

AGREEMENT
Between
The County of Orange
and Discovery Science Center of Orange County

This Agreement (“Agreement”), effective as of April ____, 2009, (the “Effective Date”) is entered into between the County of Orange, by and through OC Waste & Recycling (the “County”), and Discovery Science Center of Orange County (“DSC”). County and DSC are sometimes individually referred to as “Party”, or collectively referred to as “Parties.

Recitals

WHEREAS, the California Integrated Waste Management Act of 1989 (Statutes of 1989, Chapter 1095, codified as California Public Resources Code Section 40000 *et seq.*) (the “Act”) promotes the reduction, recycling, and reuse of solid waste generated in California to preserve landfill capacity, to conserve water, energy, and other natural resources, and to protect the state’s environment; and

WHEREAS, the Act requires local agencies to development Integrated Waste Management Plans to include, among other requirements, an education and public information component; and

WHEREAS, the County has established its Integrated Waste Management Plan; and

WHEREAS, consistent with the public interest, the Act, and the County’s Integrated Waste Management Plan, the County desires to educate students, parents, and all citizens about the benefits of reducing solid waste and the impact created by improper disposal of solid waste and hazardous materials; and

WHEREAS, DSC, located in Santa Ana, California, is Orange County’s largest provider of science education, providing science education at the DSC Center through hands-on exhibits and has a renown science program in the schools as well reaching over 438,000 visitors annually; and

WHEREAS, DSC is in the planning stages of an exhibit focused on the education of waste and recycling. The goal of the exhibit is:

To educate the public about waste reduction, reuse, and recycling, affecting a change in behavior that will result in decreased waste production and increased recycling; the exhibit will help the public:

- Reduce waste creation through purchasing decisions,
- Identify the different types of waste,
- Know what to do with each type of waste,
- Learn where waste goes after collection,
- Understand the finite capacity of County landfills,
- Realize that Environmental Stewardship is everyone’s responsibility; and

WHEREAS, it is anticipated that the *Waste and Recycling* Exhibit (the “Exhibit”) will be a public attraction at the DSC for approximately ten (10) years; and

WHEREAS, the County desires to use the Exhibit to enhance its mission of educating the public to reduce waste and extend the life of its landfills, consistent with the Act and the public Interest;

NOW, THEREFORE, In consideration of the mutual agreements set forth herein, reliance upon said agreements, and other good and valuable consideration, the parties agree as follows:

Agreement

1. The Exhibit.

The *Waste and Recycling* Exhibit will feature two large scale interactive science learning games to create a successful learning environment for daily living concepts that in the long run will greatly benefit the environment. Subject to the terms of this Agreement, the Exhibit will be constructed, operated and maintained in two (2) phases.

Phase I: The *Eco-Shopping Store* will be a large scale interactive learning game where visitors go through a grocery store with electronic scanners to purchase daily products that have the least amount of impact on our environment. Upon entering the Eco-Shopping Store visitors will be offered a shopping list and a scanner to select and track their shopping choices. Shelves in the store will be lined with real products. Shoppers will then gain points by choosing the “right product”. The “right products” might have less packaging, reusable containers, recycled packaging, recyclable products, or cloth shopping bags. At check out stands shoppers will view their points totaled up and see how well they did. The Eco-Shopping Store is designed to teach visitors how to reduce waste before it even goes home. A conceptual drawing of the Eco-Shopping Store is included as Attachment A.

Phase II: The *Waste Identification Game* will be a large scale interactive learning game where visitors will identify waste being released from a hauling truck and process the waste “correctly”. Visitors will line both sides of a conveyor belt at processing stations. Visitors will then earn points by correctly identifying and sorting waste product facsimiles with imbedded sensors. Each station will have four containers (trash, recyclables, yard waste, and hazardous waste) each with the ability to identify the sensors within the waste products. Players will then earn points by removing waste off of the conveyor belt and correctly disposing the waste. The game will feature a waste truck, a processing conveyor, several processing container stations, score boards, a timer, and waste with sensors. Furthermore, learning stations with videos will demonstrate where the waste goes after collection and the impact we have on the County’s landfills. A conceptual drawing of the Waste Identification Game is included as Attachment B.

The Phase I and Phase II Exhibits will be located on approximately 3,000 square feet at the DSC. The projected costs of the *Eco-Shopping Store* and the *Waste Identification*

Game are \$2 million and \$1,600,000, respectively. Projected operating costs are \$113,000 annually.

2. Phased Exhibit Funding

Formal design, engineering, construction, and operation of the Exhibit will be conducted on a Phase-by-Phase basis, consistent with the County's ability to fund the development, engineering, and construction of each separate Phase.

Phase I Funding: Within 30 days following the Effective Date of this Agreement, the County will disburse to DSC the amount of Two Million Dollars (\$2,000,000), representing the design, engineering, and construction costs of Exhibit Phase I.

Phase II Funding: Subject to the appropriation of sufficient funds by the County Board of Supervisors, the County will disburse to DSC the amount of One Million Six Hundred Thousand Dollars (\$1,600,000), representing the design, engineering, and construction of Exhibit Phase II. The decision whether or not to fund and/or implement Phase II shall be in the sole and absolute discretion of the County. The County acknowledges and agrees that, upon obtaining the appropriation by the Board of Supervisors in the amount specified above for Phase II, no further approvals or appropriations need to be obtained from the Board of Supervisors or the County with respect to the Exhibit funding.

3. Exhibit Design, Engineering, and Construction

DSC shall be fully responsible for Exhibit design, engineering, and construction and shall use reasonable efforts to conform to the project schedule (see Attachment C). DSC shall keep the County apprised of any and all updates with respect to such design, engineering, and construction. In addition to the foregoing, DSC shall consult with the County and shall obtain the County's input regarding the education and other content of the Exhibit.

4. Operations and Maintenance Funding; County Funding Offset

DSC shall be responsible for all costs in connection with operation and maintenance of the Exhibit. DSC will seek donations from public and private sources involved in recycling and waste management activities. The County agrees to provide reasonable assistance to DSC in raising an additional Two Hundred Forty Thousand Dollars (\$240,000) to create an operating endowment for Phase I and an additional Three Hundred Twenty-Five Thousand Dollars (\$325,000) to create an operating endowment for Phase II, in support of the Exhibit.

If, and to the extent, DSC is successful in receiving donations specifically made in connection with and for the purpose of the operation and maintenance of the Exhibit in excess of the amounts set forth above, and unless otherwise agreed to by the County, such excess amount shall be used to offset additional County funding attributable to the Exhibit or be paid directly to the County to the extent the County has made all Exhibit disbursements as provided in this Agreement.

5. Accountability and Reporting

From time-to-time, but no less frequently than quarterly, DSC will report to the County on the status of the Exhibit. Such report will include, without limitation, Project status, timeline, expenditure of County disbursements, and the progress of operations and maintenance fund raising efforts. In addition, once any portion of the Exhibit is operational DSC will report on the Exhibit feedback received from visitors. The report format will be mutually determined by the parties and reporting will continue for the life of the Exhibit.

6. Unused Funds

Unless otherwise agreed to by the County, within ninety (90) days of completion of the Exhibit, or within ninety (90) days of the end of the term of this agreement, whichever occurs first, DSC shall return to the County any unused funds disbursed by the County for design, engineering and construction of the Exhibit. For the purposes of this section, completion of the Exhibit shall mean the first day the exhibit is open to the general public.

7. Recognition and Publicity

The County Board of Supervisors will be acknowledged by DSC on DSC's donor element at the Discovery Science Center. In addition, DSC will indicate by appropriate signage that the Exhibit was made possible by a grant from the County. County and DSC will coordinate to mutually agree upon the nature of the signage, including language and branding. The County will also receive additional recognition where opportunities arise from time to time.

County and DSC agree that any initial or future public disclosure or press release regarding this shall be mutually agreed upon in advance thereof. To the extent any approval is given, it may be conditioned upon express approval of the text of any written public disclosure.

8. DSC Representations and Covenants

- A) DSC represents that it is an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and described in Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code.
- B) DSC agrees to use the amounts given pursuant to this Agreement only for charitable purposes as defined from time to time by Section 501(c)(3) of the Code and equivalent provisions of the laws of the State of California.

9. Irrevocability; Binding Obligation

- A) Each party intends this Agreement to be irrevocable, legally binding, and fully enforceable in accordance with its terms.

- B) The County acknowledges that in reliance upon this Agreement, DSC will use this Agreement as a basis to solicit similar gifts from other donors.
- C) This Agreement shall be binding upon and inure to the benefit of the County and DSC and their respective successors, heirs, personal representatives, and assigns.

10. Effective Date

This Agreement is effective on the Effective Date and, unless otherwise amended, modified or terminated as provided herein, shall continue in full force for a period of three (3) years from and including the Effective Date.

11. Appropriation/Contingency of Funds:

This Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors.

12. Independent Contractor:

DSC shall be considered an independent contractor and neither DSC, nor its employees, nor anyone working under DSC shall be considered an agent or an employee of County. Neither DSC, nor its employees nor anyone working under DSC, shall qualify for workers' compensation or other fringe benefits of any kind through County.

13. Entire Agreement:

This Agreement, including Attachments A, B, and C which are attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

14. Amendments:

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

15. Governing Law and Venue:

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

16. Audits/Inspections:

DSC agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to those books, accounts, records, reports, files, financial records, supporting documentation, and other papers or property of DSC, to the extent relating to the subject matter of this Agreement, solely for the purpose of auditing or inspecting any expenditure of funds disbursed by the County under this Agreement. The County will provide reasonable notice of such an audit or inspection.

DSC agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Agreement or by law. DSC agrees to allow interviews of any employees or others who might reasonably have information related to such records; provided, that the County shall notify DSC in advance before interviewing any such employees or others and shall permit DSC personnel to be present during any such interview.

17. Notices:

Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For DSC:

Name: L. Joseph Adams
Address: 2500 N. Main
Santa Ana, CA 92705

Attn: Lisa Charrier
Title: Assistant to the President
Phone: (714) 913-5022
Fax: (714) 542-2828
Email: Lcharrier@discoverycube.org

For County:

Name: Dylan G. Wright
Address: 300 N. Flower St., Ste. 400
Santa Ana, CA 92703

Attn: Marlene Brajdic
Title: Public Affairs Manager
Phone: (714) 834-4053
Fax: (714) 834-4057
Email: marlene.brajdic@iwmd.ocgov.com

18. Headings:

The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

19. Severability:

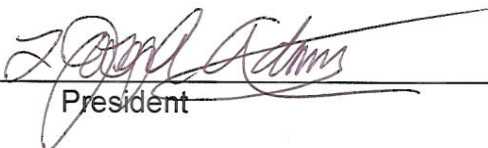
If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

20. Authority:

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date first set out above.

DISCOVERY SCIENCE CENTER

Date: 3/26/09 By: 
President

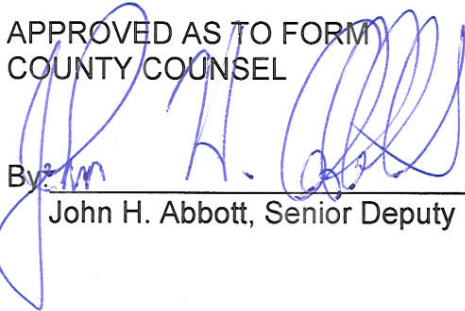
COUNTY OF ORANGE

Date: _____ By: _____
Chair of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO CHAIR OF THE BOARD

Date: _____ By: _____
Darlene J. Bloom
Clerk of the Orange County
Board of Supervisors
Orange County, California

APPROVED AS TO FORM
COUNTY COUNSEL

By: 
John H. Abbott, Senior Deputy

Attachment A: Eco Shopping Store



Attachment B: Waste Identification Game

