

RESOLUTION NO. 2004-842

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF OCT 26 2004

**RESOLUTION AUTHORIZING CITY MANAGER
TO AMEND THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY AND MILLENNIA RELATED TO THE
RAILYARDS DEVELOPMENT**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF SACRAMENTO:**

The City Manager is authorized to execute an Amendment to the Memorandum of Understanding between the City and Millennia, attached in Exhibit A, to establish a joint public/private partnership for the development of the approximately 240-acre downtown Union Pacific Railyards site.

APPROVED:

HEATHER FARGO

Mayor

ATTEST:

SHIRLEY CONCOLINO

City Clerk

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RESOLUTION NO.: 2004-842

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**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SACRAMENTO AND MILLENNIA SACRAMENTO, III, LLC
REGARDING THE PLANNING PROCESS FOR DEVELOPMENT
OF THE DOWNTOWN UP RAILYARDS SITE**

This First Amendment to Memorandum of Understanding (this "First Amendment") is entered into by and among the City of Sacramento ("City"), Millennia Associates, LLC ("Millennia Associates") and Millennia Sacramento, III, LLC ("Millennia") on this 26th day of October, 2004 at Sacramento, California.

RECITALS

This First Amendment is entered into by and between the parties in consideration of the following:

1. City and Millennia Associates entered into that certain Memorandum of Understanding between the City of Sacramento and Millennia Associates, LLC Regarding the Planning Process for Development of the Downtown UP Railyards Site on October 14, 2003 (the "MOU") relating to the approximately 240 acres of property located in downtown Sacramento (the "Railyards Property") currently owned by Union Pacific ("UP").
2. UP and Millennia have entered into that certain Purchase and Sale Agreement and Escrow Instructions for the purchase and sale of the Railyards Property.
3. City and Millennia desire to amend the MOU as set forth herein.
4. Millennia Associates has agreed to assign its rights and obligations under the MOU to Millennia, subject to the City's consent thereto.

AGREEMENT

The City, Millennia and Millennia Associates agree as follows:

1. Reinstatement and Assignment. Notwithstanding the provisions of Paragraph X of the MOU, the parties hereto agree and confirm that the MOU, including, without limitation, subparagraph IX.B. thereof, is in full force and effect, as amended hereby. City hereby consents to the assignment of the MOU from Millennia Associates to Millennia, and Millennia is hereby substituted in place of Millennia Associates in the MOU.
2. Application. Paragraph X of the MOU is hereby amended so that the deadline to submit an application to the City is hereby extended to April 30, 2005.

FOR CITY CLERK USE ONLY

2004-842

RESOLUTION NO.: _____

DATE ADOPTED: OCT 26 2004

3. Notices. Subparagraph XI.C. of the MOU is hereby deleted and replaced in full as follows:

A. Notices: Contact Persons: All notices under this MOU shall be given to the other parties at the addresses set forth below or such other addresses as the parties may designate by written notice to the other parties in an appropriate and reasonable period of time in advance.

B.

Millennia:

MILLENNIA SACRAMENTO, III, LLC
Stanley E. Thomas
Thomas Enterprises, Inc.
45 Ansley Drive
Newnan, GA 30263

and

Eric Levine
One Rockefeller Plaza, Suite 1005
New York, NY 10020

with a copy to:

Suheil J. Totah, Esq.
Morrison & Foerster LLP
400 Capitol Mall, Suite 2600
Sacramento, CA 95814

and

Jeffrey F. Montgomery, Esq.
Cushing, Morris, Armbruster & Montgomery, LLP
229 Peachtree Street, N.E. Suite 2110
Atlanta, GA 30303

City:

CITY OF SACRAMENTO
City Manager's Office
Attn: Robert Thomas, City Manager
730 I Street, Suite 304
Sacramento, CA 95814

and

FOR CITY CLERK USE ONLY

RESOLUTION NO.:

2004-842

DATE ADOPTED:

OCT 26 2004

City of Sacramento Development Services Department
Attn: Carol Shearly, New Growth Manager
2101 Arena Boulevard, Suite 200
Sacramento, CA 95834

with a copy to:

Sacramento City Attorney's Office
Attn: Robert Tokunaga, Deputy City Attorney
980 9th Street, 10th Floor
Sacramento, CA 95814-2736

4. Gatekeeper Issues.

(a) The City and Millennia acknowledge that the redevelopment of the Railyards Property presents a unique opportunity as one of the largest urban infill sites in the country, and that it is important to the City as a potential catalyst for the revitalization of downtown and the reintegration of downtown to surrounding areas. This redevelopment also presents unique challenges with complex issues that will require creative strategies and tremendous resources from all interested parties to allow development to proceed. The parties further recognize that as a major redevelopment project, the Railyards Property may require flexible and creative solutions not applicable to typical development projects. In order to meet these challenges, certain important "Gatekeeper" issues must be resolved so that they do not become impediments to the development of the Railyards Property. The parties desire to work together cooperatively as a public/private partnership to resolve these issues in a manner that will allow the development to proceed. Therefore, the parties have attached hereto as Exhibit A, incorporated herein by reference, a list of the Gatekeeper issues which have been identified by Millennia thus far, together with an outline of the current principles of agreement for each of these issues. The principles of agreement set forth in Exhibit A are intended to give direction to City staff and Millennia with respect to future negotiation and resolution of these Gatekeeper issues. Millennia and the City agree to make good faith efforts to find creative solutions to these issues (based upon these principles of agreement) and any others which are identified during the entitlement process.

(b) Further, while many departments of the City will be involved in developing solutions to these challenges, it is the understanding of the City and Millennia that the City Manager is directed to take the lead in managing this process and resolving Gatekeeper and other key issues that arise during the entitlement process, and will receive support and authority from the City to do so. The City Manager shall appoint a dedicated senior project manager to the Railyards development project, who will report to the City Manager, and will oversee the formulation and implementation of the entitlement process and the resolution of Gatekeeper issues to ensure that the development process proceeds in a timely and efficient manner. To this end, Millennia shall employ its own project manager, who will work in coordination with the City's project manager.

5. Milestone Matrix. Exhibit B of the MOU is hereby deleted in its entirety and replaced with Exhibit B attached hereto.

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3

FOR CITY CLERK USE ONLY

2004-842

RESOLUTION NO.: _____

DATE ADOPTED: _____

OCT 26 2004

6. City Staffing and Costs Exhibit. Exhibit C of the MOU is hereby deleted in its entirety. Subparagraphs VIII.A.1.(a)-(b) of the MOU are hereby deleted in their entirety and replaced with the following:

“a. core group: Representatives from the City Manager’s Office, Downtown Department, Utilities, Public Works, Planning, Parks and Recreation, Police and Fire required for the expedient and orderly processing of the development application shall be appointed and authorized by the City to devote sufficient time therefor during the 18-month planning period. The City has the right in its sole discretion to replace and substitute City employees assigned to the Master Plan process, but will endeavor to maintain the dedicated project manager and shall keep Millennia informed as to the composition of this core group throughout the planning period.

b. additional staff: City will provide support staff in addition to the core group as necessary to process the development application, subject to Millennia’s payment of the application fee set forth in the cost estimates provided by the City according to the milestone matrix attached as Exhibit B hereto.”

7. Definitions. All terms not otherwise defined herein shall have the meaning attributed to them in the MOU.

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FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-842

DATE ADOPTED: OCT 26 2004

8. Counterparts. This First Amendment may be executed in counterparts.

Exhibits

Exhibit A: Gatekeeper Issues - Principles of Agreement
Exhibit B: Joint Development Process - Milestone Matrix

IT IS SO AGREED

MILLENNIA ASSOCIATES, LLC,
a California limited liability company

By: _____
Eric Levine
CEO

MILLENNIA SACRAMENTO, III, LLC,
a Delaware limited liability company

By: _____
Stanley E. Thomas
Manager

CITY OF SACRAMENTO

By: _____
Robert Thomas
City Manager

ATTEST:

By: _____
Shirley Concolino, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE:

City Attorney

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-842
DATE ADOPTED: OCT 26 2004

EXHIBIT A

Gatekeeper Issues – Principles of Agreement

1. Infrastructure.

The redevelopment of the Railyards Property will require significant infrastructure and public funding and support at the local, state and federal levels. The City agrees that during the entitlement process, the City will negotiate in good faith with Millennia to establish an appropriate level of public investment to support the development of the Railyards Property. The parties acknowledge that the infrastructure will support the private and public portions of the development as well as areas outside the Railyards Property that will be served by the additional infrastructure. The parties further recognize that at this time, it is anticipated that almost half of the Railyards Property will be devoted to public development of one form or another, and that the level of public development will be a significant factor in assessing and apportioning funding responsibility. As part of the entitlement process for the development, the City and Millennia will make good faith efforts to agree on the necessary infrastructure, the phasing and priority of the infrastructure, the cost of the infrastructure and a financing plan including allocation of cost of the infrastructure between the private sector and the public sector. The parties agree that a fair share allocation approach, similar to that used in the City's adopted Railyards/Richards Boulevard Area Finance Plan and Railyards/Richards/Downtown Nexus Study, shall also be an appropriate factor in allocating costs for a new Railyards master plan. This approach assumes that a combination of funding sources will be pursued to achieve infrastructure and community facility needs, including funding from private development projects, outside sources (Federal, State, RT), and local funding (City of Sacramento, Redevelopment Agency). In these negotiations, Millennia and the City will strive towards allocating the public and private contributions such that the public contributions for infrastructure and community facilities reach a level not less than that committed under the adopted Financing Plan and Nexus Study. In addition, the City is supportive of prioritizing infrastructure necessary for the first phase of the development, including the widening of 7th Street.

2. Sacramento Intermodal Transportation Facility ("SITF")

The SITF is an important component of the development of the Railyards Property. The parties agree that it is important that the development of the SITF commence concurrently with the first phase of the development of the Railyards Property. Millennia and the City shall use good faith efforts to agree on the necessary footprint for the SITF and to negotiate the purchase consideration for the transfer of land necessary for the SITF to the City, with the understanding that if the City and Millennia do not reach consensus, nothing in this MOU will restrict their options with respect to the SITF site. The City recognizes that Millennia is paying a substantial price for the Railyards Property and that Millennia should be compensated for the transfer of land for the SITF through a negotiated purchase price to be satisfied in a mutually acceptable form including, by way of example, the provision of additional infrastructure funding or other subsidies. The parties will work together in an effort to find a creative ownership and operation model for the SITF which will facilitate the necessary funding to expedite development of the SITF. The City and Millennia recognize that failure to reach agreement on the issues described in this paragraph 2, as well as paragraph 1 (above) could jeopardize the development of the

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-842

DATE ADOPTED: OCT 26 2004

Railyards Property. Further, Millennia will inform the City as to: (i) the location of track alignments; and (ii) the schedule for relocating the tracks; and (iii) the proposed funding of the track relocation, once these issues have been finalized under the UP/Millennia track relocation agreement, to assist the City's understanding of the conditions and requirements which must be fulfilled to allow the City to develop the SITF in a timely manner. Notwithstanding the foregoing, the City shall have no right to participate in the negotiation of such track relocation agreement, and nothing herein will obligate Millennia to violate the provisions of its confidentiality agreements with UP and other rail operators.

3. Housing Subsidies and Affordable Housing Requirement

Housing is a key component of the redevelopment of the Railyards Property, and the revitalization of Downtown Sacramento. At this time, many downtown housing projects have required public subsidies in order for such projects to be economically feasible in this developing market. The City has provided housing subsidies on a case by base basis. The City shall work with Millennia and review its financial models and will favorably consider providing public subsidies for the development of housing at the Railyards Property. The affordable housing requirements for the development shall be governed by the City's inclusionary housing ordinance, the City's housing trust fund fee (subject to the potential reductions set forth in the following sentence) and applicable requirements of California redevelopment law. The City will favorably consider offsetting housing trust fund fees on non-residential elements of the project, as well as other development impact fees, by taking into consideration the inclusionary housing provided by the project as a whole.

4. Environmental Review of Development and Entitlement Structure

The City and Millennia agree to create an initial entitlement structure and environmental review program that will allow for subsequent "fast-track" procedures to enable development to proceed quickly.

5. Financing for Central Shops

The Central Shops are the heart of the Railyards Property but the buildings are in serious disrepair and the cost to restore the buildings is significant. City and Millennia acknowledge the benefit to the project (and the City and region as a whole) which will result from the renovation of the historic Central Shops on the Railyards Property. This renovation has the potential to provide significant cultural and commercial uses, such as a Public Marketplace, which can serve as a destination for the entire region. Further, the California State Railroad Museum has agreed to renovate two of the Central Shops to create the new Railroad Technology Museum. The City agrees to participate in and support the efforts to seek funding sources for the renovation and restoration of the other Central Shop buildings on the Railyards Property. These efforts may include the current proposal to form a JPA between the City and California State Parks in conjunction with making appropriate arrangements with Millennia to facilitate the development of the restored buildings, and the City agrees to give appropriate, good faith consideration to this proposal if and when made.

6. Detention Basin Requirements

The City will work with Millennia to find workable solutions to minimize the size of the Detention basin on site, including supporting Millennia's efforts to obtain permits for water run-off into the Sacramento River. Any joint use of the detention basin will be taken into account when calculating the public commitment for infrastructure.

7. Gateway Boulevard

The City and Millennia shall work together to resolve impediments to construction of the proposed "Gateway Boulevard."

8. Park Development Fee and Quimby Act Requirements

Urban infill development can require different and creative approaches to the provision of parks and open space. The City recognizes in its Infill Strategy that infill development in the Central City presents unique challenges which makes charging the citywide park fees problematic, and the park land dedication (or in lieu fees) under the Quimby Act and park impact fees together can operate as a disincentive to Central City residential development. These unique challenges are present in the Railyards Property as well, and the City agrees that the citywide park fee requirements could be disincentives to Millennia for developing a high-density urban environment which would be appropriate and desirable for the setting. Further, the City recognizes that it may not be desirable for urban park settings to occupy the same percentage of space which would be found in an outlying locale. Therefore, the City agrees to work with Millennia to pursue creative ways of minimizing the impact of the Quimby Act and park impact fee requirements on the redevelopment of the Railyards Property, and to work with Millennia to create a high-density urban environment with unique "signature" urban parks and plazas, public gathering areas, and connectivity to the Sacramento Riverfront. Measures that may be considered include reducing the amount of fees, additional credit for desirable portions of the Railyards Property, reducing the per-unit factors and/or including retention basins and public areas (plazas, museums, courtyards, etc.) for the purposes of calculating dedicated park acreage.

9. Removal of Levee

The City recognizes that the secondary levee located along the northern boundary of the Railyards Property reduces the developable area of the Railyards Property and is an impediment to the integration of the site with the downtown and the Richards Boulevard areas. Therefore, the City shall undertake an analysis of the usefulness and necessity of such levee on an expedited basis. If such analysis determines that the levee is not serving its intended purpose for floodwater protection, the City will support Millennia's request to remove such levee.

10. Comprehensive Parking Plan

Millennia has agreed to take lead responsibility in developing a parking plan for the Railyards Property, including shared parking and operation with the Railroad Technology Museum, SITF and other developments at the Railyards Property. The City agrees to participate and assist Millennia with development and implementation of this parking plan, in order to both minimize duplication of resources, coordinate this plan with the City's Central City Parking Study, and to reduce the total public and private expenses and land requirements for such parking.

11. Tri-Party Memorandum of Understanding

The City agrees to cooperate in amending that certain Memorandum of Understanding by and among the City, the California Department of Toxic Substances Control ("DTSC") and Southern Pacific Rail Corporation (UP's predecessor-in-interest) dated as of December 2, 1994 (the "Tri-Party MOU") in order, among other issues, to: (i) add Millennia as a party; (ii) update the remediation guidelines to assure the ability to use current science and technology in determining remedial requirements; and (iii) allow consideration by the parties of remediation requirements for Millennia's future land-use plans for the Railyards Property instead of the Roma plan.

12. State Lands

The City agrees to cooperate with Millennia to resolve any title issues with the State Lands Commission relating to public trust doctrine claims at the Railyards Property to Millennia's and the City's satisfaction. The City agrees to consider substituting alternative waterfront property as public trust land to resolve such claims.

13. Arena

Millennia agrees to participate in discussions regarding the inclusion of an arena for the Sacramento Kings basketball franchise as part of the redevelopment of the Railyards Property, provided such proposal: (i) is economically viable; (ii) fits within the master plan for the Railyards Property; and (iii) provides some certainty as to the timing and implementation of the arena project.

14. Remediation Agreements

To the extent permitted by its confidentiality agreements with other parties, Millennia will disclose to City the environmental remediation schedules and tasks developed and assumed by Millennia as a result of its purchase of the Railyards Property. However, the City shall have no right to participate in the negotiation of any such documentation.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-842

DATE ADOPTED: OCT 26 2004

EXHIBIT B
JOINT RAILYARDS DEVELOPMENT PROCESS
 (City of Sacramento, Millennium Sacramento)
MILESTONE MATRIX

Phase I Milestones (Oct. - Dec. 2004)	Phase II Milestones (Jan. - April 2005)	Phase III Milestones (Summer 2004 - Fall 2005)	Phase IV Milestones (Mid-2006)
<p>City Manager shall appoint dedicated senior staff person to oversee Railyards project. Millennium shall appoint project manager to oversee Railyards project. City to provide detailed cost estimates for the application fee.</p> <p>City and Millennium shall continue to work towards resolving Gatekeeper issues.</p> <p>Millennium shall assemble information for development application; City Manager's Office shall cooperate with Millennium to assist in application effort.</p> <p>City and Millennium shall cooperatively manage the integration of Millennium's land development concept with the SITF.</p> <p>Millennium shall continue with its community outreach program as previously approved by the City.</p> <p>City and Millennium shall formulate a land use entitlement process to govern development of the 240 acre site, including refining project milestones and reach agreement on the environmental consultant and review structure, and schedule under CEQA, including allocation of costs between the City, Millennium, and others.</p> <p>The City and Millennium shall address financial feasibility assumptions underlying infrastructure financing, and other fundamental elements of development of the Railyards site.</p> <p>City and Millennium shall agree on the terms of the sale of property necessary to serve the SITF, including identification of the facility footprint, including all necessary public right of ways, and infrastructure necessary to serve the facility.</p> <p>Millennium will continue to share with the City current</p>	<p>Millennium shall submit development application including project description for purposes of environmental review.</p> <p>Millennium shall submit payment of application fee and payment for preparation of environmental documentation.</p> <p>Millennium shall commence the Master Plan process for the entire 240-acre site, including continuing with community outreach program.</p> <p>City shall commence drafting amendments to General Plan, Community Plan and other regulatory documents</p> <p>City and Millennium to work towards allocation of infrastructure costs and finalizing other terms of the nexus study and financing plan consistent with the terms of the MOU.</p> <p>City shall commence program/project level environmental review for the 240-acre site; City shall publish NOP for the EIR.</p> <p>Based on financial feasibility and assumptions, City and Millennium shall discuss, and as appropriate, negotiate the terms and conditions of an OPA, DA, and/or other agreement(s) concerning development of the 240-acre site.</p> <p>City and Millennium shall identify regulatory structure for the project, and commence drafting documents necessary to allow for expeditious review and approval of projects.</p> <p>City and Millennium shall address plans for financing of central shop restoration.</p>	<p>Project concept refinement.</p> <p>City/Redevelopment Agency, Millennium and UP continue negotiations of a Master OPADA.</p> <p>City and Millennium continue drafting regulatory and implementation documents.</p> <p>City shall continue processing CEQA documentation and amendments to regulatory documents.</p> <p>City and Millennium shall continue work on nexus study and financing plan.</p>	<p>Certify program/project level EIR for Master Plan covering 240-acre site, and approval of regulatory and implementation documents.</p> <p>Public hearing to approve Master Plan including amendments to General Plan, Community Plan and approval of Design for Development Guidelines, nexus study, financing plan and other regulatory documents.</p> <p>Approve project entitlements for entire site including first phase.</p> <p>Approve Master OPA/DA.</p> <p>Approve Subdivision Map.</p> <p>Adopt design guidelines as necessary to allow for expeditious review and approval of projects.</p>

FOR CITY CLERK USE ONLY

RESOLUTION NO.:

2004-342

DATE ADOPTED:

OCT 26 2004

Phase I Milestones (Oct. - Dec. 2004)	Phase II Milestones (Jan. - April 2005)	Phase III Milestones (Summer 2004 - Fall 2005)	Phase IV Milestones (Mid-2006)
<p>conceptual plans for the development, including current iterations of the land use program (including housing prototypes and densities), identification of roadway system and interaction with existing grid, and areas of open/public space and community facilities.</p> <p>Millennia will share with the City (subject to all confidentiality restrictions required by Millennia or third parties) market research/studies, if any, prepared in connection with the development plans.</p>			

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RESOLUTION NO.: 2004-842
DATE ADOPTED: OCT 26 2004