

RESOLUTION NO. 2010-118

Adopted by the Sacramento City Council

March 9, 2010

APPROVING THE AGREEMENT FOR THE OPERATIONS AND MAINTENANCE OF THE ENVIRONMENTAL REMEDIATION SYSTEM AT THE JIBBOOM STREET POWER STATION SITE

BACKGROUND

- A. The City of Sacramento approved the purchase of the Jibboom Street Power Station Site from the California Department of Water Resources (DWR) by Resolution 2002-031 on January 22, 2002.
- B. The Contract for the Sale of Excess Land with DWR, executed on January 22, 2002, identified in Section 11 that the City agreed to assume all responsibilities of DWR as set out in the Operations and Maintenance Agreement with the California Department of Toxic Substance Control (DTSC).
- C. In the Contract for the Sale of Excess Land, DWR also agreed to work with the City to complete a final Five Year Report on the site, which report was submitted to DTSC on January 26, 2010.
- D. The City desires to update the prior DWR agreement by entering into a new Operations and Maintenance Agreement with DTSC to specify the remaining obligations for the environmental remediation system at the site, including maintaining and monitoring the system, conducting periodic tests and reporting on the results of these activities to the DTSC. The agreement also includes a process to allow for discontinuance of the remediation system when the site is environmentally cleared by DTSC.

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

- Section 1. The City Manager is authorized to sign the Operations and Maintenance Agreement with the Department of Toxic Substance Control for the environmental remediation system at the Jibboom Street Power Station site (consisting of APNs 001-0190-004, 006, 012 & 015), as set out in Exhibit A.

Table of Contents:

- Exhibit A Operations and Maintenance Agreement – Jibboom Street Power Station Site

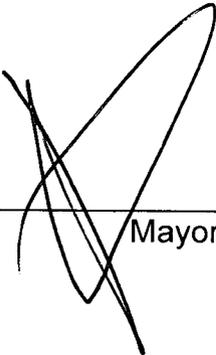
Adopted by the City of Sacramento City Council on March 9, 2010 by the following vote:

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

In the matter of:)	Docket No.: _____
)	
Former PG&E Power Plant)	OPERATION AND MAINTENANCE
240 Jibboom Street)	AGREEMENT
Sacramento, California 95814)	
)	
Proponent:)	
)	Health and Safety Code
The City of Sacramento)	Sections 25355.5(a)(1)(C)
Economic Development Department)	
915 I Street, New City Hall, 3 rd Floor)	
Sacramento, California 95814)	
Attn: Rachel Hazlewood)	
_____)	

The California Department of Toxic Substances Control (DTSC) and the City of Sacramento, a municipal corporation (Proponent) enter into this Operation and Maintenance Agreement (Agreement) for the site located at 240 Jibboom Street in the City of Sacramento, Sacramento County, California (Site) and agree as follows:

1. Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C) which authorizes DTSC to enter into an enforceable agreement to oversee the investigation and/or remediation of a release or threatened release of any hazardous substance at or from the Site, and to oversee the operation and maintenance of any remediation system installed at the Site. DTSC agrees to the Proponent's assumption of all operation and maintenance obligations from the State of California, Department of Water Resources, as agreed to between the Proponent and the State of California, Department of Water Resources (DWR) by way of City Agreement No. 2002-012. This City Agreement was entered on January 22, 2002 for the acquisition of the Site.

2. Remediation System. A DTSC-approved Remediation System has been installed at the Site by DWR for the remediation of soil (Remediation System). The Remediation System consists of site grading for drainage control in conjunction with the construction of an engineered vegetative covered earthen clay cap over lead contaminated soil to eliminate exposure and minimize percolation of rainwater, the groundwater monitoring wells, and the surveyed former power plant building footprint described in the Covenant To Restrict Use of Property Environmental Restriction recorded in the County of Sacramento as Document No. 199807301260. The Site is now owned by the City of Sacramento. A site location map and site diagram showing the Remediation System is attached as Exhibit A and Exhibit B.

3. Operation and Maintenance of Remediation System. Operation and maintenance of the Remediation System are required at the Site, and shall be left in place, operated and maintained by Proponent until and except to the extent that DTSC authorizes Proponent in writing to discontinue or modify part or all of the Remediation System.

4. Implementation of Operation and Maintenance Plan. Proponent shall fully implement the DTSC-approved Operation and Maintenance Plan dated June 1998 prepared by the California Department of Water Resources (DWR), attached as Exhibit C, including any requirements for inspections, monitoring, reporting and record keeping.

5. Modification or Discontinuation of Remediation System. Proponent shall submit a written request for DTSC's authorization for any modification or discontinuation of the Remediation System or any part thereof at least 60 days, to the extent feasible, prior to the intended date of any proposed modification or discontinuation. Proponent may seek modification or discontinuation of the Remediation System or any part thereof if (a) Proponent has met the remediation objectives for the Site; (b) the modification would better achieve the remediation objectives; (c) the location of a monitoring well interferes with the Proponent or tenant of Proponent's operation on the site and a suitable alternate location can be accommodated; (d) the Remediation System could not achieve the remediation objectives and other cleanup methods will be implemented; or (e) it has been demonstrated that the maximum achievable remediation has occurred. The written request to DTSC shall include the reasons for the request, a detailed description of any work to be done or modification to be made, and a map showing the exact location of the proposed work. In addition, Proponent may request DTSC approval to relocate or abandon the monitoring well if it interferes with the Proponent's or its tenant's use of the Site or if groundwater monitoring is no longer required.

6. DTSC-Required Modification. DTSC may require modification, replacement, or additions to the Remediation System if the Remediation System or part of thereof is not achieving the remediation objectives or is not protecting human health or the environment. DTSC may require additional evaluations, designs and the construction and operation of facilities to achieve these objectives.

7. Five-Year Review. DWR has informed DTSC that it intends to start the first five year review of the Remediation System after July 1, 2009. In the event DWR fails to complete the first five-year review by March 31, 2010, Proponent agrees to conduct the first five-year review within 150 days of written notification by DTSC. Proponent will reevaluate the Remediation System every five years thereafter as long as such reevaluation is required by DTSC. The review and reevaluation shall be conducted to determine if human health and the environment are being adequately protected by the Remediation System. Within 30 days of the end of each five-year period, Proponent shall submit a report of the results of the five-year review. The report shall describe the results of all sampling analyses, tests and other data generated or received by Proponent and evaluate the adequacy of the implemented remedy in protecting human health and the environment. As a result of any review work performed under this Agreement, DTSC may require Proponent to perform additional review work or modify the review work previously performed by Proponent.

8. Quality Control/Quality Assurance (QC/QA). All sampling and analysis conducted by Proponent under this Agreement shall be performed in accordance with standard QA/QC procedures and conducted by qualified consultants with expertise in hazardous substance testing and evaluation as described in paragraph 16.

9. Cost Recovery and Payment.

9.1. Prior to Proponent's commencement of a five-year review or at Proponent's request, DTSC shall provide Proponent with a cost estimate for DTSC's cost to review the report. Proponent shall be liable for all of DTSC's costs incurred in implementing this Agreement, including costs of overseeing the work performed by Proponent, and in responding to any contamination at the Site. Cost recovery may be pursued by DTSC pursuant to applicable state or federal laws or common law. DTSC will invoice Proponent for DTSC's costs on a quarterly basis.

9.2. All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the Site (Site #100258) and the docket number of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards. Payments by check shall be sent to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

9.3. DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

10. Endangerment During Implementation.

10.1. Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

10.2. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

11. Site Access. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times with at least forty eight hours advance notice, excepting in the event of an emergency. Access may be limited to business hours and DTSC's inspections shall not unnecessarily interfere with Proponent

or Proponent's tenant's business operations at the Site. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law. Proponent agrees to cooperate with any other entity under DTSC oversight which may require access to the Site to undertake monitoring of off-site contamination which may be impacting the Site.

12. Sampling, Data and Document Availability. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat or Microsoft Word formatted file.

13. Record Preservation. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

14. Notification of Field Activities. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and, upon request, shall provide DTSC or its authorized representatives with duplicates of any samples collected by Proponent pursuant to this Agreement.

15. Project Managers. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

16. Proponent's Consultant and Contractor. All work performed pursuant to this Agreement shall be under the direction and supervision of a professional engineer or professional geologist, licensed in California, with expertise in hazardous substances site cleanup. Proponent's Project Manager, contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the professional engineer or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

17. DTSC Review and Approval. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Unit Chief or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

18. Amendments. This Agreement, including the attached Operation and Maintenance Plan, may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

19. Termination of Agreement. This Agreement may be terminated by either party by providing written notice and specifying the effective date of termination after DTSC has determined that the five year reviews as set out in paragraph 7 are no longer required.

20. Incorporation of Exhibits, Plans and Reports. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

21. Reservation of Rights. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefore. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to Proponent under applicable laws.

22. Non-Admission of Liability. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

23. Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

24. Government Liabilities. The State of California or DTSC shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor

shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

25. Third Party Actions. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions if DTSC is required to undertake any work, including but not limited to responding to subpoenas.

26. California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

27. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

28. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents which may be undertaking any activities at the Site comply with the terms of this Agreement in regards to not altering or interfering with the Remediation System.

29. Effective Date. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

30. Representative Authority. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

31. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

_____ Date: _____
Richard Hume, P.E.
Supervising Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

_____ Date: _____
Ray Kerridge, City Manager
City of Sacramento, a municipal corporation
Former PG&E Power Plant
Project 100258-00

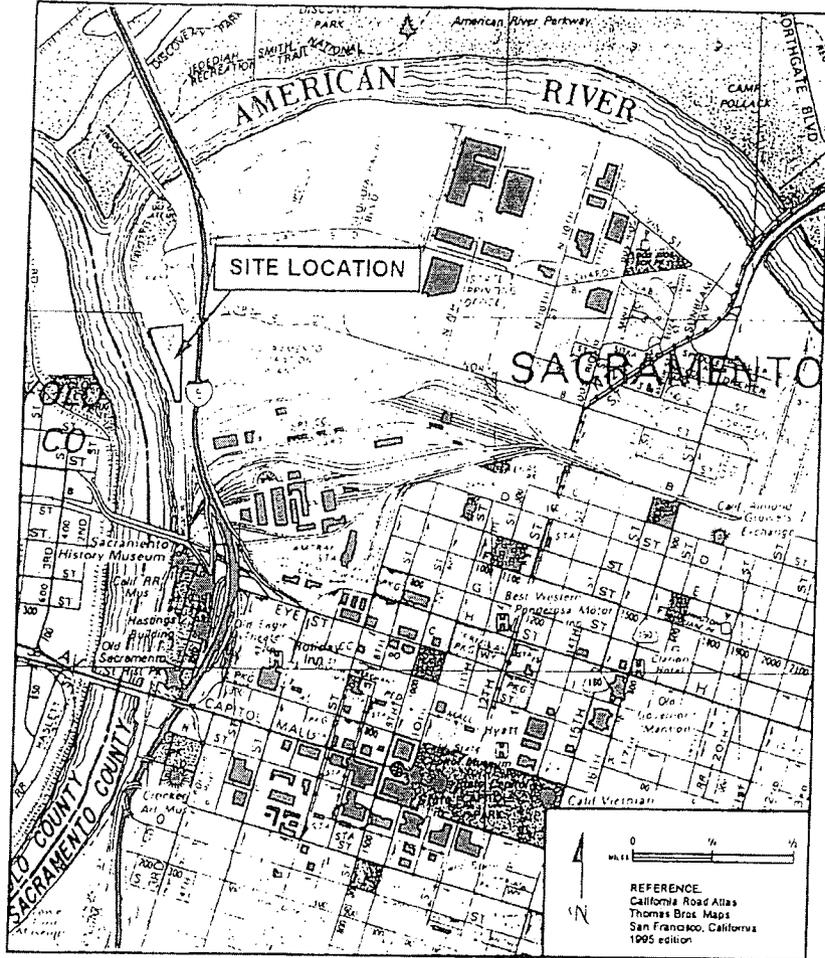


EXHIBIT A: Site Location Map
 Former PG&E Power Plant Site @ Jibboom Street

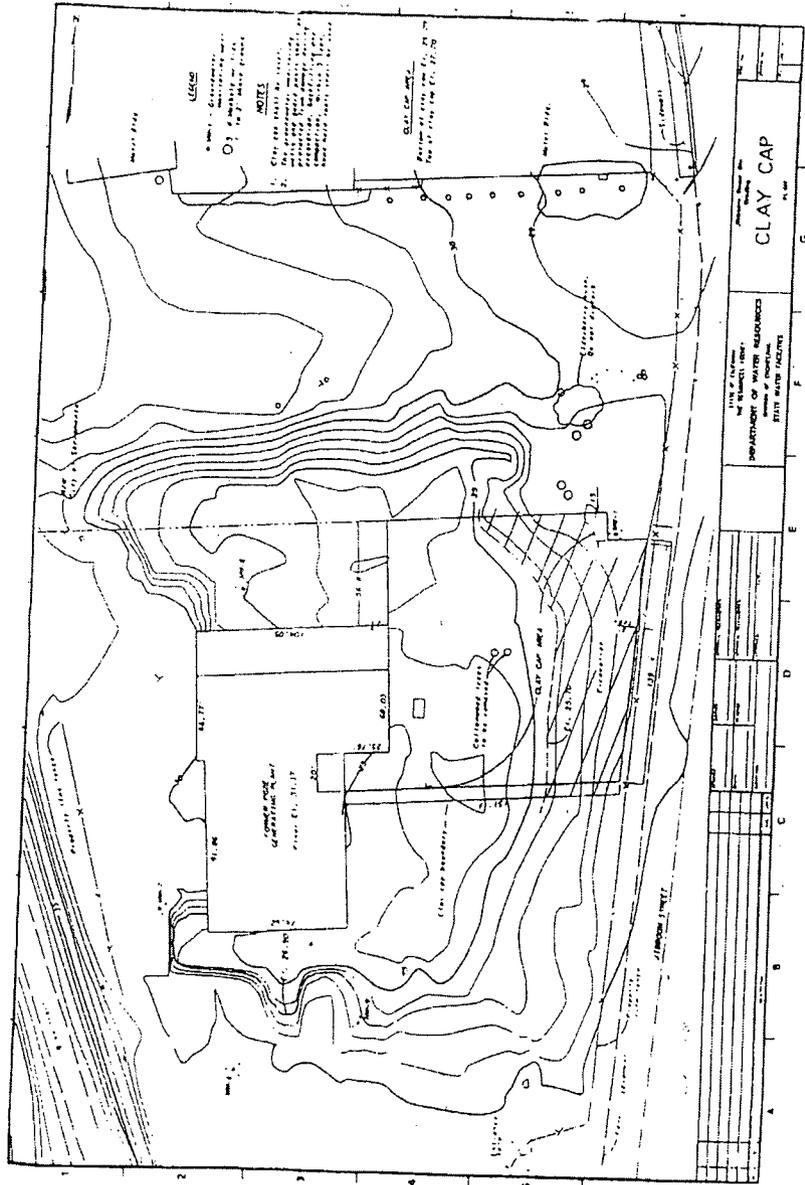


EXHIBIT B:
 Cap/Monitoring Well Locations
 Former PG&E Power Plant Site @ Abbott Street