

**Meeting Date:** 6/16/2015

**Report Type:** Consent

**Report ID:** 2015-00524

**Title:** Brownfields Cleanup Revolving Loan Program Agreements: Powerhouse Science Center

**Location:** 400 Jibboom Street, District 4

**Recommendation:** Pass a Motion authorizing the City Manager or his designee to execute a Reimbursement and Loan Agreement for Site Remediation and related Security Agreement with the Powerhouse Science Center.

**Contact:** Denise Malvetti, Senior Project Manager, (916) 808-7064; Rachel Hazlewood, (916) 808-8645, Economic Development Department

**Presenter:** None

**Department:** Economic Development Dept

**Division:** Citywide Development

**Dept ID:** 18001031

**Attachments:**

- 1-Description/Analysis
- 2-Loan Agreement
- 3-Security Agreement
- 4-BCRLF Note

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**City Attorney Review**

Approved as to Form  
Michael Sparks  
6/8/2015 9:24:36 AM

**Approvals/Acknowledgements**

Department Director or Designee: John Dangberg - 6/1/2015 9:42:26 AM

## Description/Analysis

**Issue Detail:** The City leases its historic PG&E Power Station B building and surrounding property at 400 Jibboom Street (the “Site”) to Powerhouse Science Center (“PHSC”) under a 55-year ground lease. 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 new science center at the Site.

As a result of past uses, the Site is contaminated with petroleum byproducts and heavy metals. In order to redevelop the Site into a premier science center, the Site must first be remediated. The City is preparing to undertake a cleanup project to excavate potentially contaminated soil from the interior of the historic Power Station B building, test the soil to determine the appropriate landfill for disposal, dispose of the contaminated soil, and shore up the building in approximately 26 locations. The total cleanup project budget is \$720,000. To assist with the cost of remediation, the City applied for and was awarded a \$200,000 grant from the U.S. EPA and a \$150,000 grant from the State Department of Toxic Substances Control. The PHSC is providing \$60,000 to match the two grants and the City has provided \$10,000 of in-kind staff services as match; however, a funding gap of approximately \$300,000 still remains to complete the cleanup project.

The PHSC is willing to reimburse the City for up to \$300,000 of the funding gap. To raise the \$300,000, PHSC has submitted an application for a loan from the City’s Brownfields Cleanup revolving loan fund program (the “BCRLF Program”). In 1997, the City established BCRLF Program, which was funded by the United States Environmental Protection Agency (EPA). The purpose of the City’s BCRLF Program is to provide loans and sub-grants to qualified projects to assist with the investigation and cleanup of contaminated sites within the City. Examples of other projects that have been recipients of BCRLF funds include the Warehouse Artist Lofts and Curtis Park Village. In accordance with the City Council approved BCRLF Implementation Plan/Loan Policies and Procedures Manual (Resolution 2009-002), the PHSC loan application has been reviewed and recommended for approval by a loan committee.

The Reimbursement and Loan Agreement for Site Remediation memorializes the \$300,000 loan and PHSC’s obligation to reimburse the City for up to \$300,000 to close the funding gap for the cleanup project.

Staff is scheduled to return to City Council on June 23, 2015 to award a contract for the cleanup project.

**Policy Considerations:** The reuse of the former PG&E Power Station B property as a science center is consistent with the 2035 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.

**Economic Impacts:** The cleanup project is estimated to create 1.78 total jobs (1.02 direct jobs and .76 jobs through indirect and induced activities) and create \$274,864 in total economic output (\$173,249 of direct output and another \$101,615 of output through indirect and induced activities).

The indicated economic impacts are estimates calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). CSER utilized the IMPLAN input-output model (2009 coefficients) to quantify the economic impacts of a hypothetical \$1 million of spending in various construction categories within the City of Sacramento in an average one-year period. Actual 2 of 30

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 2010-0296). The action implements the project as considered in the Mitigated Negative Declaration. Section 15162 of the CEQA Guidelines provides that an additional Negative Declaration need not be prepared unless subsequent changes are proposed in the project, substantial changes occur with respect to the project circumstances, or new information of substantial importance to the project becomes known or available. As none of the conditions listed above relating to Section 15162 exist; additional environmental review is not required.

Under National Environmental Policy Act (NEPA), Sacramento Housing and Redevelopment Agency (SHRA), as the delegated Responsible Entity for HUD, completed preparation of an EA pursuant to 24 CFR 58.36 and approved a FONSI for the project on July 21, 2010. After completion of the 15-day review period and consideration of the comments, SHRA on behalf of HUD submitted a Request Release of Funds (RROF) along with the environmental documentation to HUD. HUD approved the RROF on August 23, 2010. Therefore, environmental review under NEPA is complete.

**Sustainability:** The reuse of a brownfields 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 City has made an ongoing commitment to the PHSC by way of a 55-year ground lease and an annual financial contribution. 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 12<sup>th</sup> grade. The Site of the future PHSC will continue to be owned by the City of Sacramento and therefore the remediation is an enhancement to a City asset.

**Financial Considerations:** The current balance of the Brownfields Revolving Loan CIP (G18334500) is \$800,638. Staff recommends a loan for up to \$300,000. Annual interest payments of 2% will be required with a balloon payment at closing of the construction loan or the end of the 5th year. The RLF Program Guidelines allow for an interest rate of two to five percent. The PHSC loan is recommended to have a 2% interest rate because the project has enormous community benefits. This loan will be evidenced by a Promissory Note that is secured by the PHSC furniture, fixtures and equipment. The Reimbursement and Loan Agreement for Site Remediation, Security Agreement and form Promissory Note are included as Attachments 1, 2, and 3, respectively.

**Local Business Enterprise (LBE):** The loan documents do not trigger LBE requirements; however, the Project is funded with federal monies and therefore requires conformance with Disadvantaged Business Enterprise requirements (DBEs).

**CITY OF SACRAMENTO  
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

**REIMBURSEMENT AND LOAN AGREEMENT FOR SITE REMEDIATION**

This agreement, dated June 16, 2015, for purposes of identification, is between the **City of Sacramento** (the “**City**”), a California municipal corporation, and the Powerhouse Science Center (“**Borrower**”), a California nonprofit corporation.

**Background**

The City received funds through United States Environmental Protection Agency’s Brownfields Cleanup Revolving Loan Fund Program (the “**BCRLF**”) and is authorized to make certain loans from these funds (these funds, the “**BCRLF Funds**”). The BCRLF Funds are to be used to undertake cleanup of brownfields sites by making low interest loans to parties willing to undertake cleanup of these sites.

The City owns the historic PG&E Power Station B building (the “**PG&E Building**”) and adjacent real property at 400 Jibboom Street, Sacramento, California 95814, (that adjacent real property, together with the PG&E Building, the “**Property**”). The Property is described in Exhibit A. The City leases the Property to Borrower under a 55-year lease, identified as City Agreement 2011-0748 (the “**Lease**”).

Due to the presence of hazardous substances on the Property that pre-date the Lease, the Property is under the regulatory oversight of the California Department of Toxic Substances Control (“**DTSC**”). Borrower 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.

The presence of hazardous substances has complicated the redevelopment and reuse of the Property. To facilitate the reuse 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 (the “**EPA**”) and an environmental cleanup subgrant of \$150,000 from DTSC. The grant and subgrant require a total local match of \$70,000 (the “**Match**”). Under the Powerhouse Science Center Cost Share Agreement, identified as City Agreement 2012-750, the Borrower is responsible for \$60,000 of the Match and the City responsible for the remaining \$10,000.

The City now desires to enter into a contract with a remediation contractor to cleanup the contamination and hazardous substances that are in the interior of the PG&E Building (that contract, the “**Remediation Contract**”). The removal and activities that are integral to the removal of hazardous substances from the Property under the Remediation Contract are referred to as the “**Project**.” The City intends to use the funding from the grant and subgrant to pay the City’s costs under the Remediation Contract; however, the City anticipates that its costs under the Remediation Contract will exceed the amount of the unexpended grant and subgrant funds.

Because the cleanup activities to be performed under the Remediation Contract will directly benefit Borrower's leased premises, Borrower is willing to reimburse the City for a portion of the costs the City incurs under the Remediation Contract. Specifically, after the City expends the balance of the grant funds and the Match under the Remediation Contract, Borrower is willing to reimburse the City for the remainder of the costs that the City incurs under the Remediation Contract up to a maximum amount of \$300,000. Borrower desires to borrow, and the City is willing to loan, \$300,000 of BCRLF Funds to enable Borrower to reimburse the City.

The Property is not listed, or proposed for listing, on the United States Environmental Protection Agency's National Priorities List. And neither the City nor the Borrower is a generator or transporter of the contamination at the Property.

The City and Borrower are not and have never been subject to any penalties resulting from environmental non-compliance at the Property. Furthermore, neither the City nor the Borrower is currently (and no contractor or subcontractor under the Remediation Contract will be) suspended, debarred, or otherwise declared ineligible for participation in the BCRLF or receipt of BCRLF Funds.

In May 2000, an American Society for Testing and Material (ASTM) E1527-97 Phase I environmental site assessment was performed on the Property. The City acquired fee title to the Property in 2002. Both the City and the Borrower acquired their interests in the Property after the time of disposal or placement hazardous substances and have not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from, the Property.

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

- 1. Borrower's Reimbursement Obligation.** Borrower shall reimburse the City's costs under the Remediation Contract as follows:
  - (a) The City is responsible for the first \$360,000 in costs incurred that are reasonably related to the Project with no right to reimbursement from Borrower. The City has already incurred some of these costs.
  - (b) Once the City expends the balance of the grant funds and the Match (approximately \$300,000) on costs reasonably related to the Project, Borrower shall reimburse the City for the remainder of the costs that the City incurs that are reasonably related to the Project up to a maximum of \$300,000.
  - (c) The City is entitled, without the need to provide prior notice to Borrower, to advance loan funds from the loan identified in Section 3 on behalf of buyer to satisfy Borrower's obligation to reimburse the City under subsection (b) of this section. The City will provide notice to Borrower not more than ten business days after it advances funds on Borrower's behalf under this subsection (c).

- (d) The City may, in its sole discretion after considering its other needs, decide not seek reimbursement from Borrower for some costs that it incurs after the first \$300,000. As used in this section, "sole discretion" means that the City may decide whether to seek reimbursement for costs that exceed \$300,000 based solely on its own assessment of the City's interests and without considering how its decision affects Borrower.
- (e) If the Project costs exceed \$720,000, neither party shall be required to provide further funds to complete the Project; however, the parties agree to work together in good faith to find a solution to complete the remediation.

**2. Borrower's Representations.** Borrower makes the following representations as of the effective date of this agreement, and Borrower shall re-make these representations upon each disbursement of Loan Funds.

- (a) Borrower is not potentially liable under section 107 of the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**") (42 U.S.C. §9607) for the Property.
- (b) Borrower is not a viable responsible party or potentially liable for the petroleum contamination at the Property.
- (c) Borrower is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the Property.
- (d) Borrower is a corporation authorized to do business in the State of California.
- (e) Borrower's making and performance of this agreement does not violate any provision of federal or state law, or City of Sacramento ordinance, or result in a breach of or constitute a default under any agreement, indenture, or other instrument to which Borrower is a party or by which Borrower may be bound.
- (f) This agreement, the Note, and the Security Agreement have been duly authorized, executed and delivered, and are valid and binding agreements of Borrower.
- (g) There are no pending or threatened actions or proceedings before any court or administrative agency that may adversely affect the financial condition or operation of Borrower.
- (h) The financial statement dated June 30, 2014 delivered by Borrower to the City presents fairly the financial condition of Borrower, and has been prepared by a certified public accountant in accordance with generally accepted accounting principles consistently applied. As of the date of the financial statement, and since that date, there has been no material adverse change in the condition or operation of Borrower, and Borrower has not mortgaged, pledged or granted security interest in or encumbered any of the Collateral (as defined in Section 6) since the date of the financial statement.
- (i) No Event of Default (as defined in Section 14) and no condition, event, or act that, with the giving notice or lapse of time or both would constitute an Event of Default, has occurred.

**3. Loan.** The City shall lend to Borrower the principal sum of \$300,000 (the "**Loan**") to be used

exclusively for the purpose of reimbursing the City for costs that the City incurs under the Remediation Contract. Funds from the Loan that are advanced on Borrower's behalf are referred to as the "Loan Funds."

4. **Note.** Borrower shall evidence the Loan by executing a promissory note (the "Note") in the amount of \$300,000, payable to the order of the City, substantially in the form of Exhibit B. The Note contains the specific terms for the repayment of the Loan.
5. **Term.** The term of the Loan is a period of five years, with interest to be charged on the Loan funds that are advanced on Borrower's behalf at the rate of 2% simple interest per annum.
6. **Security Agreement.** To secure Borrower's obligation to repay the Loan, Borrower shall enter into a security agreement (the "Security Agreement") with the City (the Security Agreement, together with this agreement and the Note, the "Loan Documents"). The Security Agreement will be in a form provided by the City and provides for certain collateral to secure the Loan ("Collateral"). The Borrower shall reimburse the City for any fees or taxes required to file a financing statement covering the collateral that will be subject to the Security Agreement.
7. **Loan Closing.** The closing of the Loan shall be subject to the following:
  - (a) Borrower executing and delivering the Loan Documents to the City.
  - (b) Borrower delivering evidence satisfactory to the City that Borrower is in good standing and qualified to do business in the State of California.
  - (c) Borrower delivering an opinion of Borrower's legal counsel that all Loan Documents executed by Borrower are valid and enforceable. The form and substance of the opinion must be satisfactory to the City.
  - (d) Borrower providing written authorization in the form of a corporate resolution authorizing the Loan to the Borrower and authorizing Borrower's representative to execute the Loan Documents on behalf of the Borrower.
  - (e) The EPA's approval of the Loan Documents.
  - (f) The City's City Attorney being satisfied by with all legal matters incidental to the City's commitment to issue the Loan, including the form, validity and enforceability of this Loan Documents.

The City reserves the right to waive any or all requirements of this section.

8. **Use of Loan Funds.** The use of the Loan Funds are subject to the following conditions:
  - (a) The Loan Funds may only be used for eligible activities and in compliance with the requirements of CERCLA (42 U.S.C. §9601 et seq.) and all applicable federal, state, and local laws and regulations as required by 42 U.S.C. §3222, including: Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 1500) and federal cross-cutting requirements relating to Minority Business Enterprises and Women-Owned Business

Enterprises (MBE/WBE) requirements (40 CFR Part 33; Occupational Health and Safety Administration (OSHA) Worker Safety Standard (29 CFR §1910.120); Permits required by Section 404 of Clean Water Act (33 U.S.C. §1344); Executive Order 11246, Equal Opportunity; and implementing regulations at 41 CFR Part 60-4; Contract Work Hours and Safety Standards Act (40 USC §§3701-3708); the Copeland Anti-Kickback Act (40 U.S.C. §3145); and, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) as implemented by Executive Orders 11914 and 11250.

- (b) Loan Funds shall be used only for the costs of the removal and activities that are integral to the removal of hazardous substances from the Property as set forth in the following documents and exhibits (collectively, the “**Project Documents**”):

Improvement Plans for Powerhouse Science Center Lower Level Soil  
Removal 400 Jibboom Street C.I.P. No. G18337000, Approved April 15,  
2015

Exhibit “C”	Engineering Evaluation/Cost Analysis (EE/CA)
Exhibit “D”	Project Budget
Exhibit “E”	Responsiveness Summary, as amended (PPP)
Exhibit “F”	Schedule.

- (c) The cleanup must be protective of human health and the environment.
- (d) The City shall document how the Loan Funds are used. Because the cleanup involves a petroleum-contaminated brownfields site, the City shall maintain separate records for costs it incurs at the Property.
- (e) Borrower shall maintain records relating to the Loan and the cleanup for a minimum of three years following completion of the cleanup.
- (f) The City shall carry out the Project in accordance with the Davis-Bacon Act of 1931 (42 U.S.C. §§3141 - 3148) as required by 42 U.S.C. §9604(g)(1) and 42 U.S.C. §3222). CERCLA compliance with Davis Bacon requires payment of federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with Loan Funds. The City will obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the Remediation Contract. In the event of a conflict between the federal prevailing wages and State of California prevailing wages, the City will pay the higher prevailing wage.
- (g) The City shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR Part 60-4 relating to federally assisted construction contracts.
- (h) The City shall commence work on the Project not more than 60 days after the date of execution of this agreement and shall complete all work not more than 365 days after the date of the execution of this agreement in accordance with the Project Documents. Upon completion of the Project, the City shall prepare a cleanup closeout report developed in accordance with 40 CFR section 300.165 and all applicable EPA guidance. This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any.

- (i) The City shall erect a sign on the Property stating that the Project is being financed in part by the BCRLF and the City and providing the appropriate contacts for obtaining information on activities being conducted at the Property and for reporting suspected criminal activities. The sign erected on the Property shall comply with all requirements of the state and local law applicable to on-site outdoor advertising as well as 40 CFR section 35.6105(a)(2)(ii).
- 9. Borrower's Obligation to Perform.** Borrower shall perform all of its obligations under the Loan Documents.
- 10. Inspection of Records.** The City or its designated representative may inspect, audit, and copy Borrower's records and books related to the Loan Documents at any time during normal business after providing Borrower with reasonable notice.
- 11. Financial Statements and Ongoing Reporting.** So long as amounts remain due under the Note, Borrower shall furnish the City with the following:
- (a) Quarterly reports that document that Borrower is in compliance with all relevant federal and state environmental regulations and that it meets the requirements of the BCRLF.
  - (b) Quarterly income statements, balance sheets, and cash flow statements.
  - (c) Any other information that the City reasonably requests.
- 12. Taxes and Other Liabilities.** Borrower shall pay when due all indebted obligations, assessments, taxes real and personal, including federal and state payroll and income taxes, except those that Borrower in good faith contests or as to which a bona fide dispute exists. For those obligations, assessments, or taxes that Borrower in good faith contests or as to which a bona fide dispute exists, Borrower must pay them if the federal or state government, or a court with jurisdiction, determines that they are an obligation of Borrower.
- 13. Litigation.** Borrower shall promptly notify the City of any litigation pending or threatened against Borrower in excess of \$5,000.
- 14. Event of Default.** An "Event of Default" occurs when:
- (a) Borrower assigns any interest in this agreement or any Loan Funds to a third party without the prior written consent of city.
  - (b) Borrower fails to pay any principal or interest when due under the Note within ten (10) days of written notice to Borrower.
  - (c) Any representation made by Borrower in this agreement or any of the Loan Documents proves to be false or misleading in any material respect.
  - (d) Borrower does not cure a default in its performance of any of its obligations under this agreement or any of the Loan Documents within 30 days from the date of the default, or if such cure cannot be completed within 30 days, then if Borrower commences a cure within 30 days

and diligently completes such cure within 90 days.

- (e) Borrower defaults under the terms of any agreement or instrument pursuant to which Borrower has borrowed money from any person or entity that results in the acceleration of the maturity of the indebtedness under the agreement or instrument.
  - (f) Borrower fails to promptly to pay and discharge any judgment or levy of any attachment, execution or other process against the Collateral, and that judgment is not satisfied, or that levy or other process is not removed within 30 days after the entry of judgment or levy, or at least 5 days prior to the time of any proposed sale under the judgment or levy.
  - (g) Borrower is adjudicated as bankrupt or insolvent, or consents to or applies for the appointment of a receiver, trustee, or liquidator of itself or any of its property, or admits in writing its inability to pay its debts generally as they become due, or makes a general assessment for the benefit of creditors, or files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization or arrangement in a proceeding under any bankruptcy law, or borrower or its directors or majority stockholders take action looking into the dissolution, liquidation, or reorganization of Borrower.
  - (h) Borrower sells any of the collateral covered by the Security Agreement.
- 15. Acceleration.** Upon, or at any time after, the occurrence of an Event of Default, the City's obligation, if any, to advance Loan Funds terminates, and any indebtedness of Borrower under this agreement or the Note will, at the City's option and without notice, become immediately due and payable without presentment, notice, or demand, all of which Borrower hereby expressly waives.
- 16. Remedies.** Upon, or at any time after, the occurrence of an Event of Default, then the City may elect, at its discretion and in addition to any other rights or remedies provided by law or this agreement, to enforce all rights and remedies under this agreement and the Loan Documents, and may pursue all rights and remedies available at law or in equity. The City's rights and remedies under this agreement, whether granted by law or otherwise, are cumulative and not exclusive, and the City may exercise any or all of those rights and remedies at any time.
- 17. Indemnity.** Borrower shall defend, hold harmless and indemnify the City, its officers and employees, 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, including, but not limited to, any fees and/or costs reasonably incurred by the 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 contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with a breach of the Loan Documents or use of the Loan Funds, or performance of or failure to perform this agreement by Borrower, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities 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 the City, its agents, servants, or independent contractors who are directly responsible to the City.

**18. Notices.** Any notice or other communication under this agreement must be in writing and is considered properly given and effective only when mailed or delivered in the manner provided by this Section 18 to the persons identified below. A notice or other communication that is mailed is effective or 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 is effective or 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 18.

*If to the City:*

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

*If to Borrower:*

Powerhouse Science Center  
3615 Auburn Blvd., Sacramento, CA 95821  
Attention:  
Randy Beaton  
Director of Finance

- 19. Assignments.** Borrower may not assign or otherwise transfer this agreement or any interest in it without the City's prior written consent, which the City may withhold in its sole discretion. An assignment or other transfer made contrary to this Section 19 is void.
- 20. Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.
- 21. 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.
- 22. Waiver.** The City's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement is not a waiver of the performance, right, or remedy. The City's waiver of Borrower's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any later breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the City.
- 23. 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.
- 24. Attorneys' fees.** The parties must bear their own costs and attorneys' fees incurred in connection with this agreement.
- 25. No Third-Party Beneficiaries.** This agreement is solely for the benefit of the City and Borrower. It is not intended to benefit any third parties.
- 26. Agency.** The parties do not intend for this agreement to create a partnership or joint venture between the City and Borrower. The City is not an agent or representative of Borrower.
- 27. Effective date.** This agreement is effective on the date both parties have signed it, as indicated by

the dates in the signature blocks below.

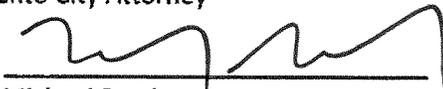
- 28. Counterparts.** The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.
- 29. Integration and modification.** This agreement, together with the other Loan Documents, 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, along with the other Loan Documents, 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.

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**City of Sacramento**

By: \_\_\_\_\_  
John F. Shirey  
City Manager  
Date: \_\_\_\_\_, 2015

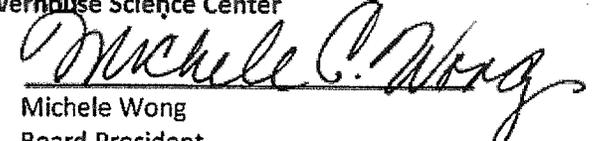
Approved as to Form  
Sacramento City Attorney

By:   
Michael Sparks  
Senior Deputy City Attorney

Attest:

By: \_\_\_\_\_  
Assistant City Clerk

**Powerhouse Science Center**

By:   
Michele Wong  
Board President  
Date: May 26, 2015

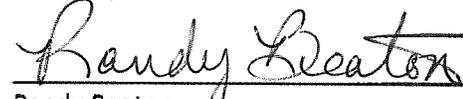
By:   
Randy Beaton  
Director of Finance  
Date: May 26, 2015

Exhibit A  
Property Description

Premises means, collectively the real property, buildings, appurtenances, and improvements, and all incidentals located at 400 Jibboom Street, identified as assessor's parcel numbers 01-0190-015, -016, and portions of -004, -005, -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.

Exhibit B  
Form Promissory Note

\$300,000.00

Sacramento, California  
Date: As of \_\_\_\_\_, 2015

- 1. Promise to Pay.** For value received, **Powerhouse Science Center (“Borrower”)**, a California corporation, promises to pay to the **City of Sacramento (“Lender”)**, a California municipal corporation, or order, at the office of its Economic Development Department at 915 I Street, 4<sup>th</sup> Floor, Sacramento, CA 95814, the principal sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00), or so much as is advanced to or for the benefit of Borrower and is outstanding under this note, together with interest as provided in Section 3 of this note.
- 2. Loan Agreement.** This note is the “Note” as defined in the reimbursement and loan agreement for site remediation (the “**Loan Agreement**”) between Lender and Borrower dated June xx, 2015, as the Loan Agreement may be amended from time to time. All capitalized terms used in this note but not expressly defined in this note shall have the meanings ascribed to them in the Loan Agreement. This note is subject to the terms of the Loan Agreement; however, in the event of a conflict between the terms of this note and the Loan Agreement, the terms of this note shall prevail.
- 3. Interest Rate.** The outstanding principal amount advanced under this note will accrue simple interest at the rate of two percent per annum through the Maturity Date (as defined below) and so long as there is no existing Event of Default. After the Maturity Date or while there exists an Event of Default under the Loan Agreement, the interest rate will increase to the maximum rate allowed by law. Interest will be calculated on the basis of a 365-day year based upon the actual days elapsed. The term “**Event of Default**” means (a) an Event of Default under the Loan Agreement, or (b) the failure to pay all principal and interest when due, whether at the Maturity Date or by acceleration.
- 4. Maturity Date.** The term “**Maturity Date**” means the date that is the earlier of (a) the first day of the 60<sup>th</sup> calendar month commencing after the effective date of the Loan Agreement, and (b) the date that Borrower secures \$40,000,000 in municipal finance bonds (or similar funding mechanism) and construction financing for Phase I of the construction of the Powerhouse Science Center.
- 5. Regular Payments.** Commencing on January 5, 2016, and continuing each January 5<sup>th</sup> until the Maturity Date, Borrower shall pay the accrued interest that is due. On the Maturity Date, Borrower shall pay the outstanding principal amount and accrued interest, along with any late charges. In addition to any other amounts due under this note, Borrower shall immediately pay a late charge of five percent of any installment not paid within ten days of the due date.
- 6. Prepayment.** This note may be prepaid, at any time or from time to time, in whole or in part without premium or penalty. Any prepayment of principal must be accompanied by interest accrued but unpaid to the date of receipt of prepayment. If interest is owed on the note, prepayments shall be applied first to accrued interest then due and the remainder will be credited to principal.
- 7. Loan Documents.** This note is issued pursuant to the Loan Agreement and is secured by the Security Agreement.

- 8. Collection Costs.** If this note is not paid when due, whether at the Maturity Date or by acceleration, Borrower, and every guarantor and endorser of this note, and every person who assumes the obligations of this note, agrees to pay all costs of collection when incurred, including reasonable attorney's fees, whether or not suit is filed. Additionally, the holder of this note will be entitled to reimbursement for all attorney's fees and costs incurred in enforcing any judgment arising from or out of this note. These fees and costs do not merge into the judgment and may be added to the judgment and substantiated by supplemental cost bill.
- 9. Presentment; Demand, Protest; Notice.** Borrower, every guarantor and endorser of this note, and every person who assumes the obligations of this note, waives presentment, demand, protest, and notice of dishonor, notice of protest, notice of nonpayment, and notice of any kind with respect to this note or any guarantee of it.
- 10. Other Obligations.** Borrower agrees to perform all of its obligations under the Loan Agreement and Security Agreement.
- 11. Modification and Waiver.** This note may not be changed or terminated orally, but only by an agreement in writing signed by the party against who enforcement of the change or termination is sought. No alteration, amendment or waiver of any provision of this note, the Loan Agreement, or the Security Agreement, made by agreement of the holder of this note or any other person or party, shall constitute a waiver of any other term of this note, or otherwise release or discharge the liability of Borrower under this note.
- 12. Acceleration.** If an Event of Default occurs, Lender may, in its sole discretion, declare the entire unpaid principal balance of this note, together with all accrued and unpaid interest, and all other amounts due under this note, immediately due and payable without notice or demand.
- 13. Interpretation.** This note is to be interpreted and applied in accordance with California law.

**BORROWER:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit C  
Engineering Evaluation/Cost Analysis (EE/CA)

Description		Base Bid
<b>Preparatory Work:</b>		
a	General Provisions	30,000
b	Remove Bird Droppings	15,000
c	Remove & Replace South Doors for Building Access	3,000
d	Relocate Existing Fencing @ Matsui Park	7,925
e	Excavate Ramp to Intake Level	4,500
f	Backfill Ramp to Intake Level	4,500
g	Construction Staking	2,500
h	Storm Water Pollution and Prevention Program	10,000
<b>Construction:</b>		
a	Hazardous Material Abatement @ Wall to Slab Tie-in	6,500
b	Wall to Slab Tie-in	26,000
c	Ventilation of Excavation Area	15,000
d	Remove Non-Hazardous Misc. Items @ Intake Level	10,000
e	Footings & Excavation for Wall Shoring	15,000
f	Steel Frame @ Wall Shoring for Interior Excavation	105,000
g	Helical Anchors	39,000
h	Temp Power & Water	16,500
i	Excavation of Intake Level	32,000
j	Haul Excavated Materials Class II	16,500
k	Landfill Disposal Fees Class II	50,000
l	Touch-Up Interior Grades @ Completion	2,500
<b>Subtotal</b>		<b>411,425</b>
<b>Contingency:</b>		
a	10% Contingency:	41,143
<b>Subtotal</b>		<b>452,568</b>
<b>Miscellaneous Items:</b>		
a	1% Insurance	4,526
b	1.5% Payment & Performance Bonds	6,789
c	7.5% Contractor Fee	33,943
<b>Total</b>		<b>497,824</b>

Exhibit D  
Project Budget

<b>Sources</b>	
Brownfield RLF	300,000
DTSC Cleanup Grant	150,000
DTSC Cleanup Match	30,000
EPA Cleanup Grant	200,000
EPA Cleanup Grant Match	40,000
	720,000
<b>Uses</b>	
DTSC Grant Match already spent	-
EPA Match already spent	22,832
EPA Grant Expenses already billed	21,377
Geocon Contract - Remaining	30,767
Demo Permit	11,800
Air Test & Permit	5,435
Otto/B&B Costs/Nolte	25,700
City Project Manager	9,000
Labor Compliance	6,000
PW Inspector	43,000
Contractor	500,000
Contingency	44,089
	720,000

Exhibit E  
Responsiveness Summary

On September 24, 2009 the City hosted the Jibboom Street Powerstation Community Outreach Meeting. At the meeting, city staff gave a presentation and provided the community with an information sheet regarding the cleanup plan and the City's intent to apply to the U.S. EPA for grant funding to complete the cleanup. The community shared comments related to preserving the historic structure, enhanced landscaping and the building's relationship to the Sacramento River, but the City received no comments related to the proposed cleanup plan.

City staff provides regular updates to the River District Board (property and business owner association) regarding the clean up of the Jibboom Street Powerstation. Most recently, staff presented on February 11, 2015 and received no comments or questions.

Exhibit F  
Schedule

June 23- Award Cleanup Contract

June 26– Issue Notice to Proceed (120 calendar days)

October 26 – Complete Construction

November 4 – File Notice of Completion with County Clerk

December 16 – Pay construction retention

## SECURITY AGREEMENT

This agreement, dated June 16, 2015, for purposes of identification, is between the **City of Sacramento** ("**Secured Party**"), a California municipal corporation, and the **Powerhouse Science Center** ("**Debtor**"), a California nonprofit corporation.

1. **Security Interest.** For value received, Debtor hereby grants to Secured Party a security interest in the property described in exhibit A, referred to in this agreement as the "**Collateral**," to secure:
  - (a) Debtor's promissory note of \$300,000 to Secured Party of May 26, 2015, payable as to principal and interest as provided in the note ("Note");
  - (b) Future advances by Secured Party to Debtor, to be evidenced by similar notes;
  - (c) All expenditures by Secured Party for taxes, insurance, and repairs to and maintenance of the Collateral incurred by Secured Party in the collection and enforcement of the note and other indebtedness of Debtor; and,
  - (d) All liabilities of Debtor to Secured Party under the Note, whether now existing or incurred in the future, matured or unmatured, direct or contingent, and any renewals, extensions, and substitutions of those liabilities.
2. **Loan Agreement.** This agreement is the "**Security Agreement**" as defined in the reimbursement and loan agreement for site remediation (the "**Loan Agreement**") between Secured Party and Debtor dated June 16, 2015, as the Loan Agreement may be amended from time to time. All capitalized terms used in this agreement but not expressly defined in this agreement shall have the meanings ascribed to them in the Loan Agreement. All other terms used in this agreement that are defined in the California Commercial Code shall have the meanings ascribed to them in the California Commercial Code. This agreement is subject to the terms of the Loan Agreement; however, in the event of a conflict between the terms of this agreement and the Loan Agreement, the terms of this agreement shall prevail.
3. **Debtor's Representations.** Debtor represents that:
  - (a) The Collateral is to be used in business other than farming operations;
  - (b) No financing statement covering the Collateral or any part of it or any proceeds of it is on file in any public office.
  - (c) Debtor's chief place of business is, and the Collateral will be kept at 3615 Auburn Blvd., Sacramento, CA 95821.
4. **Title.** Except for the security interest granted by this agreement, Debtor has full title to the

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Collateral free from any lien, security interest, encumbrance, or claim, and Debtor, at Debtor's cost and expense, will defend any action that may affect Secured Party's security interest in, or Debtor's title to, the Collateral.

- 5. Financing Statement.** Secured Party may file a financing statement covering the Collateral. At Secured Party's request, Debtor shall join in executing, and pay the filing fees required for, the financing statement in a form satisfactory to Secured Party and will further execute all other instruments deemed necessary by Secured Party. Except for the financing statement to be executed in connection with this agreement, Debtor shall not cause or permit any financing statement covering the Collateral to be filed in any public office until this agreement and all debts secured by it have been fully satisfied.
- 6. Sale, Lease, or Disposition of Collateral.** Debtor shall not sell, contract to sell, lease, encumber, or dispose of the Collateral or any interest in it without the written consent of Secured Party until this agreement and all debts secured by it have been fully satisfied.
- 7. Taxes and Assessments.** Debtor shall pay promptly when due all taxes and assessments on the Collateral, or any part of the Collateral, or for its use and operation.
- 8. Location and Identification.** Debtor shall keep the Collateral separate and identifiable and at the address shown in Section 3, and shall not remove the Collateral from that address without Secured Party's written consent, for as long as this agreement remains in effect.
- 9. Security Interest in Proceeds and Accessions.** Debtor hereby grants to Secured Party a security interest in and to all proceeds, increases, substitutions, replacements, additions, and accessions to the Collateral and to any part of the Collateral. This provision shall not be construed to mean that Debtor is authorized to sell, lease, or dispose of the Collateral without the prior written consent of Secured Party.
- 10. Decrease in Value of Collateral.** If, in Secured Party's judgment, the Collateral has materially decreased in value or if Secured Party determines that Debtor is financially unstable, Debtor shall either provide enough additional Collateral to satisfy Secured Party or reduce the total indebtedness by an amount sufficient to satisfy Secured Party.
- 11. Reimbursement of Expenses.** Secured Party may discharge taxes, liens, interest, or perform or cause to be performed for and on behalf of Debtor any actions and conditions, obligations, or covenants that Debtor has failed or refused to perform. In addition, Secured Party may pay for the repair, maintenance, and preservation of the Collateral. Secured Party also may enter the premises where the Collateral or any part of it is located and cause to be performed as agent and on the account of Debtor any acts that Secured Party deems necessary for the proper repair or maintenance of the Collateral or any part of it. All sums expended by Secured Party under this Section 11, including agent's fees, or commissions, or any other costs or expenses, will bear interest from the date of payment at the rate of five percent per annum on the basis of a 365-day year based upon the actual days elapsed, will be payable no later than the Maturity Date, will be payable at the place designated in Debtor's note, and will be secured by this Security Agreement.

- 12. Payment.** Debtor shall pay the note secured by this agreement and any renewal or extension of it and any other indebtedness secured by this agreement in accordance with the terms and provisions of the indebtedness. On full payment by Debtor of all indebtedness secured by this agreement, this agreement will expire, and Secured Party's security interest in the Collateral, as set forth in this agreement, will terminate.
- 13. Change of Place of Business.** Debtor shall promptly notify Secured Party of any change of Debtor's chief place of business or place where records concerning the Collateral are kept.
- 14. Attorney-in-Fact.** Debtor hereby appoints Secured Party as Debtor's attorney-in-fact to do any act that Debtor is obligated by this Security Agreement to do, to exercise all rights of Debtor in the Collateral, to make collections, to execute all papers and instruments, and to do all other things necessary to preserve and protect the Collateral, to make collections, and to protect Secured Party's security interest in the Collateral.
- 15. Event of Default.** Debtor will be in default under this agreement on the occurrence of any of the following events or conditions ("**Event of Default**"):
- (a) Default in the payment the Note not cured within ten (10) days of written notice, or any liability secured by this agreement, or performance of the Loan Agreement not cured within the time frames set forth therein;
  - (b) Any representation made or furnished to Secured Party by or on behalf of the Debtor proves to have been false in any material respect when made or furnished;
  - (c) Any event that results in the acceleration of the maturity of the indebtedness of Debtor to others under any indenture, agreement, or undertaking;
  - (d) Loss, theft, substantial damage, destruction, sale, or encumbrance to or of any of the Collateral, or the making of any levy, seizure, or attachment of or on the Collateral;
  - (e) Any time Secured Party reasonably believes that the prospect of payment of any indebtedness secured by this agreement or the performance of this agreement is impaired; or,
  - (f) Dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Collateral, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency law by or against Debtor or any guarantor or surety for Debtor.
- 16. Remedies.** On the occurrence of any Event of Default, and at any later time, Secured Party may declare all obligations secured due and payable immediately and may proceed to enforce payment and exercise any and all of the rights and remedies provided by the California Commercial Code as well as other rights and remedies either at law or in equity possessed by Secured Party. Secured Party may require Debtor to assemble the Collateral

and make it available to Secured Party at any place to be designated by Secured Party that is reasonably convenient to both parties. Unless the Collateral is perishable, threatens to decline speedily in value, or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice will be met if the notice is given according to the requirements of Section 17 at least 10 days before the time of the sale or disposition.

- 17. Notices.** Any notice or other communication under this agreement must be in writing and is considered properly given and effective only when mailed or delivered in the manner provided by this Section 17 to the persons identified below. A notice or other communication that is mailed is effective or 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 is effective or 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 17.

*If to Secured Party:*

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

*If to Debtor:*

Powerhouse Science Center  
3615 Auburn Blvd., Sacramento, CA 95821  
Attention:  
Randy Beaton  
Director of Finance

- 18. Assignments.** Debtor may not assign or otherwise transfer this agreement or any interest in it without Secured Party's prior written consent, which Secured Party may withhold in its sole discretion. An assignment or other transfer made contrary to this Section 18 is void.
- 19. Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.
- 20. 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.
- 21. Waiver.** Secured Party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement is not a waiver of the performance, right, or remedy. Secured Party's waiver of Debtor's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any later breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by Secured Party.

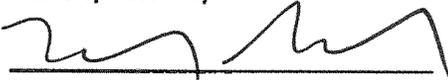
- 22. Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.
- 23. Attorneys' fees.** The parties must bear their own costs and attorneys' fees incurred in connection with this agreement.
- 24. No Third-Party Beneficiaries.** This agreement is solely for the benefit of Secured Party and Debtor. It is not intended to benefit any third parties.
- 25. Agency.** The parties do not intend for this agreement to create a partnership or joint venture between Secured Party and Debtor. Secured Party is not an agent or representative of Debtor, except as provided in Section 14.
- 26. Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- 27. Counterparts.** The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.
- 28. Integration and modification.** This agreement, together with the Note and Loan 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, along with the Note and Loan Agreement, 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.

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**City of Sacramento**

By: \_\_\_\_\_  
John F. Shirey  
City Manager  
Date: \_\_\_\_\_, 2015

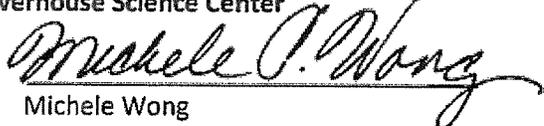
Approved as to Form  
Sacramento City Attorney

By:   
Michael Sparks  
Senior Deputy City Attorney

Attest:

By: \_\_\_\_\_  
Assistant City Clerk

**Powerhouse Science Center**

By:   
Michele Wong  
Board President  
Date: May 26, 2015

By:   
Randy Beaton  
Director of Finance  
Date: May 26, 2015

Exhibit A  
List of Collateral

**Description**

---

**Furniture and Fixtures**

- Chairs
- Chairs - Planetarium
- Flagpoles
- Signage
- Projection video
- VCR
- Signage
- Equipment
- Equipment
- Scanning system
- Chairs
- Chairs and tables
- Chipper and pruner
- Telephone system
- Furniture and fixtures
- Moon Scenario Display
- Microscopes
- DVD Player
- Storage Container
- Robot
- CDW Challenger Software
- Computer
- Computer keyboards
- Lawnmower
- Challenger Reservation Fee
- 6 Redwood Picnic Tables
- File Cabinets for Business Office
- 2 Technical Miscrosopes
- 15 Computers/Monitors
- 3 Computers/Monitors
- POS System
- Sound System Planetarium
- Projector and lamp
- 3 Apple Mini Computers
- Tables-Robotics
- Chairs-Robotics
- TVs for Challenger

**Autos/Transportation**

Ford Van

98 Chevy Astro

94 Dodge Van

2001 Chrysler Van

**Displays & Exhibits - Discovery**

Challenger Exhibit

Rocket Engine Display

Dental Chair for Bone Zone

**Displays & Exhibits - PSC**

Swim for Your Life' Exhibit

Deposit - Challenger simulators

**Robotics Lab Trailer**

## PROMISSORY NOTE

\$300,000.00

Sacramento, California  
Date: As of May 26, 2015

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- 4. Maturity Date.** The term “**Maturity Date**” means the date that is the earlier of (a) the first day of the 60<sup>th</sup> calendar month commencing after the effective date of the Loan Agreement, and (b) the date that Borrower secures \$40,000,000 in municipal finance bonds (or similar funding mechanism) and construction financing for Phase I of the construction of the Powerhouse Science Center.
- 5. Regular Payments.** Commencing on January 5, 2016, and continuing each January 5<sup>th</sup> until the Maturity Date, Borrower shall pay the accrued interest that is due. On the Maturity Date, Borrower shall pay the outstanding principal amount and accrued interest, along with any late charges. In addition to any other amounts due under this note, Borrower shall immediately pay a late charge of five percent of any installment not paid within ten days of the due date.
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- 13. Interpretation.** This note is to be interpreted and applied in accordance with California law.

**BORROWER:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_