

**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE  
DOCKS AREA**

1. The Redevelopment Agency Of The City Of Sacramento (“Agency”) and KSWM Docks Partners, LLC (“Developer”), for valuable consideration , the receipt of which is hereby acknowledged, have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of January 7, 2006 (“Effective Date”) upon the follow terms:

2. DEVELOPER RESPONSIBILITIES. Developer is expected to complete the milestones identified on the attached “Docks Area Developer Milestones” at Developer’s expense. Developer and Agency are to agree individual milestones are met before moving forward.

3. DEPOSIT FEE. Developer shall deliver to Agency a deposit of One Hundred Thousand Dollars (\$100,000) (“Deposit”). The Deposit is the property of the Agency, subject to the following:

a. Prior to the Agency's approval of a DDA for the project or termination of negotiations between Agency and Developer, Agency may expend the Deposit solely for payment of all third-party fees, costs and expenses (the “Third Party Costs”) for predevelopment activities for the project incurred by Agency, including, without limitation the non-legal costs related to negotiating a development agreement for the Project and required CEQA review;

Prior to any such expenditure, Agency shall provide the Developer with a schedule of anticipated expenditures on the Third Party Costs. Developer must approve expenditures in advance, and in writing, and the expenditures so approved are referred to in this Agreement as "Approved Third Party Costs". . The Agency and Developer anticipate that Third Party Costs will not exceed \$100,000. If the expected expenditures exceed \$100,000 the Agency and Developer shall meet and confer with respect to the budget for such costs. It is agreed and understood that the required \$100,000 deposit is a Deposit only, and that to the extent that the Approved Third Party Costs exceed \$100,000, Developer is responsible for the payment of any and all such additional costs.

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

c. If for any reason the Agency fails to approve a proposed DDA, Agency will refund to Developer the Deposit remaining after payment of any Approved Third Party Costs incurred to the date of the hearing regarding approval of the DDA. All materials paid for with the Deposit will remain the property of the Agency.

d. If Developer and Agency agree in writing to terminate the negotiations, the Deposit remaining after payment Approved Third Party Costs will be refunded to the Developer.

4. RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Agency and Developer:

a. Developer desires to negotiate with Agency to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California, called the “Docks Area.” The Property is within the Merged Downtown Sacramento Redevelopment Project Area (“Project Area”). The

development of the Property (“Project”) is consistent with the Merged Downtown Sacramento Redevelopment Plan (“Redevelopment Plan”) and it’s implementing documents, and has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.

b. The purpose of this Agreement is to state the obligations of the Agency and Developer to investigate the feasibility of the project and to develop a project proposal. Once such feasibility is demonstrated, the Agency and Developer intend to negotiate a Disposition and Development Agreement ("DDA") exclusively and in good faith.

c. Agency represents, and Developer agrees, that the development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the project is to be undertaken.

5. IDENTITY OF PARTIES. The legal identities of the parties to this Agreement and their addresses are as follows:

a. Developer is KSWM Docks Partners, LLC, organized and doing business in the State of California. KSWM Docks Partners, LLC is made up of Kenwood Investments, LLC, Wilson Meany Sullivan, LLC, and Stockbridge Capital Partners, LLC. The principal office of Developer is located at One Ferry Building, Suite 350, San Francisco, CA.

b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 1030 15<sup>th</sup> Street, Suite 250, Sacramento, CA 95814. Agency includes any successor to operations of Agency.

c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked “Attention: Downtown Development Group (Docks Area).” A copy of all notices to Agency shall be mailed or delivered to 630 I Street, Sacramento, CA 95814 and marked “Attention: Legal Department (Docks Area).”

d. Agency expects all parties to be present during the negotiation process in order to facilitate the decision making process.

6 EXCLUSIVE RIGHT TO NEGOTIATE. Agency grants to the Developer an exclusive right to negotiate for the right to develop the Property in accordance with the terms and conditions of the *Guidelines for Individual Project Review* (“*Guidelines*”) adopted by the Agency in order to guide project negotiations. The *Guidelines* are attached as Exhibit 1.

7. TERM. This Agreement shall be effective as of Effective Date and shall terminate in two hundred and seventy (270) days after the Effective Date.

8 PROJECT APPROVAL. If the final proposed project is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise as may be required in this Agreement, in the exercise of the Agency's discretion, or by law, this Agreement shall terminate as of the date of such

disapproval. If the Agreement terminates without the execution of a DDA, each party shall bear its own costs related to this Agreement.

9 REFINEMENT OF PROPOSAL. As a condition to the Agency negotiating for and entering into a DDA, Developer must prepare and submit to Agency a proposal that meets the objectives of the parties and that is approved by the Agency as provided in this Agreement and more clearly specified in the *Guidelines*. It is agreed and understood that approval of a proposal is a prerequisite and preliminary step to further processing a proposal, and that the approval of the full proposal under this Agreement for further processing and consideration is not intended to, and does not, in fact, compel or require the Agency to approve the Project, enter into a DDA or agree to contribute Agency property to Developer following completion of CEQA and/or other review processes.

10. SCHEDULE OF PERFORMANCES. The parties shall perform the stated obligations within the 270-day period of this agreement.

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

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

13. PREDEVELOPMENT COSTS. Developer shall bear some of the predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental, architectural, engineering and legal services and other costs associated with preparation of Developer's proposal and/or the DDA.

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

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

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

17. UNAVOIDABLE DELAY. For the purposes of any of the provisions of this Agreement, milestones in the Agreement, and the term of the Agreement, shall be extended (and neither Agency nor Developer shall be considered in breach of, or default in, its obligations with regard to their respective obligations), if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the

public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or litigation or other legal action brought by third parties not in privity with contract with Agency or Developer. In the event of the occurrence of any such delay, the time or times for performance of such obligations of Agency and Developers shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this Section shall, within ten days after it has or should have knowledge of any such delay, first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

#### 18. Integration; Amendment

This Agreement, including the Exhibit, constitutes the entire agreement of the Agency and Developer hereto with respect to the subject matter hereof. There are no agreements or understandings between the Agency and Developer and no representations by either Party to the other as an inducement to enter in to the Agreement, except as expressly set forth herein. All prior negotiations between the Agency and Developer are superseded by this Agreement. This Agreement may not be altered, amended or modified, except by a writing executed by both Agency and Developer.

#### 19. Enforcement

The Agency and Developer may use the equitable remedy of specific performance to enforce the terms of this Agreement, but no party shall be liable for damages, one to another.

#### 20. Counterparts

This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

#### 21. Purpose of Agreement

It is expressly understood and agreed by the Agency and Developer that this is an Agreement regarding the conduct of negotiations only and does not convey any interest in the project or project site whatsoever. The Agency shall have no obligation to enter into a DDA with Developer and neither the Agency or its officers, members, staff or consultants have made any promises to Developer other than to negotiate in good faith with Developer during the term provided herein. No statements of the Agency or its officers, members, staff or consultants as to future obligations shall be binding upon the Agency until and unless a DDA is approved and adopted by the Agency in the exercise of its discretion and in conformance with applicable laws.

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

AGENCY: REDEVELOPMENT AGENCY OF THE  
CITY OF SACRAMENTO

Approved as to form:

By: \_\_\_\_\_  
Ray Kerridge, Interim City Manager as  
Designated Signatory

By: \_\_\_\_\_  
Agency Counsel

DEVELOPER: KSWM Docks Partners, LLC

Approved as to form:

By: \_\_\_\_\_  
Jay Wallace, Managing Member

By: \_\_\_\_\_  
Counsel for Developer

## Guidelines for Individual Project Review

### **Background and Criteria**

The Downtown Development Group serves as the redevelopment arm of the City of Sacramento for the Downtown and Richards Boulevard/Railyards redevelopment project areas. Its purpose is to engage in redevelopment activities and projects that revitalize the project areas and meet one or more of the following criteria adopted by the Redevelopment Agency in late 2003:

- Contributes to achieving the vision of adopted 5-year Redevelopment Strategy;
- Removes blight;
- Leverages significant private or public investment;
- Spurs additional private investment in the vicinity;
- Contributes to City revenues; and
- Creates jobs.

Additionally, proposed projects that meet one or more of the following criteria may be given priority:

- Achieves multiple redevelopment goals;
- Takes advantage of an existing asset or investment;
- Appeals to a large group of users;
- Contributes significantly to the aesthetic environment; and
- Employs smart growth principles and infill development strategies.

***The following information must be submitted prior to consideration of a development proposal.***

### **Development Team Identification and Experience**

- ....Provide the name, address, and telephone numbers of the development team. Include resumes and a description of background experience of each principal and of each person having major responsibilities for project development.
- ....Identify the type of legal entity with whom the Agency would contract (e.g., individual, corporation, partnership, joint venture, other). If the legal entity with which the Agency would contract is different than the parent corporation, please indicate the relationship and degree of control and whether the parent corporation will guarantee performance or provide some other such guaranty.
- ....Identify and describe any relationship the development team may have with subsidiaries, joint ventures partners or others who are significant to the project development.
- ....Provide documentation demonstrating that development team is qualified to undertake the proposed project, including:
  - Experience with the product type proposed by respondent;
  - Experience with developments in other urban areas;

- Experience with public/private development, including references for public partners;
  - Prior relationship with key tenants;
  - Access to financial resources consistent with project requirements;
  - Experience in redevelopment or other public private development;
  - Track record of superior architectural design; and
  - Track record of development team.
- ....Identify the principal person within the development team authorized to negotiate on its behalf (“Key Negotiator”), and the level of authority that the Key Negotiator possesses. If the Key Negotiator has limited authority, describe the process required to obtain authorization. Key Negotiator’s resume should indicate that he/she is qualified to serve as Key Negotiator, including successful experience in negotiating public private partnerships, successful experience developing the type of development being proposed, and references who can validate Key Negotiator’s role in prior projects.

**Statement of Financial Capability**

- Copies of any annual reports, financial rating reports, or other documents indicating the financial condition of the development team must be provided. The Agency will, to the extent of its ability under the law, endeavor to keep all financial data in strict confidence and return it to the developer upon completion of the review process.
- Prior to taking a recommendation forward to City Council and based on the scale of the project, staff may occasionally request copies of audited financial statements prepared by an independent licensed certified public accountant in accordance with generally accepted accounting principles must be provided.

**Development Proposal and Financing Plan**

Project Design

- ....The project design must comply with the Redevelopment Plan and meet or exceed the City’s adopted Design Guidelines. Any additional assumptions made by the developer should be clearly stated in the submitted reports.
- ....The project design should contain sufficient detail to show the scale, scope, size, and mix of project elements. The following required drawings must be at a scale and level of detail necessary to accurately and reliably estimate the cost of project development and operation. The project design must give verifiable detail on project materials and construction quality, which may be satisfied by reference to other buildings and their components
- Include, at a minimum, the following design information in schematic form:
  1. Site Plan;
  2. Elevations; and
  3. Floor plan.

Project design and quality is a material reason for Agency’s participation in a project and changes in design and quality, irrespective of their nature, are grounds for Agency’s withdrawal from negotiation.

### Financing Plan and Business Offer

The purpose of the financial plan is to demonstrate the feasibility of project financing and the feasibility of the proposed project upon completion. The financial plan must include:

- ...A proposed financing plan, based on and including development and operating pro forma budgets. The financing plan should include the terms of a business offer to acquire or lease the development site, in addition to the plan to finance the development.
- ...All assumptions used in preparing the financing plan. An adequate plan will identify the amount and sources of equity, construction financing, and permanent financing, and will include letters of interest or commitment from equity partners and lenders, if any.
- ...Agency funding must be justified as necessary gap financing or as the cost of public amenities included in the project.

### Proposed Development Schedule

- ... Include a preliminary schedule for development of the proposed project which addresses, at a minimum, preparation of plans, projected plan approval dates, commencement of construction, construction milestones, and completion of construction. It should provide for development in a logical and expeditious manner.

### **Property Control**

If the development team represents that it has legal control of the property (or a substantial portion of the property) where the project would be located, the following must be provided:

- Property deeds;
- Copies of executed and enforceable real property sales contracts;
- Copies of executed and enforceable real property option agreements;
- Evidence that property has been purchased or is under contract to be purchased at price not substantially greater than market value; and
- If Development Team is a partnership, evidence that the Key Negotiator has the legal authority to commit the subject property to the proposed development project.

### **Submittal Review Process**

For any proposed project, the Agency may elect not to participate in the project, engage in an open bidding process, or choose to negotiate with a sole source. A sole-source negotiation will not proceed unless all of the Individual Project Review requirements listed above are met within a reasonable time frame. The Agency, after review of the application, may elect not to proceed further. Decisions to commence negotiations are made at the staff level and typically do not require governing board approval. Once a complete application has been submitted, the following process will apply:

- ...Within 30 days of application submittal, staff will review and determine if additional information is needed.
- ...Within 60 days of determination that the submittal is complete, staff will consider which of the following directions is appropriate:

1. Commence negotiations on the project;
2. Reject proposal because the project does not meet established criteria, lack of development team experience, lack of available funding or staff resources, excessive subsidy request or determination that the project is not of sufficient priority; and/or
3. Seek City Council approval of an Exclusive Right to Negotiate with development team that specifies the duration of the negotiation period and the Agency and Developer' expectations during the negotiation period.

**Note:** the Agency reserves the right to reject any proposal submitted, elect not to negotiate, and/or withdraw from any negotiation at any time.

**Docks Area  
Developer Milestones**

	Activity	Who Pays	Timeline	Reimbursed if DDA not finalized?
1.	Agency shares progress/work completed to date.	N/A	12/21/2005	
2.	Agency and Developer agree on milestones, timeline and finalize Docks Area - Developer Milestones table.	N/A	1/13/2006	
3.	Developer completes research/defines development concept for Docks Area with Agency assistance, if desired.	Developer		No
4.	Property acquisition continues/finalized.	Agency	See final EIR date.	N/A
5.	Developer presents their draft concept plan for the Docks Area to Agency.	Developer		No
6.	Developer and Agency agree on final design team.	N/A		
7.	Developer and Agency agree on draft concept plan.	N/A		
8.	Developer and Agency negotiate preliminary business terms and preliminary business plan of Developer proposal.	Developer		No
9.	Developer and Agency present draft concept plan and preliminary business terms to City Council.	N/A		
10.	Developer and Agency identify changes needed to EIR project description, etc.	N/A		
11.	Changes incorporated into EIR for circulation.	Developer		Yes
12.	Draft of Specific Plan completed. Agency & developer review and "approve."	Developer		Yes
13.	Development Agreement (DDA) completed based on preliminary business terms and draft Specific Plan.	Developer		No