Meeting Date: **5/27/2014**

Report Type: Staff/Discussion

Report ID: 2014-00365

City of SACRAMENTO 25

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: Agreement: Funding for Powerhouse Science Center (Reviewed 05/20/2014)

Location: 400 Jibboom Street, District 4

Recommendation: Pass a Resolution 1) authorizing the City Manager of his designee to execute the Powerhouse Science Center Funding Agreement; 2) appropriating $200,000 from the Economic Development Fund Contingency to I06100200.

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

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

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:
1-Description/Analysis
2-Background
3-Resolution
4-Funding Agreement

City Attorney Review

Approved as to Form
Michael Sparks
5/15/2014 2:00:32 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 5/8/2014 4:00:14 PM

James Sanchez, City Attorney Shirley Concolino, City Clerk Russell Fehr, City Treasurer
John F. Shirey, City Manager

Back to Report Table of Contents

Description/Analysis

Issue Detail: The Powerhouse Science Center (PHSC), also known as the Discovery Museum, is asking the City for an annual appropriation of $350,000 per year for 20 years to assist with the payments on a $25 million construction loan from the California Infrastructure and Economic Development Bank (I-Bank) that will fund the relocation and expansion of the science center (Project) to 400 Jibboom Street, the City-owned historic PG&E Power Station B property. The I-Bank loan (Construction Loan) is being sought by the PHSC to fund construction of Phase 1 of the Project, consisting of the Earth, Space and Sciences Center. Phase 2 includes the rehabilitation of the historic building and development of a parking structure and will be funded in a future financing effort.

The Construction Loan repayment would be the sole obligation of PHSC and would come from PHSC operating income and donations and sponsorships from corporate, government and private entities made to the PHSC endowment. The City has supported the PHSC with annual operating funds since it opened and this operating appropriation will continue at the new facility. The current amount of the annual contribution is $143,000. The County also contributes operating funds annually to the PHSC and their contribution is currently $93,000 a year.

The source for the City's annual appropriation would include unexpended bond proceeds from the former River District Redevelopment Area, a portion of the revenue generated from net property tax revenues received by the City as a result of the dissolution of redevelopment, funds from the Economic Development Reserve (Assistance) Program, I06100200, and revenue generated by leasing the existing Auburn Boulevard facility and dedicating the net proceeds to the PHSC Project. These sources of funds are described in more detail in the Financial Considerations section of this report.

Terms of the City's 20-year annual appropriation, which are contained in the Funding Agreement attached as Exhibit A, include the following:

- Financing for the entire Phase 1 construction project must be fully identified and committed;
- All sources to make the annual debt service payments for the Construction Loan must be identified and committed;
- All PHSC donations and sponsorships committed to the loan repayment must be reviewed and approved by City staff;
- Throughout the term of the Agreement, the PHSC must be in good standing on its debt(s);
- PHSC must be in compliance with the terms of the Ground Lease;
- PHSC must submit quarterly financial reports to the City;
- PHSC must submit its annual tax returns to the City;
- The annual appropriation will be subject to City Council approval each year in the City budget, subject to the City Council's sole discretion in determining its budget priorities.

An amendment to the Ground Lease for 400 Jibboom Street and an agreement for the River District bond proceeds will be necessary and will be brought before Council for action at a future meeting.

Policy Considerations: The reuse of the former PG&E Power Station B property as a science center is consistent with the 2030 General Plan, the 2013 Economic Development Strategy, the River District Specific Plan, the Sacramento Riverfront Master Plan and prior actions taken by the City Council in support of the PHSC Project. The use of the Economic Development Funds for this use is also consistent with the proposed Economic Development Policy and Guidelines to be considered by City Council in another staff report.

Economic Impacts: The total cost of construction for the Powerhouse Science Center project (Phase 1 and Phase 2) is estimated at $89 million, which is projected to create 418 direct jobs and 240 indirect jobs. Additionally, according to the CSER calculation, over $55 million in direct output and over $31 million in indirect or induced activities will be generated by the construction project.

The indicated economic impacts estimates are calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.

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). The action implements the project as considered in the Mitigated Negative Declaration and no additional environmental review is required.

Sustainability: The reuse of a brownfield site will meet the sustainability goal of reusing underutilized properties. Additionally, the PHSC is seeking, at a minimum, silver designation for LEED certification.

Commission/Committee Action: None

Rationale for Recommendation: The PHSC was selected by the City Council in 2007 to renovate and occupy the historic PG&E Power Station B on Jibboom Street. Since that time, the PHSC has completed entitlements, received environmental clearances and regulatory approvals. At the April 17, 2014 meeting, City Council approved a resolution of support for the PHSC's I-Bank application and the purchase of a small interior parcel owned by PG&E that is integral to the project. The PHSC has nearly completed construction drawings and has been raising funds for the new center. The construction of the project will create a regional draw for Sacramento as well as provide a much needed center for science, technology, engineering and math education for children from kindergarten to 12th grade. Providing a reliable source of funding for debt service will help to secure the Construction Loan.

Financial Considerations: The City's annual contribution of $350,000 will be used to help pay the annual debt service payment for the $25 million Construction Loan. The proposed sources of funds making up the annual appropriation are described below and consist of:

Proposed Funding Sources - Annual Appropriation	Amount	Time Frame	Total Amount
Bond Proceeds – River District Redevelopment Area [1]	$50,000	Annually, 20-years	$1,000,000
Economic Development Fund (Fund 2031)	$200,000	Annually, 20-years	$4,000,000
Lease Revenue (General Fund)	$100,000	Annually, 20-years	$2,000,000
TOTAL	**$350,000**		**$7,000,000**
Proposed Funding Sources - Reserve Account	**Amount**	**Time Frame**	**Total Amount**
Bond Proceeds – River District Redevelopment Area [1]	$200,000	One-time	$200,000
Economic Development Reserve (Assistance) Program (I06100200)	$160,000	One-time	$160,000
TOTAL			**$360,000**

[1] RASA Oversight Board approval needed

The unexpended bond proceeds from the former River District Redevelopment Area will contribute approximately $50,000 each year. These funds may only be used in the former River District Redevelopment Area. The use of these funds will have to be approved by the Redevelopment Agency Successor Agency (RASA) Oversight Board and placed on the Recognized Obligation Payment Schedule (ROPS).

The Economic Development Fund Contingency (Fund 2031) will contribute approximately $200,000 each year. This fund includes net property tax revenues generated as a result of the dissolution of redevelopment. Use of these funds is consistent with the proposed Council policy for the use of the Economic Development Fund to be considered by City Council on May 27, 2014.

Lease revenue expected from the Auburn Boulevard facility, approximately $100,000, will not be available until after the PHSC has relocated into the new building. Additionally, the facility will require some rehabilitation and rent incentives to bring it to current standards meaning its revenue will not likely be available until six months after the first construction loan payment is due. Therefore, a "reserve fund" will be created to pay for any shortfalls that may occur from leasing the Auburn Boulevard facility. That reserve fund will consist of an additional $200,000 from the River District bond proceeds and $160,000 from the multi-year operating project (MYOP) Economic Development Reserve (Assistance) Program (I06100200). To account for this source of funding, appropriation of the River District bond proceeds will also be transferred to the MYOP, I06100200, once it is approved by the RASA Oversight Board.

Local Business Enterprise (LBE): No goods or services are being procured under this report.

Back to Report Table of Contents

Attachment 1

Background

PROJECT INFORMATION

The Powerhouse Science Center (PHSC) is a nonprofit corporation that was founded in 1951. It has operated as the Discovery Museum in a City-owned and supported facility at 3615 Auburn Boulevard for over 60 years. The PHSC has outgrown the 11,000 square foot facility and is working to develop the Powerhouse Science Center (Center) on the City-owned site of the former Pacific, Gas & Electric (PG&E) Power Station B at 400 Jibboom Street (Site).

The Site is located approximately one-quarter mile north of Old Sacramento and is immediately adjacent to the City's water intake structure on the Sacramento River. It includes the historic PG&E building and vacant areas to the north and east of the building. The Site is approximately four acres in size and is immediately north of the six and one-half acre Robert T. Matsui Waterfront Park. The City took title to the Site in 2002 from the State of California. Other than a brief time in the early 1960s when the site was used as a metal salvage yard, the building has been shuttered since PG&E ceased its operation in 1954.

The new Center will include a science, space and technology center, planetarium and dome theater to be known as the Earth, Space and Sciences Center (ESSC), a cafe, gift shop and parking structure. The development of the Center will be phased. Phase 1 includes the ESSC, a parking lot and the stabilization of the historic Power Station. Phase 2 includes the full renovation of the historic Power Station and the construction of a multistory parking structure.

At its current location the Discovery Museum operates Sacramento's only public planetarium and one of the nation's most successful Challenger Learning Centers, a simulated space mission developed with NASA. Annually, approximately 90,000 school children and individuals visit the PHSC. The City has supported the PHSC with an annual operating appropriation since it opened and this operating appropriation will continue at the new Center. The current amount of the contribution is $143,000. The County also contributes operating funds annually to the PHSC and their contribution is currently $93,000 a year.

The new location will provide room for the PHSC to expand its exhibits, classrooms and laboratory space. Due to the increase in size, expanded exhibits, additional programs and improved location, the new Powerhouse Science Center is projected to attract 250,000 annual visitors, a substantial portion of which would be K-12th grade students.

The unique location of the new Powerhouse Science Center will take advantage of the nearby new Water Intake Facility on the Sacramento River, which will provide learning opportunities for students, and the Robert T. Matsui Waterfront Park, which will be enhanced with interpretive tours to further environmental study. Additionally, the proximity of the Site to the Railroad Museum, Old Sacramento, and the future Railroad Technology Museum in the Railyards will place the Powerhouse Science Center centrally amidst other tourist attractions.

ACHIEVEMENTS TO DATE

On June 12, 2007, City Council awarded the Powerhouse Science Center an Exclusive Right to Negotiate for the science center project. Subsequently, on June 21, 2011 in Resolution 2011-361, City Council approved a 55-year lease with the PHSC which included the requirement that the PHSC construct the new facility by June 30, 2017.

Since 2007, the PHSC has been diligently pursuing the development of the new center through fundraising, obtaining regulatory approvals and developing construction documents for the new center. A summary of those accomplishments is as follows:

- **Hazardous Contamination:** The Site is a former, delisted Super Fund site and is under the oversight of the California Department of Toxic Substances Control (DTSC). There is a recorded land use covenant and annual groundwater monitoring requirement. The new project has obtained DTSC approval of the construction plans and the environmental remedies that will ensure the new building and site design protect public health and safety.
- **Endangered Species:** The Site had a large elderberry shrub, home to the endangered Valley Elderberry Longhorn Beetle, which was relocated in accordance with federal standards to a protected wildlife bank.
- **Wetland:** An early City construction project resulted in the creation of a small man-made wetland, which has been mitigated as required by federal and state requirements.
- **PG&E Towers:** Two PG&E electrical towers remained on the Site from the prior operations as a power station. PG&E removed these towers and relinquished the easements crossing the property as part of its contribution to the Powerhouse Science Center.
- **Entitlements:** The City approved planning entitlements and a parks master plan amendment for the PHSC design.
- **Design:** The PHSC completed design drawings and is 75% complete on its construction drawings for the new science center.
- **Science Exhibits:** The PHSC completed its Exhibition Master Plan for the new exhibits which will include Liquid Gold on water conservation, Power-Up on energy conservation, and the Nature Discovery Center among others.
- **Historic Landmark:** The City and PHSC solicited and received approval for the building to be considered a National Historic Landmark.

- **Levee:** The site is located along the Sacramento River flood control levee. The City and the PHSC have worked with regulators to get approval for the site design to develop the project adjacent to the levee.

REMAINING DEVELOPMENT ISSUES

The PHSC continues to ready the Site for the new project. Remaining hurdles include:

- Approval from the Army Corps of Engineers (Corps) to construct the facility adjacent to the flood control levee. The PHSC has received preliminary approval from the Corps.
- Ownership of a small remainder parcel from PG&E where one of the transmission towers was located. Agreement on the purchase of the parcel has been reached with PG&E and was approved by City Council on April 17, 2014. The purchase should be concluded by July 2014.
- The PHSC and the City are working to gain acceptance of the State Office of Historic Preservation for the project design.

PROJECT FINANCING

The Center project has been more than six years in development. The project funding will come from a number of sources including foundation grants, government grants, corporate and private donations and tax credits.

The total project cost, including exhibits and soft costs, is estimated to be $89 million. It will be broken into two phases:

Phase 1: This phase will include the Earth, Space and Science Center, the planetarium, gift shop, café, parking lot, and stabilization of the historic structure. The cost estimate for Phase 1 is $49 million.

Phase 2: Phase 2 will include the rehabilitation of the historic Power Station B building and the construction of the multistory parking structure. Additionally, it will include improvements to the adjacent Robert T. Matsui Waterfront Park. The estimated cost for Phase 2 is $40 million.

The tables below show proposed Phase 1 funding sources and the general uses of the funds.

Proposed Sources	Amount
City River District Redevelopment Grant (2011)	1,100,000
County of Sacramento (TOT Grant, 2010)	200,000
State Prop. 84 Grant (Nature Education Facility)	7,000,000
Founding Partners/Private Donations	2,200,000
Subtotal	$10,500,000
New Market Tax Credits	13,500,000
I-Bank Construction Loan	25,000,000
Total Sources	**49,000,000**

Proposed Uses	Amount
Construction Costs (Direct Facility, Site, Interior, & Exhibits)	$28,000,000
Predevelopment Costs (Architecture Design & Engineering, Preconstruction, Environmental)	5,000,000
Soft Costs (Permits, Planetarium, Challenger, Exhibits)	8,700,000
Pre-opening Soft Costs	2,100,000
Financing Expenses	5,200,000
Total Uses	**$49,000,000**

The PHSC is submitting an application to the I-Bank for a $25 million loan to fund the construction of the new Center (Construction Loan). The annual debt service payment for the $25 million loan is estimated at $1.5 million. The City is being asked to provide an annual appropriation of $350,000 for 20 years ($7 million) that will be used towards that annual payment. Additional sources for the Construction Loan repayment will include other government grants, private donations/pledges, and a ticket surcharge.

Due to constitutional debt limitations, the City could not enter into a binding 20-year commitment, but rather would have to make annual budget appropriations to PHSC over the course of the 20 years. The proposed sources for the $350,000 annual appropriation from the City would be unexpended proceeds from a bond generated by the former River District Redevelopment Area that can only be spent in the River District ($50,000), a portion of net property tax revenues received by the City as a result of the dissolution of redevelopment ($200,000), and annual revenues generated by leasing the current site of the PHSC at 3615 Auburn Boulevard and dedicating the net proceeds to the PHSC Project (approximately $100,000).

Additionally, a reserve fund will be created to cover the cost to rehabilitate the Auburn Boulevard building for a private tenant, any necessary rent incentives to bring it to current standards and the gap in revenue due to the fact that the site will not likely be available until six months after the first payment on the Construction Loan is due.

Additionally, the reserve fund will cover any shortfalls that may occur due to vacancy at the Auburn Boulevard facility over the years. The reserve fund will consist of $160,000 from the Economic Development Reserve (Assistance) Program, (I06100200), and an additional $200,000 in former River District Redevelopment bond proceeds.

Back to Report Table of Contents

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING THE POWERHOUSE SCIENCE CENTER FUNDING AGREEMENT AND APPROPRIATING FUNDS

BACKGROUND

A. On June 21, 2011, City Council approved the Ground Lease between the City and the Powerhouse Science Center (PHSC) for the City-owned site of the historic PG&E Power Station B at 400 Jibboom Street.

B. The PHSC will be a catalytic project that will be a regional draw for Sacramento as well as provide a center for science, technology, engineering and math education for children from kindergarten to 12th grade.

C. The PHSC is applying for a $25 million loan from the California Infrastructure and Economic Development Bank (I-Bank) to pay for Phase 1 of the construction of the new center (Construction Loan) and on April 17, 2014 the City Council approved a resolution of support for the PHSC's I-Bank application.

D. The PHSC has requested financial support from the City in the amount of $350,000 annually for 20 years to help repay the Construction Loan and the City has identified funding sources to make that payment from unexpended bond proceeds from the former River District Redevelopment Area, revenue generated from net property tax revenues received by the City as a result of the dissolution of redevelopment, lease revenues generated by leasing the Auburn Boulevard facility, and $160,000 in the Economic Development Reserve (Assistance) Program (I06100200).

E. The City and PHSC desire to enter into a funding agreement (Agreement) for the annual appropriation, which will be subject to approval by City Council each year and is conditioned on compliance with the terms of the Agreement, to be used towards repayment of the Construction Loan.

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

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

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

Table of Contents:

Exhibit A Funding Agreement

Back to Report Table of Contents

FUNDING AGREEMENT

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

Background

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

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

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

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

1. **Term.** This agreement takes effect as described in Section 8 and terminates on July 2, 2035.

2. **Funding.** Beginning in the City's fiscal year that commences on July 1, 2014, and continuing each succeeding fiscal year while this agreement is in effect, the City, in its sole discretion, will provide PHSC with $350,000 in funding per fiscal year, but in no event will the City provide more than $7,000,000 in funding under this agreement. There is no guarantee of funding expressed or implied by this agreement.

3. **Funding Conditions.** The City will consider providing PHSC with a funding payment in a fiscal year only if all of the following conditions are satisfied, as determined by the City Manager or his designee in his sole discretion:

   (i) PHSC is a member in good standing with the American Association of Museums and the Association of Science and Technology Centers.

   (ii) PHSC has secured funding, through legally enforceable agreements, for one-hundred percent of cost to construct the Phase 1 Project.

   (iii) PHSC has secured a $25,000,000 loan from the I-Bank (the "**I-Bank Loan**").

(iv) PHSC has provided the City for its review and approval a list of all donations and sponsorships that PHSC intends to use to repay the I-Bank Loan and a quarterly status report on all donations and sponsorships made for this use.

(v) PHSC has secured funding, through legally enforceable agreements, to pay one-hundred percent of the annual debt service on the I-Bank Loan.

(vi) PHSC is in compliance with the construction schedule required by the I-Bank for the Phase 1 Project.

(vii) PHSC is not in default following any applicable notice and cure period of any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement, or other form of contractual obligation or undertaking to which PHSC is a party or by which PHSC or any of its property, including the Lease, is bound.

(viii) PHSC has provided the City with its complete tax returns for the preceding year not more than fourteen days after they have been filed.

(ix) PHSC has provided the City with audited financial statements with the report and opinion of an independent accountant stating that the financial statements have been prepared in accordance with generally accepted accounting principles (with such exceptions as are not objected to by the City) and that such independent accountant's audit was performed in accordance with generally accepted auditing standards.

(x) PHSC has provided the City with unaudited quarterly financial statements not more than ninety days after the end of each fiscal quarter, which include copies of its complete financial statements, including a statement of financial position, a statement of activities, a statement of cash flow and such other financial reports and schedules as may have been delivered to PHSC in connection with such financial statements.

(xi) PHSC has provided the City with notices of all PHSC board of directors (BOD) meetings, copies of all BOD meeting minutes, and provided the Manager or his designee with the right to attend and speak at all BOD meetings.

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

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

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

If to the City:

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

If to PHSC:

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

6. **Assignments.** A party may not assign or otherwise transfer this agreement or any interest in it without the other party's prior written consent, which the other party may withhold in its sole discretion, except that the PHSC may assign its interests in this agreement and all payments made by the City under this agreement to the I-Bank to provide security for the I-Bank Loan without the City's prior written consent. An assignment or other transfer made contrary to this section 6 is void.

7. **Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.

8. **Time of Essenc**e. Time is of the essence in the performance of this agreement.

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

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

11. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.

12. **Attorneys' fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.

13. **No Third-Party Beneficiaries.** This agreement is not intended to benefit any third parties other than the I-Bank.

14. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

15. **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement shall have the same binding effect as originals.

16. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

(*Signature Page Follows*)

City of Sacramento

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

Approved as to Form
Sacramento City Attorney

By: _____
Michael Sparks
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

Powerhouse Science Center

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