

EXCLUSIVE NEGOTIATING AGREEMENT

DISCOVERY SCIENCE FOUNDATION

(Development of a Children's Science and Technology Educational Institute)

This Exclusive Negotiating Agreement ("ENA") is hereby entered into this _____ day of _____, 2016, ("Effective Date") by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and DISCOVERY SCIENCE FOUNDATION, a California corporation ("Foundation"), as follows:

I.

PURPOSE/TERM

1.1. **Purpose.** The purpose of this ENA is to establish a period during which Foundation shall have the exclusive right to conduct investigatory analyses of the existing City of Riverside Main Library located at 3581 Mission Inn Avenue ("Site"), for the purpose of determining the feasibility, cost, funding sources, development, etc. of a children's science and technology educational institute ("Project").

1.2. **Term.** The term of this ENA shall begin on the Effective Date and shall continue for a period of six (6) months to and including 5:00 p.m. on the last day of such period ("Termination Date"), with one option to extend for an additional six (6) month period at the discretion of the City Manager. This ENA may be earlier terminated pursuant to Section 8 herein. Extension to this Agreement shall be granted in accordance with Section 8.2 herein.

1.3. **Consideration.** City recognizes the value of various Site analyses to be performed by Foundation and the documentation and other information likely to result therefrom. In consideration of the exclusive rights granted to Foundation hereunder, Foundation shall furnish to City copies of all site analyses (i.e., feasibility studies, funding documents, cost analysis, title documents, parcel maps, records of survey and all related environmental documents pertaining to the Site and acquired or developed by Foundation, or by a third party on Foundation's behalf) as they become available. City shall provide Foundation with any and all analyses currently in its possession to assist Foundation with its analysis.

1.4. **Right of Entry.** During the term of this ENA, representatives of the Foundation shall have the right of access to and entry upon the Site for the purpose of obtaining data and information that Foundation deems necessary to carry out its Site Analyses. Foundation shall coordinate with the City prior to access to the Site. Should Foundation desire to perform any invasive studies, Foundation will execute the City's standard Right of Entry Agreement before any such action shall occur.

II.

DEFINITIONS

2.1. "Site" shall mean a portion of that certain real property owned by the City and identified as 3581 Mission Inn Avenue, Riverside, California, more commonly known as the Riverside Main Library.

2.2. "Site Analyses" shall mean those investigatory activities undertaken by Foundation during the Term with respect to the Site and its suitability for development as a children's science and technology educational institute.

III.

OWNER PARTICIPATION

3.1. Participation by City. This ENA shall not be construed as binding the City to enter into negotiations with Foundation regarding the proposed use of the Site, or any portion thereof. City may receive competing and alternative proposals from third parties during the term of this ENA, however, City shall be prohibited from considering any such proposals and/or engaging in negotiations with any proposing party, other than Foundation, until such time as this ENA has been terminated.

IV.

NEGOTIATIONS

4. Negotiations. The parties agree that negotiations, if any, under this ENA shall be conducted in accordance with the following:

4.1. Exclusive Negotiations. The City agrees to negotiate exclusively with Foundation and Foundation agrees to negotiate exclusively with the City with regard to the development of the Site as a children's science and technology educational institute. The City shall not consider proposals or engage in negotiations with persons or entities other than Foundation, concerning the leasing and development of the Site or development of specific projects on the Site. Notwithstanding the foregoing, nothing in this ENA shall prohibit the City from: (i) providing information the City may have in its possession concerning the Site (provided this information is not confidential information within the meaning of Section 6.1 of this ENA); or (ii) referring third parties to Foundation for consideration by Foundation of their participation as partners, joint ventures, developers, or contractors with regard to development of the Site, or any portion thereof as a children's science and technology educational institute.

4.2. Diligence and Good Faith. The parties agree that at all times, they will negotiate diligently and in good faith to carry out the obligations of this ENA on or before the times established herein.

4.3. Cooperation. The parties agree that, at all times during this ENA, each party shall cooperate with the other party and shall supply such information and documents related to the Site as may be within the party's possession and reasonably requested by the other party.

V.

FOUNDATION OBLIGATIONS

5. Foundation Obligations. Foundation promises and agrees to diligently pursue, and to use its best efforts, to complete the following obligations:

5.1. Information. Foundation shall respond to all City requests for information by promptly providing such information and documents that are in the possession, custody and control of Foundation and which have not previously been submitted by Foundation to City. Any such information not transmitted to City as of the date of termination of this ENA shall be sent by the thirtieth (30th) day after termination of this ENA. The parties agree and acknowledge that some information in the possession, custody and control of Foundation is proprietary in nature. Any such proprietary documentation or information that is used by Foundation in its analysis shall be clearly marked as such and shall be exempt for disclosure pursuant to Government Code § 6254(k), Evidence Code § 1060 and Civil Code § 3426 et seq., unless that the release of such information is required by the California Public Records Act (Government Code §6250 et al.), the U.S. Freedom of Information Act (5 U.S.C. §552 et seq.) or other applicable federal, state, or City statute, laws, or ordinances, or as may be required by an order of a court of competent jurisdiction.

5.2. Develop and present to the City staff, for review, all of the following:

5.2.1. A conceptual study for the project that shall include, at a minimum, the proposed terms and the development of a children's science and technology educational institute concept with drawings and a floor plan;

5.2.2. A proposed time schedule for commencement and completion of the Project; and

5.2.3. A written financial pro-forma in a reasonable form and substance regarding the anticipated costs of the Project as well as potential funding sources.

VI.

CITY OBLIGATIONS

6. City Obligations. The City promises and agrees to diligently use its best efforts to complete the following obligations within the times required herein:

6.1 Foundation's Financial Information is Confidential. City shall keep Foundation's statements of personal worth or personal financial data confidential as permitted by the exemption stated in California Government Code § 6254(n) as well as all proprietary information pursuant to Government Code § 6254(k), Evidence Code § 1060 and Civil Code § 3426 et seq., unless that the release of such information is required by the California Public Records Act (Government Code §6250 et al.), the U.S. Freedom of Information Act (5 U.S.C. §552 et seq.) or other applicable federal, state, or City statute, laws, or ordinances, or as may be required by an order of a court of competent jurisdiction.

6.2. Confidentiality of Information. For a period of two (2) years after termination of this ENA, City shall consider as confidential any proformas or similar documents prepared by Foundation, related to development of the Site, and any work-product of Foundation or its consultants related to the Site, which is supplied by Foundation to City. During the term of this ENA, and for the period after termination specified in the immediately preceding sentence City shall refrain from releasing such information to any person or entity other than Foundation or its designees, unless Foundation consents to release of such information or until the City's legal counsel has determined, after notification to Foundation's legal counsel, that the release of such information is required by the California Public Records Act (Government Code §6250 et al.), the U.S. Freedom of Information Act (5 U.S.C. §552 et seq.) or other applicable federal, state, or City statute, laws, or ordinances, or as may be required by an order of a court of competent jurisdiction. This section shall survive the expiration of the ENA.

6.3. Governing Body Approval Process. This ENA is subject to approval by the City Council of the City of Riverside ("City Council").

VII.

LIMITING CONDITIONS

7.1. Discretionary Approval. The acceptance by the parties hereto of the terms and provisions of this ENA is merely an accommodation to clarify the process the parties desire to commence and pursue in connection with Foundation's evaluation of the Site and the conveyance by Foundation to City of information pertaining to the Site and obtained or developed by Foundation, or a third party on Foundation's behalf. No document shall be binding upon the City until the City Council has an adequate opportunity to consider such document for approval and have, in the free exercise of their discretion, approved the document.

Foundation acknowledges and agrees that nothing herein restricts nor shall be deemed to restrict the City Council in the free exercise of its discretion, or in the free exercise of its executive, quasi-judicative, or legislative powers.

7.2. Limitation on Remedies. City and Foundation each acknowledge and agree that neither the City nor the Foundation would have entered into this ENA if it were to be liable to the other for monetary damages or other remedies. Accordingly, City and Foundation each acknowledge and agree that their respective sole and exclusive right and remedy upon the breach of this ENA by the other is to terminate this Agreement.

7.3 Subject to Approval. This ENA and any subsequent conveyance or agreement contemplated by this ENA is subject to subsequent approval of the City Council.

VIII.

TERMINATION/EXTENSION

8.1. Termination. This ENA may be terminated in one of the following ways: (i) lapse of the agreement; (ii) mutual agreement of the parties; or (iii) the expiration of fifteen (15) days after one party sends the other party written notice of the noticed party's failure to timely and diligently perform any of its obligations under this ENA, and the noticed party's failure to cure or correct the failure to perform within the same fifteen (15) day period.

8.2 Extension. The parties agree that Foundation shall have the option to request, in writing, to extend this ENA for an additional six-month period.

IX.

GENERAL TERMS AND CONDITIONS

9. General Terms and Conditions. The following general terms, conditions, and covenants shall apply to this ENA:

9.1 Assignment. There shall be no assignment or other transfer ("Assignment") of the rights and/or obligations of Foundation under this ENA unless the City has given its prior written approval to the Assignment. The City shall not unreasonably withhold its approval of an Assignment that meets the following requirements: (i) the Assignment is to a validly organized and existing business entity which is a corporate affiliate or subsidiary of Foundation, of which Foundation is a general partner, or of which Foundation is the majority shareholder (meaning owning at least 51% of the outstanding stock entitled to voting rights in the business entity); (ii) the Assignment is to an entity that expressly assumes the obligations of Foundation under this ENA in a writing satisfactory to the City; (iii) Foundation remains fully responsible for the performance of, and liable for the obligations of, Foundation under this ENA; and (iv) the assignee is financially capable of performing the duties and discharging the obligations it is

assuming. Foundation shall promptly notify the City in writing of any and all changes whatsoever in the identity of the persons in control of Foundation and the degree thereof.

9.2 Nondiscrimination. Foundation agrees to refrain from discriminating against persons in the course of its conduct under this ENA on the basis of race, color, creed, religion, sex or sexual orientation, marital status, genetic information, gender, gender identification, gender expression, ancestry, national origin, familial status, age, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) and the California Fair Employment and Housing Act (Cal. Government Code §12900 et seq.), as they exist on the date of this ENA or as they may thereafter be amended, repealed and reenacted, or otherwise modified. Foundation further agrees not to establish or permit any such practice or practices of discrimination or segregation with reference to its conduct under this ENA. Any further agreement between the parties shall contain appropriate, City approved, non-discrimination and non-segregation provisions binding Foundation and its successors and assignees, and shall be covenants running with all affected parcels of the Site.

9.3 Non-liability of City Officials and Employees. No council member, official, consultant, attorney, or employee of the City shall be personally liable to Foundation, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the City or for any amount which may become due to Foundation or to its successor, or on any obligations arising under this ENA.

9.4 Conflicts of Interest. No board member, official, consultant, attorney, or employee of the City shall have any personal interest, direct or indirect, in this ENA nor shall any such member, official or employee participate in any decision relating to this ENA which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

9.5 Warranty Against Payment of Consideration for ENA. Foundation represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this ENA, other than payments to consultants retained by Foundation to assist it in the negotiation of this ENA.

9.6 No Third Party Beneficiaries. This ENA, its provisions, and its covenants, are for the sole and exclusive benefit of the City and Foundation. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this ENA.

9.7 Recitals and Definitions. The Recitals and Definitions set forth at the beginning of this ENA are a substantive and integral part of this ENA and are incorporated herein by this reference.

9.8 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this ENA or any of its terms. References to section numbers are to sections in this ENA unless expressly stated otherwise.

9.9 Interpretation. The City and Foundation acknowledge that this ENA is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this ENA. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this ENA. In any action or proceeding to interpret or enforcement of this ENA, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this ENA to determine and give effect to the intention of the parties hereto.

9.10 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this ENA shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this ENA is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this ENA and shall not affect any other provision, term, condition, covenant, and/or restriction, of this ENA and the remainder of the ENA shall continue in full force and effect.

9.11 Amendments to ENA. Any amendments to this ENA must be in writing and signed by the appropriate authorities of the City and Foundation. The City Manager, or his designee, shall have the authority to make minor amendments to this ENA, including, but not limited to, the granting of extensions of time to Foundation, on behalf of the City so long as such actions do not materially change the ENA or make a commitment of additional funds of the City. All other changes, modifications, and amendments shall require the prior approval of the City's governing bodies.

9.12 Administration. This ENA shall be administered by the City Manager, or his or her designated representative, following approval of this ENA by the City Council. The City shall maintain authority of this ENA through the City Manager (or his or her authorized representative). The City Manager shall have the authority to issue interpretations with respect to this ENA on behalf of the City so long as such actions do not materially change the ENA or make a commitment of additional funds of the City.

9.13 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, or by reputable overnight delivery service, or personal delivery, to the principal offices of the parties, as designated below. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received upon the date personal service is affected, if given by personal service, or upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

To City:

City of Riverside
Attn: John Russo, City Manager
3900 Main Street
Riverside, California 92522

To Foundation:

Discovery Science Foundation
Attn: Joe Adams, CEO
2500 N. Main Street
Santa Ana, California 92705

9.14 Computation of Time. The time in which any act is to be done under this ENA is computed by excluding the first day (such as the Effective Date) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code Sections 6700 and 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

9.15 Authority. The individuals executing this ENA on behalf of Foundation and the instruments referenced on behalf of Foundation represent and warrant that they have the legal power, right and actual authority to bind Foundation to the terms and conditions hereof and thereof.

9.16 Counterpart Originals. This ENA may be executed in duplicate originals, each of which is deemed to be an original.

9.17 Effective Date of ENA. This ENA shall not become effective until the date it has been formally approved by the City's governing body and executed by the appropriate authorities of the City and Foundation. This date shall be affixed on the cover page of this ENA and shall be used as the "Effective Date" for purposes of calculating time under this ENA.


[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this ENA on the date and year first-above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

DISCOVERY SCIENCE FOUNDATION,
a California corporation

By: _____
City Manager

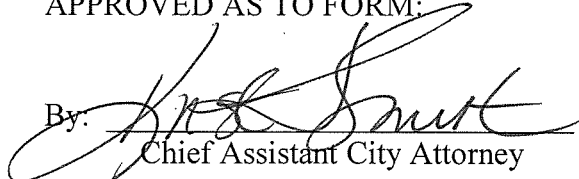
By: 
Printed Name: L. Joseph Adams
Its: Chief Executive Officer

ATTESTED TO:

By: _____
City Clerk

By: _____
Printed Name: _____
Its: _____

APPROVED AS TO FORM:

By: 
Chief Assistant City Attorney


CA: 15-2277
01/22/16

IN WITNESS WHEREOF, the parties hereto have executed this ENA on the date and year first-above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation


DISCOVERY SCIENCE FOUNDATION,
a California corporation

By: _____
City Manager

By: 
Printed Name: Joseph Adams
Its: Chief Executive Officer

ATTESTED TO:

By: _____
City Clerk

By: 
Printed Name: Mike McGee
Its: Chief Financial Officer

APPROVED AS TO FORM:

By: _____
Chief Assistant City Attorney

CA: 15-2277
01/22/16