

RESOLUTION NO. 2010-430

Adopted by the Sacramento City Council

July 20, 2010

APPROVING THE EXTENSION OF THE TERM OF THE EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT WITH THE SACRAMENTO CONVERGENCE, LLC

BACKGROUND

- A. On April 27, 2010, by Resolution 2010-221, the City Council approved the execution of an Exclusive Right to Negotiate (ERN) Agreement with Sacramento Convergence, LLC to provide for the evaluation of the "Convergence Plan" as outlined in the offer to the SacramentoFIRST Task Force by Sacramento Convergence, LLC ("Developer"), whose principal members are Gerry N. Kamilos and David S. Taylor.
- B. The ERN provides for the City's evaluation of the Convergence Proposal, which includes the Developer's financial plan to fund development of the Sports and Entertainment (S&E) Complex, a Point West mixed-use development, and a new State Fair and Exposition facility at the City's Natomas property.
- C. It is anticipated that once the Convergence Proposal and the S&E Complex Plan and the evaluations are complete, the Convergence Plan may be refined and further detailed so that the scope of each development project is defined. The revised Convergence Plan will be submitted to the City Council for concurrence before drafting of a "pre-development agreement" and commencement of preparation of an environmental impact report.
- D. A sixty day extension of the ERN term will enable the City to receive and evaluate the Cal Expo consultant's report on the feasibility of the Natomas site for the new State Fair and complete its analysis of the feasibility of the Convergence Plan.

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

- Section 1. The City Manager or his designee is hereby authorized to enter into an Amendment to Agreement No 2010-0305 to extend the terms of the Exclusive Right to Negotiate Agreement for the Convergence Plan with Sacramento Convergence, LLC for an additional sixty days in the form attached as Exhibit A.

Table of Contents:

- Exhibit A First Amendment to Agreement for Exclusive Right to Negotiate for Convergence Plan

Adopted by the City of Sacramento City Council on July 20, 2010 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk

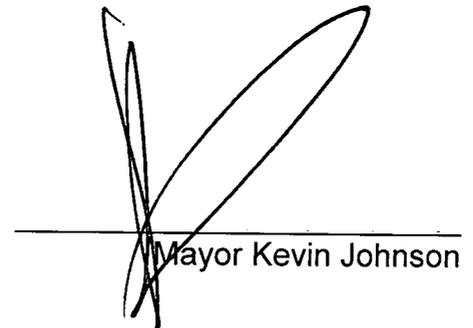

Mayor Kevin Johnson

Exhibit A

EXTENSION OF AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE FIRST AMENDMENT TO AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE CONVERGENCE PLAN

This FIRST AMENDMENT to Agreement for Exclusive Right to Negotiate ("**First Amendment**") is entered into as of July 20, 2010, by and among the CITY OF SACRAMENTO, a municipal corporation ("**CITY**"), and SACRAMENTO CONVERGENCE, LLC, a Delaware limited liability company ("**DEVELOPER**"). CITY and DEVELOPER hereinafter may be referred to collectively as the "**Parties**" or in the singular as "**Party**," as the context requires.

RECITALS

- A. On April 27, 2010, the Parties entered into the Agreement for Exclusive Right to Negotiate ("**ERN**" or the "**Principal Agreement**") in regards to the Convergence Plan that was submitted to the Sacramento FIRST Task Force. The term of the ERN expires on August 25, 2010.
- B. On June 30, 2010, DEVELOPER submitted to CITY a formal Proposal regarding the Convergence Plan, which includes development of a Sports and Entertainment Complex, also referred to as the Event Center, on the City's Intermodal property, transfer of the City's Natomas property to the State to allow for development of a new State Fair and Exposition facilities, and redevelopment of the existing Cal Expo site in Point West. The Parties are concurrently undertaking an evaluation of the feasibility of the Convergence Plan and the financial assumptions, and commencing negotiations in regards to the terms of the Proposal. The Parties anticipate developing the business terms for a "predevelopment agreement," also referred to as a "Project Parameters Agreement," during the Term of the ERN.
- C. In order for the State to sell its existing Cal Expo property and develop new facilities at the City's Natomas property, the board of directors of the State Fair and Exposition ("**State Fair**") need to evaluate the feasibility of the Convergence Plan and obtain special legislative authority. The State Fair has entered into an Evaluation Agreement with Sacramento Convergence, LLC and hired consultants to undertake an analysis of the costs and benefits of relocating the Cal Expo operations by building new facilities in Natomas. The Evaluation Agreement term ends on September 25, 2010, at which time the analysis and enactment of the special legislation is expected to be completed.
- D. The Parties desire to extend the Term of the ERN for an additional 60 days to allow for: (1) the continued evaluation and negotiation of business terms in regards to the Proposal, (2) completion of the feasibility evaluation of the Convergence Plan by CITY and State Fair staff and consultants, (3) approval by board of the State Fair to

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enter into a Project Parameters Agreement with Sacramento Convergence, LLC, (4)

enactment of legislation needed to authorize the sale of the State's Cal Expo property and development of the new State Fair and Exposition facilities in Natomas, and (5) preparation of a Project Parameters Agreement between the CITY and DEVELOPER.

AGREEMENT

NOW, THEREFORE, based on the Recitals, which are incorporated into this Agreement, the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Term. Article 6 of the Principal Agreement is hereby amended and restated in its entirety as follows:

"6. Term. This Agreement shall become effective as of the Effective Date and shall terminate one hundred and eighty (180) days thereafter ("**Initial Term**" or "**Term**") unless sooner terminated or extended by a duly authorized and executed written agreement of the Parties or when a PPA is executed by both Parties and all other parties thereto, if any. As part of the execution of the PPA, the Initial Term of this Agreement may be extended by mutual agreement of the Parties to provide DEVELOPER with a continuing exclusive right to negotiate regarding the terms of the Convergence Proposal until CITY is able to make a determination whether to approve or disapprove, or conditionally approve, all or portions of the Convergence Project after completion of the required CEQA and NEPA environmental studies.

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

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2. Effect of Amendment. Except as expressly modified by this First Amendment, the Principal Agreement shall continue in full force and effect according to its terms and

conditions, and the CITY and DEVELOPER hereby ratify and affirm all of their respective rights and obligations under the Principal Agreement. In the event of any conflict between this First Amendment and the Principal Agreement, this First Amendment shall control.

3. Construction. The CITY and DEVELOPER have both been represented by counsel in the preparation of this First Amendment and no presumption or rule that ambiguity shall be construed against the drafter shall apply to the interpretation or enforcement hereof.

4. Authority. The persons signing below represent that they have the authority to bind their respective Party and that all necessary approvals have been obtained.

5. Counterparts. This First Amendment may be executed in one or more counterparts, and all of the counterparts shall constitute one and the same agreement, notwithstanding that all Parties hereto are not a signatory to the same or original counterpart.

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

SACRAMENTO CONVERGENCE, LLC
a Delaware limited liability company

CITY OF SACRAMENTO

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

By: _____
JOHN DANBERG
Assistant City Manager

By: _____
Gerry N. Kamilos, Manager

Date: _____

Approved as to Form:

Date: _____

By: _____
Senior Deputy City Attorney

Approved as to Form:

ATTEST:

By: _____
DEVELOPER'S Counsel

By: _____
City Clerk

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