

RESOLUTION NO. 2010-221

Adopted by the Sacramento City Council

April 27, 2010

APPROVING THE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH SACRAMENTO CONVERGENCE, LLC FOR THE CONVERGENCE PLAN

BACKGROUND

- A. With the completion of the work of the Mayor's Sacramento FIRST Task Force, on March 16, 2010 the City Council accepted the Task Force's recommendation to accept the offer by the Kamilos Companies to develop a Sports and Entertainment ("S&E") Complex at the City's Intermodal property located within the Sacramento Railyards. The City Council further directed staff to prepare an Exclusive Right to Negotiate (ERN) agreement to provide for the evaluation of the "Convergence Plan" as outlined in the offer by the Kamilos Companies. The Kamilos Companies have formed the Sacramento Convergence, LLC ("Developer"), and its principal members are Gerry N. Kamilos and David S. Taylor.
- B. The Convergence Plan involves the transfer of the City's Natomas property to the State and the sale by the State of the existing Cal Expo property to the Developer, and the financing for development of the S&E Complex at the Intermodal property. The ERN provides for the preparation of a formal, detailed proposal ("Convergence Proposal"), an S&E Complex Plan, and submittal of Developer's financial plan that includes the revenue information and assumptions for funding development of the S&E Complex.
- C. The ERN also provides for Developer to fund City's third-party costs and hire a project manager to assist in the staff evaluation of the Convergence Proposal and the S&E Complex Plan. The information developed by the City consultants during the ERN period will be submitted for review by the Sacramento Convergence Project Ad Hoc Committee. It is anticipated that once the Convergence Proposal and the S&E Complex Plan and the evaluations are complete, the Convergence Plan as it may be refined and further detailed will be submitted to the City Council for concurrence before drafting of a "pre-development agreement" and preparation of environmental impact report commences.
- D. The ERN also addresses the possible need for special legislation to implement the Convergence Plan and all proposed legislation will be reviewed by the Sacramento Convergence Project Ad Hoc Committee to provide direction to the City Manager.

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

- Section 1. The City Manager or his designee is hereby authorized to execute on behalf of the City of Sacramento the Exclusive Right to Negotiate Agreement for the

Convergence Plan with Sacramento Convergence, LLC in the form attached as Exhibit A.

Table of Contents:

Exhibit A Agreement for Exclusive Right to Negotiate (Conveyance of City's Intermodal, Railyards and Natomas Property Interests and Development of a Sports and Entertainment Complex)

Adopted by the City of Sacramento City Council on April 27, 2010 by the following vote:

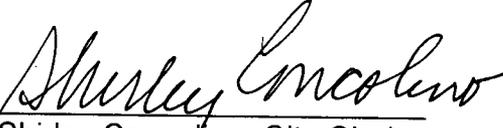
Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk

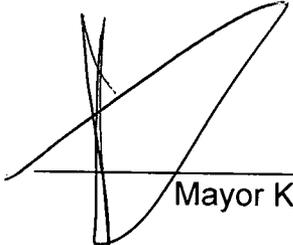

Mayor Kevin Johnson

EXHIBIT A

AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE (Conveyance of City's Intermodal, Railyards and Natomas Property Interests and Development of a Sports and Entertainment Complex)

The CITY OF SACRAMENTO, a municipal corporation ("**CITY**"), and SACRAMENTO CONVERGENCE, LLC, a Delaware limited liability company ("**DEVELOPER**"), hereby enter into this Agreement for Exclusive Right to Negotiate ("**Agreement**") as of April 27, 2010 ("**Effective Date**"). CITY and DEVELOPER hereinafter may be referred to collectively as the "**Parties**" or in the singular as "**Party**," as the context requires.

RECITALS

A. Intermodal Property - CITY currently owns an approximate 8.82 acres of land along I Street, between 3rd Street and 5th Street, Assessor Parcel Number 002-001-044 ("**Parcel A**"), upon which is located the Sacramento Valley Station for Amtrak and Capitol Corridor passenger rail service, light rail and intercity bus service, and the historic Depot building ("**Depot**"). This property and improvements are collectively referred to as the "**Amtrak Station**." CITY has entered into a Purchase and Sale Agreement ("**PSA**") with S. Thomas Enterprises of Sacramento, LLC ("**Thomas**") for CITY to acquire the generally vacant 23.86 acre parcel of land abutting Parcel A, Assessor Parcel Number 002-001-046, ("**Parcel B**"). Parcel B contains a 17.46 acre easement owned by the Union Pacific Railroad Company ("**UPRR**"), which is the location of the future alignment of UPRR's mainline freight tracks. CITY is seeking to acquire Parcel B and will undertake relocation of the existing UPRR tracks to the north within that easement area. Parcel A contains a 1.26 acre easement for the Sacramento Regional Transit District's light rail facility, and CITY has rights to relocate this facility. Parcels A and B are also encumbered by the Caltrans I-5 freeway easement that restricts development underneath the elevated freeway, and the freeway triangle area covers 1.82 acres. The Depot and its adjacent existing parking lot encompasses 2.71 acres within Parcel A. Once the existing UPRR tracks behind the Depot are relocated to the north within Parcel B, the developable acreage of Parcels A and B combined (the "**Intermodal Property**") will be approximately 9.43 acres.

B. Intermodal Project - CITY has prepared preliminary plans and environmental reports under California Environmental Quality Act ("**CEQA**") and the National Environmental Policy Act ("**NEPA**") regarding expansion of the existing Amtrak Station into the planned Intermodal facility (the "**Intermodal Project**"). On June 2, 2009, the City Council certified the environmental reports and approved a site plan for the Intermodal Project that would retain the Depot in its current location. CITY will undertake relocation of the existing UPRR mainline tracks and that work is currently scheduled to be completed by late 2011. Thereafter, CITY plans to develop the Intermodal Project and expects that there will be excess land available for joint development adjacent to the new terminal building. The new terminal building is planned to be a two-story structure designed to accommodate the future expansion of rail and bus passenger services and the planned extension of high speed rail to the Amtrak Station.

C. Railyards Property - Under the terms of the Development Agreement with Thomas regarding implementation of the Railyards Specific Plan, CITY has certain rights to obtain, at no cost, title to a parcel of land located just north of the relocated UPRR mainline tracks between the planned extension of 5th and 6th Streets to build a public parking garage on lot 17a of the Railyards Tentative Map (the "**Railyards Property**"). CITY has prepared design plans for this new garage (the "**5th Street Garage**") and committed \$2 million in excess CITY parking enterprise fund revenues annually for five years to help pay debt service (a total of \$10 million), but the timing and feasibility for its development is contingent on parking demand, revenue bond financing, and the schedule for construction of the street extensions.

D. Natomas Property - CITY owns approximately 183.78 acres of contiguous land within North Natomas. The land area includes the site of the existing Arco Arena and Kings practice facility, Assessor Parcel Numbers 225-0070-059, 060, 063, 067, (the "**Arco Arena Parcel**"), and an approximately 100-acre vacant parcel of land adjacent to the Arco Arena Parcel, Assessor Parcel Number 225-0070-076. Together the Arco Arena Parcel and the adjacent vacant parcel are collectively referred to as the "**Natomas Property.**" The Arco Arena Parcel is subject to a lease with Maloof Sports Entertainment and this parcel is not available for sale until that lease expires or is earlier terminated by mutual agreement. Also, the Arco Arena building and the Arco Arena Parcel are pledged as security to repay the bonds issued to finance construction of the arena and it is uncertain whether substitute security can be pledged to remove this lien on the Arco Arena Parcel. The existing \$6 million in yearly lease payments from Kings Arco Arena Limited Partnership ("**Malooofs**") is currently used to pay the bondholders. The existing bond debt is approximately \$69 million (the "**Arco Arena Bond Loan**").

E. Point West Property – The state owns approximately 350 acres of land along Exposition Boulevard in the Point West area of the city where the existing State Fair and exposition facilities are located (the "**Point West Property**"). The operations of the existing State Fair and exposition facilities are overseen by a board of directors appointed by the Governor (the "**Cal Expo Board**"). In 2008, the Cal Expo Board issued a solicitation for redevelopment of the existing State Fair and exposition facilities to be funded by the sale of a portion of the Point West Property. DEVELOPER has interacted with the Cal Expo Board to discuss relocation of the state facilities to the Natomas Property in exchange for the sale of the Point West Property. The Cal Expo Board is currently evaluating this proposal.

F. S&E Complex - DEVELOPER has met with representatives of the National Basketball Association ("**NBA**") and the Malooofs to evaluate the financial feasibility and the desirability of constructing a new arena for the Sacramento Kings basketball team and an entertainment complex (the "**S&E Complex**") at the Intermodal Property. DEVELOPER participated in the Mayor's SacramentoFIRST Task Force process for evaluating offers to build a new multi-use entertainment complex, which would include developing a new arena for the Sacramento Kings. The Sacramento FIRST Task Force recommended the DEVELOPER'S proposal to the City Council. DEVELOPER has represented that the Malooofs are willing to increase their lease payments to \$10 million annually (with as yet undetermined annual escalations) if a new arena is built. DEVELOPER submitted an offer to build those facilities at the Intermodal Property and the Task Force, NBA, Malooofs and the City Council have all expressed support for the S&E Complex to be located at the Intermodal Property.

G. Convergence Plan - DEVELOPER's plan for development of the S&E Complex at the Intermodal Property involves (i) DEVELOPER acquiring the Point West Property for redevelopment as a new mixed-use neighborhood, (ii) CITY conveying the Natomas Property to the State for redevelopment as the new State Fair and Exhibition facility (the "**New State Fair & Expo**"), (iii) DEVELOPER using the proceeds from the sale of portions of the redeveloped Point West Property to assist in financing the New State Fair & Expo and the S&E Complex, (iv) CITY allocating a portion of the increment in new property tax revenues generated from redevelopment of the Point West Property and the Natomas Property to assist in financing the public infrastructure improvements which may be required for redevelopment of each site, (v) CITY conveying rights to DEVELOPER to design, build and finance the S&E Complex at the Intermodal Property, (vi) CITY conveying rights to DEVELOPER to build and possibly finance the 5th Street Garage, and (vii) CITY pledging the additional parking and possibly other revenues from the S&E Complex events to assist in financing construction of the 5th Street Garage and the S&E Complex. This multi-faceted effort is generally referred to as the "**Convergence Plan.**"

H. Integration of S&E Complex with Intermodal Project - The Convergence Plan is to include an integration of designs of the S&E Complex and the Intermodal Project, either by incorporating the Intermodal Project into the actual physical design of the S&E Complex or to have the Intermodal Project located adjacent to the S&E Complex. Incorporating the Intermodal Project into the actual physical design of the S&E Complex may require review under NEPA and approval by the federal agencies providing funding for the Intermodal Project.

I. Convergence Proposal - Before CITY can make any commitments regarding its willingness to implement the Convergence Plan, DEVELOPER must prepare and submit a proposal (the "**Convergence Proposal**") that identifies all of the planned sources of funding for acquisition and development of the Point West Property, and development of the S&E Complex, the 5th Street Garage and the New State Fair & Expo, as well as payment of the Arco Arena Bond Loan. DEVELOPER and CITY staff has conducted preliminary discussions regarding such sources of funding, but DEVELOPER has not yet submitted a detailed and comprehensive financing plan, which is to be part of the proposal. In addition, the proposal must identify the proposed ownership and operating arrangement for the S&E Complex, as well as to define the planned uses of the S&E Complex at this initial phase of evaluation. One of the purposes of this Agreement is to allow DEVELOPER time to prepare the Convergence Proposal and for CITY to undertake an evaluation of the financing assumptions and the financial feasibility of DEVELOPER's Convergence Plan based on the information to be contained in the Convergence Proposal.

J. Feasibility Studies and Environmental Analysis - The Parties also need to conduct studies to evaluate the physical and financial feasibility of developing the S&E Complex at the Intermodal Property, to prepare a site plan and related technical reports to define the size and scope of the S&E Complex facilities and operations, and to prepare the studies required under NEPA, to be funded by CITY, to secure federal funding for the Intermodal Project. In consultation with the Cal Expo Board, DEVELOPER needs to prepare a land use and site plan and cost estimates for redevelopment of the Natomas Property as the New State Fair & Expo. In addition, DEVELOPER needs to evaluate the Point West Property to determine the amount of mixed-use development it can accommodate, develop a land use plan, identify the additional infrastructure that may be needed to support such development, and the costs and

financing for such development and infrastructure. These feasibility studies, plans, and reports are needed to define the "project" for the purposes of CEQA to allow for preparation of an environmental impact report(s), to be funded by DEVELOPER; to evaluate impacts of these proposals (to be known collectively as the "**Convergence Project**"); to determine the possible site and land use alternatives for each component of the Convergence Project; and to identify possible mitigation measures to reduce the potential adverse effects of such development at each of the three locations.

K. Conveyance of City Property and Development Rights - DEVELOPER is interested in obtaining CITY's agreement to convey the Natomas Property to the State and the rights to develop the S&E Complex at the Intermodal Property on terms that would facilitate financing of the S&E Complex. In addition, DEVELOPER may desire to assume some or all of CITY's rights to the Railyards Property to facilitate development of the 5th Street Garage to provide for additional parking facilities to serve the S&E Complex as well as the Intermodal Project. In addition, DEVELOPER may desire to construct other supporting joint development projects on the Intermodal Property if there is surplus land area or airspace available to support such development. Collectively, these property interests are referred to herein as the "**CITY Property**" and the rights to design, build and finance the S&E Complex and the 5th Street Garage are referred to herein as the "**Project Based Infrastructure (PBI) Program.**"

L. DEVELOPER Costs - In order for DEVELOPER to be willing to expend the necessary funds to prepare the Convergence Proposal, the land use and infrastructure plans, the environmental studies, and to fund the CITY's consultant costs to evaluate the physical and financial feasibility of developing the S&E Complex at the Intermodal Property, DEVELOPER needs CITY's commitment that it will negotiate exclusively with DEVELOPER in good faith in regards to the price and terms for the CITY's conveyance of the CITY Property and the terms of the PBI Program.

M. Financing - DEVELOPER has prepared a preliminary financing plan as part of the Convergence Plan for the development of the S&E Complex and redevelopment of the Point West Property and the Natomas Property. DEVELOPER has informed the CITY that the preliminary financing plan relies on a CITY commitment to allocate a portion of the increase in CITY taxes and revenues generated by the S&E Complex to assist in funding the costs of the S&E Complex and the 5th Street Garage. In addition, DEVELOPER's preliminary financing plan relies on allocation of a portion of the property tax increment from the redevelopment of the Point West Property and the Natomas Property to assist in funding the new public infrastructure which may be needed for such development projects. DEVELOPER has also indicated a commitment to pay-off or assume (by substituting security) the existing Arco Arena Bond Loan which encumbers the Arco Arena Parcel. In return, DEVELOPER intends to seek a commitment for the sale of the CITY Property at less than its current fair market value as part of the CITY's investment in the S&E Complex. CITY needs to evaluate the DEVELOPER's cost estimates for the S&E Complex and to determine the anticipated CITY costs for public services that will be needed for the S&E Complex, as well as for the redeveloped Point West Property and Natomas Property. One of the purposes of this Agreement is to allow for DEVELOPER to prepare a detailed financing plan as part of the Convergence Proposal and to provide CITY with its confidential financial information for the purpose of CITY's evaluation of the DEVELOPER's financing plan. CITY will accept DEVELOPER's Convergence Proposal only for the purposes of such evaluation and makes no commitment to accept the DEVELOPER's preliminary or refined financing plan terms.

N. Legislation - In order to facilitate financing for development of the S&E Complex and the New State Fair & Expo, there is a need for special State legislation ("**Legislation**") to allow for the sale of the Point West Property to the DEVELOPER and for the authority to establish special financing mechanisms for the state to help fund the cost of constructing the New State Fair & Expo. In addition, Legislation may be needed to allow for establishment of one or more tax increment financing districts or other financing mechanisms to allow CITY to assist in funding a portion of the costs of the additional public facilities and infrastructure which may be required for implementation of the Convergence Project. It may also be desirable for the Legislation to provide for other authorizations needed to implement the Convergence Project. DEVELOPER and CITY will need to agree on the terms of such Legislation, in coordination with the Cal Expo Board, and the exercise of new authority which may be granted by the Legislature would be subject to compliance with CEQA for any development to be funded by such special financing.

O. Cal Expo Board - DEVELOPER is in dialog with the Cal Expo Board to enter into a negotiation and confidentiality agreement with that body regarding the disposition of the Point West Property and the programming of a New State Fair & Expo at the Natomas Property. CITY intends to closely coordinate with the Cal Expo Board regarding CITY's evaluation of the Convergence Proposal and implementation of the Convergence Project, as well as other stakeholders.

P. Purpose of Agreement - The primary purpose of this Agreement is provide DEVELOPER with the opportunity to submit to CITY the Convergence Proposal and the plans, studies and reports to further define the Convergence Project, and to provide DEVELOPER with a period of time within which it has the exclusive right to negotiate with the CITY to develop the terms of a "Project Parameters Agreement" ("**PPA**") to secure CITY's contingent commitment regarding financing of the Convergence Project and the PBI Program. In addition, this Agreement provides funding for the CITY's costs to hire consultants to assist in its evaluation of the physical and financial feasibility of the Convergence Proposal and the proposed ownership and operation of the S&E Complex. Further, this Agreement allows DEVELOPER and CITY to cooperatively draft and introduce the Legislation and for DEVELOPER to obtain a concurrent exclusive right to negotiate agreement with the Cal Expo Board.

AGREEMENT

NOW, THEREFORE, based on the Recitals which are incorporated into this Agreement, 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. Identity of DEVELOPER. During the Initial Term of this Agreement (as defined in Section 6 below), DEVELOPER shall make full disclosures to CITY of the identity of all members, principals, officers, stockholders, partners, joint venturers, and entities of or in Sacramento Convergence, LLC, ("**Developer's Interested Persons**") or any successor entity to which DEVELOPER may assign its rights under this Agreement with CITY's prior written consent (which shall not be unreasonably withheld). As of the Effective Date, the

principals of DEVELOPER are Gerry N. Kamilos and David S. Taylor. Gerry N. Kamilos is the Manager of the DEVELOPER. During the Term of this Agreement, DEVELOPER shall provide CITY with prompt written notice of any change in Developer's Interested Persons.

2. **Identity of Development Team.** The identity of the development team, including but not limited to advisors and consultants, for each element of the proposed Convergence Project is to be set out in the Convergence Proposal, to the extent determined.
3. **Exclusive Negotiation.** During the Initial Term (as hereinafter defined), the Parties shall negotiate exclusively with each other and in good faith with respect to the Convergence Proposal (or any variations thereof that involve all three of the Natomas Property, the Intermodal Property and the Point West Property) to identify and determine the feasibility of the financing mechanisms for development of the S&E Complex, with the goal of reaching an agreement on the terms of the PPA by the end of the Initial Term. The Parties acknowledge and agree that: (i) neither Party is obligated by this Agreement or otherwise to sell, lease, purchase or assign all or a portion of the CITY Property or rights therein; (ii) no Party has or will have a cause of action against the other arising under this Agreement for failure to approve the purchase, sale lease and other agreement(s) related to the S&E Complex and/or CITY Property, the terms of which are to be negotiated between the Parties during the Term of this Agreement; and (iii) neither Party is obligated to undertake development of the S&E Complex, the Intermodal Project, the 5th Street Garage, the Natomas Property, or any other development of CITY Property by entering into this Agreement.
4. **Negotiations and Communications Not Confidential.** The Parties acknowledge and agree that this Agreement does not bind either Party in regards to the confidentiality or content of the communications and negotiations it may have with (i) the Cal Expo Board and others regarding the sale and redevelopment of the Point West Property and the redevelopment of the Natomas Property, and (ii) the members of the State Legislature and the Governor and his staff regarding the terms of the proposed Legislation. In addition, CITY shall not be barred from releasing information to the public regarding the progress of the negotiations and copies of all feasibility studies, plans and reports prepared by CITY and its consultants pursuant to this Agreement, with the exception that the CITY will abide by the terms of the existing confidentiality agreement between the Parties with regard to not releasing DEVELOPER's confidential financial information to the public without DEVELOPER's prior written approval. The Confidentiality Agreement between CITY and an affiliate of DEVELOPER, which has been assigned to DEVELOPER, shall remain in full force and effect during the Term of this Agreement.
5. **Ad Hoc Committee.** DEVELOPER understands and acknowledges that the City Council has appointed an "**Ad Hoc Committee**" of less than a quorum of the City Council to assist staff in negotiating the terms of the agreements for the development and financing of the S&E Complex and the sale of the CITY Property. Although Ad Hoc Committee meetings may be closed to the public under the Brown Act, the Ad Hoc Committee members may nonetheless decide to allow for open meetings. However, in such event, CITY will continue to abide by the terms of the existing confidentiality agreement between the Parties with regard to preventing public release of DEVELOPER's confidential financial information without DEVELOPER's prior written consent. DEVELOPER understands that the Ad Hoc Committee will not serve as a review committee to oversee any plans that might be prepared by DEVELOPER for redevelopment of the Point West Property as a substitute for the

standard review process for obtaining approval of the entitlements required to be secured by DEVELOPER for redevelopment of this site.

6. Term. This Agreement shall become effective as of the Effective Date and shall terminate one hundred and twenty (120) days thereafter ("**Initial Term**" or "**Term**") unless sooner terminated or extended by a duly authorized and executed written agreement of the Parties or when a PPA is executed by both Parties and all other parties thereto, if any. As part of the execution of the PPA, the Initial Term of this Agreement may be extended by mutual agreement of the Parties to provide DEVELOPER with a continuing exclusive right to negotiate regarding the terms of the Convergence Proposal until CITY is able to make a determination whether to approve or disapprove, or conditionally approve, all or portions of the Convergence Project after completion of the required CEQA and NEPA environmental studies.

This Agreement may be terminated by either Party upon the occurrence of any of the following events and neither Party will have any recourse against the other Party for any costs or losses resulting from such termination: (i) DEVELOPER does not submit the Convergence Proposal or does not provide the information requested within the time periods specified in Section 11, below; (ii) the NBA and/or Maloofs provide either Party with written notice that the S&E Complex is not acceptable and the Parties do not mutually agree to the changes as may be needed to secure such approvals, or that the NBA and/or Maloofs make an announcement that the Kings franchise is to be moved outside of CITY's jurisdictional boundaries; (iii) DEVELOPER is unable to secure the rights from the State to acquire all of the Point West Property based on the written confirmation or documentation of the rejection or denial of the proposed transfer of the State's property to DEVELOPER issued by either the Cal Expo Board, the Legislature and/or the Governor; (iv) CITY is notified by a federal or state agency that it will lose eligibility for federal and/or state funding for the Intermodal Project if the S&E Complex is located on the Intermodal Property; or (v) the City Council rejects the S&E Complex Plan and/or the Convergence Proposal as specified in Section 10, below.

7. Convergence Proposal and S&E Complex Plan. In order for CITY to evaluate the feasibility of developing the S&E Complex, and as a condition precedent to CITY negotiating the financial terms for the sale or transfer of any CITY Property or any interest therein, or for financing the development of the S&E Complex; DEVELOPER, in consultation with CITY, must first (i) submit the Convergence Proposal, and (ii) prepare the "**S&E Complex Plan**" for development of the S&E Complex at the Intermodal Property. The Convergence Proposal and the S&E Complex Plan must provide sufficient information for CITY to conduct an evaluation of the feasibility for implementation of the Convergence Project and to verify that development of the S&E Complex can be funded by CITY's pledge of only the CITY Property and the new revenues which may be generated by the S&E Complex operations, although this Agreement does not limit the CITY from considering allocation of other revenue sources; however, the CITY's General Fund will not be at risk for payment of any debt service for the S&E Complex.

8. Legislative Process. The State Legislature must approve the sale of the Point West Property to DEVELOPER and DEVELOPER desires that the state allocate funding to help finance the New State Fair & Expo facilities at the Natomas Property. There may be a need for Legislation to assist in financing the public infrastructure required for redevelopment of the

Point West Property and the Natomas Property. The Parties agree that any Legislation which involves securing funding or the authority for financing the redevelopment of the Point West Property, the Natomas Property or the development of the S&E Complex shall first be approved by both Parties before requesting a member of the State Legislature to introduce such Legislation. The Parties also agree that any amendment to that Legislation must be approved by both Parties before it is submitted to a member of the Assembly, Senate or to the Governor.

9. CITY Evaluation of S&E Complex Plan and Convergence Project Financing Plan.

CITY intends to obtain independent consultants to evaluate the S&E Complex Plan and the Convergence Proposal financing plan, and to determine the value of the CITY Property proposed to be transferred to DEVELOPER and/or the State. The list of disciplines and estimated cost for each CITY consultant is provided in Exhibit 1, which is attached and incorporated herein. Based on such evaluations and negotiations with DEVELOPER, including direction from the Ad Hoc Committee, the S&E Complex Plan and/or the Convergence Proposal may be refined by DEVELOPER. CITY's consultant costs for such evaluations are to be funded from the proceeds of the DEVELOPER's Deposit, as set out in Section 12, below. CITY shall share with DEVELOPER the reports and studies funded with DEVELOPER's Deposit as specified in Section 13, below.

10. CITY Concurrence with S&E Complex Plan and Convergence Proposal. Once CITY staff and DEVELOPER mutually concur that the content of the S&E Complex Plan and the Convergence Proposal is sufficiently complete and accurate at this initial phase of evaluation to submit to the City Council, City Council review and comment will be sought before the Parties proceed with the next phase of evaluation, which includes issuing the notice of preparation of the environmental impact report(s) and negotiating the terms of the PPA. City Council concurrence or rejection of the S&E Complex Plan and/or the Convergence Proposal shall be made in its sole and absolute discretion and nothing in this Agreement shall be deemed to limit Council's exercise of such discretion.

A. Concurrence Prerequisite to Further Study - It is agreed and understood that the CITY's concurrence with the S&E Complex Plan and the Convergence Proposal is a prerequisite to CITY's further consideration of the options for financing and the proposed ownership and operating arrangements for the S&E Complex, and for the negotiation of the terms of the sale or transfer of any CITY Property, or any interest therein, which may be needed or desirable to develop and/or finance the S&E Complex. Such concurrence does not commit the City Council to take any further action or to make any Convergence Project approvals. The purpose of such concurrence is solely to avoid incurring additional costs by each Party for further evaluation of the Convergence Project in the event some or all of the components of the S&E Complex Plan and/or the Convergence Proposal are not supported by the CITY. The Parties acknowledge and agree that the PPA will address the costs to prepare the additional plans and studies, the conceptual terms and conditions of future agreements regarding the disposition of CITY Property and financial commitments, and the parameters for development of the S&E Complex, and that neither Party is bound by or obligated to implement the S&E Complex Plan or to finance or construct the S&E Complex under this Agreement. The DEVELOPER's preliminary schedule for the milestones leading to development of the S&E Complex is set out in Exhibit 1, which is attached and incorporated herein. If the City Council does not concur with the content of the S&E Complex Plan and/or the Convergence Proposal, this

Agreement may be terminated by either Party and CITY shall have no liability to DEVELOPER in such event, other than refunding the excess Deposit as set out in Section 12, below.

B. CITY Action Not Binding - DEVELOPER acknowledges and agrees that if the City Council concurs with the S&E Complex Plan and the Convergence Proposal, such action does not compel or require the City Council to approve the development of a S&E Complex on property owned by CITY or at any other location within the CITY's jurisdictional boundaries, to enter into any further agreements with the DEVELOPER as contemplated in this Agreement, or to approve any development project at the Intermodal Property, Railyards Property, Point West Property and/or the Natomas Property. In the event that the Parties agree to extend, the extension of the Term of this Agreement after CITY's concurrence does not limit CITY from subsequently denying any entitlement or agreement which may be needed to implement the Convergence Project.

C. CITY Retains Legislative Authority and Police Power - This Agreement does not restrict the legislative and discretionary authority of the City Council in any manner, whatsoever. Nothing in this Agreement shall be construed to limit the City Council's powers, rights and duties under CEQA and NEPA, or to obligate CITY to approve the S&E Complex project or the redevelopment of the Point West Property or the Natomas Property. Notwithstanding CITY's approval of this Agreement and the City Council's subsequent concurrence with the content of the S&E Complex Plan and/or the Convergence Proposal, CITY has not made any pre-commitments to approve any aspect of the Convergence Project, the schedule as to when the S&E Complex may be approved or developed, or whether the S&E Complex would be developed at the Intermodal Property or any other CITY Property.

D. CITY Review of Project Plans - CITY, acting as a governmental entity in evaluating the application for development of all or portions of the Convergence Project by DEVELOPER (or its successor entity), will be acting in its capacity as a municipal land use regulatory authority and shall have no obligation whatsoever to exercise its discretion in any particular manner, including, without limitation, (i) insuring the approval of the Convergence Project as proposed by DEVELOPER as set out in the S&E Complex Plan and the Convergence Proposal, or (ii) limiting its discretion to require changes to the Convergence Project and to impose conditions and CEQA and NEPA mitigation measures as a condition of any approval of any portion of Convergence Project. CITY reserves its full sole and absolute discretion in this regard. This Agreement shall not be construed as a development agreement within the meaning of Government Code Section 65864 *et seq.*

E. Transfer of Ownership - This Agreement does not obligate the CITY to enter into agreement(s) to sell or transfer ownership of any portion of CITY Property, or any interest therein, or to take any course of action with respect to the transfer of ownership of any portion of the CITY Property after CITY concurrence with the S&E Complex Plan and/or the Convergence Proposal. It is specifically understood that the sale or transfer of any ownership interest in CITY Property will be subject to the terms and conditions set out in any purchase and sale agreement or other agreement(s) which may be developed during the Term of this Agreement and which would be subject to separate and subsequent approval of each Party exercising their independent judgment.

F. Consultants and Third Parties - CITY shall not be liable, in any respect, to DEVELOPER or any of the consultants that may be hired by DEVELOPER to prepare the S&E Complex Plan and/or the Convergence Proposal, and such consultants shall not be considered a third party beneficiary of this Agreement in regards to CITY's concurrence or rejection of the S&E Complex Plan and/or the Convergence Proposal, regardless as to whether DEVELOPER has identified, and CITY has approved, such consultants prior to or after the Effective Date of this Agreement.

11. Performance Schedule. The Parties shall perform the following obligations by the dates specified in the following schedule:

Due Date	Action	Responsible Party
At least twice each month commencing not later than twenty (20) days of the Effective Date	Meet and confer concerning progress of the tasks set out in this Agreement; DEVELOPER to submit progress reports at each meeting.	DEVELOPER and CITY
Within thirty (30) days of Effective Date	Submittal of the Convergence Proposal	DEVELOPER
Within sixty (60) days of Effective Date	Submittal of the S&E Complex Plan	DEVELOPER
Within ten (10) days from the execution date or the date of the written request	Submittal of agreements between DEVELOPER and the NBA, Maloofs, Cal Expo Board and agreements with or between any other entity in DEVELOPER's possession regarding the Convergence Plan, as may reasonably be requested by CITY.	DEVELOPER
Within thirty days from the date of the request	Submittal of such additional information as may be requested by either Party which is in the possession of the other Party or which is reasonably required to be developed by the other Party to facilitate the evaluation of the Convergence Proposal, the S&E Complex Plan and/or the terms of the PPA.	DEVELOPER and CITY

12. Deposit Fee. DEVELOPER has delivered to CITY an initial deposit of Twenty Thousand Dollars (\$20,000.00) (the "Deposit") prior to CITY's execution of this Agreement. The Deposit is to be expended by CITY to hire a project manager to evaluate the Convergence Proposal and the S&E Complex Plan and coordinate the selection of CITY's consultants for an initial two month period. Within thirty (30) days from the Effective Date or

upon the date of submission of the Convergence Proposal, whichever date is earlier, DEVELOPER shall increase the amount of the Deposit by Thirty Thousand Dollars (\$30,000.00) to fund CITY's initial consultant costs to commence evaluation of the Convergence Proposal financing plan. Within sixty (60) days from the Effective Date, DEVELOPER shall increase the amount of the Deposit by Sixty Thousand Dollars (\$60,000.00) to fund CITY's project manager costs for an additional two months and the additional CITY consultant costs to complete the financing plan and Convergence Proposal feasibility evaluation. Within ninety (90) days from the Effective Date, DEVELOPER shall increase the amount of the Deposit by Sixty Thousand Dollars (\$60,000.00) to fund the continued CITY consultant costs and to hire outside counsel to assist in preparing the terms of the PPA agreement and other agreements which may be needed to establish the parameters for the continued evaluation and preparation of plans and studies as may be needed for implementation of the Convergence Project. CITY will provide DEVELOPER with the proposed scopes of work and cost proposals for each consultant CITY selects to hire to assist in the CITY's evaluation of the Convergence Proposal and the S&E Complex Plan. The total amount of the Deposit under this Agreement shall not exceed One Hundred and Seventy Thousand Dollars (\$170,000.00). The Deposit is non-refundable except for termination of the Agreement as addressed in Section 15, below. If CITY terminates this Agreement for its convenience for a reason not set out herein, CITY shall reimburse DEVELOPER for half of the costs of the Deposit paid by DEVELOPER within thirty (30) days from the date of CITY's receipt of a written demand for such payment.

The Deposit does not include CITY's processing fees for any entitlements related to development of the Intermodal Property, the Railyards Property, the Point West Property or the Natomas Property, nor does the Deposit include the CITY's cost for preparing the environmental impact report(s) for the Convergence Project. Costs payable by DEVELOPER to CITY for CITY processing of the entitlement applications, environmental studies, community and commission and council meetings shall be subject to the terms of a separate reimbursement agreement.

13. Predevelopment Costs and Ownership of Plans and Studies. DEVELOPER shall bear all costs relating to actions and obligations of DEVELOPER under this Agreement, including, without limitation, costs for planning, environmental, architectural, engineering, financial and legal services, and other costs incurred by DEVELOPER associated with preparation of the S&E Complex Plan and the Convergence Proposal, and any other plans and studies and the preparation of any agreements which may be negotiated between the Parties during the Term of this Agreement.

All completed and final plans, studies, reports, and any other work products obtained by DEVELOPER for the Convergence Project from third-party consultants, that are not proprietary, attorney-client privileged, under a confidentiality agreement with Cal Expo or other third parties nor DEVELOPER's work product, shall be provided to CITY upon demand, but DEVELOPER shall own such work products. All plans, studies, reports, and any other work products, excepting any work products of CITY's retained attorneys or the City Attorney or are proprietary or provided to CITY as confidential materials, that are paid for by CITY with the Deposit shall be provided to DEVELOPER upon demand. All such work products obtained by the CITY that are paid for with the Deposit shall be owned by the CITY and DEVELOPER.

CITY may seek copies of the plans and studies developed by the Cal Expo Board in regards to the possible relocation of the State Fair & Expo to the Natomas property directly from that entity, to the extent they are not under a confidentiality agreement with DEVELOPER. CITY shall return all documents marked as confidential or proprietary provided by DEVELOPER in accordance with the terms of the Confidentiality Agreement.

14. Defaults. CITY or DEVELOPER shall be in default of this Agreement if it: (i) fails to fulfill its obligations when due if the failure is not caused by the other Party; or (ii) does not reasonably cooperate with the other Party thereby disabling the other Party from performing its obligations under this Agreement.

After termination of this Agreement for any reason, DEVELOPER shall have no rights under this Agreement to participate in the development of the S&E Complex, and CITY shall have the absolute right to pursue development of the S&E Complex or the sale or transfer of CITY Property as identified in this Agreement in any manner it deems appropriate.

15. Remedies. The defaulting Party shall have thirty (30) days from the date of the actual receipt of written notice of default to cure the default, or such reasonable time as may be necessary to cure the default as set out in the written notice of default. Should the defaulting Party fail to cure the default within the specified cure period, the non-defaulting Party may terminate this Agreement by written notice to the defaulting Party.

If DEVELOPER terminates this Agreement for default by CITY, CITY shall refund to DEVELOPER the amount of the Deposit that has not been expended, less any unpaid amounts CITY owes to its third party consultants for work performed or due to cancellation of those consultant contracts.

If CITY terminates this Agreement for default of DEVELOPER pursuant to Section 14, DEVELOPER shall promptly pay unpaid amounts owed to CITY for consultants' work performed or for consultant contract cancellation, plus interest accruing at ten (10) percent per year, plus CITY's attorney's fees and costs (including in-house CITY Attorney's fees) for collection of the amounts owed by DEVELOPER.

The remedies contained in this Section 15 are the sole exclusive remedies for default of this Agreement, and neither Party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

16. CITY Funds. In no event shall the CITY's General Fund, any of the CITY's general or special funds, or any of the funds currently controlled by CITY or in its accounts be obligated as or claimed as a source of funding for the S&E Complex or for any other component of the Convergence Project.

17. Indemnification. DEVELOPER shall indemnify, defend, protect, and hold CITY and CITY's officers, employees, agents, and contractors harmless from all liabilities, claims, demands, damages, and costs (including attorneys' fees and litigation costs through final appeal) that arise out of or are in any way related to, caused by, or based upon:

(i) DEVELOPER's officers, employees, agents, and contractors inspection of CITY Property;

(ii) DEVELOPER's contracts with third parties in regards to the subject matters of this Agreement ; or

(iii) any claim or lawsuit that may be filed challenging: (a) CITY's approval of this Agreement or the validity of any portion of this Agreement, (b) CITY's concurrence with the S&E Complex Plan and/or the Convergence Proposal, (c) any agreement approved by the Parties to implement the S&E Complex Plan and/or the Convergence Proposal, or (d) any other agreement or other act undertaken by the Parties in furtherance of this Agreement. The Parties agree to cooperate in the defense of such actions; or

(iv) DEVELOPER's performance of obligations under this Agreement, and the actions of DEVELOPER or DEVELOPER's employees, officers, agents and contractors in pursuit thereof.

In particular and without limiting the foregoing, DEVELOPER's indemnification obligation to CITY shall also apply in the event of any disputes among the entities that comprise DEVELOPER's limited liability company and any successor entity thereto related to their respective obligations and rights under this Agreement and under any future agreements that may be approved by the Parties to implement the S&E Complex Plan and/or the Convergence Proposal.

The foregoing defense and indemnification obligations shall survive the expiration, termination or cancellation of this Agreement

18. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending party delivers the notice also by one other method permitted under this Section); (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier).

The addresses of the Parties to receive notices are as follows:

CITY: John Dangberg

Assistant City Manager
City of Sacramento
915 I Street, Fifth Floor
Sacramento, CA 95814
Phone (916) 808-5704
Fax (916) 808-7618

DEVELOPER: Gerry N. Kamilos, Manager
Sacramento Convergence, LLC
11249 Gold Country Blvd., Suite 190
Gold River, CA 95670
Phone (916) 631-8440
Fax (916) 631-8445

Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section, and that any person to be given notice actually receives such notice. Any notice to a Party which is required to be given to multiple addresses shall only be deemed to have been delivered when all of the notices to that party have been delivered pursuant to this Section. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after 5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. Notices delivered by electronic mail shall not be deemed properly delivered, even if received and if the electronic mail addresses of the Parties appear above for convenience. A Party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Section by delivering to the other Party written notice in the manner set forth above.

19. Interpretation and Venue. This Agreement is to be interpreted and applied in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Sacramento County Superior Court.

20. Waiver. A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A Party's waiver of the other Party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

21. Assignment. This Agreement is not assignable by either Party in whole or in part without the prior written consent of the other Party, which shall not be unreasonably withheld.

22. No Joint Venture. This Agreement does not create a joint venture, partnership, or any other legal relationship of association among the Parties. Each Party is an independent legal entity and is not acting as an agent of the other Party in any respect.

23. Third-party Beneficiary. Nothing contained herein is intended, nor shall this Agreement be construed, as an agreement to benefit any third parties including, without limitation, NBA, Maloofs, Thomas, lenders of Thomas' Railyards property, the Cal Expo

Board, the State, and the property owners and businesses within Downtown Sacramento, Natomas or Point West.

24. Amendments. Any amendment or modification of this Agreement shall be effective only if set forth in a written document that has been approved by the governing board of each Party and executed by a duly authorized officer of each of the Parties.

25. Ambiguities. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve its objectives and purposes. Captions on sections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this Agreement. The Parties have each carefully reviewed this Agreement and have agreed to each term herein. No ambiguity shall be presumed to be construed against either Party.

26. Entire Agreement. This Agreement sets forth the Parties' entire understanding regarding the matters set forth. It supersedes all prior or contemporaneous agreements, representations, and negotiations and no other understanding whether verbal, written or otherwise exists among the Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, CITY and DEVELOPER have executed this Agreement as of the dates set forth next to their signatures below.

SACRAMENTO CONVERGENCE, LLC
a Delaware limited liability company

CITY OF SACRAMENTO

By: **SACRAMENTO CONVERGENCE HOLDINGS, LLC**, a Delaware limited liability company

By: _____
JOHN DANGBERG
Assistant City Manager

By: _____
Gerry N. Kamilos, Manager

Date: _____

Date: _____

Approved as to Form:

By: _____
Senior Deputy City Attorney

Approved as to Form:

ATTEST:

By: _____
DEVELOPER'S Counsel

By: _____
City Clerk

EXHIBIT 1

Preliminary Milestone Schedule

