



REPORT TO THE REDEVELOPMENT AGENCY of the City of Sacramento

915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

Consent
April 7, 2009

Honorable Chair and Members of the Board:

Title: Docks Area Exclusive Right to Negotiate and Business Terms

Location/Council District: The Docks Area is located along the eastern bank of the Sacramento River, north of the Marina/Miller Park, west of Interstate 5 and south of Capitol Mall. (Council District 4).

Recommendation: Adopt a Redevelopment Agency Resolution 1) authorizing the Executive Director or her designee to execute an Exclusive Right to Negotiate with KSWM Docks Partners, LLC; and 2) approving the Term Sheet and Performance Schedule for the Docks Area project.

Contact: Beth Tincher, Senior Economic Development Project Manager, 808-7730; Leslie Fritzsche, Downtown Development Manager, 808-5450

Presenters: N/A

Department: Economic Development

Division: Downtown Development Group

Organization No: 18001021

Description Analysis:

Issue: The Agency approved an Exclusive Right to Negotiate (ERN) with KSWM Docks Partners, LLC (Developer) on January 5, 2006 for the development of the Docks project area. KSWM is a partnership between Kenwood Investments, Wilson Meany Sullivan and Stockbridge Capital Partners. On October 31, 2006, business terms were approved for Phase I of the Docks project, with specific terms for entitlements, acquisition and remediation to be outlined in a Disposition and Development Agreement. The Redevelopment Agency (Agency) approved extensions to the ERN on August 22, 2006, June 26, 2007 and March 31, 2008, the last of which expired on December 31, 2008. The proposed action would allow the Agency to execute a new ERN and business terms with the Developer for a period of nine months.

Phase I generally includes all of the properties north of the Pacific Gas and Electric (PG&E) parcel (APN: 009-0012-003) to Q Street, and is approximately eight acres. A map identifying the Docks project area and Phase I is included as Attachment 2.

Policy Considerations: The Docks Area project and business terms will result in a proposed project consistent with the City of Sacramento's 2003 Sacramento Riverfront Master Plan, the 2005-2006 Docks Area Community Planning Process and the Amended Merged Downtown Redevelopment Plan and Five-Year Strategy.

Environmental Considerations: Approval of the extension of the ERN and related business terms, which authorizes staff to negotiate with the Developer to further define the scope of the proposed development project and to complete the environmental review process for the Docks Specific Plan is authorized under CEQA Guidelines Section 15262, planning for possible future action.

Rationale for Recommendations: Staff anticipates that City Council and the Agency Board will consider the Docks Area Specific Plan in summer, 2009. The Specific Plan and the Planned Unit Development Schematic Plan and Design Guidelines will establish development standards for the public and private realm of the Docks area. Additional entitlements including a Central City Community Plan Amendment and rezoning will be considered by City Council for final consideration by July, 2009.

A few items must be completed prior to City Council and Agency Board consideration including:

1. Preparation of the Final Environmental Impact Report: A Notice of Preparation was re-circulated in October 2007 and environmental studies for the preparation of an Environmental Impact Report have been prepared. A Draft EIR was circulated in July 2008 and the public review period closed in September 2008. A few outside agencies requested additional time to submit comments, the last of which was received the week of March 9, 2009. A Final EIR is nearing completion and will be circulated prior to Planning Commission and City Council Specific Plan consideration.
2. Pioneer Reservoir Relocation Study: On August 12, 2008, City Council authorized a Request for Proposals for the preparation of a study to analyze the cost and outline potential financing scenarios for the relocation of Pioneer Reservoir. In addition, the study would value engineer previous options investigated for capping the existing facility and making it a park. In September 2008, West Yost and Economic Planning Systems were selected to prepare this study and it is anticipated to be complete in May 2009. This study will help guide the decision as to which land use plan alternative to adopt for the Docks Area Specific Plan.
3. Financing Plan: Economic Planning Systems is preparing a Finance Plan for the Docks Area Specific Plan, which will outline a funding strategy for the development of necessary infrastructure in the development plan. This study is anticipated to be complete in May 2009.

The Developer has been involved in the preparation of the Specific Plan and related documents and remains committed to the project.

This report asks for Agency approval of an ERN and business terms for a period of nine months to allow sufficient time to complete the necessary predevelopment assessments and negotiate a Disposition and Development Agreement (DDA) with the development team. In consideration for the ERN, the Agency retains the rights to all the planning and design documents, technical reports and the environmental documentation prepared for the project.

Phase I Business Terms and timelines for each of these actions are included in the Business Term agreement.

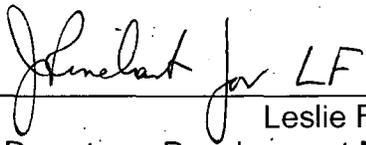
Business Term	Schedule
Developer	
Work with Agency to ensure entitlements reflect feasible and marketable project	August 2009
DDA for Development of 300-500 units in Phase one once remediation/infrastructure issues are complete	DDA by October, 2009
Agency	
Agency Site Control	August 2009
Evidence of Acquisition Financing	August 2009
EIR and Entitlements Approved	August 2009
Decision to repair or replace Pioneer Reservoir	June 2009
Identify a plan to finance the construction of Phase II – Docks Promenade with Phase I of the Docks development	August 2009
Evidence of funding Phase I infrastructure and remediation and evidence of funding for Phase II - Promenade	August 2009

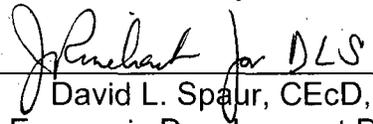
Financial Considerations: A full evaluation of costs related to repairing, replacing or relocating Pioneer Reservoir and potential financing mechanisms for recommended options will be presented to City Council in June, 2009.

The Specific Plan identifies project phasing and infrastructure cost estimates. Estimated costs of infrastructure, land acquisition and the development of parks in Phase I is \$4.8 million. A Finance plan to determine the amount and type of public and private assistance required for the development of the Docks Specific Plan is anticipated to be completed in May 2009. Staff will return with a Financing Plan prior to adoption of the Specific Plan.

The developer made two deposits to the Agency totaling \$175,000 to be used for third party costs related to the preparation of environmental documents and market analyses.

M/WBE Considerations: Minority and Women's Business Enterprise requirements will be applied to all activities to the extent required by federal funding.

Respectfully submitted by: 
Leslie Fritzsche
Downtown Development Manager
on behalf of the Redevelopment Agency
Of the City of Sacramento

Approved by: 
David L. Spaur, CECD, EDFD
Economic Development Director

Recommendation Approved:

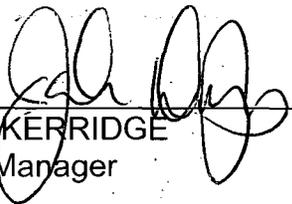

RAY KERRIDGE
City Manager

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Attachment 1**Background
Docks Area Redevelopment Project**

In July 2003, the City of Sacramento accepted the Sacramento Riverfront Master Plan (Master Plan) following a community process supported by both the cities of Sacramento and West Sacramento. The Master Plan identified two opportunity sites targeted for redevelopment on the City of Sacramento riverfront. One of those opportunity sites is the Docks Area, located north of the Marina/Miller Park, west of Interstate 5, south of Capitol Mall and east of the Sacramento River. The Master Plan includes a design for a continuous riverfront promenade/parkway along the urbanized areas of the Sacramento River.

In 2005, the community engaged in an extensive planning process to further define the redevelopment concepts for the Docks Area. The Docks Area community planning process resulted in a number of concept plans, all of which included a riverfront parkway/promenade. In addition, a number of guiding principles were established for the redevelopment of the Docks Area, including:

1. Access to the riverfront;
2. Linkages to adjacent neighborhoods;
3. Pedestrian orientation; and
4. An animated riverfront.

In October 2005, the Agency issued a Request for Qualifications (RFQ) to determine developer interest in the Docks Area. Following an extensive review of received submittals and a community workshop and interviews, a development team was selected by the evaluation committee. On January 5, 2006, an Agreement between the Agency and KSWM Docks Partners, LLC for the Exclusive Right to Negotiate was approved for the development of properties north of the Pioneer Bridge in the northern section of the Docks Area.

In April 2006, SACOG awarded the City of Sacramento (City) a \$1.239 million grant for the design and construction of the Docks Area Riverfront Promenade. The City has entered into a Memorandum of Understanding for the grant and provided the required local matching funds from Merged Downtown Redevelopment Project Area funds.

On May 23, 2006, staff received direction from City Council to issue a Request for Proposals for the design of the levee improvements and riverfront promenade/parkway. Following Council direction, a Request for Proposals was issued for the Docks Area levee improvements and riverfront promenade design. An evaluation committee made up of the City's Docks Area technical team, including seven staff members from the City's Economic Development, Parks and Recreation, Transportation, and Planning departments reviewed the initial proposals. One proposal was received for the civil design work. Four proposals were received for the landscape architecture, permitting and community outreach portion of the project. The civil design team met all the necessary qualifications. The evaluation team recommended selecting Walker Macy as the landscape architect firm.

On May 26, 2006, the City was awarded a \$183,620 grant from the California Department of Transportation for the community outreach process related to the promenade/parkway design. On August 22, 2006, \$45,905 in local matching funds was approved. These funds came from the Merged Downtown Redevelopment Project Area funds.

On May 30, 2006, the Agency approved an Environmental Oversight Agreement between the Agency and the State of California Department of Toxic Substances Control for oversight and guidance on proposed remediation strategies for redeveloping the Docks Area.

In August, 2006, a number of community meetings were held to solicit public input on the final draft land-use plans. In addition, on August 22, the Agency allocated \$7.26 million for land acquisition and related costs within the Docks area.

On October 31, 2006, the Agency approved the Docks project concepts and adopted the following business terms for Phase I of the project:

Business Terms – Developer Responsibilities:

- a. Continue to work with the Agency to ensure the entitlements for the project area reflect a feasible and marketable development;
- b. Participate in efforts to identify remediation options for the project with the Agency's Environmental Oversight Agreement (EOA) with DTSC; and
- c. Develop 300-500 units in Phase I of the project, once remediation and infrastructure issues have been completed.

Business Terms – Agency Responsibilities:

- a. Complete the acquisition of all properties located north of Pioneer Bridge and west of Front Street;
- b. Complete the entitlements for the properties north of Pioneer Bridge and west of Front Street;
- c. Complete the remediation process through the EOA with DTSC for all properties north of Pioneer Bridge and west of Front Street;
- d. Complete all infrastructure improvements for Phase I of the project, subject to funding availability;
- e. Work with the City to determine plan for the repair/replacement of Pioneer Reservoir; and
- f. Work with the City to continue developing the riverfront promenade.

On April 11, 2007, the design team met with the City Technical Advisory Committee, neighborhood groups, outside agencies and organizations to discuss further refinement of the Docks Area Plan and the development of promenade concept plans.

On April 18, 2007, the Agency held the Seventh Community Workshop. Wallace Roberts and Todd presented refined land use plans for the Docks Area plan and Walker Macy presented design options for the Promenade. This workshop also served as an additional scoping meeting for the preparation of an Environmental Impact Report for the Docks Area

Specific Plan. This workshop allowed for continued involvement and input into the development of the plans.

Additional stakeholder and the technical advisory committee meetings were held on June 13, 2007, to allow for additional input as refinements to the promenade design concepts were developed. As a result of these meetings, a preferred alternative was selected for development of design drawings.

On June 13, 2007, artist Ned Kahn presented refined concepts for the promenade art program to the Art in Public Places/Sacramento Metropolitan Arts Commission and received additional input for refinements to the art program for the promenade.

The City of Sacramento Redevelopment Agency adopted an extension of the business terms and the exclusive right to negotiate with KSWM Docks Partners, LLC on June 26, 2007.

As preferred land use alternatives were being finalized, a Docks Technical Advisory Committee meeting was held on July 12, 2007, followed by stakeholder meetings to receive feedback on land use plans.

The Waterfront Advisory Committee received a Docks Project and Promenade Progress Report on September 12, 2007.

The Docks Area Plan and Promenade projects were presented to the ADA Commission on October 18, 2007 for review and comment and to the Parks and Recreation Commission on December 6, 2007 and both committees forwarded their support for the project.

The draft Docks Area Specific Plan has been prepared and a notice of its availability was circulated on February 29, 2008.

On December 9, 2007 and March 17, 2008 staff met with the Southside Park Neighborhood Group. Staff also met with the Old Sacramento Board on January 17, 2008, the Neighborhood Area Group 1 on February 25, 2008, the Downtown Partnership on March 11, 2008, and the Broadway Business Improvement District on April 10, 2008 to review progress of the Docks land use plan and design guidelines development to garner support for the project and receive additional input. The NAG gave their full support for the project and offered to give testimony at any upcoming meetings.

On March 28, 2008, the Agency approved an extension to the business terms and the exclusive right to negotiate with KSWM Docks Partners, LLC for a period of nine months.

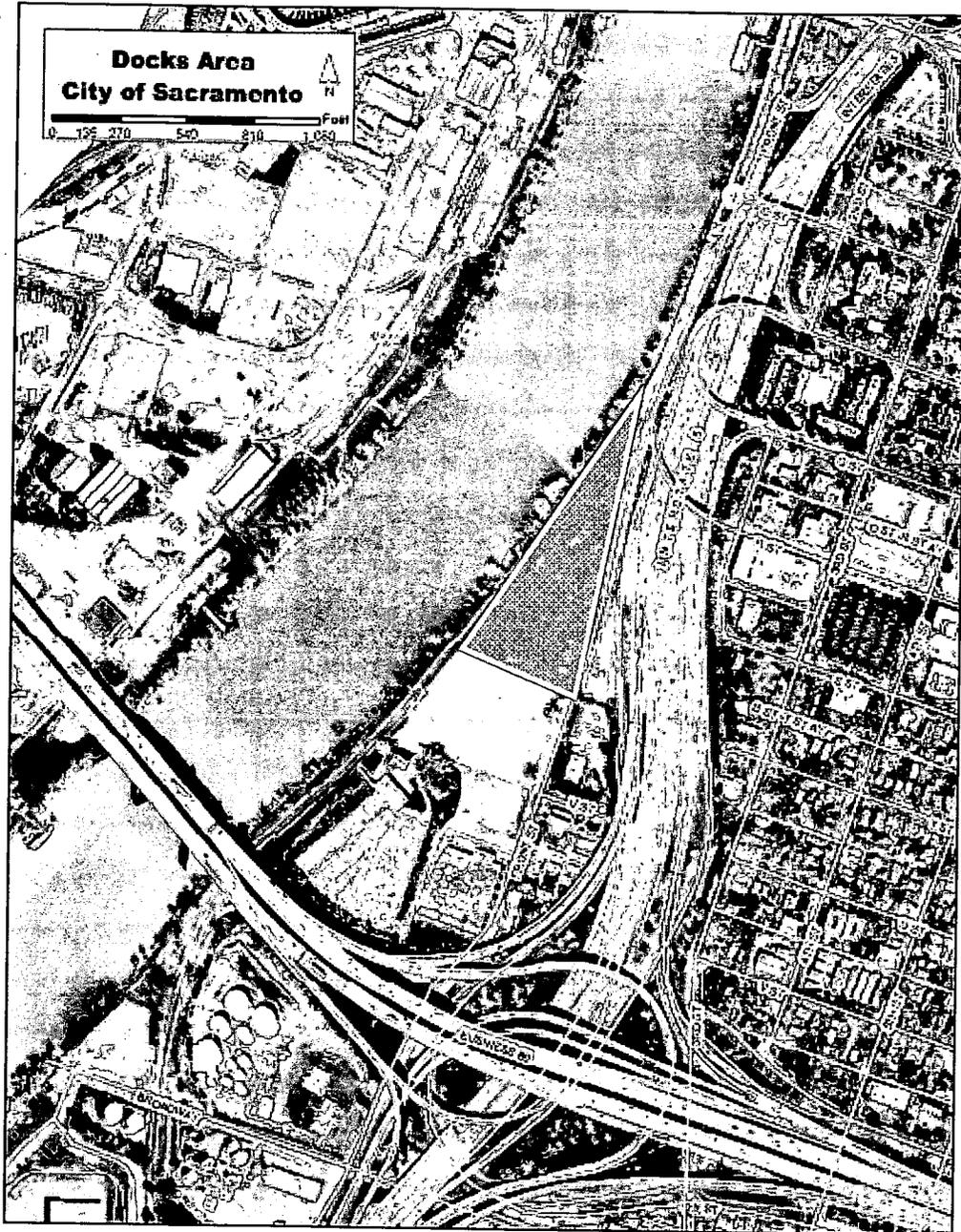
A Docks Area Specific Plan Draft Environmental Impact Report published and circulated for public review in July 2008. The public comment period officially closed on September 25, 2008, but a few outside agencies requested additional time to comment. The last comment was received the week of March 9, 2009.

On June 11, 2008, an additional presentation was made to Towe Auto Museum for continued outreach of project progress.

On September 17, 2008, the Design Commission considered and recommended approval of the Docks Area Planned Unit Development Design Guidelines.

The Docks Area Plan and Promenade projects were presented to the Parks and Recreation Commission on November 9, 2008 for review and comment and to the ADA Committee on November 20, 2008. Both committees forwarded a recommendation of support for approving the Docks Area Specific Plan.

Attachment 2
Map of the Docks Area and Phase I



Attachment 3
Exclusive Right to Negotiate Extension

EXCLUSIVE RIGHT TO NEGOTIATE
DOCKS AREA

The Redevelopment Agency Of The City Of Sacramento ("Agency") and KSWM Docks Partners, LLC ("Developer"), have entered into this Extension of the Agreement for Exclusive Right to Negotiate ("Agreement") as of April 7, 2009, ("Effective Date") upon the follow terms:

1. DEPOSIT FEE. An initial deposit of \$100,000 was made on January 7, 2006 and an additional deposit fee of \$75,000 was submitted on July 1, 2007. Agency will use the deposit fee for the following project related expenses:

- Completion of the Environmental Impact Report;
 - Negotiations on the development agreement; and
 - Completion of the Specific Plan.
- a. Prior to the Agency's approval of a DDA for the project or termination of negotiations between Agency and Developer, Agency may expend the Deposits solely for payment of all third-party fees, costs and expenses (the "third Party Costs") for predevelopment activities for the project incurred by Agency, including, without limitation the non-legal costs related to negotiating a development agreement for the Project and required CEQA review;

Prior to any such expenditure, Agency shall provide the Developer with a schedule of anticipated Third Party Costs. Developer must approve expenditures in advance, and in writing, and the expenditures so approved are referred to in this Agreement as "Approved Third party Costs."

- b. If the Developer enters into a DDA with the Agency, the Deposit remaining after payment of the Approved Third Party Costs may, at Developers election, be applied to the good faith deposit required under the DDA.

2. RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Parties:

- a. Developer desires to negotiate with Agency to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California, called the "Docks Area" The Property is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area"). The development of the Property ("Project") is consistent with the Merged Downtown Sacramento Redevelopment Plan ("Redevelopment Plan") and it's implementing documents, and has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.

- b. The purpose of this Agreement is to state the obligations of the parties to investigate the feasibility of the project and to develop a project proposal. Once such feasibility is demonstrated, the parties intend to negotiate a Disposition and Development Agreement exclusively and in good faith.
 - c. Agency represents, and Developer agrees, that the development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the project is to be undertaken.
3. IDENTITY OF PARTIES. The legal identities of the parties to this Agreement and their addresses are as follows:
 - a. Developer is KSWM Docks Partners; LLC, organized and doing business in the State of California. KSWM Docks Partners, LLC is made up of Kenwood Investments, LLC, Wilson Meany Sullivan, LLC, and Stockbridge Capital Partners, LLC. The principal office of Developer is located at 100 Spear Street, Suite 1600, San Francisco, CA.
 - b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 915 I Street, 2nd Floor, Sacramento, CA 95814. Agency includes any successor to operations of Agency.
 - c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked "Attention: Downtown Development Group (Docks Area Project)." A copy of all notices to Agency shall be mailed or delivered to 630 I Street, Sacramento, CA 95814 and marked "Attention: Legal Department (Docks Area Project)."
4. EXCLUSIVE RIGHT TO NEGOTIATE. Agency grants to the Developer the exclusive right to negotiate.
5. TERM. This Agreement shall be effective as of Effective Date and shall terminate on December 31, 2009.
6. PROJECT APPROVAL. If the final proposed project is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval. If the Agreement terminates without the execution of a DDA, each party shall bear its own costs related to this Agreement.
7. REFINEMENT OF PROPOSAL. As a condition to the Agency negotiating for and entering into a DDA, Developer must prepare and submit to Agency a proposal that meets the objectives of the parties and that is approved by the Agency as provided in this Agreement and more clearly specified in the *Guidelines*. It is agreed and understood that approval of a

proposal is a prerequisite and preliminary step to further processing a proposal, and that the approval of the full proposal under this Agreement for further processing and consideration is not intended to, and does not, in fact, compel or require the Agency to approve the Project, enter into a DDA or agree to contribute Agency property to Developer following completion of CEQA and/or other review processes.

8. SCHEDULE OF PERFORMANCES. The parties shall perform the stated obligations by December 31, 2009.

9. EXTENSION PERIOD. Upon written request of Developer, Agency shall reasonably consider an extension of this Extension, if Developer has acted diligently and in good faith in performing its obligations under this Agreement, subject to governing board approval.

10. DEFAULTS. Either the Agency or the Developer shall be in default of this Agreement if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party (b) does not reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (c) unilaterally terminates this Agreement.

11. PREDEVELOPMENT COSTS. Developer shall bear predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental, architectural, engineering and legal services and other costs associated with preparation of Developer's proposal and/or the DDA. The initial \$175,000 will be used toward these costs.

12. ASSIGNMENT. This Agreement is not assignable by either party in whole or in part without the prior written consent of the other parties.

13. APPLICABLE LAW; VENUE. This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in Sacramento County, California.

14. ATTORNEYS' FEES. In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

15. UNAVOIDABLE DELAY. For the purposes of any of the provisions of this Agreement, neither Agency nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time

or times for performance of such obligations of Agency and Developers shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

EXECUTED as of the date first written above, in Sacramento, California.

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO Approved as to form:

By: _____
Ray Kerridge, City Manager as
Designated Signatory

By: _____
Agency Counsel

DEVELOPER: KSWM Docks Partners, LLC Approved as to form:

By: _____
Jay Wallace, Managing Member

By: _____
Counsel for Developer

TERM SHEET

BETWEEN

**THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency")
AND**

KSWM DOCKS PARTNERS, LLC ("DEVELOPER")

THIS NON-BINDING TERM SHEET FOR THE REDEVELOPMENT OF THE SACRAMENTO DOCKS AREA PROJECT ("Term Sheet") dated as of _____, 2009, is between the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and KSWM DOCKS PARTNERS, LLC, a limited liability company ("Developer").

RECITALS

A. The Agency is currently in the process of planning an area known as the "Docks Area Project" consisting of approximately 29 acres in the City of Sacramento that are located north of the freeway/Pioneer Bridge. The Docks Area Project is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area").

B. The Agency owns some of the parcels comprising the Docks Area Project; however, other parcels are owned by the City of Sacramento ("City"), the State Department of Parks and Recreation, or Pacific Gas & Electric Company ("PG&E"). The Agency is currently negotiating with these property owners and is continuing to pursue site control of all of the parcels comprising the Docks Area Project.

C. Agency and Developer were parties to that certain Agreement for Exclusive Right to Negotiate, dated as of January 7, 2006, as amended by the Extension of the Agreement for Exclusive Right to Negotiate dated as of August 22, 2006, June 26, 2007 and March 31, 2008 (as amended, the "ERN"). This agreement expired on December 31, 2008. The Agency and the Developer are parties to an Exclusive Right to Negotiate Agreement, which is in effect until December 31, 2009. Under the ERN, the Agency has granted to Developer the exclusive right to negotiate a Disposition and Development Agreement ("DDA") which would set forth the respective parties' rights and obligations with regard to development of the Docks Area Project.

D. The ERN requires the Developer to prepare and submit to the Agency a proposal that meets the objectives of the parties for consideration by the Agency and requires the Agency to proceed with the planning process for the Docks Area Project. In furtherance thereof, this Term Sheet sets forth the key policy goals, basic development guidelines, financial framework and other key terms and conditions that will inform the basis of the continuing planning process and the negotiation and completion of a final DDA between the parties.

TERM SHEET

I. Project Description.

A. The Project Site/Ownership

The Project Site includes the following properties located north of the freeway/Pioneer Bridge and west of Front Street:

<u>Docks Area Project Site Parcels</u>		
	<u>Assessor's Parcel Number</u>	<u>Owner</u>
1.	006-0241-007	Agency
2.	009-0012-050	Agency
3.	009-0012-067	Agency
4.	009-0012-048	State Department of Parks and Recreation
5.	009-0012-058	State Department of Parks and Recreation
6.	009-0012-059	State Department of Parks and Recreation
7.	009-0012-019	Agency
8.	009-0012-002	Agency
9.	009-0012-017	State Department of Parks and Recreation
10.	009-0012-003	Pacific Gas & Electric Company
11.	009-0012-073	State Department of Parks and Recreation
12.	009-0012-045	PG&E
13.	009-0012-075	City of Sacramento
14.	009-0012-005	City of Sacramento
15.	009-0012-068	Agency

B. Development Description.

The Project Site presents the Agency and the City with a unique opportunity to create a vibrant and active riverfront development that will reclaim Sacramento's waterfront as a local and regional asset. However, the Project Site also presents unique challenges due to disparate ownership, inadequate public infrastructure and environmental issues.

In order to achieve the full potential of the Project Site, the Agency is currently planning The Docks Area Project through the proposed Docks Area Specific Plan (the "Specific Plan" or the "Plan"). The Plan will reflect the community vision for a mixed-use neighborhood and is consistent with the 2003 Sacramento Riverfront Master Plan. The Docks Area Project will include significant open space, vehicular, bicycle and pedestrian circulation improvements, existing, new and replacement infrastructure facilities, and a

mixed-use urban infill development that takes advantage of the waterfront location. Agency anticipates that the City will construct a new riverfront promenade along the entire westerly boundary of the Project Site, a portion of which will be funded by a State of California Proposition 40 Grant.

The Project Site also includes the existing Pioneer Reservoir that is currently located on approximately 6 acres located immediately north of the freeway. As part of the continuing planning process, the Agency will work with the City to determine whether or not the Pioneer Reservoir should stay in its existing location, taking into account any potential adverse impacts on adjoining new residential development proposed under the Specific Plan, and if it remains in its existing location, whether or not it is feasible to incorporate park and open space on the facility's roof.

In addition to the public benefits described above, the mixed-use, urban infill development anticipated for the Project Site will consist primarily of residential uses, which may include a mix of town homes, flats and high rise condominiums, as well as offices along the I-80 corridor, restaurants and waterfront-oriented retail. The mix of housing product type will be refined during the continuing planning process for the Project Site. The entire Project Site may accommodate up to 1,850 units; however, preliminary studies indicate that the total number of units is expected to be between 1000-1400 units.

The Agency anticipates that full development of the Project Site will occur in phases over a period of years. Phase 1 includes all of the horizontal and vertical development within an approximately 8 acres area located immediately north of the PG&E facility (Parcel NO. 009-0012-003) and west of Front Street, and consists of the following parcels (collectively, the "Phase 1 Site"):

Docks Area Project - Phase I Parcels		
	<u>Assessor's Parcel Number</u>	<u>Owner</u>
1.	006-0241-007	Agency
2.	009-0012-050	Agency
3.	009-0012-067	Agency
4.	009-0012-048	State Department of Parks and Recreation
5.	009-0012-058	State Department of Parks and Recreation
6.	009-0012-059	State Department of Parks and Recreation
7.	009-0012-019	Agency
8.	009-0012-002	Agency

Future phases will include development of the PG&E parcels, potentially the Pioneer Reservoir site and adjacent parcels, as well as the extension of the Riverfront Promenade.

C. Transaction Overview.

1. Overview. The redevelopment of the Property requires both "horizontal" land development necessary to transform the Property into parcels that are improved with streets, sidewalks, parks and infrastructure suitable for the "vertical" development of the proposed residential and mixed-use buildings.

As is more particularly described in this Term Sheet, the Agency is committed to undertake the following with respect to the "horizontal" development: (1) acquire all parcels within Phase I of the Project Site; (2) prepare a Specific Plan for the Project Site to assure a well-planned community with public benefits, high site-design standards and environmental quality, and complete the necessary environmental review and entitlements to allow adoption of the Plan and related planning documents and infrastructure development; (3) take such actions as necessary to lift or modify existing environmental deed restrictions and remediate the site to allow for residential development on the Project Site in accordance with the Plan when a project moves forward; (4) work with the City to develop a plan and funding mechanism for the repair or relocation of the Pioneer Reservoir; (5) identify funds and undertake such necessary horizontal infrastructure as necessary to create economically viable vertical residential development sites within the Project Site; and (7) enter into a Disposition and Development Agreement ("DDA") and related documents with private developers for the development of the Project Site in accordance with the Specific Plan. Agency will consider the option to shield private developers from liability to future homeowners as a result of pre-existing conditions on the Property, including environmental conditions. Subject to the Agency's performance of its obligations, the DDA will give Developer the right to acquire the parcels and undertake the "vertical" development within Phase 1, and will give Developer a right of first offer to develop remaining phases. Developer will also cooperate closely with Agency during the Project planning phase.

2. Term Sheet. The purpose of this Term Sheet is to set forth the process and provide timelines for achieving certain benchmarks related to the planning and site acquisition process and to determine whether or not Developer and Agency are able to reach agreement on achieving an economically feasible project that meets the parties' goals and objectives. The Agency will consider final Transactional Documents for the development of the Project Site upon completion of environmental review and the planning process. Nothing in this Term Sheet is intended to commit the Agency or Developer to a particular development plan or create a binding obligation on either party to proceed with the development of the Project. Except as otherwise provided in Article VII hereof, no binding obligations shall exist unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA process and other public review and hearing processes and subject to all applicable governmental approvals.

II. Site Control

A. Agency Obligation to Obtain Site Control. A prerequisite to development of the Project Site is the Project Site acquisition in fee by the Agency. The Agency agrees that on or before August 31, 2009, Agency shall provide written evidence to Developer

demonstrating Agency has obtained evidence that the State is a willing seller and has identified a schedule for obtaining the properties (i.e. ownership or binding commitment to obtain ownership or required easements) comprising Phase I of the Project Site, subject only to compliance with CEQA. Approval of State legislation authorizing the necessary transfer of fee title and/or related easements from the State Department of Parks and Recreation related to the Project Site will be deemed evidence of a willing seller.

Agency will consider that any purchase or other property acquisition contract evidencing site control must provide that Developer and its successors and assigns would have no on-going liability to the applicable transferor for environmental contamination or related issues, and the DDA will shield Developer and its successors and assigns from liability to future homeowners as a result of pre-existing conditions on the Property, including environmental conditions.

B. Agency to Provide Evidence of Financing. On or before August 31, 2009, Agency must demonstrate to Developer's reasonable satisfaction that Agency will have sufficient financing to complete the acquisition of the identified properties in Phase I of the Project Site, including identifying the proposed purchase price and sources and availability of funding for the identified properties, subject only to compliance with CEQA.

III. Project Entitlements

A. Agency's Obligations. As stated in the ERN, Agency will use Developer's initial deposit of \$100,000 to complete the Environmental Impact Report (EIR) and the Docks Area Specific Plan. On July 1, 2007, the Developer submitted an additional deposited of \$75,000 for EIR and Docks Area Specific Plan third party costs. Agency shall be responsible for completing all entitlements and approvals necessary for the Project, even if costs exceed Developer's deposits. This includes, but is not limited to, the EIR, the cost to prepare, process and approve the Specific Plan, and the costs related to negotiations of a DDA. Agency agrees to use best efforts to cause the EIR to be certified and the Plan and related entitlements approved on or before August 31, 2009. Related entitlements include:

- Community Plan Amendment
- Adoption of Docks Area Specific Plan
- Rezone of all Docks Area Project properties

If the Developer does not move forward with Phase I or any portion of the Docks project, the City will refund \$75,000.

B. Developer's Obligations. Developer shall work cooperatively with Agency to facilitate the entitlement process, including participating in planning meetings and community outreach process. Developer's costs for participation in the entitlement process shall not be recoverable by Developer unless Developer develops Phase I pursuant to the terms of a DDA. If the Plans result in a development that Developer determines is economically infeasible, Developer shall have the right to terminate the ERN and receive a refund of its deposit as more particularly described in Section VII below.

IV. Pioneer Reservoir

A. Agency shall work with the City and provide Developer with a plan on or before June 30, 2009 for the repair and/or replacement of the City's Pioneer Reservoir ("Reservoir"), including a determination of its proposed location within the ultimate development and the suitability of the proposed location with respect to any adverse impacts on new residential development on adjacent parcels.

B. Agency shall work with the City and develop a schedule showing the estimated costs associated with the necessary repairs and/or relocation of the Reservoir on or before June 30, 2009.

V. Environmental Issues

A. DTSC Deed Restrictions. On May 30, 2006 Agency approved an Environmental Oversight Agreement ("EOA") with the California Department of Toxic Substances Control ("DTSC") for the review and approval of remediation options in the Docks Area. Agency completed the Scope of Work identified in the EOA in September 2008.

B. Liability for Environmental Conditions. Agency will consider that Agency shall be responsible for any liability to a transferor, and that Developer shall only be liable for environmental conditions caused, or contributed to by Developer, and then only to the extent of Developer's contribution. The DDA will require Agency to pay the cost of environmental insurance to cover both Agency's and Developer's liabilities for the environmental condition of the Project Site subject; provided, however, that the availability of such insurance at commercially reasonable cost to the Agency shall be a condition precedent to Agency's obligations to proceed with Phase 1.

VI. Phase I Development of the Project Site

A. Phase I Assumptions. The parties agree that they will negotiate in good faith to complete a DDA for the development of Phase 1 based in part on the following assumptions: (1) Agency will be responsible to undertake all horizontal development necessary to create the developable pads within Phase 1; (2) Phase 1 will include approximately 300-500 market-rate residential units within Townhomes, Podium Flats and/or High Rise Buildings; the final product mix will depend upon completion of the planning process, construction costs, market conditions and fiscal feasibility; (3) Developer will be entitled to a fair market-rate return on project costs; and (4) project costs will include payment by Developer of prevailing wages for project construction.

The parties have reviewed a current pro forma analysis of possible vertical development scenarios but recognize that such analysis is subject to significant change based on the outcome of the planning process, product mix, construction and labor costs, market conditions, financing costs and other factors. The parties acknowledge that depending on such factors, the DDA may allow for payment of a residual land value to the Agency and/or require the Agency to contribute land and additional subsidy to Developer - the terms of which will be negotiated as part of the DDA.

B. Phase I Developer Responsibilities

1. Pre-Development. Developer shall work cooperatively with Agency to facilitate the entitlement process, including participating in planning meetings, community outreach process and by performing a market feasibility analysis prior to development of Phase 1. Developer shall also cooperate with Agency and coordinate its design of the Phase 1 vertical development with the environmental remediation obligations and solutions of the Project Site undertaken by Agency.

2. Construction of Phase 1. The DDA will require Developer to construct Phase 1 upon satisfaction or waiver of certain conditions precedent, including satisfactory completion of the Agency's Phase I responsibilities described in Section C below. Upon satisfaction of all conditions and conveyance of the Phase 1 parcels to Developer, Developer's construction obligations will be subject to a reasonable schedule of performance, subject to extension for force majeure delay.

C. Phase I Agency Responsibilities

1. Infrastructure Improvements and Remediation. As a condition to Developer's development obligations under the DDA, Agency shall complete, subject to available funding, the construction of all of the relevant horizontal off-site infrastructure improvements necessary for Developer to complete construction of housing units. As a part of DDA negotiations, the Agency shall provide evidence of available funding sources to complete infrastructure improvements. Infrastructure improvements include off site improvements, the circulation system, utility improvements and the delivery of developable parcels. Repair or relocation of the Pioneer Reservoir, or assurances satisfactory to Developer that such repairs or relocation will be completed within an appropriate timeframe shall be a condition precedent to Developer's obligation to proceed with development.

Both parties recognize that among the remediation options, one component of such options may include the built project; provided, however, that Developer shall not be required to design vertical development to accommodate remediation solutions in a manner that would result in an economically infeasible project or would have an adverse impact on marketability of the residential unit.

2. Riverfront Promenade. Agency shall use good faith efforts to work with the City to pursue the construction of the Riverfront Promenade adjacent to the Docks Area Project. Phase I of the Docks Promenade will be constructed in 2009. The Agency shall pursue the development of Phase II of the Docks Promenade (from R Street to T Street in conjunction with Phase I of the Docks development. On or before August 31, 2009, Agency shall provide Developer with a determination as to whether or not the City will proceed with the Riverfront Promenade in connection with development of Phase 1.

3. Availability of Funds. On or before October 31, 2009, Agency shall provide written evidence of the financing or other available resources for the Agency to perform infrastructure and remediation obligations for Phase 1, subject only to compliance with CEQA. Agency shall also use good faith efforts to identify sources of funding for subsequent phases of the Project Site horizontal development.

4. Relocation.

a. Agency shall be responsible for the relocation of all impacted tenants within Phase 1.

D. Financial Structure.

1. Developer Constructed Units. Based on the assumptions described in Section VI.A above, the final DDA will set forth the terms under which Agency will convey fee title to the Phase I property to Developer, including the residual land value payable to the Agency, if any, and the amount and funding mechanism for Agency subsidies as required.

2. Disposition of Undeveloped Parcels. If the DDA terminates due to a Developer default, or if Developer fails to develop the Phase I parcels in accordance with the DDA (subject to force majeure extensions), the Agency reserves the right to enter into separate and distinct DDAs for such parcels not developed by Developer.

E. Future Phases of Development

During the planning process, the Agency in consultation with Developer will identify the scope and timing of future phases of development after Phase 1. Developer will have no obligation to complete future phases of development on the Project Site. However, so long as Developer is not in default under the DDA, the DDA will allow Developer to exercise a right of first offer as to future phases. Under the right of first offer, Agency will provide Developer the first opportunity to negotiate with Agency for the vertical development of such future phases and the parties will negotiate in good faith based on the assumptions described in Section VI.A above. If Agency and Developer are unable to reach agreement with a specified period of time, Agency will have the ability to bid or negotiate with other parties for the future phases of development on the Project Site.

VII. Good Faith Efforts/Remedies

Agency shall use its best efforts to satisfy its conditions described in Articles II.A and B, Article III.A, Article IV, Article V, and Article VI.C.3 and VI.C.4 hereof, within the times provided. If Agency is unable to satisfy any of the foregoing conditions within the times required, or if at any time, Developer reasonably determines that Agency is not pursuing the completion of such conditions with reasonable diligence and in good faith, it shall be deemed an event of default under Section 10 of the April 7, 2009 ERN. In such event, Developer, in its sole discretion, may terminate the ERN in writing to Agency and Agency shall refund the Deposit remaining at the date of termination in accordance with Section 1.3 of the April 7, 2009 ERN.

In addition, if the Agency adopts a Plan, proposes the relocation or refurbishment of the Pioneer Reservoir, or adopts any other plans or policies that Developer determines will have an adverse impact on Developer's ability to achieve its required financial return or would adversely affect the suitability or marketability of Phase 1 as a residential development, then Developer, in its sole discretion, may terminate the ERN in writing to

Agency and Agency shall refund the Deposit remaining at the date of termination in accordance with Section 1.d of the April 7, 2009 ERN.

In Witness Whereof, Agency and Developer enter into this Term Sheet as of the _____ day of _____, 2009.

AGENCY

DEVELOPER

Redevelopment Agency of the City of Sacramento

KSWM Docks Partners, LLC

By: _____
Ray Kerridge, City Manager as Designated Signatory

By: _____
Jay Wallace, Managing Member

Approved as to Form

Agency Counsel

RESOLUTION NO. 2009-

Adopted by the Redevelopment Agency of the City of Sacramento

EXECUTION OF EXCLUSIVE RIGHT TO NEGOTIATE AND BUSINESS TERMS FOR THE DOCKS AREA REDEVELOPMENT PROJECT

BACKGROUND

- A. In July 2003, the City Council accepted the Sacramento Riverfront Master Plan (Master Plan). Included in the Master Plan was the identification of the Docks Area as an opportune redevelopment site. The original concept for the Docks Area included a mixed-use neighborhood with a riverfront parkway/promenade.
- B. In 2005, the City engaged in an extensive community planning process to further define the Docks Area. The 2005 Docks Area Community Planning Process resulted in a more detailed concept design which included a high-density, mixed-use neighborhood with a riverfront parkway/promenade.
- C. On January 5, 2006 the Redevelopment Agency of the City of Sacramento (Agency) approved an Exclusive Right to Negotiate (ERN) with KSWM Docks Partners, LLC (Developer) as the Master Developer for the Docks Area. The developer submitted a \$100,000 deposit to the Agency on January 7, 2007 and an additional deposit on of \$75,000 on July 1, 2007.
- D. The ERN with the KSWM Docks Partners, LLC was extended on August 22, 2006, June 26, 2007 and March 31, 2008, the last of which expired on December 31, 2008.
- E. Considerable progress has been made regarding the development of a Specific Plan and Design Guidelines, a health risk assessment, a Draft Environmental Impact Report (EIR), and other related documents.
- F. The Pioneer Reservoir Relocation Study and Financing Plan, the Docks Specific Plan Financing Plan and the Final EIR must be prepared prior to consideration of the Specific Plan by the City Council and the Agency.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

- Section 1. All of the evidence presented having been duly considered, the findings, including the environmental findings regarding this action, as stated in the staff report that accompanies this Resolution, are approved.
- Section 2. The Executive Director or her designee is authorized to exclusively negotiate,

on behalf of the Agency, with KSWM Docks Partners, LLC for the development of the Docks Area along the Sacramento riverfront. Staff is directed to follow the adopted *Guidelines for Individual Project Review*.

Section 3. The Term Sheet is approved for the Docks Area redevelopment project. The responsibility of the Agency and the Developer are as follows:

Developer Responsibilities

- a. Continue to work with the Agency to ensure the entitlements for the project area reflect a feasible and marketable development;
- b. Coordinate the remediation of the project area with the Agency's Environmental Oversight Agreement (EOA) with the Department of Toxic Substances Control (DTSC) as a development project moves forward; and
- c. Develop 300-500 units in Phase I of the project, once remediation and infrastructure issues have been completed.

Agency Responsibilities

- a. Complete the acquisition of all properties located in Phase I of the Project Site;
- b. Complete the entitlements for the properties north of Pioneer Bridge and west of Front Street;
- c. Work with DTSC to remove deed restriction related to the development of properties within Phase I of the Docks development project as a project moves forward for Phase 1;
- d. Complete all infrastructure improvements for Phase I of the project, subject to funding availability;
- e. Work with the City to determine plan for the repair/replacement of Pioneer Reservoir; and
- f. Work with the City to continue developing the riverfront promenade.

Section 4. Staff is directed to return to the Agency with a Disposition and Development Agreement for Phase I of the Docks Area redevelopment project. Phase I generally includes all of the properties north of the Pacific Gas and Electric (PG&E) parcel (APN: 009-0012-003) to Q Street.

