



May 4, 2005

Redevelopment Agency of the City of Sacramento  
Sacramento, California

Honorable Members in Session:

**SUBJECT: AUTHORIZATION TO NEGOTIATE EXCLUSIVELY FOR 90 DAYS THE  
DEVELOPMENT OF THE EBNER/EMPIRE SITE IN OLD SACRAMENTO**

**LOCATION/COUNCIL DISTRICT:** 116 and 118 K Street, Council District 1

**RECOMMENDATION:**

Staff recommends that the Redevelopment Agency of the City of Sacramento (Agency) approve the attached resolution which authorizes staff to exclusively negotiate with the Scurfield Company-Carson Development for a 90-day period regarding the development of the Ebner/Empire Hotel site in Old Sacramento.

**CONTACT PERSON:** Laura Sainz, Senior Project Manager, 808-2677  
Wendy Saunders, Economic Development Director, 808-8196

**FOR THE COUNCIL MEETING OF:** May 10, 2005

**SUMMARY:**

This report recommends exclusive negotiations between the Redevelopment Agency of the City of Sacramento and the Scurfield Company-Carson Development (development team) for a 90-day period to develop the Agency-owned site located at 116 and 118 K Street, otherwise known as the Ebner/Empire site. The process will follow the *Guidelines for Individual Project Review (Guidelines)* adopted by the Agency in 2004.

**BACKGROUND:**

**Request for Qualifications**

The Economic Development Department, acting as the agent of the Redevelopment Agency of the City of Sacramento, issued a Request for Qualifications to reconstruct buildings on four sites in Old Sacramento. The four sites included:

1. Magnolia Saloon/Lord's Restaurant Site located at 119 and 121 J Street
  - For the reconstruction of a 7,000 sq ft, 3-story building on a 2,600 sq ft lot
  - Property is owned by the Redevelopment Agency
2. Ebner Hotel/Empire Site located at 116 and 118 K Street
  - For the reconstruction of a 26,000 sq ft building on a combined lot of 6,400 sq ft.
  - Property is owned by the Redevelopment Agency
3. Orleans Hotel Site located at 1022 2<sup>nd</sup> Street
  - For the reconstruction of a 54,000 sq ft building on a 12,750 sq ft lot
  - Property is owned by the Redevelopment Agency
4. Firehouse Parking Lot Site located at 1121 Front Street
  - Lot size is approximately 19,500 sq ft
  - Property is under private ownership

The Department received eight proposals ranging from the development of a single site to a master proposal to develop all four sites.

### **The Selection Process**

In response to the RFQ, an evaluation committee was formed, made up of Old Sacramento and Downtown stakeholders. The evaluation committee reviewed all of the qualifications and selected seven teams to interview. Each team was asked to bring project-specific information related to its proposal.

The evaluation committee selected two teams to continue negotiations with for the development of the Magnolia Saloon/Lords Restaurant site and the Ebner/Empire Building. The Scurfield Company-Carson Development team was selected for the Ebner/Empire site.

### **The Scurfield Company-Carson Development Team**

The Scurfield Company and Carson Development have extensive experience with historical structures in Old Sacramento. Carson Development was involved with the early redevelopment of the Pacific Stables Building in Old Sacramento. It was also involved with the redevelopment of other historical structures in the downtown area, including the rehabilitation of the Railway Express Agency building currently under construction. The Scurfield Company was involved in the early redevelopment of three historical buildings in Old Sacramento and currently manages a number of properties in Old Sacramento. Dave Scurfield is an active board member of the Historic Old Sacramento Foundation and the Old Sacramento Business Association.

### **Schedule**

Although the developer was selected last year, the development team has not completed the approval process related to the historic façade of the building. In addition, the developer has not started the plan review process with the City's Department of Development Services. In order to expedite the preconstruction activities, staff has agreed

to the 90-day exclusive negotiation period following the *Guidelines for Individual Project Review* that were established and adopted by the Agency in 2004. The developer has agreed to complete the following in the 90-day period:

1. Obtain approval from the Old Sacramento Historic Design Committee on the proposed façade, including design and materials;
2. Complete a full set of construction drawings for the site, incorporating the approved façade; and
3. Obtain approval on submitted plans from the City's Development Services Department.

The developer has committed to obtaining a building permit for the Ebner/Empire Hotel during the 90-day period.

The Agreement for an Exclusive Right to Negotiate and the *Guidelines* are included as Attachment I. After the 90-day period, the Agency has 30 days to request additional information and a total of 60 days to: 1) Continue negotiations on the proposal; 2) Seek City Council approval on the project; or 3) Reject the proposal because it does not meet the established criteria. The 90-day period ends August 8, 2005.

#### **FINANCIAL CONSIDERATIONS:**

The original pro forma analysis prepared for this project anticipated a \$2.35 million gap in financing. However, this pro forma was prepared over a year ago and construction costs have escalated greatly since that time. The developer has committed to certain terms related to the Agency's participation, including:

1. Any funds used to subsidize the project will be on a loan basis only;
2. The loan will be based on a 25-year term;
3. Principal repayment on the loan is required if the developer reaches a 12% return on equity;
4. Interest payments (4%) are required if/when the developer reaches a 14% return on equity;
5. The remaining loan balance must be repaid in 25 years or upon sale.

The developer has committed to reevaluating the pro forma after the construction design and plans have been through the City's approval process, giving the developer more certainty on costs.

#### **ENVIRONMENTAL CONSIDERATIONS:**

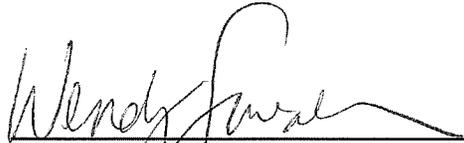
The proposed action is a planning activity for a possible future project. As such, it is exempt from further environmental review at this time pursuant to the California Environmental Quality Act, Guidelines Section 15262. Environmental review for the demolition and reconstruction of the Ebner Hotel was previously conducted. Once the scope of the proposed development project is further defined, supplemental environmental review will be conducted if needed prior to approval of a specific project.

**POLICY CONSIDERATIONS:**

The Exclusive Right to Negotiate is consistent with the Merged Downtown Redevelopment Plan.

**ESBD CONSIDERATIONS:**     None

Respectfully submitted,

  
Wendy S. Saunders  
Economic Development Director

**RECOMMENDATION APPROVED:**

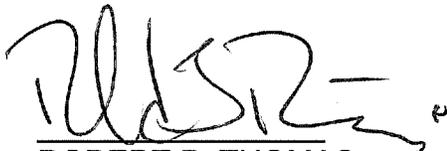
  
ROBERT P. THOMAS  
City Manager

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**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE  
EBNER/EMPIRE SITE**

1. The Redevelopment Agency Of The City Of Sacramento ("Agency") and the Scurfield Company-Carson Development ("Developer"), have entered into this Agreement for Exclusive Right to Negotiate ("Agreement") as of May 10, 2005 ("Effective Date") upon the follow terms:

2. DEPOSIT FEE. At the end of the 90-day period, Developer shall deliver to Agency with its Proposal for Agency governing body approval, a deposit of Twenty-five Thousand Dollars (\$25,000) ("Deposit"). The Deposit is the property of the Agency, subject to the following:

a. Prior to execution of a Disposition and Development Agreement ("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, costs related to preparation of the environmental documentation for the Project and supporting studies other than fees for Agency outside legal counsel for the negotiation or preparation of documents for the transactions contemplated by this Agreement. 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. The parties anticipate that Third Party Costs will not exceed \$25,000. If the actual expenditures exceed \$25,000 the parties shall meet and confer with respect to the budget for such costs. It is agreed and understood that the required \$25,000 deposit is a Deposit only, and that to the extent that the costs of the Project exceeds \$25,000, 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 the Third Party Costs may, at Developer's election, be applied to the good faith deposit or closing costs required under the DDA.

c. If the Agency fails to approve a proposed DDA, developed in accordance with the provisions of this Agreement, which is duly before it for consideration and which has been executed by the Developer, Agency will refund to Developer the Deposit remaining after payment of such Third Party Costs incurred to the date of the hearing regarding approval of the DDA. All property paid for with Third Party Costs will remain the property of the Agency.

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

3. RECITALS. This Agreement is based upon the following recitals, facts and understandings of the Parties:

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, at 116 and 118 K Street in the Old Sacramento Historic District. The Property is within the Merged Downtown Sacramento Redevelopment Project Area ("Project Area") and is owned by the Agency. The development of the Property ("Project") is consistent with the Merged Downtown Sacramento Redevelopment Plan ("Redevelopment Plan") and its 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 parties to investigate the feasibility of the project and to develop a project proposal. Once such feasibility is demonstrated, the parties intend to negotiate a Disposition and Development Agreement 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.

d. Developer Obligations – Developer agrees to complete the following during the 90-day Exclusive Right to Negotiate:

1. Review the façade for the project and get approval on it from the Old Sacramento Design Committee;
2. Develop, submit and get approval of construction drawings for the construction of the Ebner/Empire Hotels at 116 and 118 K Street; and
3. Prepare a complete pro forma analysis based on the approved construction drawings submitted to the City of Sacramento.

e. Agency Obligations – Following approval by the City of Sacramento of construction drawings and the preparation of the pro forma analysis based on the approved drawings, the Agency agrees to:

1. Present the project to the City Council for approval of a Disposition and Development Agreement (DDA) if both parties can agree on the proposed gap in financing;
2. If the Agency does not move forward with a DDA to city council, the Agency may purchase the approved drawings from developer at cost.

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

a. Developer is the Scurfield Company-Carson Development, organized and doing business in the State of California. The principal office of Developer is located at 2702K Street, No. 3, Sacramento, CA 95814.

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 (Ebner/Empire Site - Old Sacramento).” A copy of all notices to Agency shall be mailed or delivered to 630 I Street, Sacramento, CA 95814 and marked “Attention: Legal Department (Ebner/Empire Site – Old Sacramento).”

5. **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.

6. **TERM.** This Agreement shall be effective as of Effective Date and shall terminate in ninety (90) days after the Effective Date.

7. **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 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.

8. **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.

9. **SCHEDULE OF PERFORMANCES.** The parties shall perform the stated obligations within the 90-day period of this agreement.

10. **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.

11. **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 (b) does not reasonably cooperate with the other in fulfilling the other’s obligations under this Agreement, or (c) unilaterally terminates this Agreement.

12. **PREDEVELOPMENT COSTS.** Developer shall bear all 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.

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

14. 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.

15. ATTORNEYS' FEES. In the event of any dispute between the parties, 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.

16. UNAVOIDABLE DELAY. For the purposes of any of the provisions of this Agreement, 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). 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.

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

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

Approved as to form:

By: \_\_\_\_\_  
Robert P. Thomas, City Manager

By: \_\_\_\_\_  
Dana W. Phillips, General Counsel

DEVELOPER: The Scurfield Company

Approved as to form:

By: \_\_\_\_\_  
Dave Scurfield

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

DEVELOPER: Carson Development

By: \_\_\_\_\_  
Johan Otto

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 parties' 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.

**RESOLUTION NO. \_\_\_\_**

**ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**

ON DATE OF \_\_\_\_\_

**MERGED DOWNTOWN SACRAMENTO REDEVELOPMENT PROJECT AREA:  
AUTHORIZATION TO EXCLUSIVELY NEGOTIATE  
WITH THE SCURFIELD COMPANY-CARSON DEVELOPMENT  
FOR THE DEVELOPMENT OF THE EBNER/EMPIRE SITE IN OLD SACRAMENTO**

**WHEREAS**, the Amended Redevelopment Plan for the Merged Downtown Sacramento Redevelopment Project Area was prepared by the Redevelopment Agency of the City of Sacramento ("Agency") and approved and adopted on June 17, 1986, by Ordinance No. 86-063, -064, 065, 0-66, and -067 of the City Council of the City of Sacramento and subsequently amended;

**WHEREAS**, the goals of the Redevelopment Plan for the Project Area include: to improve the visual and aesthetic appearance of the Merged Project Area;

**WHEREAS**, the Agency adopted the Merged Downtown Five-Year Strategic Plan and Implementation Plan for the Project Area on February 29, 2000;

**WHEREAS**, the Downtown Five-Year Strategy and Implementation Plan identified the development of opportunity sites in Old Sacramento:

**WHEREAS**, the Ebner/Empire Site in Old Sacramento is properly zoned and situated for commercial use;

**BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO;**

Section 1: The above statements are true and correct.

Section 2: The City Manager is authorized to exclusively negotiate, on behalf of the Agency, with the Scurfield Company-Carson Development for the development of the Ebner/Empire site in Old Sacramento. Staff is directed to follow the adopted *Guidelines for Individual Project Review*.

Approved:

ATTEST:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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