

RESOLUTION NO. 2007-074

Adopted by the Redevelopment Agency
of the City of Sacramento

December 11, 2007

ADOPTING THE CITY'S ENVIRONMENTAL IMPACT REPORT AND MITIGATION MONITORING PROGRAM FOR THE 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 the 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 238 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 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 Exhibit 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.
- 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.

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Exhibit A- Owner Participation Agreement Business Terms

Adopted by the Redevelopment Agency of the City of Sacramento on December 11, 2007 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.


Heather Fargo, Chair

Attest:


Shirley Concolino, Secretary

Attachment 1
REDEVELOPMENT AGENCY OF THE
CITY OF SACRAMENTO
OWNER PARTICIPATION AGREEMENT (OPA)
BUSINESS TERMS
12/7/07

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% compounded 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 qualified Developer 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 5th/6th 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 is required solely 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% compounded 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 during the initial term of the development agreement with the City of Sacramento, ten years from track relocation, 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 in 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. Regardless of whether the Developer vests its rights under this OPA it is the Agency's intent to start reimbursing the developer as net TI revenues are received, subject to the terms herein.

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. 5th Street from H Street to Railyards Boulevard
2. Railyards Boulevard from Jibboom Street to 7th Street
3. Expansion of 7th Street from H Street to Railyards Boulevard
4. 6th 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. 5th and 6th 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 5th and 6th 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.)