

RESOLUTION NO. 2011-160

Adopted by the Sacramento City Council

March 22, 2011

AGREEMENT FOR THE EXCLUSIVE RIGHT TO NEGOTIATE WITH POWERHOUSE SCIENCE CENTER, INC. FOR THE REDEVELOPMENT AND REUSE OF THE FORMER PG&E 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, -006, -009, -011, -015, and -016 ("Property") located within the River District Redevelopment Project Area ("Project Area").
- B. The Property contains the historic landmark structure, the PG&E Power Station ("Power Station"), located on a former superfund site, which has been shuttered and in deteriorating condition since it was last used for a heavy industrial operation in the early 1960s.
- C. Powerhouse Science Center ("PHSC"), formerly known as Sacramento Museum of History, Science and Technology, desires to rehabilitate the building and redevelop the Property into a science and space center with adjacent restaurant/education center and parking structure serving the site.
- D. The Property has been identified by the Redevelopment Agency 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.
- E. The PHSC proposal meets the objectives of the Sacramento Riverfront Master Plan, the River District Specific Plan and the River District Redevelopment Implementation Plan.
- F. On June 12, 2007, in Resolution 2007-431, City Council entered into an Exclusive Right to Negotiate Agreement with PHSC. This was extended by Council on August 18, 2008, in Resolution 2008-572, and on July 28, 2009, in Resolution 2009-500, which also committed \$200,000 of River District Redevelopment Tax Increment funds

for predevelopment activities such as architectural fees, engineering studies, environmental studies, and entitlement fees. Of this \$200,000, \$24,526 remains unexpended.

- G. On March 8, 2011, in Resolution 2011-134, City Council approved the PHSC Individual Project Agreement with the Redevelopment Agency for the transfer of \$881,605 of River District Redevelopment Tax Increment funds to PHSC for preconstruction design development activities.
- H. Providing River District Redevelopment Tax Increment funds for predevelopment and preconstruction design activities will benefit the River District Redevelopment Area, and at this time there is no other reasonable means of financing these studies and activities.
- I. The proposed agreement extends the exclusive right to negotiate for one year and provides the City Manager the authority to extend the agreement for an additional one-year term for a total of two years.
- J. On June 1, 2010, City Council adopted the Mitigated Negative Declaration and Mitigation Monitoring Plan for the Robert T. Matsui Waterfront Park Master Plan Amendment, which included the development of the Powerhouse Science Center Project (Resolution 2010-296). The MND was reviewed and the environmental effects were considered pursuant to CEQA Guidelines section 15096(f). Because there is neither any new information of substantial importance nor any substantial changes with respect to the circumstances under which the project will be undertaken that would require the preparation of supplemental environmental documentation, the recommended actions do not require further environmental review pursuant to CEQA Guidelines sections 15162 or 15163.

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 execute an agreement with Powerhouse Science Center, Inc., for the exclusive right to negotiate for the redevelopment and reuse of the former PG&E Power Station Site and obligate \$906,131 from the Richards Boulevard Capital Improvement Project (B18216500) to PHSC for predevelopment activities and preconstruction design development activities.
- Section 3. The City Manager is authorized to extend the agreement for one additional term of up to one year without further action required by the City Council.
- Section 4. The agreement identified in Section 2 is attached as Exhibit A and is made a part of this resolution.

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Exhibit A: Agreement to for the Exclusive Right to Negotiate

Adopted by the City of Sacramento City Council on March 22, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer,
Sheedy.

Noes: None.

Abstain: None.

Absent: Mayor Johnson.



Bonnie Pannell, Vice-Mayor

Attest:



Dawn Bullwinkel, Assistant City Clerk

**AGREEMENT FOR THE
EXCLUSIVE RIGHT TO NEGOTIATE FOR THE
JIBBOOM STREET POWER STATION SITE**

This agreement for the exclusive right to negotiate for the Jibboom Street Power Station Site is dated _____, and is between the City of Sacramento (the “**City**”), a municipal corporation, and the Powerhouse Science Center, formerly known as the Sacramento Museum of History, Science and Technology, a California nonprofit corporation (“**Developer**”)

BACKGROUND

- A. On June 21, 2007, the City and Developer entered into City agreement number 2007-0632 for the exclusive right to negotiate (the “**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 as Exhibit A (the “**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. The City and Developer again extended the ERN for an additional 365-day period on July 30, 2009 (City Agreement 2009-0729).
- C. The Property is within the River District Redevelopment Project Area (the “**Project Area**”) and the redevelopment of the Property (the “**Project**”) is consistent with the River District Redevelopment Plan (the “**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 (the “**MOU**”) and a ground lease of the Property (the “**Lease**”) under which such program will be completed.
- E. Current economic and site conditions have created the need to extend the exclusive right to negotiate for an additional one-year period to complete the negotiation process and to complete Predevelopment Activities (as defined in section 4) and the following preconstruction design development activities related to the Project: schematic design, design documents, construction plans and specifications (collectively the “**Preconstruction Design Development Activities**”). The Predevelopment Activities and Preconstruction Design Development Activities may be referred to collectively as the “**Activities**.”

- F. Prior to the execution of this agreement, the City entered into two Individual Project Agreements (the “IPAs”) with the Redevelopment Agency of the City of Sacramento (the “Agency”) for the transfer of \$1,081,605 in River District Redevelopment Tax Increment funds into the Richards Boulevard Capitol Improvement Project (B18216500) for Activities related to the Project. Of this amount, \$881,605 is set aside to fund Preconstruction Design Development Activities. All the funds the City is obligated to provide to Developer under this agreement for Activities come from the funds transferred under the IPAs.

With these background facts in mind, the Parties agree as follows:

1. **Exclusive Right to Negotiate.** City grants to the Developer the exclusive right to negotiate for the right to develop and lease the Property.
2. **Term.** This agreement commences as of the date of its execution by both parties (“Commencement Date”) and shall terminate upon the earlier of completion of all the parties’ obligations under this agreement or one year after the Commencement Date (“Termination Date”), except as otherwise provided in this agreement.
3. **Developer’s Proposal for Development of the Property.** As a condition precedent to the City negotiating the MOU and Lease, Developer must prepare an update to the comprehensive proposal for the development of the Property (the “**Updated Proposal**”) and submit the Updated Proposal to the City for its approval. It is agreed and understood that the City’s approval of the Updated Proposal is a prerequisite to further consideration of the Project and that the City’s approval of the Updated Proposal does not compel or require the City to approve the Project, or enter into a MOU or Lease with Developer.
 - (a) **Contents of the Updated Proposal.** Developer shall include in its Updated Proposal, without limitation, the following: (1) 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; (2) Project conceptual design, including site plans, elevations and typical floor plates in keeping with all applicable planning requirements and design guidelines of the City; (3) refined economic estimate of construction costs for Project designs; (4) detailed fundraising plan and financing plan; (5) 10-year cash flow analysis for Project operations; (6) location of parking spaces and the physical manner by which those spaces will be operated; (7) description of restaurant’s financial and operational relationship with the Project; and, (8) evidence of ability to satisfy City insurance and indemnity requirements.
 - (b) **Disapproval of Proposal.** This agreement will automatically terminate if the City Manager or his designee disapproves the Updated Proposal.

4. **Schedule of Performances.** The parties shall perform the following obligations by the dates specified in the following schedule (the “**Schedule of Performances**”):

Due Date	Action	Responsible Party
Within one-hundred fifty (150) days of Commencement Date	Submit Updated Proposal to City	Developer
	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 two-hundred ten (210) days of Commencement Date	Obtain Project entitlement approvals from the City	Developer
	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. These consist of engineering services, including structural, surveying, lot line adjustments, etc.; environmental services, including environmental studies, historic preservation, etc.; architectural services; and entitlement expenses including, fees, permits, etc. (collectively the “ Predevelopment Activities ”)	Developer
	Complete Preconstruction Design Development Activities	Developer
	Execute the MOU and Lease	Developer and the City

5. **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: (1) use covenants to run with the land; (2) payment and performance bonding and/or other completion assurances; (3) insurance and

indemnities, including hazardous materials indemnities; (4) anti-discrimination provisions; (5) the City's local hiring policies and prevailing wage requirements; (6) performance assurances; (7) limitation on assignments prior to Project completion; (8) compliance with CEQA mitigation; (9) the City's rights to revest the Property upon default; and (10) the City's Art in Public Places requirements; (11) the City's rights to cure defaults, assume loans and complete construction; (12) loan guarantees and additional securities; (13) customary protections for lenders providing financing for the Project; and, (14) business operations and maintenance standards and requirements.

6. **Costs of Predevelopment Activities and Preconstruction Design Development Activities.** Developer is responsible for all costs of Predevelopment Activities and Preconstruction Design Development Activities relating to actions of Developer under this agreement, including but not limited to costs for planning, environmental, architectural, engineering, legal services, and other costs associated with preparation of Developer's Proposal, the MOU and the Lease. The City will be the sole owner of all such studies, reports, plans, and writings, as defined in California Evidence Code section 250, (collectively the "**Materials**") for which Developer receives reimbursement in whole or in part under this agreement. Developer shall provide all Materials in its possession or control to the City upon demand.
- (a) **Predevelopment Activities Loan.** During the term of this agreement and any Extension Period (as defined in section 7), City will loan up to a total of \$24,526 to Developer for the cost of the Predevelopment Activities conducted under this agreement that are approved in writing by the City in advance. With the exception of Predevelopment Activities 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 Predevelopment Activities.
- (b) **Preconstruction Design Development Activities Loan.** During the term of this agreement and any Extension Period, City will loan up to a total of \$881,605 to Developer for the cost of the Preconstruction Design Development Activities conducted under this agreement that are approved in writing by the City in advance. With the exception of Preconstruction Design Development Activities costs payable to the City, the City will disburse loan proceeds to Developer or its designee to reimburse Developer for the 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 the costs of these Preconstruction Design Development Activities up to the amount of \$881,605.
- (c) **Approval of Predevelopment and Preconstruction Design Development Activities Agreements and Assignment of Agreements.** Developer shall obtain the written approval of the City for all agreements for the provision of the Predevelopment and Preconstruction Design Development 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 Predevelopment and Preconstruction Design Development Activities 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 to the City of all Materials for which Developer received reimbursement in whole or in part under this agreement. Developer shall tender all such Materials to the City not less than thirty (30) days prior to (1) the Termination Date or (2) the expiration of the Extension Period if there is an Extension Period. If Developer fails to tender all such Materials to the City within this prescribed time period, then (1) the entire loan balance shall become immediately due and payable upon notice by the City and (2) the City will not be obligated to provide Developer with any additional loan funds under this agreement.

7. **Term Extension.** This agreement may be extended for one additional period of up to one year (the “**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, obtaining financing commitments, obtaining approval of entitlements, obtaining tenant commitments as necessary for financing, and engaging the general contractor.
8. **Default.** The following events by either party shall be an “Event 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 non-defaulting party.
9. **Remedies.** (a) Upon the occurrence of an Event of Default, (1) the non-defaulting party has the right to terminate this agreement and may pursue equitable remedies available to it for such Event of Default; (2) the City has the right to (A) demand and receive the immediate repayment of all loans made to Developer under this agreement and (B)

demand and receive and an assignment of all contracts for the performance of Predevelopment and Preconstruction Design Development Activity for which Developer received reimbursement in whole or in part under this agreement; and, (3) the City has the right to pursue development of the Project without any participation by Developer. These remedies are cumulative.

(b) The remedies 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. **Indemnity.** Developer shall indemnify, defend and hold harmless the City from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description (hereafter collectively "Liabilities") arising out of or in any way connected with this agreement, whether or not (a) such Liabilities are caused in part by active or passive negligence of the City, its officers or employees or (b) such Liabilities are litigated, settled or reduced to judgment.
11. **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.
12. **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.
13. **No Joint Venture.** This agreement does not create a joint venture or a partnership between the parties.
14. **Notices.** Notices required to be given by either party under this agreement 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: Jennifer Witz

Powerhouse Science Center Project

c/o Otto Construction

1717 2nd Street

Sacramento, CA 95811

Attn: Debora Fee

15. **Entire Agreement.** This document 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 signed by Developer, and by City.
16. **Severability.** If any portion of this agreement or the application thereof to any person or circumstance shall be held invalid or enforceable, the remainder of this agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
17. **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.
18. **Enforcement of Agreement.** This agreement shall be governed, constructed and enforced in accordance with the laws of the State of California.
19. **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.
20. **Authority.** Each person signing this agreement for Developer hereby represents and warrants that he or she is fully authorized to sign this agreement on behalf of Developer and to bind Developer to the performance of its obligations under this agreement.
21. **Termination of Prior Agreement.** City Agreement number 2009-0729 will automatically terminate upon the Commencement Date.

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

CITY OF SACRAMENTO
A Municipal Corporation

Powerhouse Science Center
A Nonprofit Corporation

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

For: City Manager

APPROVED TO AS FORM:

By: _____

Senior Deputy City Attorney

Print Name: _____

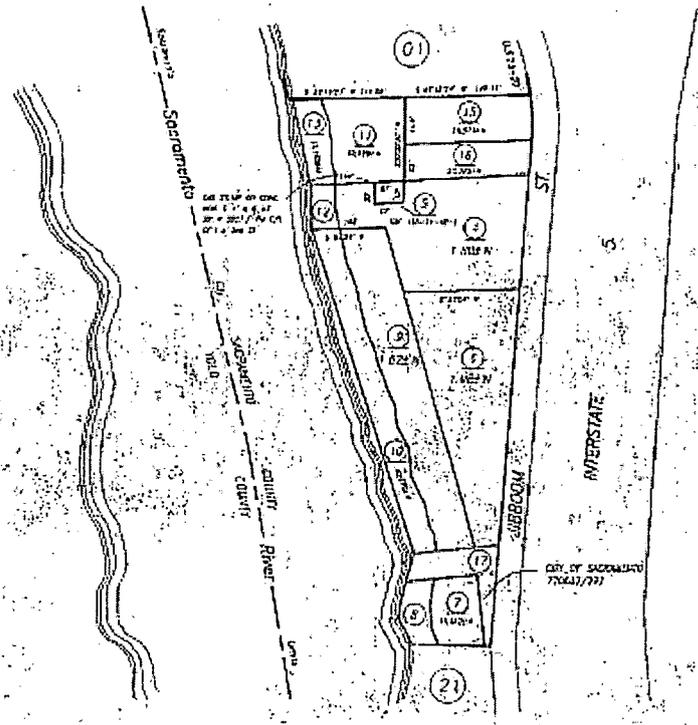
Title: _____

ATTEST:

City Clerk

Parcel Map

POR. RANCHO NEW HELVETIA & SWAMP LAND SURVEYS



Record of Survey, O.S. Bk. 28, Pg. 20 (12-31-70)

AE