

**EXHIBIT E**  
**IMPROVEMENTS AND EXHIBITS AGREEMENT**

BETWEEN CITY OF LOS ANGELES AND THE  
DISCOVERY SCIENCE CENTER OF LOS ANGELES  
FOR THE DESIGN AND MODIFICATION OF AN EXISTING FACILITY  
AND THE DESIGN, CONSTRUCTION, AND INSTALLATION OF EXHIBITS FOR THE  
CENTER

**ARTICLE 1. BASIC AGREEMENT PROVISIONS**

**1.1. Parties.** This Improvements and Exhibits Agreement ("Agreement") is entered into this 31<sup>st</sup> day of December 2012, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, as Landlord ("CITY"), and DISCOVERY SCIENCE CENTER OF LOS ANGELES, a California non-profit corporation ("DSCLA"), with a principal mailing address of 2500 North Main Street, Santa Ana, California, 92705, as Tenant.

**1.2. Recitals.**

**1.2.1.** CITY owns and/or controls certain lands known as Hansen Dam Recreation Area under the management and control of the Board of Recreation and Park Commissioners ("BOARD"). A portion of the subject lands are owned by CITY and a portion of the subject lands are owned by the U.S. Army Corps of Engineers ("USACE") and are leased to CITY for recreational purposes pursuant to Department of the Army Lease No. DACW09-1-69-45 between USACE and the CITY for property located within the Hansen Flood Control Basin. The land at the corner of Osborne Street and Foothill Boulevard located at 11800 Foothill Boulevard, Los Angeles, California, is improved with a 57,000 square foot building which was designed and constructed with funding from the following public sources: Proposition 40 Specified Grant Program (Contract No. C0231250), Proposition 40 Roberti-Z'Berg-Harris Grant Program (Contract No. C0231244), Proposition 40 Per Capita Grant Program (Contract No. C0231134), Proposition K Specified Grant Program (Contracts No. C-98362 and No. C-109472), Proposition K Competitive Grant Program (Contract No. C-100050), and private donations to the Children's Museum of Los Angeles, the former entity that oversaw partial construction of the subject facility.

**1.2.2.** CITY and DSCLA have entered into a Lease for the use of the improved land and building within the Hansen Dam Recreation Area described in Section 1.2.1 above (as shown in included in Exhibit A "Map and Legal Description" of Lease), which Lease shall set forth the duties, obligations, responsibilities, aims, and goals of the parties, for the specific purpose of providing a Children's Museum and an Environmental Learning Center, together known as a science center (the "Center") within the existing building which emphasizes recreation and environmental awareness through focused learning about the natural environment using interactive exhibits that

will provide both recreational and educational opportunities, that will increase the public's understanding and recognition of the need to sustain the environment for future generations.

**1.2.3.** CITY does not have personnel available in its employ with sufficient and appropriate expertise to develop the exhibits and operate and maintain the Center and CITY, due to current budgetary constraints, has frozen hiring and is unable to obtain the appropriate personnel to perform these specialized tasks.

**1.2.4.** DSCLA is a non-profit corporation formed for the purpose of providing recreational activities for youth and their families in the area as well as educating young minds, assisting teachers and increasing public understanding of the environment, science, math and technology, with a particular emphasis on environmental issues, through interactive exhibits and programs.

**1.2.5.** DSCLA has special abilities in the areas of presentation, fundraising, recreation, education, community support and operations with respect to the Center.

**1.2.6.** DSCLA has the staff and experience to operate and manage the Center, provide unique and highly specialized educational programs, and oversee the design, fabrication and installation, or acquisition of a state-of-the-art interactive exhibits that can be refreshed and rotated over time.

**1.2.7.** CITY and DSCLA desire to enter into an Agreement governing the design and layout and modification of the Center and the design and construction of the Center exhibits and displays to be installed inside the Center on the premises.

**1.2.8** CITY and DSCLA desire to establish an accounting structure and disbursement procedure in order to assure the efficient and orderly payment of all costs associated with the design and construction of the Center improvements and Center Exhibits. In accordance with the terms of this Agreement, DSCLA shall deposit construction funds in a construction escrow or other designated account ("CENTER Funds Account") and CITY shall maintain construction funds in separate construction escrow or other accounts ("City Funds Accounts") as further provided in this Agreement.

**1.3. Definitions in Lease.** When used in this Agreement, or in any Exhibits or Attachments to this Agreement, except where a different definition is clearly and expressly given, the following words or phrases, capitalized as shown, shall mean:

**1.3.1. BOARD.** "BOARD" shall mean the Board of Recreation and Park Commissioners of the City of Los Angeles.

**1.3.2. Center.** "Center" shall mean the premises and the improvements thereon as of the Effective Date of this Agreement and any improvements, Center exhibits and facilities constructed on the premises by DSCLA or CITY at any time and from time to time during the Term for purposes of this Lease as set forth in Article 5.

**1.3.3. Center Exhibits.** "Center Exhibits" shall mean the exhibits and displays constructed and installed inside the Center and on the Premises.

**1.3.4. CITY.** "CITY" shall mean the City of Los Angeles, a municipal corporation acting by and through its Board of Recreation and Park Commissioners. Except where clearly and expressly provided otherwise in this Agreement, any action to be taken by the CITY may be taken for the CITY by the General Manager as defined in Paragraph 1.3.8. Except where clearly and expressly provided otherwise in this Lease, the capacity of the CITY in this Agreement shall be as Landlord, and any benefits, obligations, or restrictions conferred or imposed by this Agreement on the CITY shall be limited to that capacity and shall not relate to or otherwise affect any activity of the City of Los Angeles in its governmental capacity including, but not limited to: enacting laws; inspecting structures; reviewing and issuing permits; and all other legislative, administrative, or enforcement functions of the City of Los Angeles pursuant to federal, state, or local law.

**1.3.5. DEPARTMENT.** "DEPARTMENT" shall mean the Department of Recreation and Parks of the City of Los Angeles.

**1.3.6. DSCLA.** "DSCLA" shall mean the Discovery Science Center of Los Angeles, a California nonprofit public benefit corporation.

**1.3.7. Effective Date.** "Effective Date" shall mean the date the Office of the City Clerk of Los Angeles attests this Agreement.

**1.3.8. General Manager.** "General Manager" shall mean the General Manager of the Department of Recreation and Parks of the City of Los Angeles. General Manager shall also include any person designated in writing by the BOARD to act on behalf of the General Manager.

**1.3.9. Improvements and Exhibits Agreement.** "Improvements and Exhibits Agreement" shall mean this Agreement entered into by CITY and DSCLA governing the design and modification of the existing building or facility and the design, construction and installation of the Center Exhibits.

**1.3.10. Lease.** "Lease" shall mean the agreement entered into by CITY and DSCLA for the use of the Premises (defined below) for the specific purpose of operating and maintaining a Center that emphasizes recreation and focused learning about the natural environment.

**1.3.11. Opening Date.** "Opening Date" shall be the date that DSCLA first opens the Center to members of the general public pursuant to the terms of use in Article 5 of Lease.

**1.3.12. Premises.** "Premises" shall collectively refer to the land, building, and improvements located at 11800 Foothill Boulevard, Los Angeles, California, and as depicted in Exhibit A "Map and Legal Description" of Lease.

1.3.13. **USACE.** "USACE" shall mean the United States Army Corps of Engineers.

## **ARTICLE 2. TERM**

**2.1 Term.** The term of this Construction Agreement shall be concurrent with the Lease, unless previously terminated in accordance with other provisions of this agreement.

## **ARTICLE 3. PREMISES**

**3.1 Premises.** The land and improvements located at 11800 Foothill Boulevard in the City of Los Angeles, County of Los Angeles, State of California, described in Section 1.2.1 above and as depicted in Exhibit A "Map and Legal Description" of Lease, and located within the Hansen Dam Recreation Area, Los Angeles, California. The portion of the Premises that is located on land owned by USACE and leased to CITY is subject to all existing easements, other restrictions of record, and Department of the Army Lease No. DACW09-1-69-45 between USACE and the CITY for property located within the Hansen Flood Control Basin.

**3.2 Article 4 of Lease Not Superseded.** Any and all references to Premises in this Agreement shall not supersede Article 4 of the Lease which shall remain in full force and effect.

## **ARTICLE 4. DESIGN AND MODIFICATION OF THE EXISTING BUILDING AND DESIGN, CONSTRUCTION AND INSTALLATION OF CENTER EXHIBITS**

**4.1 Initial Exhibit Plan.** DSCLA shall at its own expense and at no cost to CITY, develop an Initial Exhibit Plan for the Center and shall deliver a completed Initial Exhibit Plan to the CITY on or before September 30, 2013.

**4.2 Initial Exhibit Plan Requirements.** The Initial Exhibit Plan shall include the concept design plan, layout within the Center, and cost for each exhibit to be developed and installed in the Center by the Opening Date. The Initial Exhibit Plan shall be consistent with the terms of any grant or funding agreements or other limitations on the use of Premises.

**4.3 Design of Center and Center Exhibits.** DSCLA shall design the Center and Center Exhibits in conformance with all applicable federal, state, county, and city laws in force at the time of design. All plans shall be prepared by DSCLA and must be submitted to DEPARTMENT for approval. DEPARTMENT shall direct DSCLA to submit the plans to the BOARD and/or other City of Los Angeles agencies for approval, including, without limitation, the Cultural Affairs Commission of the City of Los Angeles, the Department of Public Works of the City of Los Angeles, and the Department of Building and Safety of the City of Los Angeles. DEPARTMENT may direct DSCLA to submit the plans for any improvements located on the portion of the Premises that is owned by USACE, and leased to CITY, to USACE for their approval. Approvals shall be



at the sole discretion of the DEPARTMENT and agencies involved. CITY is not responsible for payment of any fees nor for delays in permit processing or approvals.

**4.4 Design Submission Requirements.** During the design phase for the Center and the Center Exhibits, DSCLA shall provide DEPARTMENT with various submittals for approval. These include but are not limited to the following:

**4.4.1 Schematic Plans.** Schematic plans shall include at least the following: analysis of requirements and proposed uses including site utilization and computation of required floor, parking, yard and other areas necessary to the proposed uses; single-line drawings illustrating appropriate floor areas and arrangement of the various uses, and site utilization; specifications indicating construction methods, concepts and materials, including mechanical and electrical concepts; and approximate estimates of construction costs.

**4.4.2 Preliminary Plans.** Preliminary plans shall include at least the following: drawings illustrating in greater detail than the schematic plans, floor area relationship, the various requirements of different occupancies, elevations, sections, and architectural, structural, civil, mechanical, electrical, landscaping and other design aspects; preliminary specifications for the project arranged in Construction Specification Institute form; preliminary estimate cost of construction; and a colored perspective Delineation or Rendering of the project.

**4.4.3 Working Drawings.** Working drawings shall include at least the following: computations and specifications, in accordance with the approved preliminary plans, including necessary drawings in sufficient detail to provide adequate information for accurate minimum bids; a detailed final estimate of cost of construction of the project; and complete checking and coordination of all architectural, structural, civil, landscape, mechanical and electrical drawings.

**4.4.4 Final Plans.** Final plans shall include at least working drawings and specifications that have been processed through plan check review and other required corrections.

**4.5 DEPARTMENT Participation.** DSCLA shall design the Center and the Center Exhibits with the input of the DEPARTMENT, DEPARTMENT, and/or other City of Los Angeles agencies as determined by DEPARTMENT, shall be full participants in all design meetings.

**4.6 USACE Participation.** DSCLA shall consider the active input and participation of USACE in the design of any improvements located on the portion of the Premises that is located on land owned by USACE and leased to CITY, whether such facilities or uses will be temporary or permanent.

**4.7 Subcontracting for Architectural/Design and Construction Services.** DSCLA will select an architect/designer and construction subcontractors that are

licensed by the State of California to design the project and to perform other functions as described in this Agreement and the subcontract. Whether or not the architectural/design or construction services are to be funded by the City, the Grantee shall require its architect/designer and construction subcontractors to execute Attachment No.1 - Assignment of Contract and Plans and Specifications and Permits, and submit the signed document and all attachment to the City for approval prior to the execution of this Agreement. If the Grantee has not selected an architect/designer and/or construction subcontractors prior to the execution of this Agreement, the Grantee shall certify that it will require its architect/designer and construction subcontractors to execute Attachment No. 1 Assignment of Contract and Plans and Specifications and Permits -and shall obtain such assignment when the Grantee obtains its architect/designer and construction-subcontractors.

## **ARTICLE 5. MODIFICATION OF THE CENTER AND CENTER EXHIBITS**

**5.1 Modification of Center.** DSCLA shall construct any modification to the Center and Center Exhibits in conformance with all applicable federal, state, county, and city laws in force at the time of the modifications and in conformance with designs approved pursuant to the design submittal and approval process described in Article 4 above in this Agreement.

**5.1.1 Progress Report.** DSCLA shall submit a construction progress report to DEPARTMENT on a monthly basis. This report shall only be used for informational purposes.

**5.1.2 As Built Drawings.** DSCLA shall submit to the DEPARTMENT reproducible "as built" drawings of all improvements constructed on the Premises with the exception of the security system. Such plans shall also include plans for landscaping and other outdoor improvements related to the Center.

**5.1.3 No Creation of Liability.** Nothing contained herein shall be construed or deemed to create any obligation or liability, including without limitation liability as a guarantor or surety, on the part of CITY with respect to the Center or any other improvements constructed from time to time on the Premises, or any plans or specifications, construction contracts, financing or other matter, instrument or document of any nature whatsoever relating to such improvements. CITY is not and shall at no time be liable to any creditor of DSCLA or any other persons occupying any part of the Premises or the improvements thereon as a sublessee, licensee or otherwise or to any claimant against the estate or property of DSCLA or such other occupants for any of their debts, losses, contracts or other obligations. The relationship between CITY and DSCLA is solely that of landlord and tenant and is not and shall not be deemed a partnership or joint venture.

**5.2 Department Participation.** DSCLA shall modify the Center and construct Center Exhibits with the input of the DEPARTMENT. DEPARTMENT, and/or other City of Los Angeles agencies as determined by DEPARTMENT, shall be full participants in all construction meetings.

**5.3 USACE Participation.** DSCLA shall consider the active input and participation of USACE in the construction of any improvements located on the portion of the Premises that is located on land owned by USACE and leased to CITY, whether such facilities or uses will be temporary or permanent.

## **ARTICLE 6. OPERATIONS OF THE CENTER**

**6.1 Operations of the Center.** The Center shall be used by DSCLA in accordance with Article 5 of the Lease.

## **ARTICLE 7. MAINTENANCE, CUSTODIAL SERVICES, SECURITY AND REPAIR OF THE CENTER DURING CONSTRUCTION**

**7.1 DSCLA'S Responsibilities.** During any DSCLA initiated construction activities on Premises, DSCLA shall keep and maintain, at DSCLA'S sole cost and expense, the Premises and all improvements on the Premises, including Center Exhibits, in good condition and repair and in conformance with the standard of care identified in Article 6 of the Lease.

## **ARTICLE 8. UTILITIES**

**8.1 DSCLA'S Responsibilities.** DSCLA shall pay all charges associated with the installation of electrical, natural gas, sewer, water and telephone services, as well as all periodic fees for said services, needed for any DSCLA initiated construction activities on Premises in conformance with Article 7 of the Lease.

## **ARTICLE 9. FINANCING AND DISBURSEMENT OF FUNDS**

**9.1. Financing.** DSCLA shall be responsible to secure funding for any costs associated with the design and modification of the Center and the design, construction and installation of Center Exhibits for the uses set forth in Article 5 of the Lease. CITY may, but is not obligated to, assist DSCLA to identify and secure funding for the design and modification of the Center and the design, construction and installation of Center Exhibits. For purposes of the Agreement, DSCLA shall be deemed to have "secured" funding only under the following circumstances:

**9.1.1** DSCLA establishes an account, as hereinafter provided, and deposits cash into the account which can be withdrawn only as hereinafter provided for payment of costs associated with the design and construction of Center improvements and Center Exhibits; and/or

**9.1.2** DSCLA secures an line of credit that may be drawn on solely for the design and construction of the Center and Center exhibits; and/or

**9.1.3** DSCLA has fully executed grant or funding agreement(s) with federal, state, or local governmental agencies which provide guaranteed funds for the design and construction the Center and Center Exhibits.

**9.2 Establishment of Center Funds Account.** DSCLA shall establish a construction escrow or other designated account ("Center Funds Account") for the disbursement of construction funds for the Center modifications and improvements and the Center Exhibits. Disbursement of funds from such account shall solely be for the design and construction of the Center modifications and improvements and Center Exhibits.

**9.3 Establishment of City Funds Accounts.** CITY may establish, or identify, construction escrow or other designated accounts ("City Funds Accounts") for the disbursement of construction funds for the Center modifications and improvements and the Center Exhibits. Disbursement of funds from such account shall solely be for the design and construction of the Center modifications and improvements and Science Center Exhibits.

**9.4 Financing for Initial Exhibit Plan.** DSCLA shall demonstrate to satisfaction of CITY that the amount of funding available in the Center Funds Account and the City Funds Account, either individually or in combination, is sufficient to complete the Center modifications and improvements and Science Center Exhibit improvements identified on the Initial Exhibit Plan.

**9.4.1 Review of Financing.** From the Effective Date of this Agreement and prior to the Opening Date, representatives of the parties will confer, on a quarterly basis or as deemed necessary by either DSCLA or CITY, to evaluate adequacy of the financing for the Initial Exhibit Plan and operational responsibilities of each party, as stipulated in the Lease and in this Agreement and make any adjustments as they mutually deem necessary. DSCLA shall submit a Financing progress report to DEPARTMENT on a monthly basis.

**9.5 Disbursement Requests From City Funds Account.** DSCLA shall submit requests for disbursements of construction funds ("Disbursement Request") for the Center and the Center Exhibits from the City Funds Account to the CITY. Disbursement Requests shall be submitted in conformance with any forms and/or procedures required by the CITY and shall be made to the staff member(s) designed by the CITY to review all Disbursement Requests and the information contained in each. Disbursement Requests shall be only for costs incurred for the construction of the Center and the Center Exhibits and only for items for which the funds in the City Funds Account may be expended pursuant to applicable law.



**9.5.1 Cash Advances and Payment to DSCLA.** DSCLA may request cash advances as needed to fund allowable project expenses, in accordance with a draw down schedule approved by the City and using project monies designated for use as cash flow. DSCLA shall be reimbursed on a progress payment basis, no later than forty-five (45) days after receipt by the City of an acceptable Disbursement Request and approved invoice(s) for expenses authorized for material furnished, service rendered or work completed under the term and conditions of this Agreement, subject to the availability of funds for the work and subject to all other provisions of the Agreement. Construction progress payment requests shall be certified by the project Architect and/or Manager and the Grantee. All charges and expenses shall be properly documented with adequate vouchers and receipts and approved by the City. Only those expenses that are eligible and relate directly to the scope and intent of the work shall be authorized and approved for reimbursement. Progress payment requests shall not be submitted more frequently than once a month.

**9.5.2 Documentation of Construction Expenditures.** Construction expenditures shall be supported and verified by properly executed General Contractor and subcontractors payrolls, time recorded, invoices, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. Checks, payrolls, invoices, vouchers, orders or other accounting documents shall be clearly identified and readily accessible. The City may require additional substantiation of costs before making payment. All evidence of costs incurred or to be incurred shall identify or bear identification of the budget account to be charged.

**9.5.3 Schedule of Payments.** DSCLA, upon submittal of an acceptable Disbursement Request, and adequate proof of progress in the form of appropriate documentation shall be paid or reimbursed no more than once a month.

**9.5.4 Withheld Payments.** The City will withhold up to 10% of the total construction funds as Retention against the payment to DSCLA, with the option of reducing the retention to 5% when the City Project Manager has certified that the Center and Center Exhibit work is fifty percent (50%) complete and that there are no outstanding stop notices or liens, and that all vendor and/or subcontractor payments are current. The Retention is withheld to ensure that DSCLA completes the Center and Center Exhibits and that the Center is open to the public. DSCLA may request release of retention corresponding to individual phases of the project following completion of the following phases: a) exhibit design, b) exhibit fabrication, c) exhibit installation and d) completion of any building modifications design carried out by DSCLA or their architects and/or engineers, and e) completion of any building modifications carried out by DSCLA. In each case the Retention will be released after all of the following conditions are met: (i) Submittal of acceptable invoices for all project related costs; and (ii) Written confirmation submitted by DSCLA that they have received all assurances, and warranties for the project from any construction contractor(s); and, (iii) With respect to final project retention, compliance with any other project construction closeout requirement that may be specified by CITY. CITY has the authority to withhold funds under this Agreement pending a final determination by CITY of questionable

expenditures or indebtedness to CITY arising from past or present Agreements between CITY and DSCLA. Upon final determination by CITY of disallowed expenditures or indebtedness, CITY may deduct and retain the amount of the disallowance or indebtedness from the amount of the withheld funds. Payments to DSCLA may be withheld by CITY if DSCLA fails to comply with provisions of this Agreement.

**9.5.5 Return of Unexpended Funds and Close-outs.** Funds paid by CITY, and determined by CITY to be in excess of the amount actually required, shall be immediately returned to CITY. DSCLA shall submit to CITY a complete and accurate final close-out invoice of costs and reimbursements for services performed under this Agreement, within 45 days following the termination or completion of any design or construction work under this Agreement. Failure by DSCLA to comply with the 45-day requirement may result in a unilateral close-out of this Agreement by the CITY.

**9.5.6 Approvals of Disbursement Requests.** Approval of a Disbursement Request shall be at the sole discretion of the CITY. No Disbursement Requests shall be approved for the construction of any improvements or modification that are not designed and approved pursuant to the design submittal and approval process described in Article 4.

**9.6 Records.** CITY shall have the right to review documentation with respect to the design and construction costs of the Center and the Center Exhibits for, but not limited to, conformation with the budget for the improvements adopted pursuant to the design submittal and approval process described in Article 4.

**9.7. Inspection and Audit of Records by CITY.** All documents, books and accounting records required to be maintained or retained under this Article shall be open for inspection and re-inspection by CITY with reasonable prior notice during regular operating hours during the Term of this Lease and for a period of ten years thereafter. In addition, CITY may from time to time consistent with recognized accounting principles conduct, at CITY'S sole cost and expense, an audit or re-audit of the books and business conducted by DSCLA with respect to DSCLA'S construction of improvements at Center and observe the operation of business so that accuracy of the above records can be confirmed.

## **ARTICLE 10 DEFAULT AND TERMINATION**

**10.1. Events of Default.** The following occurrences are "Events of Default:"

**10.1.1. Breach of Lease.** DSCLA or CITY materially breaches or fails in the performance of any of the provisions or conditions of the Lease; or

**10.1.2. Failure to Conform to Laws.** DSCLA fails to conform to applicable federal, state, county or local laws, rules, regulations or policies; or

**10.1.3. Incapacity to Perform.** DSCLA ceases to operate, exist or maintain its nonprofit corporate status (temporary suspension of status for a period not exceeding six (6) months shall not be considered a failure to maintain status) or becomes unable through corporate or personal incapacity to fulfill its obligations under the Lease or this Agreement; or

**10.1.4. Lack of Funds.** If DSCLA is no longer able to carry out the purposes of the Lease or this Agreement because of a lack of funds or funding; or

**10.1.5. Non-conforming Use.** DSCLA ceases to use the Premises for the purpose of a recreation and environmental awareness center as set forth in Article 5 of Lease; or

**10.1.6. Termination of Lease.** In the event the Lease is terminated; or

**10.1.7. Failure to Deliver a Completed Initial Exhibit Plan.** DSCLA fails to deliver a completed Initial Exhibit Plan on or before September 30, 2013; or

**10.1.8. Failure To Commence Construction of Center Exhibits.** DSCLA fails to commence construction of the Center Exhibits on or before September 30, 2013. Construction of Center Exhibits shall be deemed to have commenced on the date DSCLA or its subcontractors starts physical fabrication work on the Center Exhibits; or

**10.2. Default - CITY's Remedies.** If any one or more of the "Events of Default" set forth in Section 10.1. above occurs, then CITY may, at its election, without any further notice to or authorization from DSCLA, and without waiving any of City's rights at any time to select any other remedy provided in this Section, or elsewhere in this Agreement, if applicable, or under law, do any one or more of the following:

**10.2.1. Termination of Agreement.** CITY may give DSCLA written notice of such "Event of Default." If DSCLA does not cure said default within thirty (30) days after notice (and forthwith for a default involving health, sanitary or safety conditions or pertaining to the maintenance of insurance required under this Agreement) or such longer period as is reasonably necessary to remedy such default, as determined by either CITY, provided that DSCLA shall continuously and diligently pursue such remedy at all times until such default is cured, CITY may, by delivering written notice to DSCLA, terminate this Agreement; and/or

**10.2.2. Recovery at Law.** CITY may recover at law any and all claims which may be due CITY; and/or

**10.2.3. Self-help.** In the event that neither the City nor DSCLA terminate the term of this lease agreement under the conditions herein defined, the CITY may, but is not obligated to, perform such work as it deems necessary to cure any "Event of Default" and charge DSCLA for the cost of labor and materials expended. The General Manager may exercise this option immediately in an "Event of Default" involving health, sanitary or safety considerations. Otherwise, the General Manager may exercise this



option within sixty (60) days after giving DSCLA written notice of a default involving Premises' maintenance if DSCLA does not commence to cure. CITY shall provide DSCLA with reasonably detailed invoice for the labor and materials expended, and DSCLA shall pay the full sum of the invoice within sixty (60) days of DSCLA'S receipt of the invoice, using as a first priority any monies remaining from the project escrow account as defined in section 9.2 of Exhibit E to this agreement. In the event DSCLA disputes any of the charges on the invoice or DSCLA'S obligation to pay for any or all of the items, DSCLA shall pay the full sum of the invoice within the sixty (60) day period, subject to prompt reimbursement from CITY to the extent DSCLA prevails on any items in dispute.

The specified remedies to which CITY may resort under the provisions of this Lease are cumulative and not intended to be exclusive of any other remedies afforded by law or equity.

**10.3. No Waiver.** The conduct of either party or the acceptance of all or part of any payment by CITY after an "Event of Default" for any period after an "Event of Default" shall not be deemed a waiver of any rights and remedies, nor a waiver of the default of the same or any other provision, covenant or condition. Waiver by either CITY or DSCLA of any breach by the other of any covenant, condition or obligation herein contained or failure by either CITY or DSCLA to exercise any right or remedy in respect of any such breach shall not constitute a waiver or relinquishment for the failure of any such covenant, condition or obligation or of any subsequent breach of any such covenant, condition or obligation nor bar any right or remedy of CITY or DSCLA in respect of any such subsequent breach.

**10.4. Default by CITY.** In the event CITY defaults in the performance of any of the provisions or conditions of this Agreement, and if a written notice of such default is issued to CITY by DSCLA, and if CITY does not commence to cure said default within sixty (60) days of receipt of said notice, DSCLA may immediately terminate this Agreement and/or obtain specific performance.

## **ARTICLE 11. NOTICES**

**11.1. Notices.** All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands shall be personally delivered (including by means of professional messenger service), sent by United States mail, postage prepaid, return receipt requested, or transmitted by telecopier (e.g., Fax) or electronic mail (upon mutual agreement of participating parties), in which case the receiving party shall immediately confirm receipt of such telecopied or e-mailed notice. All notices are effective upon receipt. For the purposes of such notices, the addresses for the parties are set forth in Section 19.2 below. In the event CITY is unable to give notice to DSCLA at the address(es) provided to CITY by DSCLA, notice shall be deemed effective when addressed to DSCLA at the Premises. Either party may from time to time designate another person or place in a notice.



**11.2. Notices - Where Sent.** All notices given under this Lease which are mailed or telecopied shall be addressed (unless redesignated as provided above) to the respective parties as follows:

To CITY or General Manager:

City of Los Angeles  
Board of Recreation and Park Commissioners  
221 North Figueroa Street, Suite 1510  
Los Angeles, California 90012

Telecopier: (213) 202-2612

with a copy of any notice to  
General Manager, Department of Recreation and Parks  
221 North Figueroa Street, Suite 1550  
Los Angeles, California 90012

Telecopier: (213) 202-2614

with a copy of any notice to  
Office of the City Attorney,  
Real Property/Environment Division  
200 North Main Street, Suite 700  
Los Angeles, California 90012-4130

Telecopier: (213) 978-8090

with a copy of any notice to  
Program Manager  
Bureau of Engineering, Recreational and Cultural Facilities Program  
1149 S. Broadway, 8<sup>th</sup> Floor  
Los Angeles, California 90015

Telecopier: (213) 847-1926

To DSCLA:

Chairman of the Board  
Discovery Science Center of Los Angeles  
2500 North Main Street, Santa Ana, CA. 92705

Telecopier: (714) 263-3838

## **ARTICLE 12. MISCELLANEOUS PROVISIONS**

**12.1. Amendment of Agreement.** No amendment, modification, supplement or mutual termination of any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by CITY and DSCLA.

**12.2. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective parties hereto.

**12.3. Captions, Table of Contents, and Index.** The captions and table of contents of this Agreement are inserted only as a matter of convenience and reference, and they in no way define, limit, or describe the scope of any provisions of this Agreement, or the intent of any provision of this Agreement, and shall not be used with respect to the interpretation of any provision of this Agreement.

**12.4. Conflict of Laws and Venue.** This Agreement shall be governed by and construed under the laws of the State of California. Venue on any action arising out of this Agreement will be proper only in the County of Los Angeles, State of California.

**12.5. Corporate Resolution.** DSCLA shall provide to the CITY a current copy of its Corporate Resolution depicting the names and legal signatures of the officers of the corporation authorized to execute legal documents, including this Agreement, on behalf of DSCLA. Within thirty (30) days of any change in such names, DSCLA shall provide to the CITY the updated Corporate Resolution.

**12.6. Counterparts.** This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

**12.7. Exhibits - Incorporation in Improvements and Exhibits Agreement.** All exhibits referred to are attached to this Agreement and incorporated by reference.

**12.8. Force Majeure.** Whenever either party hereto shall be required by the provisions of this Agreement or by law to perform any contract, act, work, construction, labor or services (excepting only the obligation to pay rent due hereunder), or to discharge any lien against the Premises, or to perform and comply with any laws, rules, orders, ordinances, regulations or zoning regulations, said party shall not be deemed to be in default herein and the other party shall not enforce or exercise any of its right under this Agreement, if and so long as nonperformance or default herein shall be directly caused by strikes, non-availability of materials, war or national defense preemptions, governmental restrictions, acts of God or other similar causes beyond the reasonable control of the nonperforming party provided; however, that notwithstanding any of the provisions of the foregoing, the nonperforming party shall commence such performance and continue the same with diligence and continuity immediately after the removal of any of the causes hereinabove specified.

**12.9. Gender.** As used herein, the neuter gender includes the feminine and masculine, the masculine includes the feminine and the neuter, and feminine includes the masculine and the neuter, and each includes corporations, limited liability companies, partnerships or other legal entities when the context so requires.

**12.10. No Prior Agreements.** This Agreement, and the Lease, contains all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement.

**12.11. No Relocation Assistance.** DSCLA acknowledges that it is not entitled to relocation assistance or any other benefits under the California Relocation Assistance Act (Government Code section 7260, et seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C.A. § 4601, et seq.), or any other provisions of law upon termination of this Agreement.

**12.12. Quiet Enjoyment.** If DSCLA is not in default as provided herein, DSCLA shall and may peaceably and quietly have, hold, and enjoy the Premises with necessary ingress and egress in accordance with the provisions hereof.

**12.13. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**12.14. Sole Discretion.** In those instances in this Agreement where it is provided that the CITY or the General Manager or other City of Los Angeles agency may approve a request in the exercise of "sole discretion" or words of like import, the parties expressly agree that CITY or the General Manager or other City of Los Angeles agency, as the case may be, has the absolute unfettered discretion to grant or withhold approval, either arbitrarily or otherwise, and with or without reason, and neither DSCAL nor any other party or tribunal shall have any right or power to inquire into or review the granting or withholding of such approval or the reasons or lack of reasons therefore.

**12.15. Time.** Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement. Except where expressly stated to be "business days" or "working days," the word "days" shall mean "calendar days."

**12.16. Indemnification.** Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, DSCLA undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses,

including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including DSCLA'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by DSCLA or its subcontractors of any tier. The provisions of this paragraph survive expiration or termination of this Agreement.

**12.17. Insurance.** During the term of this Agreement and without limiting DSCLA's indemnification of the CITY, DSCLA shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by DSCLA, but not less than the amounts and types listed on Exhibit C "146R Insurance Form" of the Lease, covering its operations hereunder. Such insurance shall conform to CITY requirements established by Charter, ordinance or policy, in accordance with Exhibit D "Instructions and Information on Complying with City Insurance Requirements" of Lease and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management.

Signature page to follow



IN WITNESS WHEREOF, the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners, Landlord herein, and DISCOVERY SCIENCE CENTER OF LOS ANGELES, a California nonprofit public benefit corporation, Tenant herein, have caused this Tenant Improvement Agreement to be executed as of the date of the attestation by the City Clerk.

Executed this 19<sup>th</sup> day  
of December, 2012

**CITY:**

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

By John Wiley Al Tamilian

PRESIDENT

By Harvey A. Hall  
SECRETARY

Executed this 19<sup>th</sup> day  
of December, 2012

**TENANT:**

DISCOVERY SCIENCE CENTER OF LOS ANGELES, a California non-profit public benefit corporation

By Joe Adams  
JOE ADAMS, Chairman of the Board

Approved as to Form:

Date: December 20, 2012  
CARMEN A. TRUTANICH,  
City Attorney

By Doni Zappala  
DEPUTY CITY ATTORNEY

ATTEST: Virginia Walmes  
Date: 1/4/13  
JUNE LAGMAY, City Clerk

By 1/4/13  
DEPUTY CITY CLERK



Council File Number: 10-1658-S2 Date of Approval: December 14, 2012  
Said Agreement is Number C-121656 of City Contracts