

Agreement for the Exclusive Right to Negotiate Jibboom Street Power Station Site

The City of Sacramento ("City") and the Sacramento Museum of History, Science and Technology ("Developer"), have entered into this Agreement for the Exclusive Right to Negotiate ("Agreement") as of _____, 2007.

RECITALS

- A. Developer desires to negotiate with City to develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California, being all or a portion of the properties on the west of Jibboom Street known as parcels 001-0190-004, -009, -011, -015, and -016, as shown on the map attached hereto as Exhibit A. The Property is within the Richards Boulevard Redevelopment Project Area ("Project Area"). The redevelopment of the Property ("Project") is consistent with the Richards Boulevard Redevelopment Plan ("Redevelopment Plan") and its implementing documents. The Property has been identified by the City as important to the furtherance of the Redevelopment Plan and the elimination of blighting conditions in the Project Area.
- B. In June 2005, the City circulated widely a Request for Proposals ("RFP") for the Project in a competitive bidding process. Developer submitted one of the five proposals received by the City. While favorably considered, Developer's proposal was not selected due to the financial strength and national reputation of the recommended proposer. However, the recommended proposer withdrew from the Project after it was selected by Council on February 14, 2006.
- C. Developer's proposal for redevelopment of the Property into a science and space museum with an adjacent restaurant and parking structure serving the site is the subject of negotiation with the City. The parties contemplate that such negotiation will lead to a mutually satisfactory program for site control, financing and development of the Property, and negotiation of a Ground Lease ("Lease") under which such program will be completed.
- D. City finds that Developer's proposal for the Project meets the objectives of the RFP, the Riverfront Master Plan and the Redevelopment Plan, and it is in the best interests of the City to pursue the Developer's program for the Project. City further finds that the Developer has assembled a Project development and construction team that is experienced in financing and rehabilitating historic properties.
- E. The purpose of this Agreement is to state the obligations of the City and Developer to investigate the feasibility of the Project and to develop a program for the development of the Property. Once such feasibility is demonstrated, the parties intend to negotiate the terms and conditions of the Lease, exclusively and in good faith, and to use reasonable good faith efforts to complete, execute and deliver the Lease at the end of the term of this Agreement, after full and unrestricted CEQA review and consideration of the Project.
- F. The parties agree that the development of the Property, the completion of the Project and the execution of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accordance with the public purposes and provisions of federal, state and local laws under which the Project may be undertaken.

NOW, THEREFORE, City and Developer agree as follows:

- 1) Exclusive Right to Negotiate. City grants to the Developer an exclusive right to negotiate for the right to develop and lease the Property.
- 2) Term. This Agreement shall commence as of the date of its execution by both parties ("Commencement Date") and, except as otherwise provided herein, shall terminate upon the earlier of

completion of all obligations herein or three hundred sixty five (365) days after the Commencement Date ("Termination Date").

- 3) Developer's Proposal for Development of the Property. As a condition precedent to the City negotiating the Lease, Developer must prepare a comprehensive proposal for the development of the Property ("Proposal") and submit the Proposal to the City for its approval within ninety (90) days of the Commencement Date. It is agreed and understood that the City's approval of the Proposal is a prerequisite to further consideration of the Project and that the City's approval of the Proposal does not compel or require the City to approve the Project, or enter into a Lease with Developer.
 - a) Contents of Proposal. Developer shall include in its Proposal, without limitation, the following: (a) a detailed description of the Developer's development team, naming the principals of Developer, the architectural and design team, the general contractor, and the marketing team; (b) Project conceptual design, including site plan, elevations and typical floor plates in keeping with all applicable planning requirements and design guidelines of the City; (c) refined economic estimate of construction costs for Project designs; (d) detailed fundraising plan and financing plan; (e) 10-year cash flow analysis for Project operations; (f) location of parking spaces and the physical manner by which those spaces will be operated; (g) description of restaurant's financial and operational relationship with the Project; (h) evidence of ability to satisfy city insurance and indemnity requirements; and (i) identification of the development and construction team members.
 - b) Disapproval of Proposal. This Agreement shall terminate if the City Manager or his designee disapproves the Proposal.
- 4) CEQA Review.
 - a) At Developer's expense, the Developer shall prepare all environmental documents necessary for the City to conduct appropriate environmental review of the Project under the California Environmental Quality Act ("CEQA").
 - b) Within ninety (90) days of the Commencement Date, Developer shall prepare and submit to the City for approval a Project description to be used by the City to prepare the environmental documentation for the Project following approval of the Proposal. Upon the City's request, Developer shall supply any additional data and information both to determine the impact of the Project on the environment and to assist in the preparation of the environmental documents.
 - c) Nothing in this section shall be construed to limit the City's powers, rights and duties under CEQA or to obligate the City to approve the proposed Project or enter into a Lease with Developer.
- 5) Schedule of Performance. The parties shall perform the following obligations by the dates specified in the following schedule ("Schedule of Performances"):

Due Date	Action	Responsible Party
Within ninety (90) days of Commencement Date	Refine site plans for the Property including revised design of museum and detailed concepts for the restaurant/entertainment/parking/public components of the Project	Developer
	Develop concepts for the open space components of the Project that harmonize with the City's Jibboom Street Park Master Plan and planned park improvement plans	Developer and the City
	Refine estimated construction costs, including all applicable fees and contingencies	Developer
	Refine development and operating pro formas	Developer
	Submit a Project description to the City	Developer
	Submit a comprehensive Proposal to the City meeting the	Developer (with

Due Date	Action	Responsible Party
	requirements detailed in Section 3a. above.	City support)
Within one-hundred twenty (120) days of Commencement Date	Approve or disapprove Proposal and Project description within 30 days of submission	City
	Consult with appropriate State and local agencies with jurisdiction over the Project regarding Project approvals	Developer and the City
	Consult with appropriate community and river groups with interests in the Project	Developer and the City
	Submit Planning entitlement application to City Planning Department	Developer
	Begin CEQA analysis	City
	Solicit comments from Design Review and Preservation Board for use in CEQA analysis	Developer and the City
Within three-hundred thirty (330) days of Commencement Date	Finalize schedule of performances for the construction period	Developer
	Negotiate the terms and conditions of the Lease	Developer and the City
	Provide evidence of confirmed commitments meeting at least 60% of total fundraising goal	Developer
	Provide evidence of at least \$5 million in cash deposited in Developer's capital campaign bank account for construction costs	Developer
Within three-hundred sixty five (365) days of Commencement Date	Obtain Project entitlement approvals, including CEQA, from the City	Developer
	Execute the Lease	Developer and the City

6) Lease.

- a) The parties shall make a good faith effort to negotiate the terms and conditions of a lease of the Property in accordance with the timeframe in the Schedule of Performances and to use reasonable and good faith efforts to complete and fully execute the Lease by the Termination Date.
- b) The parties agree that the Lease will include, without limitation, the following terms and conditions: (a) use covenants to run with the land; (b) payment and performance bonding and/or other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) the City's local hiring policies and prevailing wage requirements; (f) performance assurances; (g) limitation on assignments prior to Project completion; (h) compliance with CEQA mitigation; (i) the City's rights to revert the Property upon default; and (j) the City's Art in Public Places requirements; (k) the City's rights to cure defaults, assume loans and complete construction; (l) loan guarantees and additional securities; (m) customary protections for lenders providing financing for the Project; and (n) business operations and maintenance standards and requirements.

7) Predevelopment Costs. Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement, including but not limited to costs for planning, environmental, architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the Lease.

8) Term Extension. This Agreement may be extended for up to two additional periods of up to one hundred and eighty (180) days each ("Extension Period") and the schedule of performances amended

by the City Manager or his designee upon the mutual agreement of the parties. During the Extension Period, the parties shall accomplish all of the tasks necessary for the execution of the Lease, including without limitation, negotiating Lease terms, developing architectural plans, preparing environmental studies and documentation, obtaining financing commitments, obtaining tenant commitments as necessary for financing, and engaging the general contractor.

- 9) Default. Except as otherwise provided herein, the following events by either party shall be "Events of Default": (a) failure to perform obligations when due, which failure is not caused by the other party, (b) failure to negotiate the terms and conditions of the Lease in good faith, (c) failure to reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (d) unilaterally terminating this Agreement; provided, however, none of these events shall constitute an Event of Default unless the event continues for more than thirty (30) days after receipt of written notice of default from the other party.
- a) Remedies. Upon the occurrence of any one or more of the "Events of Default", either party shall have the right to terminate this Agreement and may pursue equitable remedies available to it for such Default. Upon such termination, the City shall have the right to: 1) retain the Deposits; and, 2) pursue development of the Project without any participation by Developer.
- b) The remedies contained in Section 9a. are the sole exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.
- 10) Unavoidable Delays. Neither the City nor Developer shall be considered in breach of, or default of, its obligations under this Agreement, if the delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (as for example, floods, tornadoes, or hurricanes). In the event of the occurrence of any such delay, the time or times for performance of such obligations of the City and Developer shall be extended for the period of the delay provided that the party seeking the benefit of the provisions of this section shall, within ten days after it has or should have knowledge of any such delay, has first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the delay.
- 11) Disclosure of Interested Parties. Developer shall, as a condition precedent to execution of the Lease by the City, make full disclosure to the City of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer.
- 12) No Joint Venture. This Agreement does not create a joint venture or a partnership between the parties.
- 13) Notices. Notices to either party shall be personally delivered or sent by first class mail to:
- City of Sacramento
Economic Development Department
1030 15th Street, Second Floor
Sacramento, California 95814
Attn: Rachel Hazlewood
- The Sacramento Museum of History, Science and Technology
1011 I Street
Sacramento, California 95814
Attn: Evangeline J. Higginbotham, Ph.d.
- 14) Entire Agreement. This document, including all Exhibits, contains the entire agreement between the

parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Developer, and by City, in accordance with applicable provisions of the Sacramento City Code.

- 15) Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- 16) Waiver. Neither City's acceptance of the performance of any obligation under this Agreement by Developer, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
- 17) Enforcement of Agreement. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- 18) Assignment Prohibited. Developer shall not assign any right or obligation pursuant to this Agreement without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
- 19) Authority. The person signing this Agreement for Developer hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Developer and to bind Developer to the performance of its obligations hereunder.

Executed as of the date first written above, in Sacramento, California.

CITY OF SACRAMENTO
A Municipal Corporation

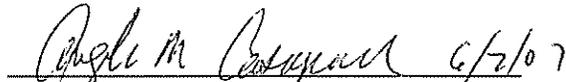
By: _____
 Print name: John Dangberg
 Title: Asst. City Manager
 For: Ray Kerridge, City Manager

Sacramento Museum of History, Science and Technology
A Nonprofit Corporation

By: 
 Evangeline J. Higginbotham, Ph.d.
 Its: Executive Director

By: 
 Michele C. Wong
 Its: President

APPROVED TO AS FORM:


 City Attorney

ATTEST:

City Clerk

