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# Item No. 35

# Supplemental Material

For  
**City of Sacramento**  
City Council  
Housing Authority  
Redevelopment Agency  
Economic Development Commission  
Sacramento City Financing Authority

## Agenda Packet

**Submitted:** 12/3/07

**For the Meeting of:** 12/4/07



Additional Material



Revised Material

**Subject: Sacramento Railyards (Economic/Financial Issues)**

The following items were marked "To Be Delivered" (TBD) attachments on the previously submitted report. They are included here as supplemental material.

**Attachments:**

- 7 City Recommended Business Terms Summary (additional material)
- 8 Agency Recommended Business Terms Summary (additional material)
- 10 Exhibit A: Funding Agreement Business Terms (additional material)
- 12 Redevelopment Agency of the City of Sacramento Resolution (revised, redlined version included here)  
Attachment 1: Owner Participation Agreement Business Terms (additional material)

The following items were marked "To Be Delivered" (TBD) on the previously submitted report. They have in fact been previously delivered, and are available on the City of Sacramento website at: <http://www.cityofsacramento.org/dsd/projects/railyards/>

**(Attachment 10):**

- Exhibit B: Sacramento Railyards Fiscal Impact Study
- Exhibit C: Sacramento Railyards Economic Impact Study

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

Please include this supplemental material in your agenda packet. This material will also be published to the City's Intranet. For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604 B (916) 808-7200.

**Attachment 7****SACRAMENTO RAILYARDS  
CITY OF SACRAMENTO  
Summary of  
Recommended Business Terms  
11/30/07**

The City agrees that the project backbone infrastructure needs exceed what the private development economics can fully bear. A public-private partnership is necessary to initiate the Initial Phase of the project and likely future phases. The following business terms are specifically intended to guide the preparation of, and will be formalized in the Development Agreement or a separate Funding Agreement to be adopted after the Project Entitlements are approved.

**TRANSPORTATION FUNDS**

1. The City commits to investing the road and highway funds identified in Measure A for the Railyards/River District Area for improvements to the Richards/I-5 interchange and nearby access improvements to offset costs identified in the Railyards Public Facilities Financing Plan (PFFP). (\$17,750,000)

2. The City commits to investing the road and highway funds that are the Federal Earmark and local match funds to help implement the North CBD Access Study including improvements to the Richards/I-5 interchange and the "Interim Access Project" (Jibboom/Bercut) to offset costs identified in the Railyards PFFP. (\$8,400,000+\$2,200,000 local match = \$10,600,000)

**PARKS AND OPEN SPACE**

3. The City commits to investing \$600,000 of Park Fees in the Central City Community Planning Area Reserves to help the initial financing of Railyards Parks and Open Space improvement costs, specifically Market Plaza between the Paint Shop and Car Shop #3, as identified in the PFFP.

4. The credit (Quimby/Parkland Dedication and Park Development Impact Fee/PIF) for turnkey development of all of the Parks and Open Spaces included in the Railyards Specific Plan shall be as spelled out in the Development Agreement, including Developer development of offsite Sacramento Riverfront improvements for an agreed to portion of the net remaining value of the obligation.

**5<sup>TH</sup>/6<sup>TH</sup> STREETS PUBLIC PARKING GARAGE**

5. The City commits to providing \$2 million annually to service debt to help fund the 5<sup>th</sup>/6<sup>th</sup> Street Public Parking Garage expected to be completed and operational by 2012. It is anticipated that most of this cash flow will come from the surplus operating revenue of the City's parking fund. Actual construction of the garage or a phased portion thereof, will be contingent upon securing other funding adequate to finance the project such as long term parking agreements with Sacramento County, Sacramento Superior Courts, other tenants, the Developer, and user fees.

6. The garage is currently planned for 1948 spaces and estimated to cost \$80 million with no other uses included in the project. The Developer acknowledges that the City is still studying the feasibility of the proposed 5<sup>th</sup> and 6<sup>th</sup> Street garage and that the final estimated costs may change. The feasibility study is anticipated to be completed in January of 2008. Further the Developer acknowledges that the inclusion of other uses such as street level retail or development in air rights

above will increase the costs of the project. The party developing the additional uses shall bear the additional construction costs.

7. The Developer will provide the land for the 5<sup>th</sup> and 6<sup>th</sup> Street Public Parking Garage at no cost to the City. The Developer will retain all retail space on parcels 47b and 18. The City will retain air rights over the parcel 17a development platform and the Developer shall retain air rights over the parcel 18 and 47b development platforms. If the City chooses not to develop a project in the parcel 17a air rights the Developer shall be offered the first opportunity to submit a proposal for a development. If the Developer's proposal is accepted the Developer shall not be obligated to compensate City for the air rights. If the City and the Developer cannot come to terms the City shall be free to seek alternate development proposals. City will offer to leaseback all retail space on Parcel 17a to Developer at a negotiated lease rate.

8. If the Agency or City chooses to develop affordable housing in the airspace on parcel 17a developer shall be given the first opportunity to develop the project on the Agency or City's behalf that housing itself or with an affordable housing partner. If an affordable housing project is developed within the City's air rights the Developer shall receive credit for the value of that portion of the land towards their inclusionary housing obligations.

#### **HOUSING TRUST FUND**

9. The City agrees that all Housing Trust Fund fees generated within the Railyards development shall be used to subsidize affordable housing projects within the Railyards to assist the Developer in complying with its Mixed Income Ordinance inclusionary housing obligations.

#### **TRACK RELOCATION AND INTERMODAL SITE PURCHASE**

10. Under a separate agreement, the City has already committed to invest \$40 million to relocate the Union Pacific rail tracks and Sacramento Valley Station passenger platforms and pedestrian access to the relocated platforms. The City and Developer have committed to sharing project costs above the first \$40 million in accordance with the terms of the Track Relocation Agreement.

11. Under a separate agreement (i.e. Purchase and Sale Agreement, dated December 13, 2006, City Agreement 2006-1405) the City has obtained an option to purchase the remainder of the Intermodal Site and rail alignment, the exercise of which is subject to CEQA review and compliance with applicable federal acquisition and NEPA regulations.

12. The City has already committed to development of the Sacramento Intermodal Transportation Facility (SITF), which includes track relocation, as one of its top priority projects and shall move to accomplish implementation of these projects as expeditiously as Federal and State regulations allow and based on the receipt of funding for the SITF project.

#### **CITY GENERAL FUND AND MUNICIPAL REVENUES**

13. The General Fund cannot be put at risk. Municipal services required to serve the Railyards must be funded by municipal revenues from the Project. The fiscal analysis of the Project assumed full build out of each project phase and currently shows that after costs of services there will be a net gain of revenue to the General Fund. If the development program varies from the assumed build out a different balance of costs to revenues can be expected.

14. Public debt financing cannot use the General Fund as security.

15. If there are surplus municipal revenues from the Railyards project the City is willing to consider the use of surpluses from the Railyards district for assistance in financing backbone infrastructure

or public facilities after the current projected General Fund budget deficit has been reduced to an acceptable level. The use of surplus municipal revenues will only be considered to be used as they are actually received. Use of surplus local public funds to underwrite the cost of private development is not intended except potentially to assist with the Central Shops.

**OTHER PROVISIONS**

16. Justifying a subsidy for private development other than with tax increment is difficult. A case needs to be made as to why this subsidy is necessary and how it will repay itself in a reasonable amount of time to be considered.

17. Impact fees will be paid at the time of development. Developer in kind construction, developer advances, or other outside funding, for public improvements will be credited against impact fees according to City policies or the facilities so constructed will be deleted from the financing plan and subsequent nexus studies.

18. Development impact fees shall be frozen for five years at the level set from the combined Railyards/River District nexus study, allowing for annual inflation increases.

19. At a minimum the "Market Plaza", Intermodal tunnel gateway structure (parcel 22) and the Paint Shop shall be developed during the Initial Phase of the project and no later than the completion of the track relocation project and the 5<sup>th</sup> and 6<sup>th</sup> street public parking garage.

**SACRAMENTO RAILYARDS  
RECOMMENDED CITY FUNDING ASSISTANCE SUMMARY  
11/29/07**

Type of Assistance	Estimated Value or Funding Principle
<b>INFRASTRUCTURE AND PUBLIC FACILITIES ASSISTANCE</b>	
Road and Freeway Funding-Measure A*	\$17,750,000
Road and Freeway Funding-Federal Earmark (N. CBD Access)*	10,600,000
Parks and Open Space (Downtown improvement reserves)*	600,000
City reinvests property tax increment to offset Initial Phase backbone infrastructure costs through Agency cooperation agreement (2008\$, 6% annual inflator)**^	\$50,000,000
<b>Estimated Subtotal**^</b>	<b>\$78,950,000</b>
<b>OTHER FACILITIES ASSISTANCE GENERATING VALUE FOR DEVELOPER</b>	
City financing of 5 <sup>th</sup> and 6 <sup>th</sup> Street parking garage (commit \$2 Million annually)**>	\$80,000,000
Track Relocation Agreement (inc new platforms and tunnel)**	\$40,000,000+
Public Purchase of Intermodal Site#	?????
<b>Estimated Subtotal**</b>	<b>\$120,000,000+</b>
<b>Estimated Potential Total**</b>	<b>\$198,950,000+</b>
* This funding is secured and actual amount is known (Measure A funds are received in two different rounds of funding.).	
** This funding is an estimated value.	
> Additional parking garage feasibility analysis required.	
^ This assumes full entitlement buildout of Phase 1.	
# Value will be determined based on Federal acquisition process or negotiation/mediation/arbitration process previously agreed to.	
<b>OTHER PUBLIC ACTIONS GENERATING VALUE FOR DEVELOPER</b>	
Estimated increased in value of property south of relocated rail tracks (@\$100/sf)**	\$45,000,000
Value of granting land use entitlements and approving DA**	?????
Re-investment of RDA 20% housing set aside (Phase 1 only)**^	\$8,500,000
<b>ESTIMATED VALUE OF OTHER ACTIONS**</b>	<b>\$53,500,000</b>

**Attachment 8**

**REDEVELOPMENT AGENCY OF THE  
CITY OF SACRAMENTO  
SUMMARY OF OWNER PARTICIPATION AGREEMENT (OPA)  
BUSINESS TERMS  
11/30/07**

**MASTER OPA.** The entire Railyards Project will be subject to a Master OPA, with Subsidiary OPAs to implement actual projects, which provides the Agency Board the discretion over future use of redevelopment resources. The following business terms are specifically intended to guide the preparation of, and will be formalized in the respective agreements described herein.

1. Infrastructure in the Initial Phase of the Project, which includes Phase 1 and Phase 2 as shown in the Development Agreement will be funded under the Initial Phase Infrastructure OPA described below, which is a commitment of the first \$50 million in tax increment as further described below. Such amount is net present value in 2008 dollars, and shall be adjusted annually by a 6% simple inflation rate. Actual amount of commitment is determined as described below.
2. The term "Net TI" means net of statutory pass-throughs, county and Agency administrative costs, housing set-aside funds, and other mandatory charges against TI funds (e.g. ERAF). All future Net TI payments shall be subordinated to the senior rights, if any, for any future bonded indebtedness. The Master OPA will acknowledge that the Agency anticipates that most aspects of the Railyards Project if built out to the full entitlements will have demonstrable financing gaps at the anticipated build-out levels based on the Railyards Specific Plan Public Facilities Financing Plan and the pro-forma analysis of the Railyards Project prepared by Keyser Marston.
3. All remaining Net TI not allocated under the Initial Phase Infrastructure OPA will be available for qualified Developer projects, subject to Agency Board approval. The Net TI funding, after payment under the Initial Phase OPA, will be committed as follows. It is Agency's intent to commit Net TI funds to eligible projects within 3 years from receipt, in accordance with redevelopment law obligations to expend funds to eliminate blight.
  - a. After Agency fulfills its Initial Phase Infrastructure OPA obligations (see below), and fulfills any outstanding obligations incurred for specific projects hereunder, the Agency reserves the right to prioritize the use of the Net TI funds (i.e., 80% money) to assure development of affordable housing and to meet Agency legal obligations for the Railyards Project Area.

- b. Each project and the Net TI funding allocation must qualify as a redevelopment project under Community Redevelopment Law and allocation of funding will be subject to a subsidiary OPA.
  - c. Except for the reservation in a. above, for the allocation of Net TI funding, priority will be given to Railyards Project public facilities financing, Developer-proposed affordable housing projects, Central Shops rehabilitation, and public parking facilities qualified to receive redevelopment funding.
  - a. Rights to receive Net TI generated from any portion of the property that is sold by Developer will be transferred to that purchaser, which may apply and will have priority for allocation of those Net TI funds and if not used by that purchaser within the same 3 year period, those Net TI funds will also be released from the Master OPA obligation. However, the Developer can still apply for an allocation of those Net TI funds if not allocated to the purchaser.
4. Low and moderate housing set-aside (20%) funds generated by the Railyards Development Project will be provided to first meet the Developer's inclusionary ordinance obligations imposed by the City and the Community Redevelopment Law. Only after all such obligations are met would the housing set-aside funds generated within the Railyards be available for other affordable housing projects, except as follows. It is the Agency's intent to commit low and moderate housing set-aside funds to eligible projects within 3 years from receipt. If Developer fails to propose a project within 3 years of notification of available funds, the Agency reserves the right to solicit other affordable housing development proposals, for which Developer may also submit a proposal, individually, or with an affordable housing partner.
5. Notwithstanding the lack of sufficient affordable housing set-aside funds, Developer must nonetheless meet all of the Agency's Community Redevelopment Law housing production/inclusionary requirements for the Railyards development based on the level of housing developed within the Railyards.
6. If in the opinion of the Chief Building Official of the City, there is an immediate and imminent threat of structural collapse of any of the Central Shops, Developer must take appropriate steps to stabilize the Central Shops from failure. This may include temporary support of walls and temporary protection of roofs if such structures are in immediate jeopardy of failing. Such actions would be considered temporary remediation steps not subject to SHPO or SOI standards to the extent permitted by law.

7. Developer shall enter into reciprocal easement agreements with the City for the Intermodal Tunnel Entrance Building and Market Plaza no later than at the time of completion of the Market Plaza or 5<sup>th</sup>/6<sup>th</sup> Streets Public Parking Garage whichever occurs first, as those projects are described in the Development Agreement and the Railyards Project entitlements. The Developer shall also meet its obligations under the Track Relocation Agreement.
8. Developer must pay prevailing wages and undertake public bidding on all public works projects funded with Net TI funds, to the extent those obligations are defined in the Labor Code and Public Contract Code.
9. Developer must indemnify Agency and City for any claims for prevailing wages, whether the claims are filed against public works projects or private development projects, including any penalties, charges, costs, and defense costs resulting from such claims. Unless expressly released by Agency in its sole discretion for the specific project, the indemnity obligation stays with Developer irrespective of subsequent sale of any of the Railyards property. Developer shall not be responsible for indemnification of the Agency for development undertaken by an approved assignee or transferee of Developer where such assignee or transferee enters into a separate OPA and indemnity with the Agency.
10. All Agency funding obligations are limited to Net TI as it is received and payments to Developer will not be owed until after Agency's actual receipt of the Net TI funds.
11. A default of the Development Agreement or the Initial Phase Infrastructure OPA is a default of the Master OPA, subject to applicable cure rights.

#### **INITIAL PHASE INFRASTRUCTURE OPA**

1. The Net TI funding will be available to Developer for the qualified infrastructure designated in the attached list. Agency agrees that this list will be modified at the request of the Developer if additional infrastructure solely to the extent required to satisfy the funding commitments made by the State under applicable infrastructure bond programs and an applicable funding agreement. In any event, the parties may agree to further changes in the list of qualified infrastructure
2. Agency will reimburse Developer for not more than \$50,000,000 (as adjusted) of actual cost of such qualified infrastructure after it is constructed. This cap shall be adjusted annually from the effective date of the Initial Phase OPA by the amount of a 6% simple inflation factor annually. Reimbursement for qualifying infrastructure shall be obligated at

the time of the completion of construction of a given piece of qualifying infrastructure, subject to the limitations described below.

3. Developer shall have ten years from the effective date to vest Agency's obligations under the Initial Phase Infrastructure OPA. To vest the OPA, Developer must complete the same level of development as required for vesting of the City Railyards DA. If Developer fails to vest its rights under the City Railyards DA, the Agency's obligations under the Initial Phase Infrastructure OPA will be terminated.
4. In no event shall Agency be obligated to reimburse Developer additional Net TI funds under this OPA for infrastructure constructed more than 15 years after the effective date, whether or not the full \$50,000,000 (as adjusted) Agency commitment has been reimbursed.
5. Reimbursement will only be made from Net TI actually received by the Agency from the property taxes generated by the Developer's development of the Initial Phase properties. The Agency's obligation to actually pay reimbursement under this OPA shall begin at the time Net TI is actually received. To the extent the Net TI funds from the Developer's cumulative Initial Phase development are inadequate to fully reimburse the Developer, the Developer shall forego further reimbursement.
6. A default of the Development Agreement or the Master OPA is a default of the Initial Phase Infrastructure OPA, subject to applicable cure rights.

## 7. DESIGNATED INFRASTRUCTURE LIST

1. 5<sup>th</sup> Street from H Street to Railyards Boulevard
2. Railyards Boulevard from Jibboom Street to 7<sup>th</sup> Street
3. Expansion of 7<sup>th</sup> Street from H Street to Railyards Boulevard
4. 6<sup>th</sup> Street from H Street to Railyards Boulevard
5. Wet and dry utilities to be placed within the right of way of any qualifying streets
6. The storm drainage detention facility (cistern), pump station and outfall
7. 5<sup>th</sup> and 6<sup>th</sup> Street Public Parking Garage
8. Car Shop #3 and Paint Shop Renovation
9. Market Plaza (Parcels 21a and 21b) between Car Shop #3 and Paint Shop
10. Intermodal Tunnel Gateway Structure (Parcel 22)
11. Pedestrian Access Improvements between the 5<sup>th</sup> and 6<sup>th</sup> Public Parking Garage and the Intermodal Tunnel North Entrance

(The Developer has indicated a desire to expand the above list. Additional proposed infrastructure shall be subject to agreement by Agency staff and ultimately the Agency Board as part of the OPA.)

**EXHIBIT A (to Attachment 10)**

**SACRAMENTO RAILYARDS  
CITY OF SACRAMENTO  
Funding Agreement Business Terms  
11/29/07**

The City agrees that the project backbone infrastructure needs exceed what the private development economics can fully bear. A public-private partnership is necessary to initiate the Initial Phase of the project and likely future phases. The following business terms are specifically intended to guide the preparation of, and will be formalized in the Development Agreement or a separate Funding Agreement to be adopted after the Project Entitlements are approved.

**TRANSPORTATION FUNDS**

1. The City commits to investing the road and highway funds identified in Measure A for the Railyards/River District Area for improvements to the Richards/I-5 interchange and nearby access improvements to offset costs identified in the Railyards Public Facilities Financing Plan (PFFP). (\$17,750,000)
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**PARKS AND OPEN SPACE**

3. The City commits to investing \$600,000 of Park Fees in the Central City Community Planning Area Reserves to help the initial financing of Railyards Parks and Open Space improvement costs, specifically Market Plaza between the Paint Shop and Car Shop #3, as identified in the PFFP.

**5<sup>TH</sup>/6<sup>TH</sup> STREETS PUBLIC PARKING GARAGE**

4. The City commits to providing \$2 million annually to service debt to help fund the 5<sup>th</sup>/6<sup>th</sup> Street Public Parking Garage expected to be completed and operational by 2012. It is anticipated that most of this cash flow will come from the surplus operating revenue of the City's parking fund. Actual construction of the garage or a phased portion thereof, will be contingent upon securing other funding adequate to finance the project such as long term parking agreements with Sacramento County, Sacramento Superior Courts, other tenants, the Developer, and user fees.

**TRACK RELOCATION AND INTERMODAL SITE PURCHASE**

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committed to sharing project costs above the first \$40 million in accordance with the terms of the Track Relocation Agreement.

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#### **CITY GENERAL FUND AND MUNICIPAL REVENUES**

8. The General Fund cannot be put at risk. Municipal services required to serve the Railyards must be funded by municipal revenues from the Project. The fiscal analysis of the Project assumed full build out of each project phase and currently shows that after costs of services there will be a net gain of revenue to the General Fund. If the development program varies from the assumed build out a different balance of costs to revenues can be expected.

9. Public debt financing cannot use the General Fund as security.

10. If there are surplus municipal revenues from the Railyards project the City is willing to consider the use of surpluses from the Railyards district for assistance in financing backbone infrastructure or public facilities after the current projected General Fund budget deficit has been reduced to an acceptable level. The use of surplus municipal revenues will only be considered to be used as they are actually received. Use of surplus local public funds to underwrite the cost of private development is not intended except potentially to assist with the Central Shops.

**Attachment 12**

**RESOLUTION NO. 2007 - \_\_\_\_\_**

**Adopted by the Redevelopment Agency of the City of Sacramento**

**ADOPTING THE CITY'S ENVIRONMENTAL IMPACT REPORT AND MITIGATION MONITORING PROGRAM FOR SACRAMENTO RAILYARDS SPECIFIC PLAN PROJECT AND APPROVAL OF BUSINESS TERMS TO BE INCORPORATED INTO THE MASTER OWNER PARTICIPATION AGREEMENT AND THE INITIAL PHASE INFRASTRUCTURE OWNER PARTICIPATION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO AND S. THOMAS ENTERPRISES OF SACRAMENTO, LLC**

**BACKGROUND**

- A. The City of Sacramento certified the Environmental Impact Report for Sacramento Railyards Specific Plan project ("Project") by resolution and adopted findings of fact, a statement of overriding considerations and the Mitigation Monitoring Program as part of the approval of the Project at its meeting on December 11, 2007.
- B. The Redevelopment Agency of the City of Sacramento (Agency) has reviewed the Sacramento Railyards Specific Plan Public Facilities Financing Plan and that plan highlights significant gaps in funding reasonably available to the community to implement the Project.
- C. The Sacramento Railyards portion of the project area is an undeveloped 240 acre site that is devoid of infrastructure, contains extensive soil and groundwater contamination, and has remained in this blighted condition since the adoption of the redevelopment plan.
- D. The Agency and S. Thomas Enterprises of Sacramento, LLC, are committed to furthering the Project and intend that these fundamental business terms be incorporated into Owner Participation Agreements to be negotiated and considered for approval in independent exercise of their legislative obligations and authorities.

**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 Background, as stated above, is true and correct.
- Section 2. The Agency has reviewed and considered the Environmental Impact Report (EIR) for the Sacramento Railyards Specific Plan project as prepared by the City of Sacramento and certified by resolution on the December 11, 2007. The Agency makes the same findings for each of the significant environmental effects and alternatives of the Project identified in the EIR as set out in the City resolution, and hereby adopts that EIR and its Mitigation Monitoring Program as a responsible agency for those components of the Project which the Agency will carry out, finance or approve.
- Section 3. In accordance with California Redevelopment Law Section 33445, the Agency further finds and determines that:
- (a) The Project will benefit the project area by improving inadequate infrastructure and by constructing and installing public facilities and infrastructure required for redevelopment within the project area.
  - (b) No other reasonable means of financing the rehabilitation of the Central Shops buildings, public facilities and infrastructure, affordable housing and other improvements contemplated by Project is available to the community.
  - (c) The payment of tax increment proceeds towards the cost of these the buildings, facilities, infrastructure, housing and other improvements is consistent with the project area implementation plan and will assist in eliminating blighting conditions inside the project area.
- Section 4. The Agency hereby approves the Sacramento Railyards Owner Participation Agreement Business Terms, attached to this resolution as Attachment 1, and directs staff to prepare a Master Owner Participation Agreement and the Initial Phase Infrastructure Owner Participation Agreement in accordance with the attached Business Terms. The attached terms are approved for purposes of negotiation and do not constitute a contract or otherwise bind the Agency.
- Section 5. When negotiated to satisfaction of Agency staff, staff shall return to the Agency governing board for consideration of approval of the Master Owner Participation Agreement and the Initial Phase Infrastructure Owner Participation Agreement in independent exercise of their legislative obligations and authorities.

**Exhibit A**

**REDEVELOPMENT AGENCY OF THE  
CITY OF SACRAMENTO  
OWNER PARTICIPATION AGREEMENT (OPA)  
BUSINESS TERMS  
11/30/07**

**MASTER OPA.** The entire Railyards Project will be subject to a Master OPA, with Subsidiary OPAs to implement actual projects, which provides the Agency Board the discretion over future use of redevelopment resources. The following business terms are specifically intended to guide the preparation of, and will be formalized in the respective agreements described herein.

1. Infrastructure in the Initial Phase of the Project, which includes Phase 1 and Phase 2 as shown in the Development Agreement will be funded under the Initial Phase Infrastructure OPA described below, which is a commitment of the first \$50 million in tax increment as further described below. Such amount is net present value in 2008 dollars, and shall be adjusted annually by a 6% simple inflation rate. Actual amount of commitment is determined as described below.
2. The term "Net TI" means net of statutory pass-throughs, county and Agency administrative costs, housing set-aside funds, and other mandatory charges against TI funds (e.g. ERAF). All future Net TI payments shall be subordinated to the senior rights, if any, for any future bonded indebtedness. The Master OPA will acknowledge that the Agency anticipates that most aspects of the Railyards Project if built out to the full entitlements will have demonstrable financing gaps at the anticipated build-out levels based on the Railyards Specific Plan Public Facilities Financing Plan and the pro-forma analysis of the Railyards Project prepared by Keyser Marston.
3. All remaining Net TI not allocated under the Initial Phase Infrastructure OPA will be available for qualified Developer projects, subject to Agency Board approval. The Net TI funding, after payment under the Initial Phase OPA, will be committed as follows. It is Agency's intent to commit Net TI funds to eligible projects within 3 years from receipt, in accordance with redevelopment law obligations to expend funds to eliminate blight.
  - a. After Agency fulfills its Initial Phase Infrastructure OPA obligations (see below), and fulfills any outstanding obligations incurred for specific projects hereunder, the Agency reserves the right to prioritize the use of the Net TI funds (i.e., 80% money) to assure development of affordable housing and to meet Agency legal obligations for the Railyards Project Area.

- b. Each project and the Net TI funding allocation must qualify as a redevelopment project under Community Redevelopment Law and allocation of funding will be subject to a subsidiary OPA.
  - c. Except for the reservation in a. above, for the allocation of Net TI funding, priority will be given to Railyards Project public facilities financing, Developer-proposed affordable housing projects, Central Shops rehabilitation, and public parking facilities qualified to receive redevelopment funding.
  - a. Rights to receive Net TI generated from any portion of the property that is sold by Developer will be transferred to that purchaser, which may apply and will have priority for allocation of those Net TI funds and if not used by that purchaser within the same 3 year period, those Net TI funds will also be released from the Master OPA obligation. However, the Developer can still apply for an allocation of those Net TI funds if not allocated to the purchaser.
4. Low and moderate housing set-aside (20%) funds generated by the Railyards Development Project will be provided to first meet the Developer's inclusionary ordinance obligations imposed by the City and the Community Redevelopment Law. Only after all such obligations are met would the housing set-aside funds generated within the Railyards be available for other affordable housing projects, except as follows. It is the Agency's intent to commit low and moderate housing set-aside funds to eligible projects within 3 years from receipt. If Developer fails to propose a project within 3 years of notification of available funds, the Agency reserves the right to solicit other affordable housing development proposals, for which Developer may also submit a proposal, individually, or with an affordable housing partner.
5. Notwithstanding the lack of sufficient affordable housing set-aside funds, Developer must nonetheless meet all of the Agency's Community Redevelopment Law housing production/inclusionary requirements for the Railyards development based on the level of housing developed within the Railyards.
6. If in the opinion of the Chief Building Official of the City, there is an immediate and imminent threat of structural collapse of any of the Central Shops, Developer must take appropriate steps to stabilize the Central Shops from failure. This may include temporary support of walls and temporary protection of roofs if such structures are in immediate jeopardy of failing. Such actions would be considered temporary remediation steps not subject to SHPO or SOI standards to the extent permitted by law.

7. Developer shall enter into reciprocal easement agreements with the City for the Intermodal Tunnel Entrance Building and Market Plaza no later than at the time of completion of the Market Plaza or 5<sup>th</sup>/6<sup>th</sup> Streets Public Parking Garage whichever occurs first, as those projects are described in the Development Agreement and the Railyards Project entitlements. The Developer shall also meet its obligations under the Track Relocation Agreement.
8. Developer must pay prevailing wages and undertake public bidding on all public works projects funded with Net TI funds, to the extent those obligations are defined in the Labor Code and Public Contract Code.
9. Developer must indemnify Agency and City for any claims for prevailing wages, whether the claims are filed against public works projects or private development projects, including any penalties, charges, costs, and defense costs resulting from such claims. Unless expressly released by Agency in its sole discretion for the specific project, the indemnity obligation stays with Developer irrespective of subsequent sale of any of the Railyards property. Developer shall not be responsible for indemnification of the Agency for development undertaken by an approved assignee or transferee of Developer where such assignee or transferee enters into a separate OPA and indemnity with the Agency.
10. All Agency funding obligations are limited to Net TI as it is received and payments to Developer will not be owed until after Agency's actual receipt of the Net TI funds.
11. A default of the Development Agreement or the Initial Phase Infrastructure OPA is a default of the Master OPA, subject to applicable cure rights.

#### **INITIAL PHASE INFRASTRUCTURE OPA**

1. The Net TI funding will be available to Developer for the qualified infrastructure designated in the attached list. Agency agrees that this list will be modified at the request of the Developer if additional infrastructure solely to the extent required to satisfy the funding commitments made by the State under applicable infrastructure bond programs and an applicable funding agreement. In any event, the parties may agree to further changes in the list of qualified infrastructure
2. Agency will reimburse Developer for not more than \$50,000,000 (as adjusted) of actual cost of such qualified infrastructure after it is constructed. This cap shall be adjusted annually from the effective date of the Initial Phase OPA by the amount of a 6% simple inflation factor annually. Reimbursement for qualifying infrastructure shall be obligated at

the time of the completion of construction of a given piece of qualifying infrastructure, subject to the limitations described below.

3. Developer shall have ten years from the effective date to vest Agency's obligations under the Initial Phase Infrastructure OPA. To vest the OPA, Developer must complete the same level of development as required for vesting of the City Railyards DA. If Developer fails to vest its rights under the City Railyards DA, the Agency's obligations under the Initial Phase Infrastructure OPA will be terminated.
4. In no event shall Agency be obligated to reimburse Developer additional Net TI funds under this OPA for infrastructure constructed more than 15 years after the effective date, whether or not the full \$50,000,000 (as adjusted) Agency commitment has been reimbursed.
5. Reimbursement will only be made from Net TI actually received by the Agency from the property taxes generated by the Developer's development of the Initial Phase properties. The Agency's obligation to actually pay reimbursement under this OPA shall begin at the time Net TI is actually received. To the extent the Net TI funds from the Developer's cumulative Initial Phase development are inadequate to fully reimburse the Developer, the Developer shall forego further reimbursement.
6. A default of the Development Agreement or the Master OPA is a default of the Initial Phase Infrastructure OPA, subject to applicable cure rights.

## 7. DESIGNATED INFRASTRUCTURE LIST

1. 5<sup>th</sup> Street from H Street to Railyards Boulevard
2. Railyards Boulevard from Jibboom Street to 7<sup>th</sup> Street
3. Expansion of 7<sup>th</sup> Street from H Street to Railyards Boulevard
4. 6<sup>th</sup> Street from H Street to Railyards Boulevard
5. Wet and dry utilities to be placed within the right of way of any qualifying streets
6. The storm drainage detention facility (cistern), pump station and outfall
7. 5<sup>th</sup> and 6<sup>th</sup> Street Public Parking Garage
8. Car Shop #3 and Paint Shop Renovation
9. Market Plaza (Parcels 21a and 21b) between Car Shop #3 and Paint Shop
10. Intermodal Tunnel Gateway Structure (Parcel 22)
11. Pedestrian Access Improvements between the 5<sup>th</sup> and 6<sup>th</sup> Public Parking Garage and the Intermodal Tunnel North Entrance

(The Developer has indicated a desire to expand the above list. Additional proposed infrastructure shall be subject to agreement by Agency staff and ultimately the Agency Board as part of the OPA.)