

MOTION
TRANSPORTATION

The City of West Hollywood has approved development of Sunset Millennium, a combined commercial and residential project, including three parcels known as the West, Middle and East Parcels, pursuant to the 1999 Sunset Millennium Development Agreement. The developer, Sunset Millennium Associates, and the City of Los Angeles entered into a Settlement & Cooperation Agreement, effective as of January 12, 2000, with respect to the Project.

Sunset Millennium has subsequently formulated a revised development plan for the Middle and East Parcels. West Hollywood has determined that development of the Middle and East Parcels of the Project will not cause any significant impacts to any roadways or intersections in Los Angeles as discussed in the Sunset Millennium Final Environmental Impact Report dated January 2005.

Los Angeles has certain concerns regarding the FEIR's analysis of traffic impacts on intersections within Los Angeles. Sunset Millennium has sought to address the concerns of Los Angeles and has negotiated a mutually beneficial resolution with the City, under which Sunset Millennium will provide certain benefits to Los Angeles in exchange for an agreement not to pursue litigation or otherwise oppose the project or project approvals.

The benefits in the proposed agreement would include the purchase of certain computer equipment, emergency vehicle traffic preemption systems, a contribution to ATCS in the Sunset Boulevard Corridor and various intersection improvements at Fairfax and Sunset Boulevards. A draft support and cooperation agreement has been negotiated between Sunset Millennium and the City, which satisfies the concerns of the Los Angeles Fire and Transportation Departments.

I THEREFORE MOVE that the City Council authorize the General Manager of the Department of Transportation to execute the aforementioned "Support and Cooperation Agreement" between the City of Los Angeles and Sunset Millennium Associates, relative to the development of the Middle and East Parcels of the Sunset Millennium project, subject to the review and approval of the City Attorney as to form and legality.

I FURTHER MOVE that the Department of Transportation be authorized to deposit the sum of \$603,500 into DOT ATSAC Trust Fund #484 and appropriate to an account titled "Sunset Millennium Traffic Mitigation Fund."

PRESENTED BY: _____

JACK WEISS

Councilmember, 5th District

SECONDED BY: _____

MAY 24 2005

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SUPPORT & COOPERATION AGREEMENT

This Support & Cooperation Agreement (this "Agreement") is made effective as of April __, 2005 and is entered into by Sunset Millennium Associates, LLC, a limited liability corporation ("Sunset Millennium") and the City of Los Angeles, a California municipal corporation ("Los Angeles"). Collectively, Sunset Millennium and Los Angeles are the Parties to this Agreement.

Recitals

Whereas, the City of West Hollywood ("West Hollywood") approved development of the original Project, including three parcels known as the West, Middle and East Parcels, pursuant to the 1999 Sunset Millennium Development Agreement, and the West Parcel has been developed accordingly;

Whereas, Sunset Millennium and Los Angeles entered into a Settlement & Cooperation Agreement ("Prior Agreement"), effective as of January 12, 2000, with respect to the Project;

Whereas, Sunset Millennium has formulated a revised development plan for the Middle and East Parcels;

Whereas, West Hollywood determined that development of the Middle and East Parcels of the Project will not cause any significant impacts to any roadways or intersections in Los Angeles as discussed in the Sunset Millennium Final Environmental Impact Report ("FEIR") dated January 2005;

Whereas, Los Angeles has certain concerns regarding the FEIR's analysis of traffic impacts on intersections within Los Angeles;

Whereas, Sunset Millennium is planning to develop the Project in a manner consistent with the Project Approvals;

Whereas, Sunset Millennium desires to address the concerns of Los Angeles and to reach a mutually beneficial resolution with Los Angeles of their differences, under which Sunset Millennium provides certain benefits to Los Angeles and in exchange Los Angeles does not pursue Litigation or otherwise oppose the Project or Project Approvals;

Now, therefore, in consideration of all the terms and provisions of this Agreement, the Parties hereby agree as follows:

Definitions

The following definitions govern this entire Agreement, including its recitals and section headings:

“Litigation” means any litigation, claim, cause of action or similar proceeding that is related to the Project Approvals,

“Los Angeles” means the City of Los Angeles and its governing bodies, including its Planning Commission and City Council,

“Project” means the Sunset Millennium Project described in the Project Approvals,

“Project Approvals” means any and all necessary or convenient discretionary or ministerial past, present and future actions, approvals and permits by West Hollywood or any other government agency to enable the Project to proceed to construction, occupancy and operation, including but not limited to: West Hollywood City Council Resolution Nos. 99-2200 and 99-2201; Ordinance Nos. 99-556 and 99-557; the 1999 Sunset Millennium Development Agreement; the Sunset Specific Plan Final Environmental Impact Report; the FEIR and all required discretionary and ministerial approvals described therein; the Sunset Millennium Amended and Restated Development Agreement; demolition, grading, building and billboard permits; and Certificates of Occupancy,

“West Hollywood” means the City of West Hollywood and its governing bodies, including its Planning Commission and City Council.

Agreement

A. Undertakings By Sunset Millennium

1. Public Improvements: As consideration for Undertakings by Los Angeles, described below, Sunset Millennium will fund the implementation of certain transportation and other improvements (the “Public Improvements”) for the benefit of Los Angeles in the amount of \$603,500 as set forth in Attachment A.

1.1. Sunset Millennium shall provide the aforementioned funds in two equal payments of \$301,750 each. The first payment shall be due upon execution of this Agreement, and the second and final payment shall be due after approval of the Project by West Hollywood and no later than 35 days after the Notice of Determination required pursuant to the California Environmental Quality Act has been filed by West Hollywood. Such requirement shall be included in the Project’s conditions of approval.

1.2. Sunset Millennium shall also fund the installation of transportation improvements in West Hollywood, and such requirement shall be included in the Project's conditions of approval.

B. Undertakings By Los Angeles

1. No Litigation: Los Angeles shall not file, as a named party or otherwise, any Litigation. Moreover, Los Angeles shall not encourage or support such Litigation directly or indirectly, by initiating, funding, cooperating with, assisting in funding or participating in any manner in Litigation; provided, however, that nothing in this Agreement shall prohibit Los Angeles from responding as required by law to valid requests made under the California Public Records Act.

2. No Opposition: Los Angeles shall not appeal, seek additional conditions upon, oppose directly or indirectly, or instigate others to oppose the Project or Project Approvals.

3. Implementation Of Public Improvements: Los Angeles shall be responsible for the implementation of the Public Improvements within its boundaries, and these Public Improvements shall be implemented no later than December 31, 2008.

4. Satisfaction Of Concerns: Los Angeles represents and warrants that the Undertakings by Sunset Millennium satisfy all of its concerns with respect to the Project and Project Approvals.

C. Miscellaneous Terms And Conditions

1. Effect On Prior Agreement: Upon execution of this Agreement, the Prior Agreement shall automatically terminate, and all rights and obligations thereunder shall be extinguished.

2. Sole Agreement: This Agreement supersedes and replaces in its entirety the Prior Agreement and all other agreements, negotiations and discussions between the Parties and/or their respective counsel regarding the subject matters in this Agreement.

3. Agreement Fully Authorized: Each of the undersigned represents, warrants and certifies that he or she is fully authorized to enter into this Agreement on behalf of the Party for which he or she has signed this Agreement, and that he or she is fully authorized to execute this Agreement and legally bind the Party for which he or she has signed this Agreement.

4. Assignment: This Agreement shall both inure to the benefit of and be binding upon each of the Parties and their respective successors, assigns, heirs and/or personal representatives.

5. Amendments/Waiver: Any amendments to this Agreement or waiver of its terms must be in a writing signed by the Parties, stating their intent to amend this Agreement. The failure of any Party to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or any such term, covenant or condition.

6. Venue: In the event of a dispute over the terms of, or performance under, this Agreement, including but not limited to all claims of fraud or misrepresentation, venue over any action concerning this Agreement shall be in the Superior Court of the State of California for the County of Los Angeles.

7. No Admission Of Liability: Neither the execution of this Agreement nor anything contained herein shall be deemed or construed as an admission by any Party of any wrongdoing or liability.

8. Notices: Any notices or payments to be made under this Agreement shall be directed as follows:

As to Sunset Millennium:

Richard Ackerman, Vice President
Sunset Millennium Associates, LLC
10250 Constellation Blvd., Suite 2900
Los Angeles, California 90067

With a copy to:
Steven Weston, Esq.
Weston Benshoof Rochefort Rubalcava
MacCuish LLP
333 South Hope Street, 16th Floor
Los Angeles, California 90071

As to Los Angeles:

Wayne K. Tanda, General Manager
Department of Transportation
City of Los Angeles
100 South Main Street
Los Angeles, CA 90012

With a copy to:
Keith W. Pritsker
Office of the City Attorney
City of Los Angeles
200 North Main Street
700 City Hall East
Los Angeles, California 90012

9. Counterparts/Facsimile Signatures: This Agreement may be executed by facsimile and in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

10. Severability: If any provision of this Agreement shall be deemed invalid, unenforceable or illegal, then notwithstanding such invalidity, unenforceability or illegality, the remainder of this Agreement shall continue in full force and effect.

LOS ANGELES

SUNSET MILLENNIUM

Dated: _____

Dated: _____

By: _____
Wayne K. Tanda, General Manager
Department of Transportation

By: _____
Richard Ackerman
Its: Vice President

Approved as to form:

ROCKARD J. DELGADILLO
City Attorney

By: _____
Keith W. Pritsker
Deputy City Attorney

ATTACHMENT A

Public Improvements

Sunset Millennium will fund Public Improvements as identified in this Agreement in the amount of \$603,500 payable to Los Angeles. The cost estimates for each item below are the basis for this total cost obligation, but Los Angeles can shift amounts between items as necessary. Below is a listing of the Public Improvements along with the cost estimate for each item.

- | | | |
|---------------------------------------|---|-----------------|
| 1. | Computer purchase: | \$6,500 |
| 2. | Emergency Vehicle Traffic Signal Preemption systems: | |
| | Funds for emergency vehicles transmitter installation: | \$100,000 |
| | Note: Sunset Millennium will also fund the installation of Opticom traffic signal emergency vehicle preemption equipment in West Hollywood. | |
| 3. | Contribution to ATCS in Sunset Boulevard corridor in Los Angeles. LADOT will provide the basis for coordination of traffic signal operations in the Sunset Boulevard and La Cienega Boulevard corridors [\$20,000/intersection for 21 intersections]: | \$420,000 |
| 4. | Fairfax-Sunset Improvements – LADOT will install the previously designed improvement of the Fairfax Avenue and Sunset Boulevard intersection in Los Angeles, which would modify the intersection's traffic signalization and restripe the road to establish a protected left-turn from Sunset east- and westbound. The improvement would also provide a northbound right-turn only lane from Fairfax Avenue on to Sunset Boulevard. | <u>\$77,000</u> |
| TOTAL ESTIMATED COST OF IMPROVEMENTS: | | \$603,500 |