Agreement). It is anticipated that the Garage Agreement will set out the scope, cost, schedule, phasing and funding for construction of the 5th/6th Street Garage concurrent with LANDOWNER's construction of Project Phases 1A and 1B1, the transfer of property rights between the Parties to the garage airspace and

improvements, the master garage retail lease, and other related matters.

5.0 CONSTRUCTION COORDINATION.

The Parties acknowledge that construction of the CITY projects described herein may occur concurrently with LANDOWNER's construction of the Railyards Project. In order to avoid conflicts between construction contractors and wasted work, to maintain site access, and to expedite construction schedules; the Parties anticipate the need for construction coordination agreements. In addition, to the extent that LANDOWNER is obligated to undertake construction of a public improvement in accordance with the Railyards Tentative Map conditions, and such improvement is to be built concurrently with the CITY projects described herein, CITY may undertake construction of such betterment on behalf of LANDOWNER in accordance with the terms of a public improvement and reimbursement agreement. The Parties agree to cooperate and negotiate in good faith in development of such agreements. However, nothing contained herein shall obligate CITY to incur costs for CITY projects described herein in excess of the amounts specified in this Funding Agreement.

6.0 DEVELOPMENT AGREEMENT.

This Funding Agreement is entered into in furtherance of the obligations of the Parties under the terms of the Development Agreement for the Railyards Project dated January 10, 2008 (Ordinance No. 2007-104, Agreement No. 2008-0150). The Development Agreement is incorporated in this Agreement by this reference as if set forth in full and all of the provisions in the Development Agreement shall apply to this Agreement. If the Development Agreement is suspended, repealed, terminated or cancelled, this Agreement will automatically also be suspended, repealed, terminated or cancelled. Nothing in this Agreement is intended to alter, modify, supplant or waive any provision in the Development Agreement or the Project Entitlements.

The foregoing funding commitments are contingent on the compliance of LANDOWNER and its Assignees with the terms of the Development Agreement and all of the Project Entitlements. Subject to applicable notice and cure provisions, CITY may terminate or suspend this Funding Agreement in the event of a default by LANDOWNER or its Assignees with the obligations set forth in the Development Agreement or the Project Entitlements. In particular, the default and cure provisions set out in Section 7.5 of the Development Agreement, including, without limitation, the provisions of Section 7.5.4 (No Cross Default) shall apply to this Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Agreement as of the date first set forth above.

CITY:

CITY OF SACRAMENTO,
a Municipal Corporation

By: _____
City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LANDOWNER:

S. THOMAS ENTERPRISES OF SACRAMENTO, LLC,
a Delaware Limited Liability Company

By: _____
Suheil Totah
Vice President

Date: _____

Exhibit 1
5th/6th Street Parking Garage Conceptual Design Study

CITY Responsibility

The 5th/6th Street Parking Garage is to be developed as a publicly-owned and operated facility. Based on the information from the Walker Study, CITY will undertake preparation of the Conceptual Design Study at CITY's cost, subject to information to be provided by LANDOWNER from its consultants. Each Party shall be solely responsible for their respective consultant contracts and work products.

CITY will coordinate with LANDOWNER regarding the scope of work for the Conceptual Design Study and will keep LANDOWNER informed of the Conceptual Design Study progress, through regular coordination meetings and providing interim and draft project reports for review. CITY and its consultant shall regularly consult with LANDOWNER's representatives and seek input on the conceptual design of the 5th/6th Street Garage to address LANDOWNER's interests in regards to coordination of the design of the garage with adjacent retail and office development, and integration of LANDOWNER's private development and improvements that may be included within the garage structure that will be privately financed and constructed.

CITY anticipates analyzing various issues related to the 5th/6th Street Garage as part of the Conceptual Design Study including, but not limited to, the subject matters listed below. CITY reserves the right to define the scope of work and to modify or amend any component of this study as it deems necessary in its independent judgment. The CITY may also suspend or delay completion of the Conceptual Design Study if LANDOWNER is unable to provide the information required for the study in a timely manner.

The Conceptual Design Study will address the following subject matters or issues:

1. Construction of the garage as two or three separate structures (lots 17a, 18 and 47b) so that each structure can be built at different times based on parking demand and funding, or construction as one large structure.
2. Integration of private development (above or within certain floors of each individual structure or portions of the one large structure) in regards to foundation supports, utilities (including HVAC systems and mechanical venting), vehicle access for deliveries, pedestrian and vehicle circulation and connectivity, and life safety.
3. Integration of the 5th and 6th Street overcrossings and the 5th Street Steps in the garage design and construction phasing of these public improvements prior to or concurrently with the garage construction.

4. Feasibility of subsequent construction above the garage structure(s) in lots 17a and 47b, including impacts on garage operations and revenues losses during such construction.
5. Additional costs to construct the parking structure(s) to be consistent or compatible with the design of the new buildings within the Central Shops Historic District, and to be consistent with the Railyards Design Guidelines (e.g., retail space along frontage of 5th and 6th Streets).

LANDOWNER Responsibility

LANDOWNER shall actively participate with CITY in the Conceptual Design Study by reviewing interim and draft work products in a timely manner and providing information and design plans requested by CITY staff and consultants in accordance with the mutually approved schedule to avoid any delays, cost overruns and rework. LANDOWNER shall provide qualified and informed representation at coordination meetings. LANDOWNER shall submit its consulting engineers work products and information as set out below, and any additional information which may reasonably be requested by CITY staff and consultants in a timely manner.

LANDOWNER shall cooperate with CITY in developing integrated construction plans and schedules, identifying critical paths for the development and project delivery of the garage and the various related public improvement projects (including the 5th and 6th Street overcrossings, Stevens Street and the 5th Street Steps), and LANDOWNER's private development that is to be located within or adjacent to the garage structure(s). LANDOWNER shall defer to CITY's chosen process for design development of the garage and shall cooperate with CITY and its consultants in developing design solutions for any garage components of common interest.

LANDOWNER shall, to the extent available, provide the following information to CITY staff and its consultants during the Conceptual Design Study:

1. Information including, without limitation, design plans and construction scheduling, for the public infrastructure improvements that are to be undertaken by LANDOWNER under the Tentative Map conditions which will pass through, be integrated within, or be developed adjacent to the garage structure(s).
2. Information including, without limitation, design plans and construction scheduling, for the private development that is proposed by LANDOWNER which will pass through, be integrated within, or be located above any portion of the garage structure(s). At a minimum, the proposed type of use, the structure support requirements, vertical access and access for deliveries and life safety, and utility requirements for each type of use must be provided.
3. Detailed information regarding the type and size of all land uses including the retail and office uses to be developed within phases 1A and 1B1, the location

and size of all surface parking lots that will be built during these phases, the schedule for construction (commencement and completion) of each building and surface parking lot within these phases, and the proposed parking rate structure for all parking lots to be owned and operated by LANDOWNER.