



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Staff Report
July 20, 2010

Honorable Mayor and
Members of the City Council

Title: Convergence Plan: Status Report and Amendment to Extend the Term of the Exclusive Right to Negotiate Agreement

Location/Council District: Council Districts 1 and 2: Railyards, Natomas and Point West

Recommendation: 1) Adopt a **Resolution** authorizing the City Manager or his designee to execute an amendment to City Agreement No. 2010-0305 with Sacramento Convergence, LLC to extend the term of the Exclusive Right to Negotiate Agreement for 60 additional days; and 2) receive a status report on the Convergence Plan.

Contact: Betty Masuoka, Executive Project Manager, 808-7942; Rachel Hazlewood, Senior Project Manager, 808-8645

Presenters: Betty Masuoka

Department: City Manager's Office, Economic Development

Division: Citywide

Organization No: 18000

Description/Analysis

Issue: The purpose of this report is to request an extension of the term of the Exclusive Right to Negotiate (ERN) Agreement with Sacramento Convergence, LLC that the City Council approved on April 27, 2010 for 60 additional days, from August 25, 2010 to October 24, 2010, and to provide City Council with an update on the status of the Convergence Plan. The 60 day extension will allow for (1) continued evaluation of the Convergence Proposal, (2) sufficient time for the Cal Expo consultant to complete its report and submit it for consideration to the Cal Expo board of directors, and (3) enactment of legislation needed to authorize the sale of the Cal Expo property and development of the new State Fair facilities in Natomas.

The Convergence Plan proposes developing the Sports and Entertainment Complex (S&E Complex) within the City's Intermodal property adjacent to the Railyards. The Plan includes transferring the City's Natomas property to the State to allow for relocation of the State Fair and Exposition facilities so that the

State may sell the existing Cal Expo property at Point West to Sacramento Convergence, LLC to allow for its redevelopment. A portion of the proceeds from redevelopment of the Point West property would be pledged to assist in financing the S&E Complex and the new State facilities.

Policy Considerations: The actions contemplated and described in this report are consistent with City goals of economic development and with the direction provided to staff at the Council session of April 27, 2010.

Environmental Considerations:

California Environmental Quality Act (CEQA): The activities and recommendations described in this report to conduct planning and feasibility studies. After the preliminary analysis of the financial feasibility of the Convergence Plan is completed and the scope of the S&E Complex and the redevelopment of the Natomas and Point West properties are defined then an analysis of environmental impacts of each aspect of the Convergence Proposal under CEQA can commence.

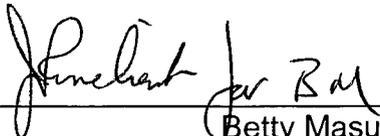
Sustainability Considerations: None at this time. As staff reviews and analyzes the proposal, it will negotiate for provisions consistent with the City's Sustainability Master Plan and the 2030 General Plan.

Commission/Committee Action: N/A

Rationale for Recommendation: A key piece of information from Cal Expo will not be available until the end of September. The ERN extension will provide time to include this information in the evaluation of the feasibility of the Plan moving forward. As required in the ERN, this report also provides Council with an update on the Convergence Plan.

Financial Considerations: City staff is evaluating the feasibility of the financial model proposed by the Convergence team. Consultants have been hired to assist in this evaluation. The costs of the consultants have been funded by the Convergence team through the deposits required under terms of the ERN.

Emerging Small Business Development (ESBD): None at this time.

Respectfully Submitted by: 
Betty Masuoka
Executive Project Manager

Approved by: 
James R. Rinehart
Economic Development Director

Recommendation Approved:

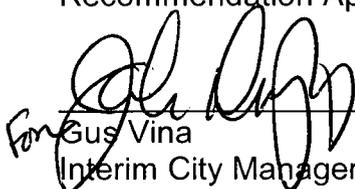

Gus Vina
Interim City Manager

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Attachment 1**BACKGROUND**

Actions to Date

On March 11, 2010, the Mayor's SacramentoFIRST Task Force presented its findings for a Sports and Entertainment Complex (S&E Complex) to the City Council at a special meeting. The Task Force recommended that the City proceed with an evaluation of the Convergence Offering submitted by Kamilos Companies and David S. Taylor Interests and including various consultants and financing partners (the "Convergence Team") for development of the S&E Complex. The Convergence Plan includes developing the S&E Complex on the City's Intermodal property and transferring the City's Natomas property to the State to allow for relocation of the State Fair and Exposition facilities, so that the State may sell the 350 acre portion of the existing Cal Expo property at Point West to Sacramento Convergence, LLC to allow for its redevelopment. A portion of the proceeds from redevelopment of the Point West property from the subsequent sale of parcels after entitlements have been secured would be pledged to assist in financing the S&E Complex and the new State facilities.

On March 16, 2010, the City Council accepted the Task Force recommendation to proceed with the Convergence Plan and directed staff to prepare an Exclusive Right to Negotiate (ERN) Agreement with the Kamilos/Taylor group to allow for an evaluation of the Convergence Plan. In addition, Council provided direction that the S&E Complex be designed to be integrated with the City's Intermodal development plan, as suggested by the Task Force.

At the following Council meeting on March 23, 2010, the Mayor, with the Council's concurrence, appointed an Ad Hoc Committee comprised of himself and Council Members Cohn, Fong and Tretheway to provide oversight of the negotiations during the ERN term and to review any proposals for legislation which may be drafted to facilitate implementation of the Convergence Plan. The Ad Hoc Committee has met twice on the Convergence Proposal focusing primarily on the proposed legislation, and the individual members have received periodic updates from staff.

On April 27, 2010, the City Council approved the execution of an Exclusive Right to Negotiate with the Sacramento Convergence, LLC for the Convergence Plan. The initial term of the ERN is for 120 days and it expires on August 25, 2010. The ERN required Sacramento Convergence, LLC to submit a proposal outlining the financing structure and assumptions, as well as a concept plan for the S&E Complex so the City could conduct an evaluation of the feasibility of the Convergence Plan. The ERN provides both parties with the opportunity to conduct necessary due diligence. It also grants to Sacramento Convergence, LLC the exclusive right to negotiate with the City regarding the terms of a pre-development agreement, which would outline the roles and responsibilities of each party if the Convergence Plan is ultimately approved by the Council.

Since commencement of the ERN period, the following has been accomplished in regards to the Convergence Proposal:

- On June 30, 2010, Sacramento Convergence, LLC submitted its formal Proposal which set out the Convergence Plan and included the S&E Complex Plan deliverables as required in the ERN (Attachment 2 to this report and posted on the project web site).
- City staff and consultants have been evaluating the financing structure and repayment sources identified in the Proposal for consistency with the Council's "no risk to the taxpayer/General Fund" direction.
- City staff is working with the Convergence Team, the NBA and Cal Expo representatives on the proposed legislation regarding the sale of the Cal Expo property and development of new State Fair and Exposition facilities.
- An Evaluation Agreement between Cal Expo and Convergence was approved by the Cal Expo Board on June 25, 2010. The evaluation period ends September 25, 2010. During this time, Cal Expo will evaluate the Convergence proposal of relocating to Natomas as well as the feasibility of staying at Pt. West.
- The Convergence Team is developing conceptual site plan options for locating the Sports and Entertainment Complex, the supportive joint development and parking structure within the City's Intermodal property. Staff is identifying requirements that would ensure that the Intermodal facilities can be developed, once funding becomes available, either concurrently or after the S&E Complex is developed.
- Discussions have commenced with Convergence Team on business terms for a Project Parameters Agreement.
- A project web page, <http://www.cityofsacramento.org/esc/>, has been created to provide the public with information on the Convergence Plan.
- Deposits have been submitted by Sacramento Convergence, LLC as required by the ERN.
- The City has hired an executive project manager.
- The City has hired a consulting team with expertise in financial evaluation, development of sports and entertainment complexes, and municipal finance.

Sacramento Convergence Proposal

The Proposal by Sacramento Convergence expands upon the concepts previously submitted to SacramentoFIRST Task Force by describing the vision for each of the three sites as well as the financing model. Each is briefly summarized below based on the Proposal, which is Attachment 2 of this report.

Downtown Site. The Convergence Proposal includes development of an approximately 800,000 sq. ft. (19,000 seat) multi-purpose Event Center, supportive retail, office and hotel uses (500,000 to 600,000 sq. ft.) with 100 to 150 residential units, as well as a 2,200 to 3,000 space parking structure within the City's Intermodal property.

New Cal Expo and State Fair Site. The Cal Expo Board is leading the programming of the new facility as well as the financial feasibility of the move.

Point West Site. Convergence proposes a mixed use development on approximately 350

acres. (The area of the American River Parkway is not a part of the proposal). The concept envisions

- 35 acres of mixed retail (340,000 sq. ft. retail and 210 residential units)
- 35 acres of office (1 million sq ft. of office space)
- 260 acres of residential (4,900 units)
- 20 acres of recreation/elementary school site

Financing Concept. Convergence proposes a Performance Based Infrastructure (PBI) model (which is also known as a Public Private Partnership or P3 model), whereby a Special Purpose Entity (from the private sector) is responsible for the financing, designing, building and maintenance of the Convergence Facilities (basically the Event Center and Parking) and for funding the new Cal Expo and State Fair. In return, the Special Purpose Entity is paid an annual "availability payment" for 30 (+/-) years. After this period, the Convergence Facilities are turned over to the public sector (i.e. the City). The revenues to support the availability payments are proposed to come from a variety of sources including the Event Center tenant, revenues from the parking structure, incremental city, county and state taxes generated from the project, assessments, etc. The financing concept also assumes the contribution of City property in Natomas and the Railyards as well as a reduction in development related fees.

Implementation Work Program. The proposal lays out the major phases of implementation:

- Phase 1: The Request for Offering (RFO) Process (completed)
- Phase 2: Exclusive Negotiating Period (current phase)
- Phase 3: Project Parameters Agreement Phase (approx 18 months)
- Phase 4: Design/Build Phase (Event Center operational by 6/2014, New Cal Expo operational by 6/2015)
- Phase 5: 30 Year Concession Period

The full Proposal can be found in Attachment 2.

Current Activities

There are three key areas that staff is currently focusing on. The major issues and targeted outcomes to be achieved in each of these areas during the ERN period include:

- Enabling Legislation
 - Special legislation is assumed in the Convergence Proposal which would enable the state to provide funding towards the capital costs for the new Cal Expo and State Fair facility and clarify the state authority regarding disposition of the current State Fair property and development of a new facility.
 - Cal Expo is also contemplating certain legislative amendments dealing with their operations. Staff and the Convergence team are working with them towards a single piece of legislation that can be jointly proposed. Current target date for the Cal Expo Board to review proposed language is July 30th.
 - Issue: The desired outcome is for urgency legislation to be enacted during

this session, but this may prove challenging given the limited time left in the current legislative session and the Legislature's focus on the State Budget.

- Site Plan
 - Agreement must be reached by Convergence, the NBA/MSE and the City, at a conceptual plan level, that the Event Center and necessary adjacent development can be accommodated on the site, and the City must agree that it does not compromise the future development of the Intermodal Facility.
 - Agreement needed from Cal Expo that the Natomas site will conceptually accommodate the needs of the state fair and that they support relocating to that site. The Cal Expo Board is scheduled to receive their consultant's recommendation on August 27th, which leaves the September 24th meeting for a final decision prior to the expiration of their Evaluation Agreement.
- Financing Model
 - Agreement by the Convergence team (including Macquarie Capital), the State/Cal Expo, the NBA/MSE and the City on the viability of the proposed Performance Based Infrastructure (PBI) financing structure.
 - Agreement that the projected revenues identified for the project are reasonable and achievable.
 - Issue: Further refinement is needed on the financing model, and in particular to the repayment sources to ensure they are investment grade given the requirement from the city that there will be no guarantees from the General Fund (i.e. no risk to the taxpayer).

In addition to seeking resolution in the above areas, Convergence and the City will also be negotiating the terms of the Project Parameters Agreement(s) required to move to the next phase.

Attachment 2
Convergence Proposal

**MATERIAL ON FILE AT THE CLERK'S OFFICE and
CAN ALSO BE ACCESSED ELECTRONICALLY ON WEBSITE:**

WWW.CITYOFSACRAMENTO.ORG/ESC/

Attachment 3

RESOLUTION NO. 2010-

Adopted by the Sacramento City Council

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.

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

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

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."

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