



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 9/11/2012

Report Type: Consent

Title: Agreements: Powerhouse Science Center Project

Report ID: 2012-00702

Location: District 3; 400 Jibboom Street

Recommendation: Pass a Resolution 1) authorizing the City Manager or his designee to execute a Brownfields Subgrant Agreement with the California Department of Toxic Substances Control for the Powerhouse Science Center Project; 2) authorizing the City Manager or his designee to execute the Brownfields Cost Sharing Agreement with the Powerhouse Science Center; and 3) establishing revenue and expenditure budgets within the Operating Grant Fund (Fund 2702) for \$150,000 in G18337000.

Contact: Rachel Hazlewood, Senior Project Manager, (916) 808-8645, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Downtown Development

Dept ID:

Attachments:

- 1-Description/Analysis
- 2-Resolution
- 3-PowerhouseSciCenterDTSCSubgrant
- 4-Powerhouse Grant Match Agreement

City Attorney Review

Approved as to Form
Michael Sparks
9/5/2012 9:33:40 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
John Colville
8/17/2012 2:20:15 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 8/30/2012 4:59:58 PM

Description/Analysis

Issue: Staff is seeking approval to accept a sub-grant from the California Department of Toxic Substances Control (DTSC) in the amount of \$150,000 for the cleanup of the historic PG&E building located at 400 Jibboom Street (Site). Also attached for approval is a Cost Share Agreement committing the Powerhouse Science Center (Science Center) to provide the required local match for this grant as well as for a grant previously awarded to the City by the Environmental Protection Agency (EPA) for the same purpose.

In June 2011, the City entered into a 55 year lease with the Science Center to construct and operate a state-of-the art science, space and technology museum at the Site. Current Science Center efforts are focused on obtaining regulatory approvals, cleanup of the historic building and fundraising.

To accommodate the planned basement in the rehabilitated building, the building interior will require excavation of dirt contaminated with petroleum and heavy metals. The total cost to excavate the soil, shore up the impacted walls, test for contaminants and dispose of the contaminated soil is estimated at \$420,000.

In order to assist in funding this effort, the City applied for and was awarded in September 2010 a \$200,000 grant from the federal Environmental Protection Agency (EPA) for cleanup of the building interior. The grant was accepted by the City on October 19, 2010 in Resolution 2010-595 and a revenue and expenditure budget was established (G18337000). A local match of \$40,000 is required for the EPA grant, of which the City is providing in-kind services in the amount of \$10,000.

To further fund the cleanup project, the City applied for and was awarded \$150,000 in additional grant funds from DTSC (Exhibit A). Local match of \$30,000 is required by this grant. The Science Center has agreed to provide the necessary match for both the EPA and DTSC grants up to \$60,000 as detailed in the attached Cost Share Agreement (Exhibit B). The combined total in grants and match will be sufficient to cover the cost of the cleanup project.

All construction activities at the site will be under the oversight and with the approval of DTSC. The Site was environmentally cleared by DTSC in 1998 and is subject to a land use covenant and an operations and maintenance agreement. The City and Science Center have met with DTSC regarding construction plans and are in the process of obtaining DTSC regulatory approval for the management and disposal of the contaminated soil displaced by this project.

Policy Considerations: The reuse of the former PG&E Power Station property as a science center is consistent with the 2030 General Plan, the River District Specific Plan and the Sacramento Riverfront Master Plan.

Economic Impacts: None at this time.

Environmental Considerations: The project is subject to review under the California Environmental Quality Act (“CEQA”). On June 1, 2010, City Council adopted the Mitigated Negative Declaration and Mitigation Monitoring Plan for the Robert T. Matsui Waterfront Park Master Plan Amendment, which included development of the Powerhouse Science Center Project (Resolution 2010-296).

Sustainability: The rehabilitation of the former PG&E building will meet the sustainability goal of reusing underutilized properties.

Commission/Committee Action: N/A.

Rationale for Recommendation: The Powerhouse Science Center is a catalyst project in the River District and will assist in its revitalization, activate the Sacramento Riverfront and bring visitors to the City of Sacramento as a regional destination. The rehabilitation of the former PG&E building as the science center will reuse a historic building that has been shuttered since the early 1960s.

In order to redevelop the former PG&E building and make it suitable for the Powerhouse Science Center Project, soil must be excavated from the building interior to make room for the basement. The new cement floor will re-seal any remaining contaminated soil so that the resulting remedy is an improvement upon current conditions. The City has obtained grants for DTSC and EPA to accomplish this excavation and will meet all safe disposal requirements. Local match will be provided by the Powerhouse Science Center through the attached cost sharing agreement.

Financial Considerations: Once the DTSC grant agreement has been accepted and executed, revenue and expenditure budgets will need to be established in the amount of \$150,000 (Fund 2702, Operating Grants) in project G18337000. Local match of \$70,000 is required by the two grants (\$40,000 for the EPA grant and \$30,000 for the DTSC grant). Of this total amount, \$10,000 is being provided by the City primarily through staff time dedicated to the project. The balance, \$60,000, will be contributed by the Science Center through the attached Cost Sharing Agreement.

Emerging Small Business Development (ESBD): The clean-up project will meet the ESBD requirements of the City.



RESOLUTION NO. 2012-

Adopted by the Sacramento City Council

AUTHORIZING ACCEPTANCE OF GRANT FUNDS FROM CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND APPROVING COST SHARING AGREEMENT FOR THE POWERHOUSE SCIENCE CENTER PROJECT

BACKGROUND

- A. In October 2010 in Resolution 2010-595, the City accepted a grant for \$200,000 from US Environmental Protection Agency (EPA) for the environmental cleanup of the historic, shuttered PG&E building at 400 Jibboom Street, the future home of the Powerhouse Science Center.
- B. In July 2012, the City was awarded a grant for \$150,000 from the California Department of Toxic Substances Control (DTSC) for the same purpose.
- C. The EPA grant has a local grant match requirement of \$40,000 and the new DTSC grant requires a local match of \$30,000.
- D. The Powerhouse Science Center has agreed to provide \$60,000 to meet the local match requirement, which when combined with the City’s in-kind contribution of \$10,000 provided primarily through staff time dedicated to the project, will meet the local match requirement for both grants.

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

- Section 1.** The City Manager or his designee is hereby authorized to execute the Cleanup Grant Agreement (Exhibit A) for the Science Center Project with the DTSC for \$150,000 to remediate contaminated soil from the former PG&E building.
- Section 2.** The City Manager or his designee is hereby authorized to execute the Local Cost Sharing Agreement (Exhibit B) with the Powerhouse Science Center to provide the local match of \$60,000 for the DTSC grant and the EPA grant.
- Section 3.** Revenue and expenditure budgets in the Operating Grants Fund (Fund 2702) in the amount of \$150,000 and \$60,000 of its associated match funds (in the CIP Reimbursable Fund, Fund 3702) shall be established for G18337000.
- Section 4.** Exhibits A and B are incorporated into, and made part of, this resolution.



GRANT AGREEMENT

BROWNFIELDS SUBGRANT AGREEMENT

Agreement No. BRLF-003-2012

This EPA Brownfields Subgrant Agreement (Powerhouse Science Center Project – Mitigation Project) is made and entered into on this ____ day of _____ 2012, by the State of California, acting through the Director of the California Department of Toxic Substances Control (the “GRANTEE” or “DTSC”) and the City of Sacramento (the “SUBGRANTEE”).

RECITALS

- A. DTSC is the recipient of certain funds from the United States Environmental Protection Agency (“EPA”) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(3); “under EPA Cooperative Agreement No. BF-96987501, dated August 10, 2012 which have been used to establish and administer a revolving loan fund (the “Brownfields Revolving Loan Fund”) from which DTSC is authorized to make subgrants to entities willing to undertake remediation and mitigation of hazardous substances on brownfields.
- B. The SUBGRANTEE, the City of Sacramento, has title to the Property, for property generally located at 400 Jibboom Street, in Sacramento, California (the “Property”); the Property is described in the “Legal Description” and depicted on the “Map” which are attached hereto as Exhibit “A” and Exhibit “B”, respectively, and incorporated herein by this reference.
- C. The SUBGRANTEE proposes to remediate heavy petroleum hydrocarbon and lead-contaminated soil at the property, which is leased to a nonprofit, Powerhouse Science Center, for a future science, space, and technology museum.
- D. Certain hazardous substances (see Section E) have been identified in the soil on the Property, having been deposited or released thereon or therein prior to the date on which the SUBGRANTEE originally acquired the Property.
- E. The Jibboom Street Powerstation B was constructed by PG&E in 1912 as an oil fired (Bunker C), steam-generating power plant which operated until approximately 1952. From 1952 to 1965 a portion of the property was used as a metal salvage yard by Associated Metals Corporation of California. In 1965 Caltrans purchased the site to construct Interstate 5 on a portion of it and shuttered the remaining portion of the property. Environmental investigations were conducted between 1981 and 1986 and identified polychlorinated biphenyls (PCBs) and heavy metals (primarily lead, copper, and zinc) caused by previous uses, not Caltrans. The US

EPA placed a portion of the site on the National Priorities List, which became known as the Jibboom Junkyard NPL and commenced clean up. It was delisted U.S. EPA on September 10, 1991.

The City of Sacramento purchased the site on January 22, 2002 from the State of California and holds fee simple title with a recorded deed. The site was leased in June 2011 for 55 years to the Powerhouse Science Center, a nonprofit, for the future site of a science, space and technology museum. The City has no plans to transfer ownership of the site. The City will continue to own the property until all cleanup work funded by the grant has been completed and the grant is closed out.

The environmental investigations (hereby incorporated as Exhibit "C") of the site between 1991 and 1996 found heavy petroleum hydrocarbons, consistent with Bunker C fuel oil, in soil and groundwater beneath the southern end of the building, and lead in site soils east of the building. Lead contamination in site soils ranged up to a maximum of 19,700 mg/kg at depths from 1 foot to 12 feet below ground surface along the northern third of the eastern property boundary. No lead contamination was detected in on-site wells at or above MCLs (DTSC, 1998). The SUBGRANTEE will undertake the Mitigation Project described in its new Remedial Action Workplan under DTSC's oversight.

- F.** SUBGRANTEE, while willing to undertake the Mitigation Project described below, has requested that DTSC provide a subgrant of the Brownfields Revolving Loan Funds (hereinafter defined as the "Subgrant") in order to do so.
- G.** The SUBGRANTEE is a city (local government) and the Property is not listed, nor proposed to be listed, on the EPA's National Priorities List; therefore, the SUBGRANTEE is eligible to receive the Subgrant; EPA approved eligibility.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND SUBGRANTEE AGREE AS FOLLOWS:

1. The Director of the DTSC or designee is authorized to act on behalf of DTSC in order to implement or to satisfy the requirements of the EPA Cooperative Agreement No. BF-96987501. The SUBGRANTEE will provide information necessary for the Grantee to complete all mandated reports to EPA and/or State and federal agencies pursuant to the aforementioned grant.
2. DTSC has designated a qualified environmental project manager who shall review the work to be performed using the Brownfields Revolving Loan Funds. DTSC's environmental project manager will review the SUBGRANTEE's arsenic mitigation planning and documents (the "Project Documents") and review the activities as they are ongoing to ensure that the Mitigation Project is being completed in

accordance with all applicable Federal, State, and local requirements and is protective of human health and the environment.

3. The SUBGRANTEE shall ensure that all public participation requirements are met. This includes public notifications, opportunities for public involvement, responses to comments and establishing a local information repository. The SUBGRANTEE will provide copies of all public notices and response to comments to DTSC for the project file.
4. DTSC agrees to grant to SUBGRANTEE up to one hundred fifty thousand dollars (\$150,000.00) of Brownfields Revolving Loan Funds to be used to implement the soil remediation (the "Mitigation Project") at the Property. All proceeds of the Subgrant shall be held by DTSC and disbursed upon receipt of written invoices and documentation to the reasonable satisfaction of DTSC.
5. DTSC's obligations under this Subgrant Agreement are contingent upon and subject to the availability of funds appropriated for the EPA Brownfields Revolving Loan Fund Grant.
6. The term of the subgrant shall be a period of twelve (12) months from the date of the DTSC's execution of this Agreement or until the Mitigation Project is complete, which ever comes first.
7. The SUBGRANTEE has prepared an initial cost estimate for the Mitigation Project, attached hereto as Exhibit "D". A detailed cost estimate ("Project Budget") shall be submitted by the SUBGRANTEE to DTSC for review and approval. The approved Project Budget will be incorporated into this Agreement.
8. The Subgrant shall be payable to the SUBGRANTEE as reimbursements for allowable expenses incurred, based upon the progress of the work, and in accordance with the approved Project Budget (as invoices are approved) by DTSC.
9. The SUBGRANTEE will carry out the Mitigation Project in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) § 104(k); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); and all other applicable provisions of Federal, State or local law.
10. The SUBGRANTEE represents that none of the contractors or subcontractors undertaking the Mitigation Project is currently suspended, debarred, or otherwise declared ineligible for participation in this Federal program or from the receipt of proceeds of the subject funds.

11. The SUBGRANTEE shall carry out the Mitigation Project in accordance with the Davis-Bacon Act of 1931, which requires payment of Federal prevailing wage rates for federally funded construction, repair or alteration work.
12. The SUBGRANTEE shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to federally assisted construction contracts.
13. The SUBGRANTEE shall grant DTSC the right to enter the Property to oversee Mitigation Project implementation at any reasonable time. Whenever possible, DTSC shall provide advance notice to SUBGRANTEE prior to entering the Property.
14. The SUBGRANTEE shall provide copies of mitigation plans, permit application, engineering documents and copies of environmental permit(s) received to DTSC's designated environmental project manager.
15. The SUBGRANTEE understands and agrees that all Subgrant funds provided by DTSC shall only be used to mitigate hazardous conditions within the remediation boundaries depicted in Exhibit "B."
16. The SUBGRANTEE further understands and agrees that the receipt of any Subgrant funds and all work performed on the Property using Subgrant funds are conditioned upon the SUBGRANTEE's full compliance with the Project Documents and this Subgrant Agreement.
17. SUBGRANTEE agrees to document and keep separate all expenditures of the Subgrant funds within the approved Project Budget. SUBGRANTEE shall not exceed any of the costs shown in the approved Project Budget. It is the responsibility of the SUBGRANTEE to pay any costs of the Mitigation Project that exceeds the Subgrant amount. In addition, SUBGRANTEE must report to DTSC, at least quarterly, the number and classification of all labor hours for the quarter associated with that quarter's expenditures.
18. All work on the Mitigation Project performed pursuant to this Subgrant Agreement and with Subgrant funds shall be performed in a good and workmanlike manner.
19. All changes or modification to the Mitigation Project shall be approved in writing by DTSC prior to such change or modification becoming effective. All additional costs incurred as the result of any Change Orders shall be subject to prior written approval of DTSC, if the costs are to be paid by DTSC's Brownfields Revolving Loan Fund. In the event that unforeseen conditions are discovered during the Mitigation Project implementation that present an imminent or substantial endangerment to human health and environment, DTSC reserves the right to require the SUBGRANTEE to revise the Project Documents.

20. SUBGRANTEE, at its sole cost and expense, and from sources other than the Subgrant funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by Federal, State or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement
21. The SUBGRANTEE shall:
 - a. Notify DTSC when the Mitigation Project is complete. The notice shall contain certification or documentation that the mitigation of hazardous conditions has been performed in accordance with the terms of this Subgrant Agreement. This closeout documentation shall summarize all actions taken, the resources committed, the problems encountered in completion of the Mitigation Project, if any, and document that the Mitigation Project is complete. The closeout documentation should also include before and after photos with the completed U.S. EPA Success Story Form. In addition, this documentation must include a completed Property Profile Form, which the SUBGRANTEE completes with the DTSC's designated environmental project manager. Finally, if the allowable costs for the Mitigation Project exceed the subgrant amount, the closeout documentation should include additional remediation invoices for those costs that would have qualified for reimbursement under the Subgrant Agreement if additional funds had been awarded to the SUBGRANTEE.
 - b. Submit copies of qualifying Mitigation Project invoices over the amount of this subgrant. While not reimbursable, copies of these invoices assist DTSC with meeting its required "cost share" or "state match" requirement for Cooperative Agreement No. BF-96987501 with U.S. EPA, which is the origin of this Subgrant Agreement's funding. This documentation shall be submitted to DTSC's project manager.
 - c. Perform all of its obligations under this Subgrant Agreement, and any other agreements or instruments to which the SUBGRANTEE is a party and which relate to this Subgrant Agreement or to the Mitigation Project.
22. Any forbearance by DTSC with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of DTSC's rights or privileges granted hereunder.
23. In the event of a default of any of the terms or conditions of this Subgrant Agreement, the SUBGRANTEE shall forfeit use of the Subgrant funds not yet disbursed.

24. The SUBGRANTEE agrees to maintain financial and programmatic records pertaining to all matters relative to this Subgrant Agreement in accordance with generally accepted accounting principles and procedures. All such records and supporting documents shall be made available, upon request, for inspection or audit by DTSC or its representatives. The SUBGRANTEE shall retain all of its records and supporting documentation applicable to this Subgrant Agreement for a period of three (3) years, after the Mitigation Project is complete, except records that are subject to audit findings, which shall be retained three (3) years after such findings have been resolved.
25. The SUBGRANTEE agrees to permit DTSC or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that DTSC desires relevant to this Agreement. DTSC shall provide written notice to the SUBGRANTEE prior to the implementation of this provision. The SUBGRANTEE agrees to deliver the records or have the records delivered to DTSC or its designated representative at an address designated by such party.
26. The SUBGRANTEE will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the SUBGRANTEE will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, provide services on contracts and subcontracts for services and supplies, and will assure the State that it complies with the American with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. § 12101 et seq.). SUBGRANTEE will provide MBE/WBE information to DTSC upon request.
27. The SUBGRANTEE agrees to protect, indemnify, defend and hold harmless, DTSC, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the SUBGRANTEE may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the SUBGRANTEE as provided herein and caused in whole or in part by any act, error, or omission of the SUBGRANTEE, its agents, servants, employees or assigns.
28. The SUBGRANTEE shall not assign or attempt to assign directly or indirectly, any of its rights under this Subgrant Agreement or under any instrument referred to herein without the prior written consent of DTSC.

29. This Subgrant Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
30. No amendments or variation of the terms of this Subgrant Agreement shall be valid unless made in writing, signed by both parties hereto. No oral understanding or agreement not incorporated into this Subgrant Agreement is binding on any of the parties. This Subgrant Agreement may be amended, modified or augmented by mutual consent of the parties, subject to the requirements and restrictions of this paragraph. Subgrant funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by Federal, State or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.
31. It is expressly understood that a failure or delay on the part of the SUBGRANTEE in the performance, in whole or in part, or any of the terms of this Subgrant Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Subgrant Agreement; however, the SUBGRANTEE shall use its best effort to ensure that the Mitigation Project is completed in a reasonable time without unnecessary delay.
32. The provisions of this Subgrant Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
33. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
34. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Subgrant Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

To the GRANTEE: Department of Toxic Substances Control:
Brownfields and Environmental Restoration Program
Stewart W. Black, P.G., Deputy Director
1001 "I" Street, P.O. Box 806
Sacramento, CA 95812-0806

To the SUBGRANTEE: City of Sacramento
John F. Shirey, City Manager
915 "I" Street, 5th Floor
Sacramento, California 95814

or to such other address as a party may subsequently specify in writing to the other party.

34. Under the State laws, the SUBGRANTEE shall not be:
- a. In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
 - b. Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
 - c. Out of compliance with any applicable federal, state, and local laws, ordinances, regulations, and permits.
35. If any provision or item of this Subgrant Agreement is held invalid, such invalidity shall not affect other provisions or items of this Subgrant Agreement which can be given effect without the invalid provisions or items, and to this end, the provisions of this Subgrant Agreement are hereby declared severable.
36. This Subgrant Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IN THE WITNESS WHEREOF, THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND THE SUBGRANTEE HAVE EXECUTED THIS AGREEMENT ON THE RESPECTIVE DATES SET FORTH BELOW

"City of Sacramento"
A local government entity

BY: _____
John F. Shirey, City Manager
Signature of the City of Sacramento's Authorized Signatory

Date: _____

“DEPARTMENT OF TOXIC SUBSTANCES CONTROL”
Brownfields and Environmental Restoration Program

BY: _____
Stewart W. Black, P.G., Deputy Director
Signature of DTSC’s Authorized Signatory

Date: _____



POWERHOUSE SCIENCE CENTER – COST SHARE AGREEMENT

This agreement is dated _____, 2012, for reference, and is between the CITY OF SACRAMENTO, a municipal corporation ("City"), and POWERHOUSE SCIENCE CENTER, a California nonprofit corporation ("PHSC"). CITY and PHSC may be referred to collectively as the "parties" or in the singular as "party," as the context requires.

Background

The City owns the former historic PG&E Power Station B building (the "PG&E Building") at 400 Jibboom Street in Sacramento and has entered into a 55-year lease, identified as City Agreement 2011-0748, (the "Lease") with the PHSC for the PG&E Building and adjacent City-owned real property (the PG&E Building and the adjacent real property may be collectively referred to as the "Site.")

Due to the presence of hazardous substances on the Site that pre-date the Lease, the Site is under the regulatory oversight of the California Department of Toxic Substances Control ("DTSC"). PHSC is obligated under the Lease to rehabilitate the PG&E Building for use as a science center, but in order to make the building suitable for this use, the interior of the building must undergo environmental cleanup.

To facilitate the re-use of the PG&E Building, the City applied for, and was awarded, a \$200,000 environmental cleanup grant from the United States Environmental Protection Agency ("EPA") and an environmental cleanup subgrant of \$150,000 from the DTSC. Both the EPA grant and the DTSC subgrant (the "Grants") require a 20% local match, which may be in the form of a contribution of money, labor, materials, or services. The local match for the EPA grant is \$40,000, and the local match for the DTSC subgrant is \$30,000.

The City has already accepted the EPA grant (City Agreement 2010-0899) and to date has contributed approximately \$10,000 in services toward the \$40,000 local match requirement. The PHSC is willing to provide the remaining \$30,000 of the EPA grant local match and the full amount of the DTSC subgrant local match because it will directly benefit from the cleanup activities funded by the Grants.

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

1. **PHSC OBLIGATIONS.** The PHSC shall provide the remaining \$30,000 of the local match for the EPA grant and the \$30,000 local match for the DTSC subgrant, on the following terms:

- (a) The local match must be in the form of a contribution of money, labor, materials, or services, and must be for costs that are eligible and allowable under the terms of the Grants. These costs may include the cost of: shoring the

walls of the PG&E Building, interior abatement, obtaining permits, soil excavation, soil testing prior to removal of soil from the Site, hauling excavated soil from the Site, tipping fees, or other costs approved by the EPA or DTSC as being necessary to complete the cleanup of the PG&E Building.

- (b) The PHSC shall provide the local match in increments of not less than \$10,000 for each \$50,000 in grant funds expended for eligible and allowable costs until the local match obligations are satisfied.
- (c) The PHSC shall provide the City with documentation of each contribution of money, labor, materials, or services that the PHSC desires to apply toward the local match.
- (d) All labor, materials, and services contributed toward the cleanup of the PG&E Building must comply with all applicable laws, statutes, ordinances, rules, regulations, orders, contracts, including the EPA grant and DTSC subgrant, covenants and restrictions of record.
- (e) Beginning on January 1, 2013, and afterward on a quarterly basis, the PHSC shall provide the City with a written report documenting the progress the PHSC has made toward meeting its obligations under this agreement.
- (f) The PHSC shall provide the local match for the EPA grant prior to the end of the term of the EPA grant agreement and shall provide the local match for the DTSC subgrant prior to the end of the term of the DTSC grant agreement.
- (g) If the City identifies contributions of money, labor, materials, and services that it has made that can be applied toward the local match for either the EPA grant or DTSC subgrant, then the City in its sole discretion may apply those contributions toward the local match. Any contribution that the City makes toward the local match requirements will result in an equivalent reduction in the amount of the local match that PHSC is required to provide under this agreement.

2. **RIGHT OF ENTRY.** PHSC shall grant the EPA and DTSC the right to enter the Site at any reasonable time to oversee implementation of the work funded by the EPA grant and DTSC subgrant.

3. **INDEMNIFICATION.** (a) The PHSC shall defend, hold harmless and indemnify the City, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the Site, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this agreement by the PHSC, its employees, officers, directors, agents, contractors, subcontractors, or anyone directly or indirectly employed by any

of them or anyone for whose acts any of them may be liable, whether or not (1) such Liabilities are caused in part by a party indemnified hereunder, or (2) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (1) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (2) the active negligence of City.

(b) The PHSC's obligations under this section 3 will survive this agreement.

4. **INSURANCE.**

(a) *Types of Policies.* While this agreement is in effect, at no cost to the City, PHSC shall procure and maintain the following insurance policies:

- (1) A policy of comprehensive general-liability insurance providing coverage at least as broad as that provided by ISO Form CG 00 01. This policy must—
 - (A) be issued on an occurrence basis;
 - (B) include coverage for premises, operations, products and completed operations, advertising injury, and contractual liability;
 - (C) have a combined single limit of at least \$1,000,000 for each occurrence; and,
 - (D) name the City and the City's elected officials, officers, employees, and agents as additional insureds with regard to general liability arising out of activities performed by PHSC or on PHSC's behalf, including coverage for products-and-completed operations.
- (2) A policy of automobile-liability insurance providing coverage at least as broad as that provided by ISO Form CA 00 01. This policy must—
 - (A) have a combined single limit of at least \$1,000,000 for each occurrence; and
 - (B) cover owned, non-owned, and hired vehicles.
- (3) A policy of workers-compensation insurance with limits at least equal to those required by California law and including employer-liability insurance with a limit of at least \$1,000,000. This policy must include a waiver of subrogation against the City. As an alternative to this policy, and subject to approval by the City's Risk Management Department, PHSC may provide the City with a copy of PHSC's Certificate of Consent to

Self Insure from the California Department of Industrial Relations and a certificate showing PHSC's excess-insurance limits and self-insured retentions.

- (b) *Insurer Qualifications.* Each policy must be issued by an insurer the California Department of Insurance has authorized to transact business in California in the relevant line of insurance, and the insurer must have a rating of at least "A" by A.M. Best Company or a rating the City's Risk Management Department determines to be substantially equivalent.
- (c) *Certificates of Insurance.* Within 10 days after the effective date of this agreement, and afterward upon request, PHSC shall provide the City with certificates of insurance, signed by authorized representatives of the insurers, confirming that PHSC has procured and is maintaining the insurance policies required by this Section 4. Upon request at any time, PHSC shall provide the City with a copy of each policy, including all endorsements.
- (d) *Notice.* Each of the policies must obligate the insurer to give the City at least 30 days' advance written notice before the policy is cancelled or materially changed.
- (e) *Other Requirements.* The general-liability and automobile-liability policies must each—
 - (1) provide that PHSC's insurance coverage is primary insurance with respect to the City and the City's elected officials, officers, employees, and agents;
 - (2) provide that PHSC's insurance applies separately to each insured against whom a claim is made or a suit brought, except with respect to the applicable policy limits; and
 - (3) provide that the City's insurance and self-insurance are in excess of PHSC's insurance and will not contribute with it.
- (f) *No Limit on Indemnification.* Nothing in this section 4 limits PHSC's obligations under section 3.

5. **NOTICES.** Notices to the parties as provided by this agreement shall be given by United States mail, postage prepaid as follows:

TO PHSC:

Powerhouse Science Center
Attn: Michele Wong
3615 Auburn Boulevard
Sacramento, CA 95821

TO CITY:

City of Sacramento
Attn: Rachel Hazlewood
Economic Development Dept.
915 I Street, 3rd Floor
Sacramento, CA 95814

Notice will be deemed to have been served when it is deposited in the United States mail, postage prepaid, and addressed as above prescribed. Notwithstanding the foregoing, in the event either of the parties provides notice to the other party by means of electronic transmission, such notice will be deemed to have been served upon receipt by the sending party of written or electronic acknowledgement of receipt thereof from the receiving party.

6. **SEVERABILITY.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

7. **WAIVER.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

8. **INTERPRETATION AND VENUE.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Any litigation concerning this agreement must be brought and prosecuted in the United States District Court for the Eastern District of California, Sacramento Division.

9. **EFFECTIVE DATE; TERM.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below, and will remain in effect until the PHSC has fully-performed its obligations under this agreement.

10. **ATTORNEYS' FEES.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement, except as provided in section 3.

11. **WARRANTIES AND REPRESENTATIONS.** Each person who signs this agreement on behalf of a party warrants and represents that he or she has the capacity and legal authority to execute this agreement for that party and to bind that party to the obligations imposed on it by this agreement.

12. **NO THIRD-PARTY BENEFICIARIES.** This agreement is solely for the benefit of the City and the PHSC. It is not intended to benefit any third parties.

13. **INTEGRATION AND MODIFICATION.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete,

and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

14. **COUNTERPARTS.** This agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Facsimiles, pdfs and photocopies of signature pages of the agreement shall have the same binding effect as originals.

CITY OF SACRAMENTO

POWERHOUSE SCIENCE CENTER

By: _____
John F. Shirey
City Manager

By: _____
Dated: September ____, 2012

Dated: September ____, 2012

By: _____
Dated: September ____, 2012

Approved as to Legal Form:

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

By: _____
Counsel

Attest:

By: _____
City Clerk