

RESOLUTION NO. 2014-0153

Adopted by the Sacramento City Council

May 27, 2014

APPROVING THE POWERHOUSE SCIENCE CENTER FUNDING AGREEMENT AND APPROPRIATING FUNDS

BACKGROUND

- A. On June 21, 2011, City Council approved the Ground Lease between the City and the Powerhouse Science Center (PHSC) for the City-owned site of the historic PG&E Power Station B at 400 Jibboom Street.
- B. The PHSC will be a catalytic project that will be a regional draw for Sacramento as well as provide a center for science, technology, engineering and math education for children from kindergarten to 12th grade.
- C. The PHSC is applying for a \$25 million loan from the California Infrastructure and Economic Development Bank (I-Bank) to pay for Phase 1 of the construction of the new center (Construction Loan) and on April 17, 2014 the City Council approved a resolution of support for the PHSC's I-Bank application.
- D. The PHSC has requested financial support from the City in the amount of \$350,000 annually for 20 years to help repay the Construction Loan and the City has identified funding sources to make that payment from unexpended bond proceeds from the former River District Redevelopment Area, revenue generated from net property tax revenues received by the City as a result of the dissolution of redevelopment, lease revenues generated by leasing the Auburn Boulevard facility, and \$160,000 in the Economic Development Reserve (Assistance) Program (I06100200).
- E. The City and PHSC desire to enter into a funding agreement (Agreement) for the annual appropriation, which will be subject to approval by City Council each year and is conditioned on compliance with the terms of the Agreement, to be used towards repayment of the Construction Loan.

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

- Section 1. The City Manager or his designee is authorized to execute the funding agreement with PHSC, which is attached as Exhibit A and made part of this resolution.

Section 2. The City Manager or his designee is authorized to appropriate \$200,000 from the Economic Development Fund Contingency (Fund 2031) to I06100200.

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Exhibit A: Funding Agreement

Adopted by the City of Sacramento City Council on May 27, 2014, by the following vote:

Ayes: Members Ashby, Cohn, Fong, Hansen, McCarty, Pannell, Schenirer, Warren, and Mayor Johnson.

Noes: None

Abstain: None

Absent: None

Attest:

Shirley A. Concolino

Digitally signed by Shirley A. Concolino
DN: cn=Shirley A. Concolino, o=City of Sacramento, ou=City Clerk, email=sconcolino@cityofsacramento.org, c=US
Date: 2014.06.02 13:36:04 -07'00'

Shirley Concolino, City Clerk

FUNDING AGREEMENT

This agreement, dated _____, 2014, for purposes of identification, is between the **City of Sacramento** (the “**City**”), a California municipal corporation, and the **Powerhouse Science Center** (“**PHSC**”), a California nonprofit corporation.

Background

The City leases to PHSC its historic PG&E Power Station B building and surrounding property at 400 Jibboom Street under a 55-year ground lease (the “**Lease**”). Under the Lease, PHSC is required to make substantial improvements to the leased premises, including the construction of an Earth, Space, and Sciences Center identified as Phase 1 in section 12.02 of the Lease (the “**Phase 1 Project**”). PHSC intends to finance construction of the Phase 1 Project, in part, through a \$25,000,000 loan from the California Infrastructure and Economic Development Bank (the “**I-Bank**”).

PHSC has requested that the City appropriate \$350,000 per year for 20 years to be used by PHSC towards the I-Bank loan’s annual debt service payment. Because of the significant benefit that completion of the Phase 1 Project would provide the City and the public, and because an annual appropriation by the City would assist PHSC in obtaining the I-Bank loan, the City desires to provide the funding requested by PHSC.

Recognizing that the City is subject to the limitations on incurring indebtedness and liabilities provided for in Section 18 of article XVI of the California Constitution, the parties understand that the City is not obligating itself to provide the full-amount of the requested funding and that there is no guarantee that the City will provide any funding in a given year. Rather, the City is willing to annually consider making an appropriation for the requested funding, subject to the City Council’s sole discretion to determine its priorities during the annual budget process.

With these background facts in mind, the City and PHSC agree as follows:

1. **Term.** This agreement takes effect as described in Section 8 and terminates on July 2, 2035.
2. **Funding.** Beginning in the City’s fiscal year that commences on July 1, 2014, and continuing each succeeding fiscal year while this agreement is in effect, the City, in its sole discretion, will provide PHSC with \$350,000 in funding per fiscal year, but in no event will the City provide more than \$7,000,000 in funding under this agreement. There is no guarantee of funding expressed or implied by this agreement.
3. **Funding Conditions.** The City will consider providing PHSC with a funding payment in a fiscal year only if all of the following conditions are satisfied, as determined by the City Manager or his designee in his sole discretion:
 - (i) PHSC is a member in good standing with the American Association of Museums and the Association of Science and Technology Centers.
 - (ii) PHSC has secured funding, through legally enforceable agreements, for one-hundred percent of cost to construct the Phase 1 Project.
 - (iii) PHSC has secured a \$25,000,000 loan from the I-Bank (the “**I-Bank Loan**”).

- (iv) PHSC has provided the City for its review and approval a list of all donations and sponsorships that PHSC intends to use to repay the I-Bank Loan and a quarterly status report on all donations and sponsorships made for this use.
- (v) PHSC has secured funding, through legally enforceable agreements, to pay one-hundred percent of the annual debt service on the I-Bank Loan.
- (vi) PHSC is in compliance with the construction schedule required by the I-Bank for the Phase 1 Project.
- (vii) PHSC is not in default following any applicable notice and cure period of any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement, or other form of contractual obligation or undertaking to which PHSC is a party or by which PHSC or any of its property, including the Lease, is bound.
- (viii) PHSC has provided the City with its complete tax returns for the preceding year not more than fourteen days after they have been filed.
- (ix) PHSC has provided the City with audited financial statements with the report and opinion of an independent accountant stating that the financial statements have been prepared in accordance with generally accepted accounting principles (with such exceptions as are not objected to by the City) and that such independent accountant's audit was performed in accordance with generally accepted auditing standards.
- (x) PHSC has provided the City with unaudited quarterly financial statements not more than ninety days after the end of each fiscal quarter, which include copies of its complete financial statements, including a statement of financial position, a statement of activities, a statement of cash flow and such other financial reports and schedules as may have been delivered to PHSC in connection with such financial statements.
- (xi) PHSC has provided the City with notices of all PHSC board of directors (BOD) meetings, copies of all BOD meeting minutes, and provided the Manager or his designee with the right to attend and speak at all BOD meetings.

4. Annual Appropriation and Budget Contingency Clause. The City intends to make annual funding payments to PHSC throughout the term of this agreement if funds are legally available. Nevertheless, during each fiscal year this agreement is in force, the City will be obligated to make a funding payment only from funds lawfully budgeted and appropriated for that purpose. The City Council will determine each fiscal year, in its sole discretion after considering the City's other needs, whether to budget and appropriate funds for a funding payment, and without such an appropriation the City will not be obligated to make a funding payment even though funds are otherwise legally available. If, during any fiscal year this agreement is in force, the City Council does not budget and appropriate funds to make a funding payment, then either party may terminate this agreement at any time by giving the other party written notice. As used in this section, "sole discretion" means that the City Council may decide whether to budget and appropriate funds for a funding payment solely on its own assessment of the City's interests and without considering how its decision affects PHSC or the I-Bank. Nothing in this agreement

creates an indebtedness or liability that is prohibited by section 18 in article XVI of the California Constitution.

- 5. Notices.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 5 to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 5.

If to the City:

City of Sacramento
Economic Development Department
915 I Street, 4th Floor
Sacramento, California 95814
Attention:
Jim Rinehart
Director of Economic Development

If to PHSC:

Powerhouse Science Center
3615 Auburn Boulevard
Sacramento, CA 95821
Attention:
Randy Beaton
Chief Operating/Finance Officer

- 6. Assignments.** A party may not assign or otherwise transfer this agreement or any interest in it without the other party's prior written consent, which the other party may withhold in its sole discretion, except that the PHSC may assign its interests in this agreement and all payments made by the City under this agreement to the I-Bank to provide security for the I-Bank Loan without the City's prior written consent. An assignment or other transfer made contrary to this section 6 is void.
- 7. Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.
- 8. Time of Essence.** Time is of the essence in the performance of this agreement.
- 9. Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.
- 10. Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.
- 11. Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.
- 12. Attorneys' fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.

- 13. No Third-Party Beneficiaries.** This agreement is not intended to benefit any third parties other than the I-Bank.
- 14. Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- 15. Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement shall have the same binding effect as originals.
- 16. Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

By: _____
John F. Shirey
City Manager
Date: _____, 2014

Approved as to Form
Sacramento City Attorney

By: _____
Michael Sparks
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

Powerhouse Science Center

By: Michele Wong, President
Michele Wong
Chairperson
Date: May 19, 2014