

RESOLUTION NO. 2009-500

Adopted by the Sacramento City Council

July 28, 2009

AUTHORIZING AN AGREEMENT WITH THE SACRAMENTO MUSEUM OF HISTORY, SCIENCE AND TECHNOLOGY FOR THE EXCLUSIVE RIGHT TO NEGOTIATE FOR THE REUSE OF THE JIBBOOM STREET POWER STATION SITE

BACKGROUND

- A. The City owns certain real property located in the City of Sacramento, being all or a portion of the properties west of Jibboom Street identified as parcels 001-0190-004, -009, -015, and -016 ("Property"), as shown on the map attached hereto as Exhibit A and being located within the River District Redevelopment Project Area ("Project Area").
- B. The Property contains the City historic landmark structure, the Jibboom Street PG&E Power Station ("Power Station"), which has been shuttered and in deteriorating condition since it was last used for a heavy industrial operation in the early 1960s.
- C. The Property had been identified by the City as important to the furtherance of the River District Redevelopment Plan ("Redevelopment Plan") and the elimination of blighting conditions in the Project Area. The Redevelopment Plan identifies the reuse of parcels that are stagnant or improperly utilized and the rehabilitation of the Project Area as a strategy to eliminate blight.
- D. The City desires to rehabilitate and reuse the Power Station for a visitor attraction which preserves the distinctive architectural features of the building and enhances public uses of the surrounding Robert T. Matsui Waterfront Park.
- E. The Sacramento Museum of History, Science and Technology ("Developer"), desires to negotiate with the City to redevelop the Property into a science and space center with adjacent restaurant and parking structure serving the site.
- F. City finds that Developer's proposal meets the objectives of the Riverfront Master Plan, the Richards Boulevard Area Plan and the Redevelopment Plan, and it is in the best interest of the City to pursue the Developers program for the project.
- G. Providing River District Redevelopment Tax Increment funds for studies and pre-development activities will benefit the River District Redevelopment Area and no other reasonable means of financing these studies and activities is available at this time.
- H. The proposed action to approve the Exclusive Right to Negotiate ("ERN") is exempt from environmental review under CEQA Guidelines, California Code of Regulations, title 14, section 15262. The ERN authorizes staff to work with the developer to define the scope and feasibility of the proposed development project and to complete the environmental review process for the project.

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

- Section 1. After due consideration of the facts presented, the findings, including the foregoing recitals regarding this action, are approved and adopted.
- Section 2. The City Manager or his designee is authorized to approve and execute the second extension of agreement for the Exclusive Right to Negotiate with the Sacramento Museum of History and Technology in substantially the form as the agreement attached to this Resolution as Exhibit B.
- Section 3. The City Manager or his designee is authorized to extend the Agreement for up to one additional one year term based on approval of the City Manager and substantial progress of Developer in developing the Property.
- Section 4. The City Manager or his designee is authorized to enter into an Individual Project Agreement to transfer \$200,000 of River District Redevelopment Tax Increment funds to the Richards Boulevard Capitol Improvement Project (B18216500).
- Section 5. The City Manager or his designee is authorized to increase the revenue and expenditure budget by \$200,000 of River District Redevelopment tax increment funds for the Richards Boulevard Capitol Improvement Project (B18216500).

Table of Contents:

- Exhibit A Parcel Map
- Exhibit B Agreement for the Exclusive Right to Negotiate Extension

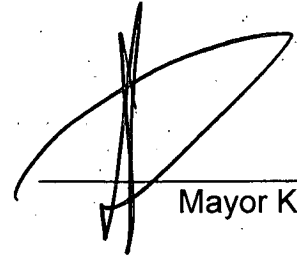
Adopted by the City of Sacramento City Council on July 28, 2009 by the following vote:

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

Noes: None.

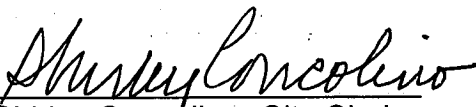
Abstain: None.

Absent: None.



Mayor Kevin Johnson

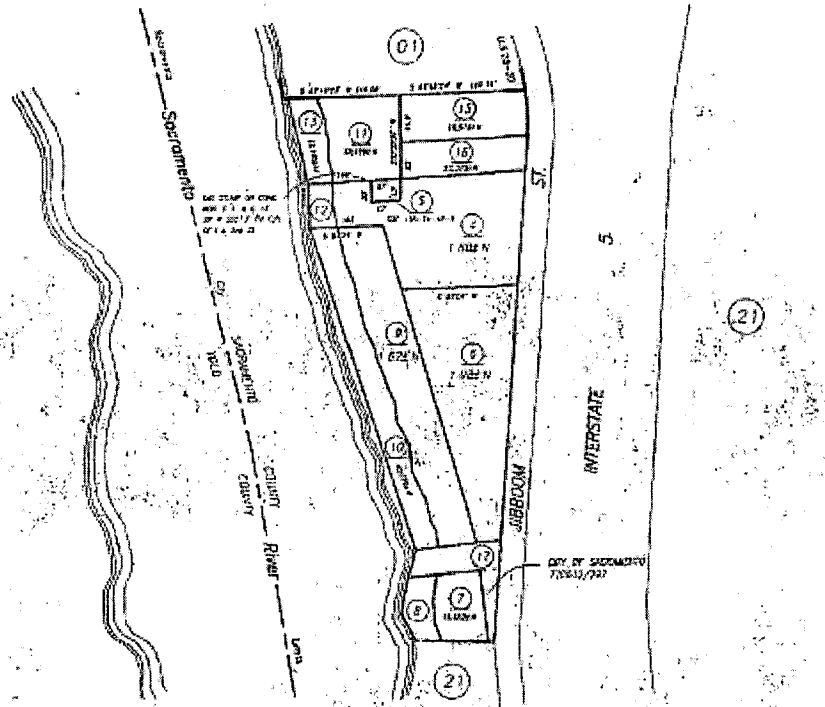
Attest:



Shirley Concolino, City Clerk

Parcel Map

POR. RANCHO NEW HELVETIA & SWAMP LAND SURVEYS



Record of Survey, O.S. Bk. 28, Pg. 20 (12-31-79)

A&C

Agreement to extend the

Exclusive Right to Negotiate for the Jibboom Street Power Station Site

This agreement ("Agreement") between the City of Sacramento ("City") and the Sacramento Museum of History, Science and Technology, a nonprofit corporation ("Developer"), is made as of _____, 2009.

RECITALS

- A. On June 21, 2007, the City and Developer entered into City agreement number 2007-0632 for the exclusive right to negotiate ("ERN") for a 365 day period, the development of certain real property known as the Jibboom Street Power Station Site, parcel numbers 001-0190-004, -009, -011, -015, and -016 as shown on the map attached hereto as Exhibit A. ("Property").
- B. On August 15, 2008, the City and Developer entered into City Agreement number 2008-0837 to extend the ERN for an additional 365 day period.
- C. The Property is within the River District Redevelopment Project Area ("Project Area") and the redevelopment of the Property ("Project") is consistent with the River District Redevelopment Plan ("Redevelopment Plan") and its implementing documents. The Property has been identified by the City as important to the furtherance of the Redevelopment Plan and the elimination of blighting conditions in the Project Area.
- D. The Project remains the subject of negotiation. The parties contemplate that such negotiation will lead to a mutually satisfactory program for site control, financing and development of the Property, and the negotiation of a memorandum of understanding for the development of the Property ("MOU") and a ground lease of the Property ("Lease") under which such program will be completed.
- E. Current economic and site conditions have created the need to extend the ERN for an additional 365 day period to complete the negotiation process and to conduct additional predevelopment activities ("Activities") during the extension period.
- F. Concurrent with the execution of this Agreement, the City will enter into an Individual Project Agreement ("IPA") with the Redevelopment Agency of the City of Sacramento ("Agency") for the provision of \$200,000 to the City for the performance of the Activities on the Property.
- G. The Activities will be conducted both by the City and Developer as provided in the schedule of performances in Section 5 below.
- H. The City will provide a forgivable loan up to \$200,000 to complete the Activities.
- I. The parties understand that the performance of the Activities does not commit the City to approval of the proposed development of the Property but rather constitute predevelopment activities necessary to any development of the Property, regardless of the future intended use or the proposed development.

NOW, THEREFORE, City and Developer agree as follows:

- 1) Extend the Exclusive Right to Negotiate. City grants to the Developer an extension of the exclusive right to negotiate for the right to develop and lease the Property.
- 2) Term. This Agreement shall commence as of the date of its execution by both parties ("Commencement Date") and, except as otherwise provided herein, shall terminate upon the earlier of completion of all obligations herein or three hundred sixty five (365) days after the Commencement Date ("Termination Date").
- 3) Developer's Proposal for Development of the Property. As a condition precedent to the City negotiating the MOU and Lease, Developer must prepare a comprehensive proposal for the development of the Property ("Proposal") and submit the Proposal to the City for its approval. It is agreed and understood that the City's approval of the Proposal is a prerequisite to further consideration of the Project and that the City's approval of the Proposal does not compel or require the City to approve the Project, or enter into a MOU or Lease with Developer.
 - a) Contents of Proposal. Developer shall include in its Proposal, without limitation, the following: (a) a detailed description of the Developer's development team, naming the principals of Developer, the architectural and design team, the general contractor, and the marketing team; (b) Project conceptual design, including site plans, elevations and typical floor plates in keeping with all applicable planning requirements and design guidelines of the City; (c) refined economic estimate of construction costs for Project designs; (d) detailed fundraising plan and financing plan; (e) 10-year cash flow analysis for Project operations; (f) location of parking spaces and the physical manner by which those spaces will be operated; (g) description of restaurant's financial and operational relationship with the Project; and (h) evidence of ability to satisfy City insurance and indemnity requirements.
 - b) Disapproval of Proposal. This Agreement shall automatically terminate if the City Manager or his designee disapproves the Proposal.
- 4) CEQA Review.
 - a) Subject to Section 7 below, at Developer's expense, Developer shall prepare all environmental documents necessary for the City to conduct appropriate environmental review of the Project under the California Environmental Quality Act ("CEQA").
 - b) Within ninety (90) days of the Commencement Date, Developer shall prepare and submit to the City for approval a Project description to be used by the City to prepare the environmental documentation for the Project following approval of the Proposal. Upon the City's request, Developer shall supply any additional data and information both to determine the impact of the Project on the environment and to assist in the preparation of the environmental documents.
 - c) Nothing in this section shall be constructed to limit the City's powers, rights and duties under CEQA or to obligate the City to approve the proposed Project or enter into a lease with Developer.

5) Schedule of Performances. The parties shall perform the following obligations by the dates specified in the following schedule ("Schedule of Performances"):

Due Date	Action	Responsible Party
Within ninety (90) days of Commencement Date	Submit a Project description to the City	Developer
	Submit Planning entitlement application to City Planning Department	Developer
	Approve or disapprove Proposal and Project description within 30 days of submission	City
	Begin CEQA analysis	City
	Solicit comments from Design Review and Preservation Board for use in CEQA analysis	Developer and the City
	Continue to consult with appropriate State and local agencies with jurisdiction over the Project regarding Project approvals	Developer and the City
	Continue to consult with appropriate community and river groups with interests in the Project	Developer and the City
Within one-hundred twenty (120) days of Commencement Date	Finalize schedule of performances for the construction period	Developer
	Negotiate the terms and conditions of an MOU and Lease	Developer and the City
Within three-hundred thirty (330) days of Commencement Date	Provide evidence of confirmed commitments meeting at least 25% of total fundraising goal	Developer
	Provide evidence of at least \$5 million committed in cash deposited in Developer's capital campaign bank account for construction costs	Developer
Within three-hundred sixty five (365) days of Commencement Date	Complete Predevelopment Activities, including; engineering services including, structural, surveying, lot line adjustments, etc.; environmental services including, traffic studies, environmental studies, historic preservation, etc.; architectural services; and entitlement expenses including, fees, permits, etc.	Developer
	Obtain Project entitlement approvals, including CEQA, from the City	Developer
	Execute the MOU and Lease	Developer and the City

6) Memorandum of Understanding for Development of Property and Lease.

- a) The parties shall make a good faith effort to negotiate the terms and conditions of the MOU and the Lease in accordance with the timeframe in the Schedule of Performances and to use reasonable and good faith efforts to complete and fully execute the MOU and Lease by the Termination Date.

- b) The parties agree that the MOU and/or Lease will include, without limitation, the following terms and conditions: (a) use covenants to run with the land; (b) payment and performance bonding and/or other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) the City's local hiring policies and prevailing wage requirements; (f) performance assurances; (g) limitation on assignments prior to Project completion; (h) compliance with CEQA mitigation; (i) the City's rights to revest the Property upon default; and (j) the City's Art in Public Places requirements; (k) the City's rights to cure defaults, assume loans and complete construction; (l) loan guarantees and additional securities; (m) customary protections for lenders providing financing for the Project; and (n) business operations and maintenance standards and requirements.
- 7) **Predevelopment Activities Costs.** Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to cost for planning, environmental, architectural, engineering a legal services, and other costs associated with preparation of Developer's Proposal, the MOU and the Lease. All such studies, reports, plans and any other work product completed in whole or in part under this Agreement shall be owned solely by the City and, if in the possession or control of Developer, shall be provided to the City upon demand.
- a) **Predevelopment Loan.** During the term of this Agreement and any Extension Period, City will loan up to a total of \$200,000 to Developer for the cost of the Activities conducted under this Agreement that are approved by the City in advance. With the exception of Predevelopment costs payable to the City, the City will disburse loan proceeds to Developer to reimburse it for one-half of costs that are actually incurred by Developer. With respect to approved costs payable to the City, the City shall provide a credit to Developer to offset one-half of the cost of these Activities.
- b) **Predevelopment Costs Eligible for Reimbursement or Credit.** The cost of the following services are eligible for reimbursement or credit:
- i) Engineering Services - Structural, surveying, lot line adjustments, etc.;
 - ii) Environmental Services - Traffic studies, environmental studies, historic preservation, etc.;
 - iii) Architectural Services;
 - iv) Entitlement Expenses- Fees, permits, etc.
- c) **Approval of Predevelopment Activities Agreements and Assignment of Agreements.** Developer shall obtain the written approval of the City of all agreements for the provision of the Activities services prior to execution of the agreements. All such agreements shall have terms providing for the right of Developer to assign the agreements to the City. Upon the termination of this Agreement, or upon the demand by the City, Developer shall assign its rights in any such agreements to the City. Such assignments shall be effective only upon the assumption of the agreements by the City.
- d) **Method of Reimbursement or Credit.** City shall reimburse or credit Developer for the Activity costs within a reasonable time after receipt of a detail of expenses incurred

and detail of services provided, and proof of payment by Developer.

- e) **Loan Forgiveness.** The City shall forgive all loans made to Developer under this Agreement upon the tender of all studies, reports, plans and any other work product paid for in whole or in part by the City. Developer shall tender all such documents to the City within thirty (30) days of the termination of this Agreement. If Developer fails to tender all such documents within this prescribed time period, the entire loan balance shall become immediately due and payable upon notice by the City.
- 8) **Term Extension.** This Agreement may be extended for one additional period of up to one year ("Extension Period") and the schedule of performances amended by the City Manager or his designee with the approval of the City Manager and substantial progress of Developer in developing the Project. During the Extension Period, the parties shall accomplish all of the tasks necessary for the execution of the MOU and Lease, including without limitation, negotiating MOU and Lease terms, developing architectural plans, preparing environmental documentation, obtaining financing commitments, obtaining tenant commitments as necessary for financing, and engaging the general contractor.
- 9) **Default.** Except as otherwise provided herein, the following events by either party shall be "Events of Default": (a) failure to perform obligations when due, which failure is not caused by the other party; (b) failure to negotiate the terms and conditions of the MOU or Lease in good faith, (c) failure to reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (d) unilaterally terminating this Agreement; provided, however, none of these events shall constitute an Event of Default unless the event continues for more than thirty (30) days after receipt of written notice of default from the other party.
- a) **Remedies.** Upon the occurrence of any one or more of the "Events of Default", either party shall have the right to terminate this Agreement and may pursue equitable remedies available to it for such Default. Upon such termination, the City shall have the right to: 1) demand and receive the immediate repayment of all loans and an assignment of all contracts for the performance of the Activities identified in; and, 2) pursue development of the Project without any participation by Developer.
- b) The remedies contained in Section 9(a) are the sole and exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.
- 10) **Unavoidable Delays.**
Neither the City nor Developer shall be considered in breach of, or default of, its obligations under this Agreement, 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 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 performances of such obligations of the City and Developer shall be extended for a 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, has first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.

11) Disclosure of Interested Parties. Developer shall, as condition precedent to execution of the MOU and Lease by the City, make full disclosure to the City of the identity of all principals, officers, stockholders, partners, joint ventures, and entities in Developer.

12) No Joint Venture. This Agreement does not create a joint venture or a partnership between the parties.

13) Notices. Notices to either party shall be personally delivered or sent by first class mail to:

City of Sacramento
Economic Development Department
915 I Street, Third Floor
Sacramento, California 95814
Attn: Rachel Hazlewood

The Sacramento Museum of History, Science and Technology
1011 I Street
Sacramento, California 95814
Attn: Michelle Wong

14) Entire Agreement. This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Developer, and by City, in accordance with applicable provisions of the Sacramento City Code.

15) Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16) Waiver. Neither City's acceptance of the performance of any obligation under this Agreement by Developer, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17) Enforcement of Agreement. This Agreement shall be governed, constructed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

18) Assignment Prohibited. Developer shall not assign any right or obligation pursuant to this Agreement without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.

19) Authority. The person signing this Agreement for Developer hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Developer and to bind Developer to the performance of its obligations hereunder.

20) Termination of Prior Agreement. City Agreement number 2008-0837 shall automatically terminate upon execution of this Agreement.

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

CITY OF SACRAMENTO
A Municipal Corporation

**Sacramento Museum of History,
Science and Technology**
A Nonprofit Corporation

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

For: Ray Kerridge, City Manager

APPROVED TO AS FORM:

By: _____

Deputy City Attorney

Print Name: _____

ATTEST:

Title: _____

City Clerk

