

## **RESOLUTION NO. 2011-361**

Adopted by the Sacramento City Council

June 21, 2011

### **APPROVE LEASE AGREEMENT WITH POWERHOUSE SCIENCE CENTER FOR 400 JIBBOOM STREET**

#### **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 parcel numbers 001-0190-004, -011, -015, -016, and portions of -006 and -009 ("Property") located within the River District Redevelopment Project Area.
- B. The Property contains the historic landmark structure, the former PG&E Power Station B, 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 the Powerhouse Science Center project ("Project"), a science and space center with adjacent restaurant/education center and parking structure serving the site.
- D. The PHSC proposal meets the objectives of the Sacramento Riverfront Master Plan, the River District Specific Plan and the River District Redevelopment Plan.
- E. On June 1, 2010, City Council adopted the Mitigated Negative Declaration ("MND") and Mitigation Monitoring Plan for the Robert T. Matsui Waterfront Park Master Plan Amendment, which included the development of the Project (Resolution 2010-296). The MND was reviewed and the environmental effects were considered pursuant to section 15096(f) of the California Environmental Quality Act ("CEQA") Guidelines (Cal. Code Regs., title 14, §§ 15000-15387). 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. The MND and Mitigation Monitoring Plan are posted on the City's web site at <http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/> and are available for review at the offices of the Community Development Department at 300 Richards Boulevard, Sacramento.
- F. An Environmental Assessment ("EA") has been prepared for the Powerhouse Science Center Project in accordance with the National Environmental Policy Act ("NEPA") pursuant to 24 CFR 58.40. Based on steps set forth in paragraphs (a) through (f) or 24

CFR 58.40, a Finding of No Significant Impact ("FONSI") was made, which was published, circulated, and re-evaluated, in accordance with 24 CFR 58 Subpart E. A Notice of Intent to Request Release of Funds was published along with the FONSI and the Request for Release of Funds was submitted to the U.S. Department of Housing and Urban Development ("HUD") for approval. The Authority to Use Grant Funds was executed in August 23, 2010 by HUD. On November 9, 2010, City Council received and filed the EA and approved the Cultural Resources Treatment and Monitoring Agreement with the Shingle Springs Band of Miwok Indians (Resolution 2010-634).

- G. On April 14, 2011, the Powerhouse Science Center was awarded a seven million dollar (\$7M) grant from Proposition 84's Nature Education Facilities committee to build the Earth, Space, and Sciences Center, which will feature a full-dome, 150-seat planetarium, an updated Challenger Learning Center, and interactive exhibits focusing on natural sciences.
- H. The City and PHSC desire to enter into a fifty-five (55) year term lease for the Property for the development of the Project, which the PHSC will construct, occupy, and maintain at no cost to the City. Upon final completion of Project, the Project will become the property of City. Under the terms of the lease, the base rent commences at occupancy, and PHSC will pay rent of one-dollar (\$1) per term year. There are no financial obligations upon the City.

**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 a lease with Powerhouse Science Center for the City-owned property located at 400 Jibboom Street.
- Section 2. The lease identified in Section 1 is attached as Exhibit A and is a part of this resolution.

**Table of Contents:**

Exhibit A Lease Agreement

*LEASE TO BE ATTACHED*

**GROUND LEASE  
by and between the**

**CITY OF SACRAMENTO,  
as lessor,**

**and the**

**POWERHOUSE SCIENCE CENTER,**

**as lessee**

Dated as of \_\_\_\_\_

**RELATING TO THE DEVELOPMENT, CONSTRUCTION AND LEASING OF THE  
POWERHOUSE SCIENCE CENTER SITE**

---

ARTICLE I  
DEFINITIONS, INTERPRETATION, AND EXHIBITS

Section 1.01. Definitions .....	1
Section 1.02. Interpretation .....	2
Section 1.03. Exhibits.....	2

ARTICLE II  
REPRESENTATIONS, COVENANTS AND WARRANTIES AND DISCLOSURES

Section 2.01. Representations, Covenants and Warranties of the City.....	2
Section 2.02. Representations, Covenants and Warranties of Lessee .....	3
Section 2.03. Environmental Disclosures .....	4
Section 2.04. Remediation Obligations .....	5

ARTICLE III  
AGREEMENT TO LEASE

Section 3.01. Lease and Description of Premises .....	5
Section 3.02. Quiet Enjoyment .....	5
Section 3.03. Right of Entry .....	5

ARTICLE IV  
TERM

Section 4.01. Commencement and Term of Lease .....	6
Section 4.02. Holding Over.....	6

ARTICLE V  
TAX COVENANTS

Section 5.01. Lessee Tax Covenants .....	6
--	---

ARTICLE VI  
RENTAL PAYMENTS

Section 6.01. Amount of Base Rental Payments .....	8
Section 6.02. Additional Rental Payments .....	9
Section 6.03. Rate on Overdue Payments.....	9
Section 6.04. Prepayment.....	9
Section 6.05. Application of Rental Payments .....	9
Section 6.06. Net Lease.....	9
Section 6.07. No Termination or Abatement.....	10

ARTICLE VII  
PARTICULAR COVENANTS OF LESSEE

Section 7.01. Maintenance of Corporate Existence of Lessee; Affiliation; Consolidation, Merger, Sale or Transfer Under Certain Conditions .....	11
Section 7.02. Utilities and Other Services.....	11
Section 7.03. Signs .....	11
Section 7.04. Maintenance and Repair, Capital Reserve Account.....	11
Section 7.05. Modifications to Premises.....	13
Section 7.06. Compliance with Environmental Laws .....	14
Section 7.07. Covenants as to Corporate Existence and Certain Other Matters .....	15
Section 7.08. Additional Negative Covenants.....	15
Section 7.09. Accounting Records, Financial Statements and Budget .....	17
Section 7.10. Limitations on Indebtedness .....	18
Section 7.11. Prohibited Guaranties .....	18
Section 7.12. Indemnity.....	18

ARTICLE VIII  
TITLE TO PREMISES DURING TERM

Section 8.01. Title to the Premises During Term .....	20
Section 8.02. No Merger .....	20

ARTICLE IX  
INSURANCE

Section 9.01. Insurance .....	20
-------------------------------	----

ARTICLE X  
DAMAGE, DESTRUCTION AND EMINENT DOMAIN;  
USE OF NET PROCEEDS

Section 10.01. Damage and Destruction .....	23
Section 10.02. Eminent Domain .....	23
Section 10.03. Prosecution of Claims for Net Proceeds .....	23
Section 10.05. Use of Net Proceeds.....	23
Section 10.06. Proportionate Distribution of Net Proceeds .....	23

ARTICLE XI  
DISCLAIMER OF WARRANTIES; USE OF THE PREMISES

Section 11.01. Disclaimer of Warranties.....	24
Section 11.02. Use of the Premises.....	24
Section 11.03. Prohibited Use of Premises .....	24

ARTICLE XII  
DESIGN, CONSTRUCTION AND OWNERSHIP OF THE PROJECT

Section 12.01. Design, Construction and Installation of the Project .....	25
Section 12.02. Funding and Completion of the Project by Lessee .....	25
Section 12.03. Ownership of Completed Project .....	26

ARTICLE XIII  
DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined .....	26
Section 13.02. Remedies on Event of Default .....	27
Section 13.03. No Remedy Exclusive .....	30
Section 13.04. Agreement to Pay Attorneys' Fees and Expenses .....	30
Section 13.05. No Additional Waiver Implied By One Waiver .....	30
Section 13.06. Notice of Default .....	30

ARTICLE XIV  
MISCELLANEOUS

Section 14.01. Notices .....	31
Section 14.02. Binding Effect .....	31
Section 14.03. Severability .....	31
Section 14.04. Execution in Counterparts .....	31
Section 14.05. Applicable Law; Venue .....	31
Section 14.06. City Representatives .....	31
Section 14.07. Assignment by the City .....	31
Section 14.08. Special Provisions .....	32
EXHIBIT A – JIBBOOM STREET POWER STATION SITE PARCEL MAP .....	33
EXHIBIT B – MASTER LIST OF DEFINITIONS .....	34
EXHIBIT C – CAPITAL RESERVE ACCOUNT PAYMENT SCHEDULE .....	40
EXHIBIT D – MEMORANDUM OF LEASE .....	41
EXHIBIT E – SPECIAL PROVISIONS .....	42
EXHIBIT F – POWERHOUSE SCIENCE CENTER PHASING .....	44

**GROUND LEASE BETWEEN  
THE CITY OF SACRAMENTO AND  
POWERHOUSE SCIENCE CENTER  
POWERHOUSE SCIENCE CENTER SITE**

This Ground Lease ("Lease") is made as of \_\_\_\_\_, 2011, by and between the City of Sacramento, a municipal corporation ("City" or "Lessor"), and Powerhouse Science Center, a California nonprofit corporation, formerly known as the Sacramento Museum of History, Science and Technology ("Lessee"). The City and Lessee may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

**BACKGROUND**

- A. The City owns certain real property known as the Jibboom Street Power Station Site, parcel numbers 001-0190-015, -016, and portions of -004, -006, -009, and -011, as shown on the map attached hereto as Exhibit A.
- B. The Pacific Gas & Electric Company owns certain real property, parcel number 001-0190-005, the site of an idle transmission tower that has since been removed, and has indicated it will transfer ownership of this parcel to the City; the Parties intend for this parcel to be included in the leased premises if the City becomes the owner before or during the term of this Lease.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF  
THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND  
FOR OTHER VALUABLE CONSIDERATION, THE PARTIES AGREE AS  
FOLLOWS:**

**ARTICLE I**

**DEFINITIONS, INTERPRETATION, AND EXHIBITS**

**Section 1.01. Definitions.** The terms defined in Exhibit B, attached hereto and by this reference incorporated herein and made a part hereof, shall for all purposes hereof have the meanings ascribed to them therein, unless the context clearly requires some other meaning. Other terms shall have the meanings given to them herein. Words not defined herein shall be given their common and ordinary meaning.

**Section 1.02. Interpretation.**

(a) Unless the context otherwise indicates, all words expressed in the singular shall include the plural and vice versa, and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) All captions or headings of the sections and subsections hereof and the table of contents hereof are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subsections are to the corresponding Articles, Sections or subsections hereof, and the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subsection hereof.

(d) Unless this Lease expressly provides otherwise, Lessee is solely responsible for all expenses required for Lessee to comply with its obligations under this Lease.

**Section 1.03. Exhibits.** The following Exhibits are attached to and by this reference incorporated herein and made a part hereof:

- Exhibit A: Jibboom Street Power Station Site Parcel Map
- Exhibit B: Master List of Definitions
- Exhibit C: Capital Reserve Account Payment Schedule
- Exhibit D: Memorandum of Lease
- Exhibit E: Special Provisions
- Exhibit F: Powerhouse Science Center Phasing

**ARTICLE II**

**REPRESENTATIONS, COVENANTS, WARRANTIES AND DISCLOSURES**

**Section 2.01. Representations, Covenants and Warranties of the City.** The City represents, covenants and warrants to the Lessee as follows:

(a) Due Organization and Existence. The City is a municipal corporation and charter city organized and existing under the laws of the State, has the power to enter into this Lease and is possessed of full power to own, hold, lease, as lessor, and sell real and personal property.

(b) Approvals. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the execution of this Lease or the performance or consummation of the transactions contemplated hereby and thereby, except for those

(aa) 2

(bb) *Lease by and between City of Sacramento and the Powerhouse Science Center*

which have been made or obtained and are in full force and effect or as contemplated hereunder.

(c) Title. The City owns the Premises in fee-simple absolute, subject to easements and covenants recorded in the Official Records of the County of Sacramento, California.

**Section 2.02. Representations, Covenants and Warranties of Lessee.**  
Lessee represents, covenants and warrants to the City as follows:

(a) Due Organization and Existence. Lessee is a nonprofit public benefit corporation organized and existing under the laws of the State, has the power to enter into this Lease and is possessed of full power to own, hold, lease and sell real and personal property.

(b) Authorization. The laws of the State authorize Lessee to enter into this Lease, and to enter into the transactions contemplated hereby and thereby and to carry out its obligations under this Lease. Lessee has duly authorized the execution of this Lease.

(c) No Conflict. Neither the fulfillment of or compliance with the terms and conditions of this Lease hereof or thereof, nor the consummation of the transactions contemplated by this Lease hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which Lessee is now a party or by which Lessee is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee or upon the Premises.

(d) Approvals. No consent or approval of any trustee or holder of indebtedness of Lessee, and no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Person is required in connection with the performance or consummation of the transactions contemplated hereby and thereby, except for those which have been made or obtained and are in full force and effect or as contemplated hereunder.

(e) No Litigation. There is no action, suit, arbitration, mediation or other proceeding, at law or in equity, before or by any court or Governmental Authority, pending or, to Lessee's Knowledge, threatened against Lessee or any that is likely to result in an unfavorable decision, ruling or finding.

(f) Information Supplied by Lessee.

(1) To Lessee's Knowledge, the information heretofore supplied by Lessee to the City with respect to Lessee, its ownership structure, and the experience, financial condition and contractual rights and obligations of Lessee, and its principals was correct and complete in all material respects as of the date or dates submitted.

(2) The financial statements of Lessee, for the year ended June 30, 2010 (copies of which have been furnished to the City), present fairly the financial position of Lessee as of June 30, 2010 and the results of its operations and cash flows for the year ended on such date, and since June 30, 2010, to Lessee's Knowledge there has been no material adverse change in the financial condition or results of operations of Lessee not otherwise disclosed to City.

(g) Defaults. Lessee is not in default following any applicable notice and grace periods, under any Contractual Obligation, or in violation of any Applicable Law.

(h) 501(c)(3) Status. Lessee is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and exempt from federal income tax under Section 501(a) of said Code.

(i) No Agreement to Sell Assets, Etc. As of the date of this Lease, Lessee has no legal obligation, absolute or contingent, to any Person to sell the assets of Lessee, or to effect any merger, consolidation or other reorganization of Lessee or to enter into any agreement with respect thereto.

(j) Government Charges. Lessee has filed or caused to be filed all tax returns, which, to Lessee's Knowledge, are required to be filed by it. Lessee has paid, or made provision for the payment of, all taxes and other Governmental Charges which have or may have become due pursuant to said returns or otherwise and all other indebtedness, except such Governmental Charges or indebtedness, if any, which are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided.

(k) Formation Documents. Lessee's Formation Documents are in full force and effect, and there has been no breach by any of the parties thereto or event or condition that would otherwise give rise to a breach thereof. The Formation Documents delivered to the City are true, correct, and complete and there have been no amendments thereto.

**Section 2.03. Environmental Disclosures.** Disclosure is hereby made that Hazardous Substances have been found, stored and used on the Premises. The Hazardous Substances include lead, asbestos, petroleum hydrocarbons and other heavy metals. The California Department of Toxic Substance Control ("DTSC"), as the regulatory agency with jurisdiction over the Premises, has approved a "Remediation System" which was installed by the California Department of Water Resources. 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 Former PG&E Power Plant Site, Jibboom Street ("Covenant") recorded in the County of Sacramento on July 30, 1998 as Document No. 199807301260. These Hazardous

Substances are described in further detail in the Environmental Documents, which are incorporated herein by this reference and made a part hereof.

This disclosure is not intended to be inclusive of all Hazardous Substances which may be present on the Premises and Lessee acknowledges that additional Hazardous Substances not set forth in this Section may have been or remain present on the Premises. Lessee's execution of this Lease is deemed Lessee's acknowledgment to such disclosures as required by Hazardous Substances Laws.

**Section 2.04. Remediation Obligations.** . At its sole cost, during the Term of the Lease, Lessee shall caused to be maintained the Remediation System as described in the Operations and Maintenance Plan and the Operations and Maintenance Agreement and any other remediation measures DTSC or other environmental regulators may require. This includes the structural inspection of and, if required, repairs to the earthen clay cap and former PG&E building, groundskeeping, replanting of vegetative cover, ground water monitoring, submitting required reports to the City and DTSC, and all other obligations as required by DTSC or any other environmental regulatory agency.

Lessee shall reimburse the City for all reasonable costs incurred by the City following the Commencement Date in implementing the Operations and Maintenance Agreement and any other environmental regulatory agreement during the Term of this Lease, including, but not limited to, DTSC oversight charges, City costs of overseeing and reviewing work, and in responding to any Release of Hazardous Substances on the Premises, but not including the cost of remediating any Pre-Existing Hazardous Substances as defined in Section 7.12(b), except where the Release of the Pre-Existing Hazardous Substances is caused in whole or in part by Lessee. Such reimbursement shall be due to the City at the address specified in Section 6.01 within thirty (30) days of invoicing.

### ARTICLE III

#### AGREEMENT TO LEASE

**Section 3.01. Lease and Description of Premises.** The City hereby leases to Lessee, and Lessee hereby leases from the City, upon the terms and conditions hereinafter set forth, the Premises.

**Section 3.02. Quiet Enjoyment.** Lessee at all times during the term of this Lease shall peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from the City, except as expressly set forth in this Lease or as allowed or required by virtue of City's status as a municipal entity.

**Section 3.03. Right of Entry.** Lessee agrees that the City shall have the right as provided below, and at all reasonable times with reasonable prior notice, to

(aa) 5

(bb) *Lease by and between City of Sacramento and the Powerhouse Science Center*

enter upon and to examine and inspect the Premises, except in the event of emergency, in which case the City has the right to enter at any time. Lessee further agrees that the City shall have such rights of access to the Premises as may be reasonably necessary to cause the proper maintenance by the City in the event of failure by Lessee to perform its obligations hereunder. Lessee further agrees that the DTSC shall have the right, at all reasonable times, to enter upon and inspect the Premises as specified in the Operations and Maintenance Agreement.

## ARTICLE IV

### TERM

**Section 4.01. Commencement and Term of Lease.** The term of this Lease commences on the date that it is signed by both parties ("Commencement Date") and terminates on the last day of the calendar month immediately preceding the 55<sup>th</sup> anniversary of the Commencement Date ("Term"), unless such Term is sooner terminated as hereinafter provided. For example, if the Commencement Date occurs on November 15, 2011, then the Term would be scheduled to end on October 31, 2066. In no event shall the Term exceed the limits provided by law.

**Section 4.02. Holding Over.** Any holding over after expiration of the Term will not constitute a renewal of this Lease but will be on a month-to-month tenancy on the same terms and conditions that applied at the expiration.

## ARTICLE V

### TAX COVENANTS

**Section 5.01. Lessee Tax Covenants.**

(a) Lessee shall be liable to pay any taxes, permit, inspection, or license fees, or any other public charges of whatever nature that are assessed against the Premises or arise because of the occupancy, use, or possession of the Premises (including but not limited to taxes on, or which shall be measured by, any rents or rental income, possessory interest, and taxes on personal property, whether of the City or Lessee), during the Term of this Lease, and also any installments of assessments that are due during the Term of this Lease.

(b) The City agrees to give appropriate written instructions to public authorities for taxes, assessments, and public charges to exempt Lessee from the above obligations due to its tax-exempt status, so long as Lessee maintains its tax-exempt status and the operations and use of the Premises by Lessee and its sub-

lessees comply and are consistent with Lessee's not-for-profit status. If Lessee, or its successors, fails to maintain its tax-exempt, non-profit status, or if the operations and use of the Premises by Lessee or its sub-lessees do not comply and are inconsistent with Lessee's not-for-profit status, then Lessee shall assume the obligation to pay all such taxes, assessments and public charges and Lessee shall deliver to the City, on demand, original receipts or photocopies evidencing payment of any required taxes, assessments, or charges payable by Lessee. If Lessee fails to pay any required taxes, assessments, or charges on or before the last day on which payment may be made without penalty or interest, other than as provided for in this Section 5.01, the City may, but shall not be obligated to, pay such required taxes, assessments, or charges, together with interest and penalties as set forth below. Any amounts that the City may pay pursuant to this provision, together with interest at the Interest Rate per annum, shall be repaid to the City by Lessee on demand as Additional Rental Payments.

(c) All real estate taxes levied on the Premises for the tax year in which the Commencement Date falls shall be appropriately prorated between the City and Lessee, so that Lessee's share, if any, will reflect the portion of that tax year in which Lessee had possession of the Premises under this Lease. Lessee shall pay Lessee's share of any required taxes directly to the City and not to the public authorities charged with the collection. That payment shall constitute full performance by Lessee, and the City shall pay from those funds and the City's own funds all of the required taxes for that tax year. Any required taxes levied on the Premises for the tax year in which the Termination Date occurs shall be similarly prorated between the City and Lessee to reflect the period of Lessee's possession of the Premises during that tax year. Lessee shall pay Lessee's share of any required taxes to the City directly rather than to the public authorities, and that payment shall constitute full performance under this Lease with respect to this tax liability.

(d) Lessee shall not be required to pay, discharge, or remove any tax (including penalties and interest), assessment, tax lien, forfeiture, or other imposition or charge against the Premises or any part of the Premises or any improvements, so long as Lessee diligently and in good faith contests the validity or the legality of the assessment, levy, or charge by appropriate legal proceedings, which should prevent the collection of the tax, assessment, imposition, or charge contested; provided however, that Lessee, prior to the date that the tax, assessment, imposition, or charge is due and payable, shall either have paid it under protest or shall have, given to the City a letter executed by an officer of Lessee assuring the City that the tax, assessment, imposition, or charge will be paid when and to the extent that the legal proceedings conclude in a final determination that the tax, assessment, imposition, or charge is valid, legal and owing. Upon such final determination, Lessee agrees to immediately pay the contested tax, assessment, imposition, or charge, together with all interest and penalties, if any, and remove and discharge any lien or forfeiture arising from the prior nonpayment. Any proceedings for contesting the validity, legality, or amount of any tax, assessment, imposition, or charge, or to recover any tax, assessment, imposition, or charge paid by Lessee, may be brought by Lessee in the name of the City or in the name of Lessee, or both, as Lessee deems advisable. The City agrees that the City will, upon the reasonable request of Lessee, execute or join in the execution of any instrument or

document necessary in connection with any proceeding. However, if any proceedings are brought by Lessee, Lessee agrees to indemnify the City for all reasonable loss, cost, or expense that may be imposed on the City in connection with the proceeding. Lessee's right to contest taxes as provided in this Lease shall not extend beyond the point the protest or contest would adversely affect the rights or interests of the City or where the City's title to the Premises could be lost. In any event, Lessee shall notify the City in advance of any tax contest proceedings that Lessee intends to initiate, and shall then inform the City of all significant developments in the proceedings as they may occur.

(e) If Lessee has not paid any tax, assessment, or public charge required by this Lease to be paid by Lessee before its delinquency, or if a tax, assessment, or public charge is contested by Lessee and that tax, assessment, or public charge has not been paid within thirty (30) days after a final determination of the validity, legality, or amount of the tax, assessment or public charge, then the City may, but shall not be required to, pay and discharge the tax, assessment, or public charge. If a tax, assessment, or public charge, including penalties and interest, are paid by the City, the amount of that payment shall be due and payable to the City by Lessee with the next succeeding Base Rental Payment, and shall bear interest at the Interest Rate per annum from the date of the payment by the City until repayment by Lessee.

(f) If any assessments for local improvements become a lien after the Commencement Date, Lessee shall pay only the installments of the assessments that become due and payable during the Term. On the request of Lessee, the City agrees to cooperate or join with Lessee in any application that may be necessary to exempt the Premises from such assessments or to permit the payment of the assessments in installments. The City shall not impose any assessments for City improvements or services that may benefit the Premises and the City shall be solely responsible for the share of any such improvements or services benefitting the Premises.

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.01. Amount of Base Rental Payments.** Lessee agrees to pay to the City, its successors or assigns, for the Term of this Lease, without deduction or offset of any kind, the Base Rental Payments of one-dollar (\$1) per Term year. The Base Rental Payments shall be payable in advance on the first day of every Term year at the following address or at another address that the City may from time to time designate by written notice to Lessee:

City of Sacramento  
Economic Development Department  
915 I Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814  
Attn: Economic Development Director

**Section 6.02. Additional Rental Payments.** In addition to the Base Rental Payments, and continuing for the full Term even after payment of all required Base Rental Payments, Lessee shall also pay into the Capital Reserve Account as required by Section 7.04, without deduction or offset of any kind, Additional Rental Payments, as follows:

(a) Capital Reserve Account payments, in accordance with the Capital Reserve Account payment schedule specified in Exhibit C, attached hereto and by this reference incorporated herein and made a part hereof, as the same may be amended from time to time as required by Section 7.04 of this Lease; and

(b) Any and all costs incurred by or charged to the City pursuant to Sections 2.04 and 7.04 of this Lease; and

(c) All reasonable and necessary fees and expenses of the City attributable to this Lease, if, and only if, Lessee, or its successors, fails to maintain its tax-exempt, non-profit status.

**Section 6.03. Rate on Overdue Payments.** If Lessee should fail to make any of the payments required to be made by this Lease, then the payment in default shall continue as an obligation of Lessee, until the amount in default shall have been fully paid, with interest on such defaulted amounts from the date of default at the Interest Rate per annum; provided, that nothing in this Section shall be deemed to constitute a waiver of any Event of Default hereunder. Such amounts shall constitute Additional Rental Payments under this Lease.

**Section 6.04. Prepayment.** Lessee may prepay or cause the prepayment of Additional Rental Payments at any time.

**Section 6.05. Application of Rental Payments.** All Additional Rental Payments due hereunder shall be deposited and/or applied to the applicable reserve account or costs related thereto. But no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

**Section 6.06. Net Lease.** This Lease is a "triple net lease," and all Rental Payments due and payable hereunder shall be absolute and unconditional and shall be paid without notice or demand and without setoff or deduction. The obligations of Lessee and of the City hereunder shall be separate and independent covenants and agreements and the Rental Payments shall commence at the times provided herein and shall continue to be payable in all events during the term of this Lease. This Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment,

reduction, setoff, counterclaim or defense with respect to the Rental Payments, nor shall the obligations of Lessee hereunder be excused or delayed for any of the following causes: (i) any damage to, removal, abandonment, salvage, loss, contamination of or release from, scrapping or destruction or taking of the Premises or any part thereof by any entity other than City; (ii) any restriction, prevention or curtailment of or interference with any use of the Premises or any part thereof, including lawful eviction or constructive eviction by any entity other than City; (iii) any defect in title to or rights to the Premises or any lien on such title or rights or on the Premises or any part thereof; (iv) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by the City; (v) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee, the City or any other person, or any action taken with respect to this Lease by any trustee or receiver of Lessee, the City or any other person, or by any court, in any such proceeding; (vi) any claim that Lessee has or might have against any person, including, without limitation, the City, any vendor, manufacturer, contractor of or for the Premises, or any other person; (vii) any failure on the part of the City to perform or comply with any of the terms of this Lease; (viii) any invalidity or unenforceability or illegality or disaffirmance of this Lease or any provision of this Lease against or by Lessee; (ix) the impossibility or illegality of performance by Lessee, the City, or both of them; (x) any action by any court, administrative agency or other Governmental Authority; (xi) any restriction, prevention or curtailment of or interference with the construction on or any use of the Premises or any part thereof; (xii) any change in the tax or other laws of the United States of America or of the State or any political subdivision of either; any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of Governmental Authorities; or (xiii) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The Parties intend that the obligations of Lessee hereunder shall be covenants and agreements that are separate and independent from any obligations of the City hereunder and the obligations of Lessee continue unaffected unless such obligations are modified or terminated in accordance with an express provision of this Lease.

**Section 6.07. No Termination or Abatement.** Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, composition, adjustment, dissolution, or other like proceeding relating to the City or any other person or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator of the City or any other person, or by any court with respect to the City or any other person Lessee hereby waives all right (i) to terminate or surrender this Lease or (ii) to avail itself of any abatement, suspension, deferment, reduction, setoff, counterclaim or defense with respect to any Rental Payments. Lessee shall remain obligated under this Lease in accordance with its terms, and Lessee hereby waives any and all rights now or hereafter conferred by statute or otherwise to modify or to avoid strict compliance with

its obligations under this Lease. Notwithstanding any such statute or otherwise, Lessee shall be bound by all of the terms and conditions contained in this Lease.

## ARTICLE VII

### PARTICULAR COVENANTS OF LESSEE

**Section 7.01. Maintenance of Corporate Existence of Lessee; Affiliation; Consolidation, Merger, Sale or Transfer Under Certain Conditions.** Lessee shall demonstrate its existence as a California nonprofit public benefit corporation, operating and meeting the requirements of Section 501(c)(3) of the Code to the City prior to the commencement of this Lease, and shall maintain its existence as a California nonprofit public benefit corporation, operating a performing (or other nonprofit organizations as permitted herein) and meeting the requirements of Section 501(c)(3) of the Code during the Term of this Lease, and shall not dissolve, sell or otherwise dispose of all or substantially all of its assets or become an Affiliate with, or consolidate with or merge into another Person if such action shall jeopardize Lessee's 501(c)(3) status. If Lessee elects to Affiliate with another Person, Lessee shall obtain City's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

**Section 7.02. Utilities and Other Services.** At all times during the Term and any holdover period, Lessee shall procure and maintain all utilities and other services that are legally required, and any other utilities or services that Lessee determines may be necessary or desirable, for Lessee's use, occupancy and enjoyment of the Premises.

**Section 7.03. Signs.** Lessee shall not place, maintain, nor permit on any exterior door, wall, or window of the Science Center any sign, awning, canopy, marquee, or other advertising that does not comply with City signage requirements, including Chapter 17.134 of the Sacramento City Code, on Historic Preservation, and any other Applicable Laws. Lessee shall maintain all such signage and advertising in good appearance and repair at all times during the Term of this Lease. At the Termination Date, any of the items mentioned in this section that are not removed from the Science Center by Lessee may be removed and destroyed by the City without any damages or liability attributable to the City.

**Section 7.04. Maintenance and Repair, Capital Reserve Account.**

(a) Lessee shall maintain the Premises, including the grounds, buildings, fixtures, appurtenances, improvements, and all incidentals, so that they are: (i) in a first-class and safe condition once same have been renovated and opened to the public; (ii) in compliance with all Applicable Laws; (iii) consistent with other similar modern facilities; and, (iv) fit to be used for its intended use. Lessee shall promptly make (or cause others to make) all necessary or appropriate repairs, replacements, and Alterations, whether structural or non-structural, interior or exterior, ordinary or

extraordinary, foreseen or unforeseen) in order to maintain the Project in accordance with the requirements of this Lease and all Applicable Laws, except that Lessee's obligation to maintain and repair the former PG&E Power Station (the "Power Station") prior to the issuance of a certificate of occupancy by the City for the Power Station is limited to (i) ensuring that the Power Station is secured against unauthorized entry and (ii) ensuring that the Power Station does not create a risk of injury for members of the public lawfully using the Premises.

(b) Lessee shall promptly comply with all Applicable Laws now in force or that may later be in force, including, but not limited to, all provisions of the Americans With Disabilities Acts (42 U.S.C.A. §§ 12101 et seq.), and with any direction or certificate of occupancy issued by the City, insofar as they relate to the condition, use, occupancy or Lessee's alteration of the Premises.

(c) Lessee shall also procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the construction, use, maintenance and operation of the Premises and for the use, operation, maintenance, repair and restoration thereof.

(d) During the Term, Lessee shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises.

(e) If Lessee fails to perform its obligations under this Section 7.04, then with ninety (90) days advance notice to Lessee and failure by Lessee to cure such failure within such ninety (90) days (or, in the event such cure requires more than 90 days, the failure of Lessee to commence such repair within 90 days and diligently prosecute such cure to completion), the City (and its agents, contractors or subcontractors) may perform such maintenance or repair to the Premises. The City, however, shall not be required to give such notice if such delay poses a danger to public health or safety. The City shall be entitled to prompt reimbursement of any costs incurred by it to make any maintenance or repair in accordance with the provisions of this Section 7.04, together with interest on such sums expended from the date incurred at the Interest Rate per annum as of the date the costs were incurred. Such amounts shall constitute Additional Rental Payments under this Lease. Notwithstanding the above, the City shall not have any duty or obligation to make or perform any maintenance or repairs relating to the Premises.

(f) Lessee shall open and make deposits to a special interest-bearing FDIC insured or similar-type bank account ("Capital Reserve Account") in accordance with the Capital Reserve Account payment schedule specified in Exhibit C, attached hereto, which monthly payment amount will be evaluated by the City every five years and may be adjusted to ensure adequate reserves are available to cover projected eligible expenses. Such account shall be used solely to pay for extraordinary and substantial repairs and replacements above and beyond regularly-scheduled

maintenance of the Premises and the structures thereon. Examples of extraordinary and substantial repairs and replacements include repair, refurbishing or replacement of HVAC, carpeting, flooring, major equipment and any other item valued at, or which repair costs are \$5,000 or more with a useful life of five (5) years or more. Lessee may draw on the Capital Reserve Account for amounts \$25,000 or more only by submitting a written request for the use of funds from the Capital Reserve Account to the Director of the City's Economic Development Department, or the Director's designee (the "Director"). Lessee is not required to submit such requests to the Director for draw amounts that are less than \$25,000. Lessee shall annually submit to City on March 1<sup>st</sup> of each year during the Term an accounting of the status of the Capital Reserve Account, including planned expenditures for the coming year and all expenditures from the previous year.

(g) Not more than annually, the Director may cause an inspector selected by the Director to inspect the Premises and the Science Center and prepare a report on the condition of the carpeting, floors, wall coverings, walls, and such other elements of the facilities as the Director requests. So long as Lessee maintains its non-profit status, City shall pay the cost of the inspector's services, at its sole expense and without reimbursement out of the Capital Reserve Account. In addition to documenting existing conditions, the inspector's report shall detail any and all deterioration of the Premises or the Science Center during the preceding tenancy period that, in the inspector's opinion, constitute damage in excess of ordinary wear and tear, which shall be subject to Lessee's reasonable review and approval. The costs incurred to repair and/or replace the excess damage shall be borne by Lessee.

#### **Section 7.05. Modifications to Premises.**

(a) Lessee shall not make any modifications to the Premises subsequent to the completion of the Science Center that require issuance of a permit without the prior written consent of the City, which shall not be unreasonably withheld or delayed.

(b) All work relating to any modifications to the Premises shall be done in a good and workmanlike manner, using new materials equivalent in quality to those used in the construction of the initial construction of the Science Center. All work shall be diligently prosecuted to completion. Before beginning construction of any modification, Lessee shall obtain City's written consent and any building and other permits that may be required by Applicable Laws.

(c) Lessee shall promptly pay all charges and costs incurred in connection with any modifications to the Premises, as and when required by the terms of any agreements with contractors, designers or suppliers. At least ten (10) Business Days before beginning construction of any modification to the Premises, Lessee shall give the City written notice of the expected commencement date of that construction to permit the City to post and record a notice of nonresponsibility.

(d) Lessee shall not suffer or permit any lien of mechanics or material suppliers to be placed against the Premises with respect to work or services performed or claimed to have been performed for Lessee or materials furnished or claimed to have been furnished to Lessee or to the Premises on behalf of or for the benefit of Lessee. The City has the right at all times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens. If any such lien attaches or Lessee receives notice of any such lien, Lessee shall cause the lien to be released and removed of record within ten (10) days after receipt of the written demand of the City.

**Section 7.06. Compliance with Environmental Laws.**

(a) Lessee shall comply with, and cause its contractors, agents, servants and employees and each tenant and other occupant and user of the Premises, and the contractors, agents, servants and employees of such tenants, occupants and users, to comply with each and every Environmental Law applicable to the Premises. Specifically, but without limitation:

(1) Lessee shall obtain and maintain, and cause each occupant and user to obtain and maintain, all permits, certificates, licenses and other consents and approvals required by each Environmental Law from time to time applicable to Lessee, each and every part of the Premises and/or the conduct of any business there at or related thereto;

(2) Lessee shall not cause any Release on or off the Premises and will not suffer or permit any Release, or the presence of Hazardous Substances, on the Premises, except in compliance with all applicable Environmental Laws;

(3) If Lessee causes a Release on or off the Premises, or if a Release occurs on the Premises during the Term in violation of any Environmental Laws, and such Release is not caused by the City or any employees, officers, contractors or agents thereof, Lessee shall promptly effect the clean-up of any resulting Contamination in accordance with and as required by the provisions of all applicable Environmental Laws; and

(4) Within thirty (30) days after the date that any lien is imposed against the Premises or any part thereof under any Environmental Law, Lessee shall cause such lien to be discharged or bonded or otherwise secured to the satisfaction of the City.

(b) No Obligation of the City. Notwithstanding any provision of this Lease, the City shall not have any obligation to (i) cure any failure by Lessee to comply with any Environmental Law, (ii) take any actions or complete any actions taken, or expend any sums, to cure any failure by Lessee to comply with any Environmental Law or (iii) compel, enjoin or otherwise cause Lessee to do any of the same; nor shall the execution by Lessee, or the execution or acceptance by the City of this Lease, or the existence or the exercise of any provision hereof or of any other document, operate to

place upon the City any responsibility for the operation, control, care, management or repair of the Premises or the Science Center, or any responsibility for, or any right, power or ability to control or direct the storage, transportation, release, removal, containment, encapsulation, remediation, monitoring, or other disposition of any Hazardous Substances, or make the City an "operator" of the Premises or the Science Center within the meaning of any Environmental Law.

**Section 7.07. Covenants as to Corporate Existence and Certain Other Matters.** Lessee hereby covenants and warrants that Lessee shall:

(a) Except as otherwise expressly provided herein, preserve its corporate or other separate legal existence and all its rights and licenses to the extent necessary or desirable in the operation of its business and affairs and to be qualified to do business in the City, the County of Sacramento and the State of California;

(b) Do all things reasonably necessary to conduct its affairs and carry on its business and operations in such manner as to comply in all material respects with any and all Applicable Laws and to duly observe and conform to all valid orders, laws or regulations of any Governmental Authority relative to the conduct of its business and the management and/or operation of the Science Center;

(c) Promptly pay all lawful real property taxes levied against the Premises and any personal property taxes at any time levied or assessed upon or against Lessee prior to the date upon which fines, interest or penalties accrue thereon;

(d) Promptly pay or otherwise satisfy and discharge all of its obligations and Indebtedness and all demands and claims against it as and when the same become due and payable; and

(e) Consent to the jurisdiction of the courts of Sacramento County of the State for causes of action arising under the terms of this Lease.

**Section 7.08. Additional Negative Covenants.** During the term of this Lease, Lessee will comply, and will cause compliance, with the following negative covenants, unless the City otherwise consents in writing:

(a) Change in Business. Lessee shall not engage in any business at the Premises contrary to its mission or the uses permitted under this Lease.

(b) Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to the Premises, other than Permitted Encumbrances; The City acknowledges that Lessee may raise funds for the Project through historic tax credits or other financial bonding instruments and agrees to cooperate and make reasonable amendments to this Lease as requested by any leasehold lender, provided same do not have a material adverse effect on City's rights hereunder.

(c) Amendment of Formation Documents. Lessee shall not amend any of the Formation Documents in any material respect that would affect operations on the Premises without City's written consent.

(d) Assignment or Subleasing. The material consideration for granting this Lease and for the approval of any subleases pursuant to this Lease is the rehabilitation of the Premises by Lessee. In recognition of this consideration, no assignment of this Lease shall be permitted and no sublease of all or any part of the Premises shall be permitted, except as provided in this subsection.

(1) Assignment. Lessee shall not assign or hypothecate this Lease or any interest herein without the written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. Either of the foregoing acts without consent shall be void and shall, at the option of the City, terminate this Lease.

(2) Subleasing. Lessee shall not, without the prior written consent of the City, sublet the Science Center or Premises or any part thereof, or permit any permanent or semi-permanent use of the Science Center or Premises by any party other than Lessee. If at any time Lessee desires to sublet all or any part of the Science Center or Premises, Lessee shall give written notice to the City, setting forth all of the terms and provisions of the proposed sublease, and the identity of the proposed sublessee. Lessee shall promptly supply the City with information concerning the business background and financial condition of such proposed sublessee(s) as the City may reasonably request. The City shall have the option, exercisable by notice given to Lessee within thirty (30) days, to deny approval of the proposed sublease, provided such approval shall not be unreasonably withheld. If the City does not exercise such option, Lessee may sublet such space to such sublessee on the following further conditions:

(i) City shall have the right to approve such proposed sublessee, which approval shall not be unreasonably withheld;

(ii) City shall have the right to approve all of the terms, covenants and conditions of the sublease, provided such approval shall not be unreasonably withheld;

(iii) No sublease shall be valid and no sublessee shall take possession of the Science Center or Premises until the City has given its written approval of the sublessee and its written approval of all of the terms, covenants and conditions of the sublease and any amendments thereto and an executed counterpart of such sublease has been delivered to City;

(iv) No sublessee shall have a further right to sublet except on the terms herein contained;

(v) No subletting shall release Lessee of its obligations to perform all obligations to be performed by Lessee hereunder. The acceptance of Rent by the City from any other person shall not be deemed to be a waiver by the City of any provision hereof. Consent to one subletting shall not be deemed consent to any subsequent subletting. City may consent to subsequent subletting or amendments or modifications to the Lease, and any such actions shall not relieve Lessee of liability under this Lease;

(vi) Every sublease shall include the City as an intended third party beneficiary thereof, including without limitation, the right of the City to enforce payment of the sublessee's share of Rental Payments and to exercise all remedies in the event of Default directly against such sublessee as set forth in Article 13 hereof; and

(vii) The foregoing requirements shall not be required to be followed in the case where Lessee proposes to sublease space within the Premises on a short-term basis (such as a sublease to a community organization for a one-time community event or performance, to permit a limited series of rehearsals prior to a performance, or to make class space available for short-term instruction). City and Lessee may develop criteria for short-term leasing of space within the Premises to community organizations that will be deemed approved and not require prior approval by City.

#### **Section 7.09. Accounting Records, Financial Statements and Budget.**

(a) Lessee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions of or in relation to the business, properties and operations of Lessee. Such books of record and account shall be available for inspection by the City at reasonable hours and under reasonable circumstances following prior written request.

(b) Lessee shall furnish the City each year, within one hundred twenty (120) days of the end of each fiscal year, a report that includes the total number of visitors, gross receipts derived, and membership and fundraising results for that year. Lessee shall also furnish the City each year with its complete tax returns for the preceding year together with (1) 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 Lessee in connection with such financial statements and (2) a Certificate of the chief financial officer of Lessee, stating that no event which constitutes an Event of Default under this Lease has occurred as of the end of such Fiscal Year, or specifying the nature of such event and the actions taken and proposed to be taken by Lessee, to cure such default. Every other year, within one hundred twenty (120) days of the end of the fiscal year,

Lessee shall submit 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. Lessee shall also furnish the City upon request with unaudited quarterly financial statements within ninety (90) days of the end of each fiscal quarter.

**Section 7.10. Limitations on Indebtedness.** Lessee covenants that it shall not incur any Indebtedness, other than the Rent obligations under this Lease, in an amount, which together with all Outstanding Indebtedness, exceeds \$200,000, without the prior written consent of the City. The City agrees to decline or accept Lessee's request to incur Indebtedness within thirty (30) days of receipt of a written request from Lessee. The foregoing obligations shall not apply to applications to obtain historic tax credits or other such financing used to construct the Project, which are deemed permitted.

**Section 7.11. Prohibited Guaranties.** Lessee shall not guarantee the payment of Indebtedness of any other Person, except to the extent the Indebtedness guaranteed could be incurred as Indebtedness under Section 7.10.

**Section 7.12. Indemnity.**

(a) Except as otherwise provided herein, Lessee (the "Indemnifying Party") agrees to pay and shall indemnify, defend and hold the City, including any person at any time serving as a member, official, director, officer, employee, volunteer, attorney, agent or consultant of the City, (any such person is hereinafter referred to as an "Indemnified Party" and collectively as "Indemnified Parties") harmless from and against any and all claims, liabilities, fines, losses, damages, costs, expenses, including fees and/or costs reasonably incurred by the City's staff attorneys or outside attorneys, any fees and expenses incurred in enforcing this provision, litigation and court costs, amounts paid in settlement, and amounts paid to discharge defendants, suits and judgments of any kind whatsoever, whether in contract, tort or strict liability, brought, claimed or rendered against any Indemnified Party (collectively referred to as "Claims"), arising out of or in connection with:

(i) the modification of the Premises by Lessee after the Commencement Date;

(ii) any misrepresentation or misstatement or omission of fact regarding any warranty, representation or statement made or given by Lessee in connection with the transactions contemplated hereby;

(iii) any untrue statement or alleged untrue statement of any material fact relating to Lessee or the Premises or omission or alleged omission to state a material fact relating to Lessee or the Premises necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(iv) injury to or death of any person or damage to property in or upon the Premises;

(v) any violation by Lessee after the Commencement Date of any Applicable Law affecting the Premises or the ownership, occupation, use, possession, condition, operation or maintenance thereof;

(vi) Hazardous Substances in any way affecting the Premises, or any personal injury, including wrongful death, or property damage, real or personal, arising out of or related to such Hazardous Substances, or any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances,

(vii) any violation of laws, orders, regulations, requirements, or demands of government authorities, that are based upon or in any way related to such Hazardous Substances that are Released on the Premises by Lessee after the Commencement Date in violation of any Environmental Laws, including, without limitation, the costs and expenses of any clean-up or other remedial action or monitoring, attorney's fees, consultant fees, investigation and laboratory fees, court costs and litigation related to such Release by Lessee; or

(viii) any default by Lessee in the observance or performance of any of the terms, covenants or conditions of this Lease on Lessee's part to be observed or performed, whether or not (i) such Claims are caused in part by an Indemnified Party or (ii) such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of an Indemnified Party.

(b) Provided, however, that such indemnification of the Indemnified Parties by Lessee shall not include indemnification of any Indemnified Party for liabilities caused by the presence or existence of any Hazardous Substances affecting the Premises prior to the Commencement Date ("Pre-Existing Hazardous Substances"), so long as Lessee does not cause in whole or in part the Release of the Pre-Existing Hazardous Substances. With respect to the Release of any Pre-Existing Hazardous Substances not caused in whole or in part by Lessee, the City shall promptly effect the clean-up of any resulting Contamination in accordance with and as required by the provisions of all applicable Environmental Laws.

(c) Survival. The obligations of Lessee and City pursuant to this Section shall survive termination or expiration of this Lease.

## ARTICLE VIII

### TITLE TO PREMISES DURING TERM

**Section 8.01. Title to the Premises During Term.** So long as this Lease remains in effect, and subject to the easements and covenants recorded as referenced in Section 2.01 of this Lease, Lessee shall have leasehold title to the Premises or the applicable portions or items thereof, and any and all improvements, repairs, replacements or modifications thereto.

**Section 8.02. No Merger.** During the term of this Lease, no merger of title or interest shall occur or be deemed to occur.

## ARTICLE IX

### INSURANCE

**Section 9.01. Insurance.** Starting as of the Commencement Date, Lessee shall maintain in full force and effect at its own cost and expense the following insurance coverage. By requiring the insurance herein, the City does not represent that the coverage and limits will necessarily be adequate to protect the Lessee. It is understood and agreed by the Lessee that the required insurance coverage and limits shall not be deemed as a limitation on Lessee's liability under the indemnities granted to the City in this lease Agreement.

Insurance requirements are subject to review and revision every five (5) years to ensure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

Lessee agrees that upon the failure to insure as provided in this Lease, or to pay the premiums in the insurance, the City may, at its sole option, contract for the insurance and pay the premiums, in which case all sums expended by City for the insurance shall be considered Additional Rent under this Lease and shall be immediately repayable by Lessee.

(a) Minimum Scope & Limits of Insurance Coverage

(1) General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than three million dollars (\$3,000,000). The policy shall include coverage for premises, operations, products and completed operations and contractual liability for the term of the policy. The policy shall include a fire legal liability limit of \$300,000 per occurrence.

(2) Auto Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury of one or more persons, property damage and personal injury with limits of not less than a two million dollars (\$2,000,000) combined single limit. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Lessee.

(3) Worker's Compensation Insurance is required with statutory limits including a waiver of subrogation by endorsement in favor of the City and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000).

(4) Builders' Risk Insurance is required during the construction of the Premises to insure full replacement of the Premises in the event of damage or destruction prior to completion thereof. Not later than issuance of the Notice to Proceed and prior to start of any work, Lessee shall furnish City with a certificate of insurance showing compliance with this section and naming the City as an additional named insured and loss payee. The certificate shall include the issue date, effective date and expiration date and must be maintained without interruption during the construction phase of the Project. The builder's risk coverage will be written on an all risk or equivalent policy form in the amount of the initial contract sum, and cost of materials supplied or installed by others, comprising the total value for the entire Project on a replacement cost basis.

(5) All Risk Property Insurance during the term of the lease including coverage for special perils is required for the buildings and all improvements, fixtures, contents, and equipment. The property insurance shall be on an "all risk" or equivalent property form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal. The property insurance shall also include comprehensive boiler and machinery coverage including coverage for installation and testing. This property insurance will cover all buildings on the premises, including the remodel of the existing structure, and any new buildings constructed. The property insurance must be for replacement value and name the City as loss payee. Notwithstanding the foregoing, City may, at its sole option, elect to carry all risk property insurance during all or part of the term of this Lease in lieu of coverage by Lessee.

(b) Additional Insured Coverage

(1) Commercial General Liability Insurance. The City, its officers, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of the Lessee including products and completed operations of Lessee and premises owned, leased or used by Lessee.

(2) Auto Liability Insurance. The City, its officers, employees and volunteers shall be covered by policy terms or endorsement as additional insureds

as respects auto liability.

(c) Other Insurance Provisions

The policies are to contain or be endorsed to contain the following provisions.

(1) Lessee's insurance shall be primary as respects the City, its officers, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of the Lessee's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the other Party, its officers, employees and volunteers.

(3) Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

(4) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy terms or language.

(d) Acceptability of Insurers

Insurance shall be placed with insurers with a Bests' rating of not less than A-:VII. Self insured retentions, policy terms or other variations that do not comply with the requirements of Section 9 must be declared and approved by the City's Risk Management Division.

(e) Verification of Coverage

(1) Lessee shall furnish the City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City's representative. Copies of policies shall be delivered to the either Party on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The City may delay the Commencement Date of this Lease and/or deny entry to the Premises by Lessee if the certificates of insurance and endorsements required have not been provided prior to the Commencement Date of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by Lessee of this Lease.

(f) Contractors

Lessee shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections (a), (c) and (d) above with the exception of (a)(5).

## ARTICLE X

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

**Section 10.01. Damage and Destruction.** If the Premises are destroyed (in whole or in part) or are damaged by fire or other casualty, the Net Proceeds of any insurance claim (other than all risk property insurance insuring personal property of Lessee pursuant to Section 9.01(a)(5) of this Lease) will be the property of the City.

**Section 10.02. Eminent Domain.** If the Premises shall be taken (in whole or in part) under the power of eminent domain or sold to a Governmental Authority threatening to exercise the power of eminent domain, the Net Proceeds will be the property of the City.

**Section 10.03. Prosecution of Claims for Net Proceeds.** The City or Lessee, as applicable, shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims for Net Proceeds.

**Section 10.04. Use of Net Proceeds.** City agrees that any Net Proceeds shall be deposited and maintained in a segregated account and shall be used first as needed to contain any damaged areas and make the Premises safe, and then for the purpose, to the fullest extent economically and practically feasible, of either restoring the Premises to its original condition, normal wear and tear accepted, or acquiring a comparable replacement Premises, subject to the reasonable approval of Lessee. City shall proceed promptly and diligently with efforts to contain any damage and restore the Premises in a timely manner, if reasonably feasible to do so and if the costs thereof will not exceed the Net Proceeds available to City therefor. During any period of repair and reconstruction, Lessee shall have the option to either continue paying the Base Rental Payments, as and when due, or to extend the term of such Base Rental Payments, up to but not longer than the Term of this Lease, for the additional period, commencing after completion of such repairs or reconstruction required to pay the Base Rental in full.

**Section 10.05. Proportionate Distribution of Net Proceeds.** If, within 180 days of the damage, destruction or taking of the Premises, the City and Lessee are unable to agree upon either a plan for restoring the Premises or for acquiring comparable facilities, then either Party may thereafter terminate this Lease upon written notice to the other Party. Upon any such termination, the Net Proceeds shall be paid to the Parties in the following order: (i) first, to the City to repay any costs then incurred to contain any damage and to restore or plan for the restoration of the Premises, then, (ii) in consideration of the funds invested by Lessee to construct the improvements on the Premises, any remaining Net Proceeds shall be distributed to Lessee. In no event shall the City be obligated to distribute to Lessee funds in excess of the then remaining amount of Net Proceeds.

## ARTICLE XI

### DISCLAIMER OF WARRANTIES; USE OF THE PREMISES

Section 11.01. Disclaimer of Warranties. THE CITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PREMISES OR ANY PORTION OR ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT THERETO. LESSEE ACKNOWLEDGES THAT THE CITY IS NOT A MANUFACTURER OR DEALER OF THE IMPROVEMENTS ON THE PREMISES, THAT LESSEE LEASES THE PREMISES AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY LESSEE. IN NO EVENT SHALL THE CITY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS LEASE FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR USE OF THE PREMISES BY LESSEE OR ANY ITEM OR PRODUCTS OR SERVICES PROVIDED FOR IN THIS LEASE.

Section 11.02. Use of the Premises. Lessee may occupy and use the Premises for the Science Center and related uses, including a planetarium, ancillary retail store, café, educational center, restaurant, supporting parking and office uses and any and all other uses ancillary, supportive or related to the operation of the Science Center. Lessee shall not acquire, construct, install, use, operate or maintain the Premises or any portion or item thereof in violation of any Applicable Law or in a manner contrary to that contemplated by this Lease. Lessee shall obtain and provide all permits and licenses, if any, necessary for the planning, design, engineering, testing, acquisition, construction, installation and operation of the Premises. Lessee shall pay all sewer and water connection and impact fees and charges required for Lessee's development and use of the Premises. In addition, Lessee agrees to comply in all respects including, without limitation, with respect to the use, maintenance and operation of the Premises and each portion or item thereof with all laws of the jurisdictions in which its operations involving any portion or item of the Premises may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any portion or item of the Premises; provided, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the City, materially and adversely affect the estate of the City in and to any portion or item of the Premises or its interest or rights under this Lease.

#### Section 11.03. Prohibited Use of Premises.

(a) Lessee shall not to use the Premises for any unlawful purpose, any use contrary to Applicable Laws, or any use that is not allowed under Section 11.02.

(b) Lessee shall not commit any acts on the Premises, nor use the Premises in any manner that will substantially increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. Lessee shall, at Lessee's own cost and expense, comply with all requirements of City's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises and the improvements on the Premises.

(c) Lessee shall not commit any waste or any public or private nuisance upon the Premises.

## ARTICLE XII

### DESIGN, CONSTRUCTION AND OWNERSHIP OF THE PROJECT

**Section 12.01.** Design, Construction and Installation of the Project. Lessee has agreed to design, construct and install the Project on the Premises. The design of the Project shall be approved by both Parties, each in its reasonable discretion, and based on the preliminary designs and construction drawings prepared and approved by both Parties as of the date of execution of this Lease. The construction of the Project shall be consistent with the approved plans. The Parties agree that the City shall be under no liability of any kind or character whatsoever for any consequential harm to Lessee from any delay in the completion or the failure to construct the Project which is due to the failure of Lessee to provide funding for the Project.

**Section 12.02.** Funding and Completion of the Project by Lessee. Lessee agrees to fund the cost to complete the Science Center. The amount to be funded by Lessee is estimated to be approximately fifty-million dollars. Lessee may develop and construct the Project in the following three phases:

(a) Phase 1: Phase 1 of the Science Center, as shown on Exhibit F, consists of the Earth, Science and Space Center ("ESS"), for which Lessee has obtained \$7 million in grant funding from the State of California Department of Parks, through the Proposition 84, Nature Education Facilities Grant Program. Phase 1 must be completed, as evidenced by a certificate of occupancy issued by the City for the improvements, by June 30, 2017, except as may be extended by the State with written concurrence by the City;

(b) Phase 2: Phase 2 of the Science Center, also shown on Exhibit F, consists of the rehabilitation of the Historic Power Station building and construction of the parking structure. Phase 2 must be completed, as evidenced by a certificate of occupancy issued by the City for the improvements, by June 30, 2025;

(c) Phase 3: Phase 3 of the Science Center, also shown on Exhibit F, consists of the construction of the Restaurant and Education Center. Phase 3 must be

completed, as evidenced by a certificate of occupancy issued by the City for the improvements, by June 30, 2030.

Failure of Lessee to complete Phase 2 or Phase 3 as required above will not be deemed an Event of Default; however, if Lessee completes Phase 1, but not Phase 2 or Phase 3, as required, then the City will have the right to terminate this Lease as to Phase 2 or Phase 3 or both Phase 2 and Phase 3 by written notice to Lessee upon such failure. In the event City exercises such right, the Parties shall modify this Lease to reduce the Premises to the area represented by Phase 1, and execute a mutually acceptable joint access and parking agreement (over portions of Phase 2) permitting Lessee to use and operate Phase 1 of the Science Center for the purposes intended by the Parties.

**Section 12.03. Ownership of Completed Project.** Upon final completion and acceptance by the City, the Premises, and any other permanent improvements on the Premises, shall become the property of the City without reimbursement to Lessee.

### ARTICLE XIII

#### DEFAULT AND REMEDIES

**Section 13.01. Events of Default Defined.** The following shall be "Events of Default" hereunder and the term "Event of Default" shall mean, whenever it is used herein, any one or more of the following events:

(a) The failure by Lessee to pay any amount in full when it is due under this Lease ;

(b) The failure by Lessee to perform any obligation under this Lease, which by its nature Lessee has no capacity to cure;

(c) The failure by Lessee to perform any other obligation under this Lease, if the failure has continued for a period of thirty (30) days after the City demands in writing that Lessee cure the failure. If, however, by its nature the failure cannot be cured within thirty (30) days, Lessee may have a longer period as is necessary to cure the failure, but this is conditioned upon Lessee's promptly commencing to cure within the thirty (30) day period and thereafter diligently completing the cure. Lessee shall indemnify and defend the City against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(d) Any of the following: A general assignment by Lessee for the benefit of Lessee's creditors; any voluntary filing, petition, or application by Lessee under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Lessee without the City's prior written

(aa) 26

(bb) *Lease by and between City of Sacramento and the Powerhouse Science Center*

consent; or the dispossession of Lessee from the Premises (other than by the City) by process of law or otherwise;

(e) The appointment of a trustee or receiver to take possession of all or substantially all of Lessee's assets; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within sixty (60) days; or the involuntary filing against Lessee or any of its Affiliates, if it has any Affiliates, or

(i) a petition to have Lessee or any of its Affiliates, if it has any Affiliates, declared bankrupt, or

(ii) a petition for reorganization or arrangement of Lessee under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

(f) The abandonment of the Premises by Lessee.

(g) Any representation or warranty made by Lessee in Section 2.02 of this Lease is determined to have been false or misleading in any material respect at the time made.

(h) Failure to complete Phase 1, as evidenced by a certificate of occupancy issued by the City for the improvements, by June 30, 2017.

(i) Failure to use the Premises for the purposes identified in Section 11.02 for 6 consecutive months after Phase 1 is opened for public use.

An "Event of Sublessee Default" shall mean any of the foregoing events occurring with respect to a Sublessee of Lessee.

**Section 13.02. Remedies on Event of Default.** Upon the occurrence of an Event of Default or Event of Sublease Default, the City, in addition to any other rights or remedies available to the City at law or in equity, shall have the right to:

(a) Terminate this Lease and all rights of Lessee under this Lease upon an Event of Default, by or terminate or require Lessee to terminate the sublease and all rights of the Defaulting Sublessee under the sublease upon an Event of Sublessee Default, by giving Lessee and Sublessee, as applicable written notice that this Lease or the applicable sublease is terminated, in which case the City may recover from Lessee or Sublessee the aggregate sum of;

(i) the worth at the time of award of any unpaid rent that had been earned at the time of termination;

(ii) the worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award

exceeds (B) the amount of the rental loss, if any, as Lessee or Sublessee affirmatively proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, as Lessee affirmatively proves could be reasonably avoided;

(iv) any other amount necessary to compensate the City for all the detriment caused by Lessee's or Sublessee's failure to perform its obligations or that, in the ordinary course of things, would be likely to result from its failure; and

(v) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.

As used in clauses (i) and (ii) of Section 13(a), the worth at the time of award is computed by allowing interest at the Interest Rate per annum. As used in clause (iii) of Section 13(a), the worth at the time of award is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). As used in this Section, the term rent shall include Base Rental Payments, Additional Rental Payments, and any other payments required by Lessee under this Lease or by the Defaulting Sublessee under its sublease with Lessee.

(b) Continue this Lease or the applicable sublease, and from time to time, without terminating this Lease or the applicable sublease, either: (i) recover all rent and other amounts payable as they become due; or (ii) relet the Premises, or subleased portion any part on behalf of Lessee or Sublessee on terms and at the rent that the City, in the City's sole discretion, may deem advisable, all with the right to make reasonable alterations and repairs to the Premises, at Lessee's or Sublessee's cost, and apply the proceeds of reletting to the rent and other amounts payable by Lessee or Sublessee. To the extent that the rent and other amounts payable by Lessee or Sublessee under this Lease or applicable sublease exceed the amount of the proceeds from reletting, the City may recover the excess from Lessee or Sublessee as and when due.

(c) Upon the occurrence of an Event of Default or Event of Sublessee Default, the City shall also have the right, with or without terminating this Lease or sublease, to re-enter the Premises or subleased portion and remove all persons and property from the Premises or subleased portion. The City may store the property removed from the Premises or subleased portion in a public warehouse or elsewhere at the expense and for the account of Lessee or Sublessee.

(d) None of the following remedial actions, alone or in combination, shall be construed as an election by the City to terminate this Lease or sublease unless the City has in fact given Lessee or Sublessee written notice that this Lease or sublease is terminated or unless a court of competent jurisdiction decrees termination of this Lease or sublease: any act by the City to maintain or preserve the Premises or

subleased portion; any efforts by the City to relet the Premises; any re-entry, or repossession or reletting of the Premises or subleased portion; or any re-entry, repossession, or reletting of the Premises by the City pursuant to this Section. If the City takes any of the previous remedial actions without terminating this Lease or sublease the City may nevertheless at any later time terminate this Lease by written notice to Lessee or Sublessee.

(e) If the City relets the Premises or subleased portion, the City shall apply the revenue from the reletting as follows: first, to the payment of any indebtedness other than rent due from Lessee or Sublessee to the City; second, to the payment of any cost of reletting, including without limitation finder's fees and leasing commissions; third, to the payment of the cost of any maintenance and repairs to the Premises or subleased portion; and fourth, to the payment of rent and other amounts due and unpaid under this Lease or sublease. If applicable, the City may hold and apply the residue, if any, to payment of future amounts payable under this Lease or sublease as the same may become due, or shall return the balance to Lessee or Sublessee. If the revenue from reletting during any month, after application pursuant to the previous provisions, is less than the sum of (i) the City's expenditures for the Premises or subleased portion during that month and (ii) the amounts due from Lessee or Sublessee during that month, Lessee or Sublessee, as applicable, shall pay the deficiency to the City immediately upon demand, provided same is consistent with the remedy selected by the City.

(f) After the occurrence of an Event of Default, the City, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Lessee or Sublessee. However, the City must by prior notice first allow Lessee or Sublessee a reasonable opportunity to cure, except in cases of emergency, where the City may proceed without prior notice to Lessee or Sublessee. Lessee or Sublessee shall, upon demand, immediately reimburse the City for all fees and costs, including costs of settlements, defense, court costs, and reasonable attorney fees that the City may incur whether by the City's staff attorneys or outside attorneys in the course of any cure.

(g) No security or guaranty for the performance of Lessee's or Sublessee's obligations that the City may now or later hold shall in any way constitute a bar or defense to any action initiated by the City for unlawful detainer or for the recovery of the Premises or subleased portion, for enforcement of any obligation of Lessee or Sublessee, or for the recovery of damages caused by an Event of Default or Event of Sublessee Default.

(h) Except where this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that either Party may have otherwise agreed in writing, no waiver by a Party of any violation or nonperformance by the other Party of any obligations, agreements, or covenants under this Lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or

any other covenant, agreement, or obligation, nor shall any forbearance by either Party to exercise a remedy for any violation or nonperformance by the other Party be deemed a waiver by that Party of the rights or remedies with respect to that violation or nonperformance.

(i) Indemnification. The exercise of the City of any one or more of the remedies set forth in this Section shall not affect the rights of the City or the obligations of Lessee under the indemnity provisions set forth in Section 7.12 hereof.

**Section 13.03. No Remedy Exclusive**. No remedy herein conferred upon or reserved to the City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default or Event of Sublessee Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this article it shall not be necessary to give any notice, other than such notice as may be required in this article or by law.

**Section 13.04. Agreement to Pay Attorneys' Fees and Expenses**. If either Party should default under any of the provisions of this Lease and the non-defaulting Party should employ or use attorneys, including the City's staff attorneys, or incur other expenses for the collection of money or the enforcement or performance or observance of any obligation or agreement under this Lease on the part of the defaulting Party, then the defaulting Party agrees that it will on demand therefore pay to the non-defaulting Party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting Party.

**Section 13.05. No Additional Waiver Implied By One Waiver**. If any agreement contained herein should be breached by either Party and thereafter waived by the other Party, then such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 13.06. Notice of Default**. Lessee agrees that, as soon as is practicable, and in any event within ten (10) days after such event, Lessee will furnish the City notice of any event which is an Event of Default under this Lease, or which with the giving of notice or the passage of time or both could constitute an Event of Default under this Lease, which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Lessee proposes to take with respect thereto. Each Sublessee of the Premises shall include the provisions of this Section 13.06 to require each Sublessee to provide City notice of any Event of Sublessee Default in the same manner as required hereunder of Lessee for an Event of Default.

## ARTICLE XIV

### MISCELLANEOUS

**Section 14.01. Notices.** All notices herein required (i) shall be given not later than the date required hereunder, (ii) shall be signed by an appropriate officer or other representative, (iii) shall be addressed to the applicable Party at its Notice Delivery Address and (iv) shall be considered as properly given (A) if delivered in person, (B) if sent prepaid by a nationally recognized overnight delivery service, (C) if mailed by first class United States mail, postage prepaid or (D) if sent by facsimile copy and receipt thereof confirmed. Notice so given shall be effective upon receipt by the addressee, provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

The City may by notice given to all of the Notice Delivery Addresses, may designate a different Notice Delivery Address to which subsequent notices, certificates or other communications will be sent.

**Section 14.02. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the City and Lessee and their respective successors and assigns.

**Section 14.03. Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

**Section 14.04. Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 14.05. Applicable Law; Venue.** This Lease shall be governed by and construed in accordance with the laws of the State. Any action or proceeding to enforce or interpret any provision in this Lease shall be brought, commenced or prosecuted in Sacramento County, California.

**Section 14.06. City Representatives.** Whenever under the provisions hereof the approval or consent of the City is required, or the City is required to take some action at the request of Lessee, such approval or consent or such request shall be given for the City by its City Manager or the City Manager's designee and each Party shall be authorized to rely upon any such approval or request.

**Section 14.07. Assignment by the City.** Lessee agrees to make all payments to the City or their assignees, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Lease or otherwise) that Lessee may from time to time have against the City. Lessee agrees to execute all documents, including notices of assignment or financing statements which may be

reasonably requested by the City, to protect its interests in the Premises and in this Lease during the term of this Lease.

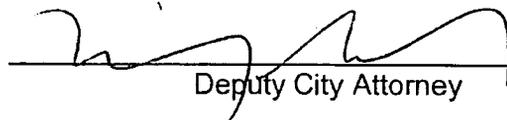
**Section 14.08. Special Provisions.** The Special Provisions set forth in Exhibit E are part of this Lease. In the event of any conflict between the Special Provisions and any other terms or conditions of this Lease, the Special Provisions shall control over said terms or conditions.

IN WITNESS WHEREOF, the City has executed this Lease in its respective names and Lessee has caused this Lease to be executed in its name all as of the date first above written.

CITY OF SACRAMENTO

By \_\_\_\_\_  
Authorized Representative

Approved as to Form:

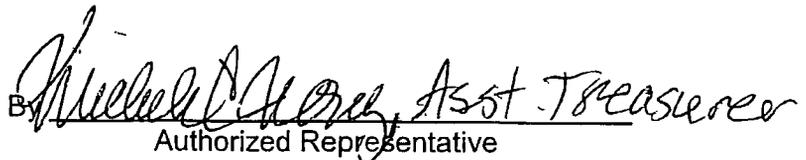
  
Deputy City Attorney

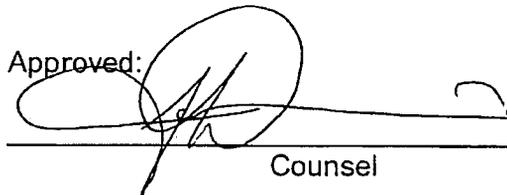
Attest:

City Clerk

POWERHOUSE SCIENCE CENTER

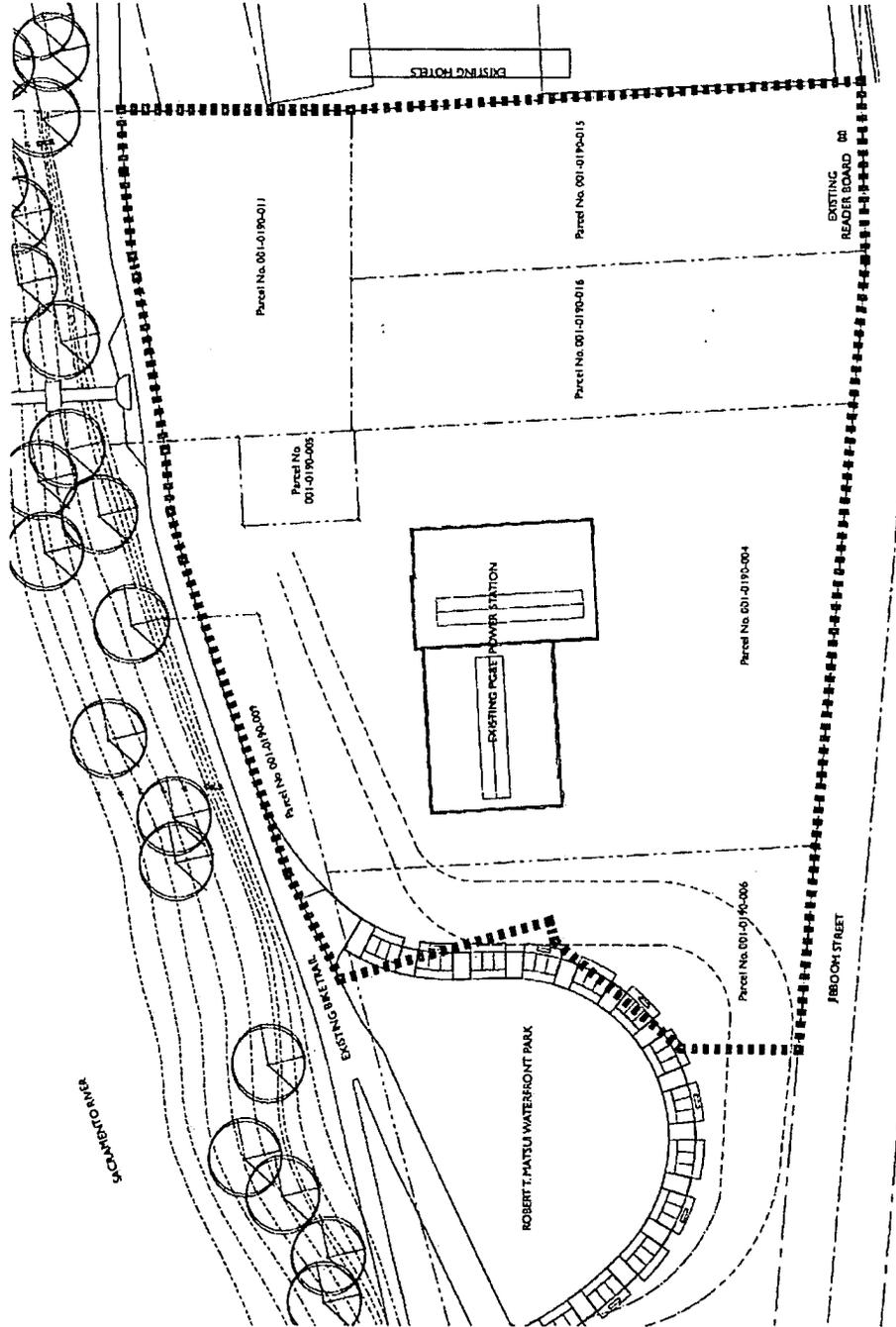
By   
Authorized Representative

By   
Authorized Representative

Approved:   
Counsel

# EXHIBIT A

## JIBBOOM STREET POWER STATION SITE PARCEL MAP



Powerhouse Science Center  
Exhibit A



## EXHIBIT B

### MASTER LIST OF DEFINITIONS

**“Additional Rental Payments”** means the payments so designated and required to be paid by Lessee pursuant to Section 6.02 of the Lease, including any prepayment thereof pursuant to Article VI of the Lease.

**“Affiliate”** means, with respect to any Person: (1) each Person that, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, one percent (1%) or more of any class of equity securities of such Person; (2) each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person; or (3) each of such Person’s officers, directors, joint venturers, managers and partners. For the purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

**“Applicable Laws”** means with reference to any Person, all laws, statutes, ordinances, municipal, state, and federal authorities and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or Governmental Authority, and all rules, regulations, orders, written interpretations, directives, licenses and permits of any Governmental Authority applicable to such Person or its property or in respect of its operations.

**“Base Rental Payments”** means all rental payments required to be paid by Lessee to the City pursuant to Section 6.01 of the Lease.

**“Business Day”** means any day other than: a Saturday or a Sunday or a legal holiday.

**“Code”** means the Internal Revenue Code of 1986 and the regulations issued thereunder, or any successor to the Internal Revenue Code of 1986.

**“Capital Leases”** means any and all lease obligations that, in accordance with GAAP, are required to be capitalized on the books of Lessee.

**“Capital Reserve Account”** means the Capital Reserve Account as defined in Section 7.04(e) of the Lease.

**“Commencement Date”** means the Commencement Date as defined in Section 4.01 of the Lease.

**“Contamination” or “Release”** means the presence of any Hazardous Substances in the soil or groundwater in violation of any Environmental Laws or the release of any Hazardous Substances into the environment.

**“Contractual Obligation”** of any Person means, 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 such Person is a party or by which such Person or any of its property is bound.

**“Counsel”** means an attorney at law or a firm of attorneys duly admitted to the practice of law in any state of the United States of America.

**“Environmental Documents”** means those documents related to the environmental remediation on the Premises, including but not limited to the Covenant to Restrict Use of Property Environmental Restriction dated July 1, 1998, the Remedial Action Plan dated April 13, 1999, the Operations and Maintenance Plan dated June 1998, and the Operations and Maintenance Agreement dated April 6, 2010.

**“Environmental Laws”** means, but shall not be limited to: the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety §§ 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code §§ 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; and all rules and regulations under each of the foregoing; and all other governmental rules relating to the protection of human health and the environment including all governmental rules pertaining to the reporting, licensing, permitting, transportation, storage, disposal, investigation or remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater, land, or other environments or relating to the manufacture, processing, distribution, use, generation, control, treatment, storage, disposal, transportation, handling, removal or recovery of Hazardous Substances.

**“Event of Default”** means: with respect to the Lease, an event of default under the Lease, as defined in Section 13.01 of the Lease.

**“Event of Sublessee Default”** means an Event of Default, as defined in Section 13.01 of this Lease.

**"Fiscal Year"** means the period beginning on July 1 of each year and ending on the succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year of Lessee.

**"Formation Documents"** means the articles, bylaws, operating agreement or any other organizational or formation document related to Lessee.

**"GAAP"** means generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

**"Governmental Authority"** means any domestic or foreign national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the Federal Deposit Insurance Company, the Federal Reserve Board, the Comptroller of the Currency, any central bank or any comparable Person, but excluding the City or any political subdivision thereof.

**"Governmental Charges"** means, with respect to any Person, all levies, assessments, fees, claims or other charges imposed by any Governmental Authority upon such Person or any of its property or otherwise payable by such Person.

**"Hazardous Substances"** means any substance: (1) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action or policy; or (2) which is or becomes defined as a "hazardous waste" or "hazardous substance" or "pollutant" or "contaminant" under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any Governmental Authority; or (4) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the Premises or to the health or safety of Persons on or about the Premises; or (5) which contains volatile organic compounds such as gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or (7) radon gas.

**"Indebtedness"** means all obligations for borrowed money, installment sales and Capital Leases, incurred or assumed by Lessee.

**"Indemnified Party"** shall have the meaning given to such term in Section 7.12 of the Lease.

**“Independent Accountant”** means an independent certified public accountant acceptable to the City of Sacramento.

**“Insolvent”** means:

(1) having, at a fair valuation, total liabilities (including contingent, subordinated, unmatured, unliquidated, disputed, legal, equitable, secured or unsecured liabilities) that exceed total assets;

(2) generally not paying debts as they become due;

(3) based on current projections that are themselves based on underlying assumptions providing a reasonable basis for the projections and reflecting present circumstances and the most likely course of action for the period projected, having insufficient cash flow to pay debts as they mature;

(4) having unreasonably small capital with which to engage in anticipated business; or

(5) being “insolvent” as defined under any applicable federal or state law.

For purposes of this definition, the “fair valuation” of the assets of any Person shall be determined on the basis of the amount which may be realized within a reasonable time, either through collection or sale of such assets at the regular market value, conceiving the latter as the amount which could be obtained for the property in question within such period by a capable and diligent seller from an interested buyer who is willing to purchase under ordinary selling conditions.

**“Interest Rate”** means the prime rate as reported by the Wall Street Journal's bank survey plus 2%. If the Wall Street Journal stops reporting the prime rate, then the term Interest Rate means an index agreed upon by the Parties. If the Parties do not agree upon an index, then the term Interest Rate means the then current statutory interest rate applicable to money judgments specified in California Code of Civil Procedure section 685.010.

**“Lessee”** means the Powerhouse Science Center, a California nonprofit corporation.

**“Lessee’s Knowledge”** means the actual knowledge of the president of Lessee, after a reasonable inquiry, of the matters related thereto.

**“Lien”** means, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on such property or the income therefrom, including, without limitation, the interest of a vendor or lessor under a conditional sale agreement, Capital Lease or other title retention agreement, or any agreement to provide any of the foregoing, or the filing of any financing statement

or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction.

**"Net Proceeds"** means any insurance proceeds or condemnation or title insurance award, paid with respect to the Premises, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

**"Notice Delivery Address"** means:

If to Lessee:

Powerhouse Science Center  
3615 Auburn Boulevard  
Sacramento, CA 95821  
Attn: Executive Director

If to the City:

City of Sacramento  
Economic Development Department  
915 I Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814  
Attn: Economic Development Director

**"Permitted Encumbrances"** means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) the Lease; (iii) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law incurred in the ordinary course of business and which do not relate to any dispute regarding payment due; and (iv) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date hereof and which Lessee certifies in writing will not impair the use of the Project or the Premises by Lessee.

**"Person"** means and includes an individual, a partnership, a corporation (including a business trust), a joint stock company, an unincorporated association, a limited liability company, a joint venture, a trust or other entity or a Governmental Authority.

**"Phase 1"** means the construction of the Earth, Sciences, and Space Center building, as shown on Exhibit F.

**"Phase 2"** means the renovation of the former PG&E power station and the construction of the parking structure, as shown on Exhibit F.

**"Phase 3"** means the construction of the Education and Restaurant Center, as shown on Exhibit F.

**“Premises”** means, collectively, the real property, buildings, appurtenances, and improvements, and all incidentals located at 400 Jibboom Street, identified as assessor’s parcel numbers 001-0190-015, -016, and portions of -004, -006, -009, and -011, except for the City-owned electronic billboard and the 20 foot by 50 foot portion of the parcel identified as assessor’s parcel number 001-0190-015 on which the billboard is located, all as shown on Exhibit A. Additionally, it will include parcel number 001-0190-005 if the City becomes the owner of that parcel before or during the Term.

**“Project”** means the design, construction, and installation of the Science Center on the Premises as shown on Exhibit A. The Project may be completed in up to three phases, identified as Phase 1, Phase 2, and Phase 3, as shown on Exhibit F.

**“Rent” or “Rental Payments”** means the Base Rental Payments and the Additional Rental Payments and any other amounts, charges or sums payable by Lessee pursuant to the Lease.

**“Science Center”** means the Earth, Sciences, and Space Center building, the Science Center, which will be located in the former PG&E power station, the Planetarium, the Education and Restaurant Center, a parking structure, and all other improvements, all of which are to be developed on the Premises by Lessee.

**“State”** means the State of California.

**“Term”** means the Term as defined in Section 4.01 of the Lease.

**“Termination Date”** means the date on which the Lease ends or terminates as provided under the Lease or as otherwise provided by law.

**EXHIBIT C**

**CAPITAL RESERVE ACCOUNT PAYMENT SCHEDULE**

Lessee shall make monthly payments in the amount of two thousand dollars (\$2,000.00) into the Capital Reserve Account.

**EXHIBIT D**

**Form of Memorandum of Ground Lease**

**Recording Requested By and  
When Recorded Mail To:**

---

*(Space above this line for Recorder's use)*

**Memorandum of Ground Lease**

This Memorandum of Ground Lease is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Sacramento ("Ground Lessor") and Powerhouse Science Center ("Ground Lessee").

**Terms and Premises.** Ground Lessor leases to Ground Lessee, and Ground Lessee leases from Ground Lessor, that certain Premises consisting of land and improvements thereon in the City of Sacramento as legally described on *Schedule A* attached hereto, in accordance with the provisions of that certain Ground Lease, dated \_\_\_\_\_, 2011 between the Parties (the "Ground Lease"). The provisions of the Ground Lease are incorporated herein.

**Term.** The initial term of the Ground Lease is for fifty-five (55) years, commencing on \_\_\_\_\_, 2011.

**Purpose of Memorandum of Ground Lease.** This Memorandum is prepared solely for purposes of notice and recordation, and in no way modifies the provisions of the Ground Lease.

***Remainder of Page Intentionally Blank***

**EXHIBIT E**  
**SPECIAL PROVISIONS**

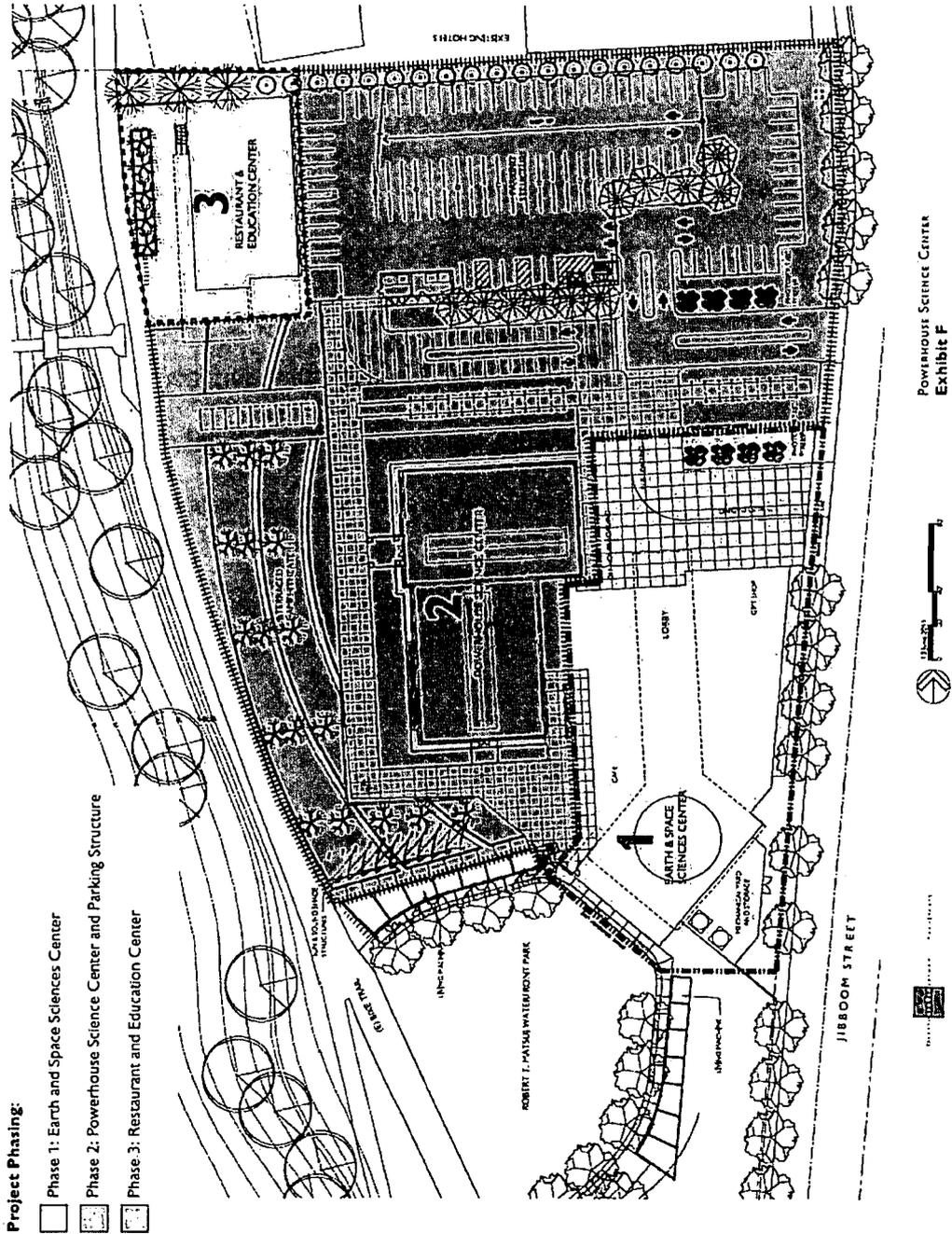
1. Art in Public Places Requirement. The Project is considered an "eligible construction project", subject to the art in public places requirements of Chapter 2.84 of the Sacramento City Code.
  
2. Construction Provisions.
  - (a) The provisions of Lessee's construction contract(s) and other construction specifications and documents are subject to City review and approval, and must include: (i) all applicable laws and regulations, including without limitation the payment of prevailing wages and anti-discrimination provisions; and (ii) bonding, insurance and indemnity provisions, including hazardous materials indemnities as may be required by the City.
  
  - (b) Lessee is solely and completely responsible for furnishing, installing, and maintaining all warning signs and devices necessary to safeguard the general public and Project work and for providing for the proper and safe routing of vehicular and pedestrian traffic during the performance of the work. This requirement is continuous and not limited to normal working hours.
  
  - (c) Lessee shall ensure that any materials stored on the Premises are placed so as to minimize any hazard to the public and so that no damage to public property will result. Lessee, its contractors, subcontractors, agents, or volunteers shall constantly preserve public safety.
  
  - (d) Lessee shall, upon completion of the construction of the Project, submit to the Director of the Economic Development Department or his designee as-built plans and specifications.
  
  - (e) Lessee shall, prior to the termination of the Lease, transfer to the City all warranties for improvements placed or constructed on the Premises that are in effect at that time and that continue beyond the Term.
  
3. Compliance with Laws. Science Center is responsible for compliance with all applicable federal, state, and local laws, ordinances, regulations and requirements, including but not limited to compliance with the American's with Disabilities Act, California Environmental Quality Act, historic preservation requirements, and Occupational Safety and Health Administration requirements.

4. Business Plan. Prior to receiving the Notice to Proceed on construction, the Science Center shall submit an updated Business Plan to the Economic Development Director or his designee for his review and approval that will include the following:
- (a) Developer shall include in its Business Plan, without limitation, the following:
  - (b) 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;
  - (c) Project conceptual design, including site plans, elevations and typical floor plates in keeping with all applicable planning requirements and design guidelines of the City;
  - (d) refined economic estimate of construction costs for Project designs;
  - (e) detailed fundraising plan and financing plan;
  - (f) 10-year cash flow analysis for Project operations;
  - (g) 5 year projected operating budget with revenues and expenses commencing on opening the Center
  - (h) location of parking spaces and the physical manner by which those spaces will be operated;
  - (i) description of restaurant's financial and operational relationship with the Project; and,
  - (j) evidence of ability to satisfy City insurance and indemnity requirements.

While the Science Center is under construction it shall provide an update to the Business Plan as part of the annual submission of Financial Reports required in Section 7.09.

# EXHIBIT F

## POWERHOUSE SCIENCE CENTER PHASING



POWERHOUSE SCIENCE CENTER  
Exhibit F



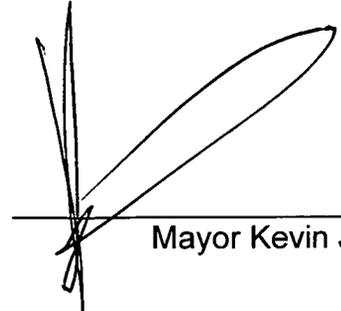
Adopted by the City of Sacramento City Council on June 21, 2011 by the following vote:

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

Noes: None.

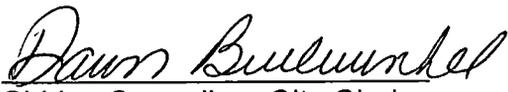
Abstain: None.

Absent: None.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:

*for*   
\_\_\_\_\_  
Shirley Concolino, City Clerk