

INTRODUCED: September 12, 2016

AN ORDINANCE No. 2016-229

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund Program Performance Agreement between the City of Richmond, Virginia, and the Virginia Economic Development Partnership Authority for the purpose of enabling the Authority to provide a grant of \$50,000 to the City to assist in the completion of a Phase II Environmental Site Assessment at the former Fulton Gas Works located at 3301 Williamsburg Avenue in the city of Richmond.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEPT 26 2016 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund Program Performance Agreement between the City of Richmond, Virginia, and the Virginia Economic Development Partnership Authority for the purpose of enabling the Authority to provide a restoration and redevelopment grant of \$50,000 to the City to assist in the completion of a Phase II Environmental Site Assessment at the former

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: SEPT 26 2016 REJECTED: _____ STRICKEN: _____

Fulton Gas Works located at 3301 Williamsburg Avenue in the city of Richmond. The Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund Program Performance Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

O & R REQUEST 4-5334

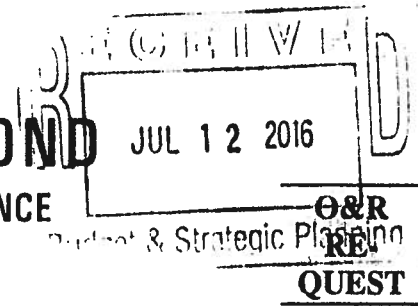


JUL 13 2016

CITY OF RICHMOND

Chief Administration Office
City of Richmond

INTRACITY CORRESPONDENCE



DATE: July 8, 2016

EDITION: RECEIVED

THRU: Dwight C. Jones, Mayor *DCJ*

AUG 01 2016

THRU: Selena Cuffee-Glenn, Chief Administrative Officer *SCG*

OFFICE OF CITY ATTORNEY

THRU: John Buturla, Interim Deputy Chief Administrative Officer for Operations *JB*

THRU: Lenora Reid, Deputy Chief Administrative Officer for Finance & Administration *LR*

THRU: John Wack, Director Finance Department *JW*

THRU: Jay Brown, Director Department of Budget & Strategic Planning *JB*

FROM: Robert Steidel, Director of Public Utilities *RS*

RE: Authorize the CAO to execute a Performance Agreement with the VEDP to allow the City to accept \$50,000 in funds to complete an assessment of the Fulton Gas Works property.

ORD. OR RES. No. _____

PURPOSE: To secure Council approval for the CAO to execute a performance agreement with the Virginia Economic Development Partnership Authority (VEDP), and to authorize the City's acceptance of \$50,000 in grant funds for the purpose of completing a Phase II Environmental Site Assessment of the former Fulton Gas Works site which, in turn, will facilitate the site's renovation and improvement.

REASON: The City is undertaking assessment and remediation activities on the Fulton Gas Works site in accordance with the Virginia Department of Environmental Quality (DEQ) Voluntary Remediation Program (VRP) to address the Recognized Environmental Conditions (RECs) and Historical RECs (HRECs) related to the gasification plant that was located on the property from the 1850s to the 1950s. RECs are defined by ASTM Standards as "the presence or likely presence of any hazardous substance or petroleum products in, on, or at a property due to release to the environment; under conditions indicative of release to the environment or under conditions that pose a material threat of future release." A HREC is defined as "an environmental condition which in the past would have been addressed to the satisfaction of the applicable regulatory authority with hazardous substances or petroleum products allowed to remain in place subject to the

implementation of required controls. The Department of Public Utilities (DPU) has qualified for grant funding from the VEDP to complete a Phase II Environmental Site Assessment, which requires Council approval before the funds can be accepted.

RECOMMENDATION: DPU, the City agency with primary responsibilities for the Fulton Gas Works property, recommends approval of the Ordinance which will authorize the CAO to execute the performance agreement with VEDP and the City's acceptance of up to \$50,000 in matching state grant money. The grant money will help DPU finish a Phase II Environmental Site Assessment of the property which, in turn, will facilitate future site improvements.

BACKGROUND: The Fulton Gas Works site, located in the City at 3301 Williamsburg Avenue, consists of one parcel totaling approximately 7.9 acres. The property is located in the coastal plain, below the rapids in downtown Richmond.

Fulton Gas Works was a manufactured gas plant that, from the 1850s through the 1950s, burned coal and oil to derive volatiles (coal gas) for use as a residential and industrial fuel source. The vacant buildings currently located on the site date to the mid-1920s. Site structures also include a gasometer frame (the large, round steel structure on the property).

Fulton Gas Works also maintained underground tar cisterns and large vertical, cylindrical crude oil aboveground storage tanks (ASTs) from as early as 1905 until the plant's closing in the 1950s. The ASTs have since been removed, but site observations indicate that the cisterns still might be present.

Evidence also shows some groundwater and building contamination present at the site. Some constituents have exceeded regulatory reporting requirements and have been reported to the DEQ, although most constituents were below VRP Tier II Screening Levels.

FISCAL IMPACT / COST: \$50,000 in matching funds from the Commonwealth

FISCAL IMPLICATIONS: Net gain of \$50,000 in funding to DPU.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: \$50,000

DESIRED EFFECTIVE DATE: Upon Adoption

REQUESTED INTRODUCTION DATE: July 25, 2016

CITY COUNCIL PUBLIC HEARING DATE: September 12, 2016

REQUESTED AGENDA: Consent Agenda

O&R Request

Page 3 of 4

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Economic and Community Development; Planning and Development Review

AFFECTED AGENCIES: Public Utilities

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: VEDP Grant Performance Agreement; Draft Ordinance

STAFF:

Prepared for Bob Steidel, DPU

Prepared by Dan Rifenburg, DPU (804-646-8537)

EC:

Rosemary Green, DPU

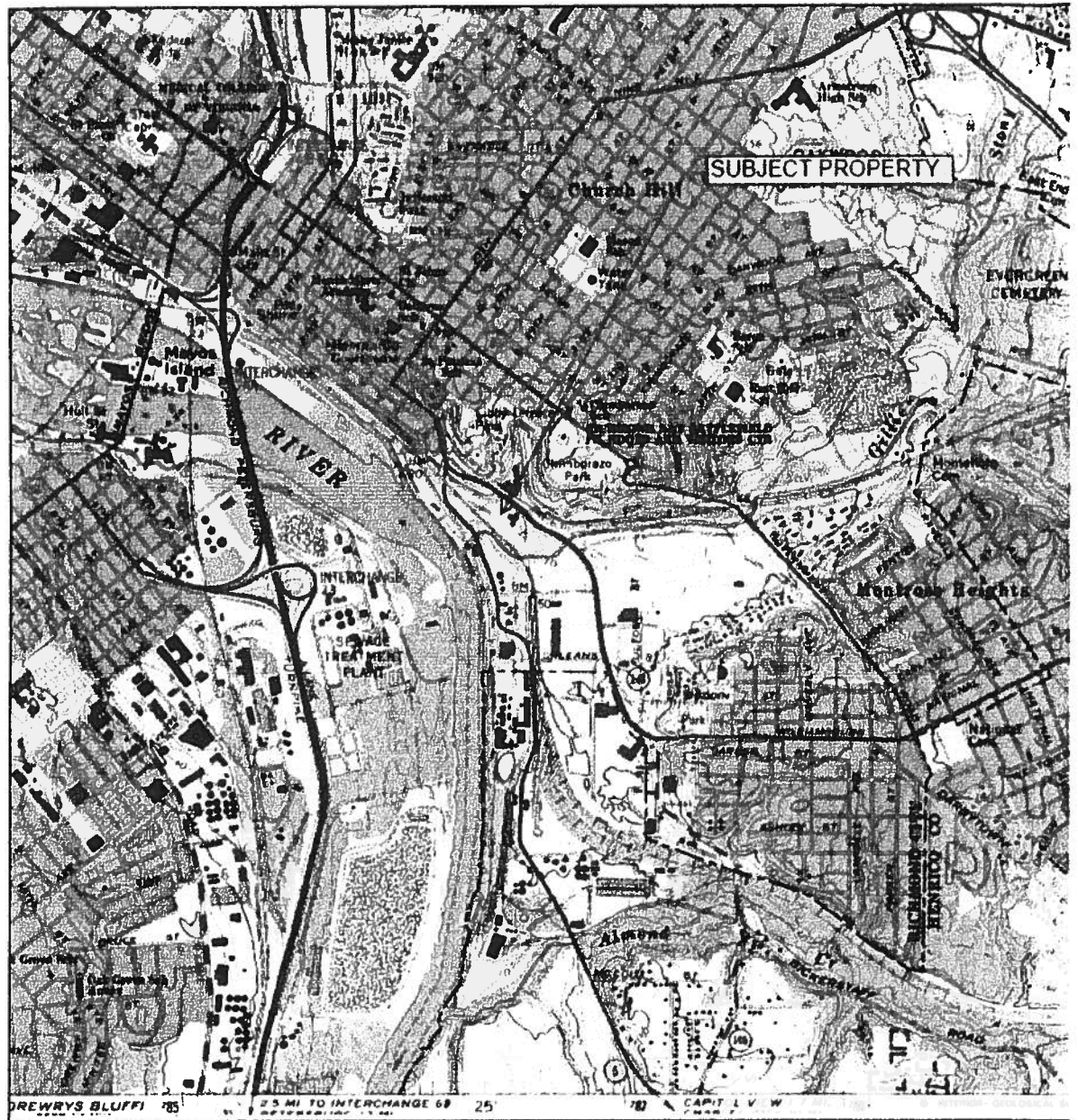
Al Scott, DPU

Wayne Lassiter, DPU

P. Lee Downey, ECD

Mark Olinger, PDR

Historical Topographic Map



**VIRGINIA BROWNFIELDS RESTORATION AND ECONOMIC
REDEVELOPMENT ASSISTANCE FUND PROGRAM**

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of _____, 2016, by and between the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (“VEDP”), a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) and the **CITY OF RICHMOND, VIRGINIA** (the “Grantee”), a political subdivision of the Commonwealth.

WITNESSETH:

WHEREAS, Section 10.1-1237 of the Code of Virginia of 1950, as amended (the “Grant Legislation”), established the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund (the “Fund”) to be administered and managed by the Virginia Resources Authority (“VRA”);

WHEREAS, pursuant to the Grant Legislation, VEDP, after consultation with the Virginia Department of Environmental Quality (“DEQ”), has established guidelines for the awarding of grants (the “VBAF Grant(s)”) from the Fund;

WHEREAS, pursuant to the Grant Legislation, VEDP, after consultation with DEQ, approves VBAF Grants to assist political subdivisions of the Commonwealth with the critically important task of evaluating potential brownfield sites in the Commonwealth for potential restoration and redevelopment and addressing environmental problems or obstacles to reuse so that such sites can be effectively marketed to new economic development prospects;

WHEREAS, after submitting an application to VEDP and DEQ requesting a VBAF Grant from the Fund, VEDP, in consultation with DEQ, has awarded the Grantee a VBAF Grant in the amount of \$50,000 (the “Grant”) to complete a Phase II Environmental Site Assessment (“ESA”) to satisfy due diligence requirements and to identify and evaluate the presence of Recognized Environmental Conditions (the “Project”) at the former Fulton Gas Works site on Williamsburg Road in Richmond, Virginia (the “Site”);

WHEREAS, VEDP and the Grantee desire to set forth their understanding and agreement as to the payout of the Grant, the use of the Grant proceeds, the obligations of the Grantee, and the repayment by the Grantee of all or part of the Grant under certain circumstances; and

WHEREAS, the Virginia General Assembly has determined that evaluating potential brownfield sites in the Commonwealth for potential restoration and redevelopment and addressing environmental problems or obstacles to reuse is critical to the future economic growth of the Commonwealth, this purpose constitutes a valid public purpose for the expenditure of public funds, and this purpose is the animating purpose in making the Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions

For the purposes of this Agreement, the following terms shall have the following definitions:

“Grant Report” means a written detailed report reasonably satisfactory to VEDP indicating that the Grant proceeds have been expended and whether the Project is complete. The Grant Report must provide a brief summary of the outcome of the Project and whether or not the Site may be effectively marketed to new economic development prospects.

“Grantee Investment” means expenditure by or on behalf of the Grantee in the furtherance of the Project, including the Grant and the Local Match. The expected Grantee Investment is set forth in Exhibit A, as it may be revised from time to time.

“Investment Schedule” means the timetable of the Grantee Investment set forth in Exhibit A, as it may be revised from time to time.

“Local Match” means the obligation of the Grantee to incur costs associated with the Project at the Site. The Local Match must be at least equal to 100% of the Grant.

“Performance Date” means May 1, 2017, which is the date by which the Grantee expects to have completed the Project and to have expended the proceeds of the Grant. If VEDP, in consultation with DEQ, deems that good faith and reasonable efforts have been made and are being made by the Grantee to expend the Grant proceeds, the Performance Date may be extended by up to 15 months and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Status Report” means written detailed report reasonably satisfactory to VEDP providing an update on the Site including whether i) the Project was completed, if applicable, ii) the Site was successfully marketed to a new economic development prospect, and iii) the Project generated any additional private investment and job creation.

Section 2. Disbursement of Grant; Reporting

(a) *Disbursement:* The Grant will be paid to the Grantee in one payment of \$50,000 promptly after the execution and delivery of this Agreement. Immediately upon the execution and delivery of this Agreement, VEDP will forward to VRA a copy of this Agreement, together with a direction to disburse \$50,000 to the Grantee.

(b) *Grant Report:* The Grantee may provide a Grant Report to VEDP at any time after the Grant proceeds have been expended and the Local Match has been made, but shall provide a Grant Report to VEDP no later than August 1, 2017.

(c) *Status Report:* The Grantee shall provide a Status Report at such other time as VEDP and DEQ may require, including after the Performance Date.

(d) *Costs of Reporting:* The cost of reporting shall be borne by the Grantee.

Section 3. Use of Grant Proceeds; Grantee Investment and Investment Schedule

The Grantee will expend the proceeds of the Grant only as part of the Grantee Investment and on the Investment Schedule set forth in Exhibit A no later than the Performance Date.

As the Project is undertaken, the Grantee may desire to add new expenditures to, or delete expenditures from, the Grantee Investment. Except for *de minimis* adjustments (which are adjustments impacting, in the aggregate, less than 10% of the Grant proceeds), adjustments to the Grantee Investment require the prior written approval of VEDP. Any adjustments to the Grantee Investment must be reflected in a revised Exhibit A. All adjustments to the Grantee Investment must be included in the Grant Report and any update provided to VEDP and DEQ.

Further, the Grantee may desire to make the Grantee Investment on a different timetable from the Investment Schedule. Adjustments to the Investment Schedule do not require prior written approval from VEDP. Any adjustments to the Investment Schedule must be reflected in a revised Exhibit A. All adjustments to the Investment Schedule must be included in the Grant Report and any update provided to VEDP and DEQ.

Section 4. Local Match.

The Grant requires a Local Match from or on behalf of the Grantee.

Evidence provided by the Grantee to VEDP indicates that the Grantee will pay costs that are associated with planning and preliminary engineering services, demolition at the Project at the Site, and a Phase II, at least equal to 100% of the Grant proceeds.

Section 5. Reduction of Grant Amount; Repayment Obligation.

(a) *If Project Costs Are Less Than Anticipated:* If the Grant Report indicates that the Grantee was able to complete the Project for less than the anticipated Grantee Investment, such that the amount of the Grant proceeds exceeds the Grantee's expenditures toward the Local Match or the Grantee will not need all of the Grant proceeds previously disbursed to the Grantee for the Project, the Grantee shall repay to VEDP an amount equal to the excess amount or the amount of the Grant proceeds no longer required.

(b) *If Grant Proceeds Are Misspent:* If the Grant Report indicates, or any evidence gathered by VEDP reveals, that any Grant proceeds have been expended on anything except the Grantee Investment, the Grantee shall repay to VEDP the amount so misspent.

(c) *If Grantee Investment Is Delayed:* The Grantee will expend the proceeds of the Grant as part of the Grantee Investment on the Investment Schedule by the Performance Date. To the extent that such Grant proceeds are not so spent or the Performance Date is not extended, the unspent proceeds as of the Performance Date shall be repaid to VEDP.

(d) *If Local Match Is Not Achieved:* If the Grant Report indicates that the Local Match was not made, the Grantee shall repay to VEDP the entire VBAF Grant proceeds.

(e) *Repayments to the Fund:* Any repayment received by VEDP will be promptly transferred by VEDP to the VRA to be redeposited to the Fund.

(f) *Repayment Date; Cure Period:* VEDP will provide written notification to the Grantee that a repayment is due from the Grantee to VEDP under this Agreement. Within 60 days of receiving such notification, the Grantee will make the repayment to VEDP, subject to appropriation and subject to the dispute resolution procedures set forth in Section 7(e).

Section 6. Notices.

Formal notices and communications among the Parties shall be given either by (i) personal written service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

If to the Grantee, to:

Daniel Rifenburgh
Engineer IV-Gas Engineering
City of Richmond, Virginia
Department of Public Utilities – Technical
Services
400 Jefferson Davis Highway
Richmond, Virginia 23224
Facsimile: 804-646-8537
Email: Daniel.Rifenburgh@richmondgov.com

With a copy to:

David B. Kearney
Senior Assistant City Attorney
City of Richmond, Virginia
City Attorney's Office
City Hall, Room 400
900 East Broad Street
Richmond, Virginia 23219
Email: David.Kearney@richmondgov.com

If to VEDP, to:

With a copy to:

Virginia Economic Development Partnership
901 East Cary Street, 8th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: dgundersen@yesvirginia.org
Attention: Interim President and CEO and COO

Virginia Economic Development Partnership
901 East Cary Street, 8th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 7. Miscellaneous.

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement between the parties hereto as to the Grant, and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Grantee may not assign its rights and obligations under this Agreement without the prior written consent of VEDP.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court. In the event this Agreement is subject to litigation, each party shall be responsible for its own attorney's fees.

(c) *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Dispute Resolution:* In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (including disputes as to the creation, validity, or interpretation of this Agreement) (a "Dispute"), then upon the written request of either party, each of the parties will appoint a designated senior official whose task it will be to meet for the purpose of endeavoring to resolve the Dispute. Such officials will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. The specific format for such discussions will be left to the discretion of the officials. No formal proceedings for the resolution of the Dispute may be commenced until the earlier to occur of (a) a good faith mutual conclusion by the officials that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the 60th day after the initial request to negotiate the Dispute. If the resolution of the Dispute requires any party to take, to cause to be taken or to cease taking, some action, such party shall be provided a reasonable period of time, not to exceed sixty (60) days, to take, to cause, or to cease taking, such action.

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY

By _____
Name: Daniel C. Gundersen
Title: Interim President and CEO and COO
Date: _____, 2016

CITY OF RICHMOND, VIRGINIA

Approved as to Form:

By _____
Name: Selena Cuffee-Glenn
Title: Chief Administrative Officer
Date: _____, 2016

By _____
City Attorney's Office

SEEN AND ACKNOWLEDGED:

VIRGINIA RESOURCES AUTHORITY

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

By _____
Name: _____
Title: _____
Date: _____, 2016

By _____
Name: _____
Title: _____
Date: _____, 2016

EXHIBIT A

**GRANTEE INVESTMENT
INVESTMENT SCHEDULE**

GRANTEE INVESTMENT

| Cost Item | Amount |
|---|------------------|
| Planning and Preliminary Engineering Services | \$29,800 |
| Demolition | \$28,712 |
| Phase II ESA | \$59,800 |
| | |
| Total | \$118,312 |

Note: The Grantee expects to use the \$50,000 grant proceeds to pay for the Phase II ESA.

EXPECTED INVESTMENT SCHEDULE

| Cost Item and Date | Amount |
|--|------------------|
| Planning and Preliminary Engineering Services – 11/01/16 | \$29,800 |
| Demolition – 11/01/16 | \$28,712 |
| Phase II ESA – 11/01/16 | \$59,800 |
| | |
| Total | \$118,312 |