

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

NOVEMBER 17, 2020

TITLE:

**APPROVE AGREEMENT WITH
DISCOVERY SCIENCE CENTER OF
ORANGE COUNTY FOR PUBLIC
EDUCATION SERVICES IN AN AMOUNT
NOT TO EXCEED \$675,000 FOR A
MAXIMUM TERM OF FIVE YEARS
(NON-GENERAL FUND)**

/s/ Kristine Ridge

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager to execute an agreement with Discovery Science Center of Orange County for public education services for a three-year period beginning January 1, 2021, and expiring December 31, 2023, in an annual amount not to exceed \$135,000 for three years, with the option to renew for up to two 1-year periods, for a total agreement amount not to exceed \$675,000, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

Assembly Bill 939 (AB939) mandates waste diversion from landfills and recycling program implementation which includes a public education component. The City is in full compliance with this legislation through a variety of diversion and recycling programs.

Since 2013, the City has partnered with the Discovery Science Center of Orange County (DSCOC) to provide waste disposal and recycling public education through its award-winning Eco Challenge exhibit. The exhibit engages visitors of all ages in a fun, interactive experience that teaches new behaviors through educational content that includes stage shows and hands-on demonstrations. The DSCOC delivers an enhanced public education program specifically tailored to Santa Ana residents entitled, "Santa Ana Waste Free Days" which includes free admission and offers a range of programs, activities, and guest incentives geared toward the promotion of positive recycling and waste disposal habits.

Initially, DSCOC reached approximately 9,000 Santa Ana residents per year through this program. In recent years, enhancements such as a new interactive Eco presentation in the Planetary Research Station and new demonstrations in the Healthy Kitchen focused on healthy living and reducing food waste, have proven to be very popular with residents and have increased attendance significantly. The additional programming also enhances the City's compliance with state education

and outreach mandates, particularly Mandatory Commercial Organics Recycling Assembly Bill 1826 (AB1826).

Staff recommends approval of the agreement with DSCOC in order to continue providing valuable educational programming to Santa Ana residents and to maintain compliance with AB939 and AB1826 (Exhibit 1).

FISCAL IMPACT

Funding for this agreement is budgeted and available in the Fiscal Year 2020-21 Refuse Enterprise Account (No. 06917640-62300), and will be budgeted and available for expenditure annually, in the same account:

Fiscal Year	Accounting Unit – Account No.	Fund Description	Accounting Unit, Account Description	Amount
FY 2020-21	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$67,500
FY 2021-22	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$135,000
FY 2022-23	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$135,000
FY 2023-24	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$67,500
Renewal Option Years				
FY 2023-24	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$67,500
FY 2024-25	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$135,000
FY 2025-26	06917640-62300	Refuse Enterprise	Refuse Enterprise, Contract Services-Professional	\$67,500
			Total Amount:	\$675,000

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Nabil Saba, P.E., Executive Director – Public Works Agency

Exhibit: 1. Agreement with Discovery Science Center of Orange County

**AGREEMENT WITH DISCOVERY SCIENCE CENTER TO
PROVIDE RECYCLING EDUCATION PROGRAM**

THIS AGREEMENT is made and entered into this 17th day of November, 2020 by and between Discovery Science Center of Orange County, a California 501(c)(3) non-profit corporation ("DSC"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California ("City").

RECITALS

- A. The DSC offers an educational program focusing on practical recycling and waste reduction behaviors in the home, otherwise known as the Santa Ana Waste Free Days Program ("Program").
- B. The Program engages visitors in a fun, interactive experience that teaches new behaviors through exciting hands-on programming.
- C. The City has previously engaged, and again desires to engage, DSC to provide the Program for Santa Ana residents free of charge once per month.
- D. DSC represents that it is qualified and willing to provide said educational programming.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. DSC'S OBLIGATIONS

DSC shall provide the Program, as further described below and set forth in Exhibit A.

- a. DSC agrees to use all funds received from City pursuant to this Agreement exclusively to provide the Program, as set forth in Exhibit A, attached hereto and fully incorporated by this reference.
- b. All funds received by DSC from City pursuant to this Agreement shall be separately accounted for apart from any other funds of DSC, or of any principal or member of DSC.
- c. DSC shall keep records of all funds received from City under the terms and conditions of this Agreement. DSC agrees to keep monthly records of the number of Santa Ana residents participating in the Program. DSC shall submit quarterly reports within fifteen (15) days after the quarter is completed. Said quarterly report shall include monthly accounting of:
 - i. Number of Santa Ana residents targeted for services,
 - ii. Actual number of Santa Ana residents attending the Santa Ana Waste Free Days program,
 - iii. Number of guest surveys completed,
 - iv. Number of Eco Challenge attendees on Santa Ana Waste Free Days, and
 - v. Documentation of program components, including samples of printed materials.

- d. Upon reasonable notice to DSC, City and/or its representatives shall have access for purposes of monitoring, auditing, and examining DSC's activities and performance, to books, documents and papers, and the right to examine records of DSC's subcontractors, bookkeepers and accountants, employees and participants regarding the Program. City and/or its representatives shall also schedule on-site monitoring at its discretion. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.
- e. All accounting records and evidence pertaining to all costs of DSC and all documents related to this Agreement shall be kept available at DSC's office or place of business for the duration of the Agreement and three (3) years beyond.
- f. Without prejudice to any other provisions of this Agreement, DSC shall, where applicable, maintain the confidential nature of information provided to it concerning participants in accordance with the requirements of federal and state law. However, DSC shall submit to City or its representatives, all records requested, including audit, examinations, monitoring and verifications of reports submitted by DSC, costs incurred and services rendered hereunder.

2. COMPENSATION

City shall pay to DSC for the Program \$11,250.00 per month for DSC's provision of one Program day per month, for a maximum aggregate payment of One Hundred Thirty-Five Thousand Dollars (\$135,000) annually, to be paid in biannual installments, as set forth in Exhibit A. City shall withhold payment if DSC fails to provide the quarterly reporting as required by Section 1.c., above, in conformance with this Agreement. The total amount to be expended under this Agreement, including any extension periods, shall not exceed \$675,000.

3. TERM

This Agreement shall commence on January 1, 2021 and terminate on December 31, 2023, unless terminated earlier in accordance with Section 12, below. The term of this Agreement may be extended for two 1-year periods each upon mutual agreement of the parties.

4. INDEPENDENT CONTRACTOR

DSC shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which DSC performs the services which are the subject matter of this Agreement; however, the services to be provided by DSC shall be provided in a manner consistent with all applicable standards and regulations governing such services. DSC shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes for its employees and shall be responsible for all applicable withholding taxes.

5. INSURANCE

Prior to undertaking performance of work under this Agreement, DSC shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. **Commercial General Liability Insurance.** DSC shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of DSC's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

b. **Worker's Compensation Insurance.** In accordance with the provisions of California law, if DSC has any employees, DSC is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, DSC agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.

c. The following requirements apply to the insurance to be provided by DSC pursuant to this section:

i. DSC shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.

ii. Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved in form by the City.

iii. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

iv. DSC shall supply City with a fully executed additional insured endorsement.

d. If DSC fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to terminate this Agreement. Such termination shall not affect DSC's right to be paid for its time and materials expended prior to notification of termination. DSC waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

6. INDEMNIFICATION

DSC agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including

death, and claims for property damage, which may arise from the direct or indirect operations of DSC or its contractors, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. DSC further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

7. CONFIDENTIALITY

If DSC receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, DSC agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of DSC disclosed in a publicly available source; (c) is in rightful possession of DSC without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by DSC without reference to information disclosed by the City.

8. CONFLICT OF INTEREST CLAUSE

DSC covenants that it presently has no interests and shall not have interests, direct or indirect, that would conflict in any manner with performance of services specified under this Agreement.

9. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the City Council City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988

To DSC: Discovery Science Center of Orange County
Mr. L. Joseph Adams

President/CEO
2500 N. Main Street
Santa Ana, California 92705
Fax 714-263-3927

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

10. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and DSC, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of DSC. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate DSC nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

11. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of DSC, DSC may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

12. TERMINATION

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, DSC shall be entitled to receive and the City shall pay DSC compensation for all services performed by DSC prior to receipt of such notice of termination, subject to the following conditions:

a. As a condition of such payment, City may require DSC to deliver to the City all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and DSC consents to the City's use thereof for such purposes as the City deems appropriate.

b. Payment need not be made for work that fails to meet the standard of performance specified in the Recitals of this Agreement.

13. NONDISCRIMINATION

DSC shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities or in connection with any activities under this Agreement. DSC affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

14. JURISDICTION – VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

15. WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16. PROFESSIONAL LICENSES

DSC shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. DSC shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

17. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

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

ATTEST:

CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

Kristine Ridge
City Manager

APPROVED AS TO FORM
SONIA R. CARVALHO
City Attorney

DISCOVERY SCIENCE CENTER OF
ORANGE COUNTY

By: John M. Funk
John M. Funk
Assistant City Attorney

Kellie Piroken
Name: Kellie Piroken
Title: COO

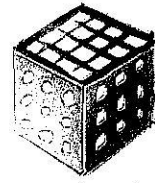
RECOMMENDED FOR APPROVAL

Nabil Saba
Executive Director
Public Works Agency

EXHIBIT A



Santa Ana Waste Free Days Proposed Scope of Work



DiscoveryCube
ORANGE COUNTY

Background

Since the doors opened in 2002 to what was then known as the Discovery Science Center, Santa Ana residents have received free admission on the first Tuesday of every month. Over nearly 20 years of operation, that has resulted in hundreds of thousands of local families being able to enjoy some of the most dazzling educational exhibits in the world, from Star Wars to Dora the Explorer.

In 2013, Discovery Cube of Orange County (DCOC) and the City of Santa Ana Public Works Agency partnered to bring Santa Ana Waste Free Day to the residents of Santa Ana, re-branding the traditional “free day” experience to place a focus on teaching practical recycling and waste-reduction behaviors in the home. Utilizing the Eco Challenge exhibit, DCOC’s world-class educational content, and stage shows and hands-on demonstrations that bring scientific concepts to life, Santa Ana Waste Free Day engages resident visitors of all ages in a fun, interactive experience that teaches new behaviors.

Scope of Work

Waste Free Day

On the first Tuesday of each month, DCOC will welcome Santa Ana residents free of charge and implement a range of programs, activities, and guest incentives focused on the promotion of positive recycling and waste disposal habits.

As a national leader in science education outreach, and as the home of the award-winning Eco Challenge exhibit, DCOC possesses a blend of resources that present a unique opportunity for the City of Santa Ana and its residents. DCOC will deliver the following program elements that will make Santa Ana Waste Free Days an immersive educational experience for all ages:

- ✓ Our Eco Challenge enhanced interactive audience show will run in our Sun Stage theater regularly during the day
- ✓ Our Eco Challenge “Jeopardy” style multi-media game show will run at regular intervals in our 4D Theater
- ✓ A new special interactive Eco presentation in our Planetary Research Station.
- ✓ New demonstrations in the Healthy Kitchen focusing on healthy living and reducing food waste, including composting
- ✓ In the Eco Challenge exhibit area, our Education team will present a special table-top demonstration focused on a key aspect of the science behind Reduce, Reuse & Recycle

- ✓ Each Santa Ana resident guest will be provided with a program containing:
 - ✓ A schedule of shows, demonstrations and other activities
 - ✓ A guest survey providing an opportunity to gauge learning, complete with a prize drawing to incentivize completion
 - ✓ Recycling and waste disposal information relevant to, and provided by, the City

At the end of each six-month period, DCOC will provide the City with attendance figures for each Waste Free Day, survey results and any other data gathered as a result of the partnership.

Cost for the entirety of the program will remain \$135,000 annually and billed on a bi-annual basis.

Discovery Cube is requesting the term of the program to be for three years. The years intended for service are:

January 1, 2021 – December 31, 2021
 January 1, 2022 – December 31, 2022 and
 January 1, 2023 – December 31, 2023

The suggested dates for 2021 are detailed below:

- Tuesday, January 5
- Tuesday, February 2
- Tuesday, March 2
- Tuesday, April 6
- Tuesday, May 4
- Tuesday, June 1
- Tuesday, July 6
- Tuesday, August 3
- Tuesday, September 7
- Tuesday, October 5
- Tuesday, November 2
- Tuesday, December 7

COVID Response

Due to the restrictions that are in place due to the COVID-19 pandemic, DCOC is proposing utilizing various additional components to both make up for Waste Free Days that have not occurred, as well as to provide an option while the Cube is still closed. These options would let us immediately pivot back to regular programming as soon as it is safe to host Santa Ana families at Discovery Cube. The following are the additional components:

Integration into Santa Ana Unified Afterschool Programming and Santa Ana Library Partnership

DCOC is an operator of afterschool programming through Santa Ana Unified School District. Leveraging our partnerships, DCOC will create and administer waste education to all students that participate in the afterschool programming. DCOC will create at least one hour of programming per month that will align with the Next Generation Science Standards. These lessons will

feature hands-on activities that students will be able to complete. Based on enrollment numbers, DCOC anticipates reaching 2,100 students through this program. Students will receive multiple lessons, until normal Waste Free Day operations can be resumed. Students who participate in this will also receive book and programming recommendations from the Santa Ana Library system to continue their learning.

World of Organics Game Access

In partnership with Orange County Waste and Recycling, DCOC is developing an \$800,000, multimedia game surrounding organics recycling. Originally developed for an exhibit at DCOC, we are now formatting the game to be playable on a computer or tablet. The World of Organics game features games and activities to help understand how to create enriched soil that helps retain moisture, suppresses plant disease and pests, and encourages healthy plant growth. Playing the competitive, fast-paced game will challenge guests to understand the process that takes place when composting, and how the production of beneficial bacteria and fungi break down organic matter. As a part of the COVID response, DCOC will make the game available to all residents of Santa Ana. As an added benefit of Waste Free Day programming, DCOC will continue to make the game available to all residents once we shift back to normal operations.

Social Media Partnership

DCOC also proposes partnering with Santa Ana Public Works on a series of social media posts. These posts will serve to make Santa Ana residents aware of their access to the World of Organics game, as well as to promote proper waste diversion through activities and messaging campaigns. DCOC can target these social media posts to reach residents of the City only. We will utilize Facebook, Twitter and Instagram to get our messaging out. DCOC is proposing to do a minimum of 4 posts per month. Through these posts, DCOC will reach over 300,000 people per month with our messaging. These posts will continue until the traditional Waste Free Day can resume.

Cost for COVID Response

DCOC has worked to leverage as many partnerships and resources as possible in creating the COVID response for Santa Ana Waste Free Day. As such, this suite of programs is designed to provide a maximum amount of value for the same per-month price that is already set for Waste Free Day, while offering programming that makes up for the dates that have been missed. The intent is to seamlessly transition over to this programming quickly and efficiently.