

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (this “ENA”) is entered into by and between the CITY OF LOMPOC, a municipal corporation (“City”) and the ENVIRONMENTAL EDUCATION GROUP, INC., a California non-profit corporation (“EEG”), under the terms and provisions set forth below.

WHEREAS, in furtherance of the goals and objectives of providing diverse educational, scientific and recreational opportunities to City and region’s residents, visitors and businesses and for EEG to fulfill its purpose of public benefit, City and EEG desire to enter into negotiations concerning the potential conveyance and development of certain land (defined below as the “Project Site”); and

WHEREAS, the Project Site is designated as such on the aerial photograph of the Project Site, attached hereto as Exhibit A; and

WHEREAS, the parties recognize and acknowledge the purpose of this ENA is to seek to negotiate the terms of a long-term lease agreement or disposition and development agreement (the “Lease/DDA”), which will accomplish the objectives described in Paragraph 1 below; and

WHEREAS, the parties acknowledge and agree no commitments have been made in relation to the ultimate terms of the Lease/DDA or conveyance or development of the Project Site.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, City and EEG hereto mutually agree as follows:

1. PURPOSE

The purpose of this ENA is to provide for the negotiation by the parties of the Lease/DDA providing for, among other things, the following:

- A. Conveyance to and development by EEG of the Project Site for development of a high quality, environmentally superior, state-of-the-art space center with adult, young-adult and children educational facilities, launch viewing areas, public open and gathering spaces, an associated office complex and associated parking and aesthetic improvements (the “Proposed Project”). The development shall be subject to and consistent with the requirements of the California Environmental Quality Act and related State Guidelines (“CEQA”), as well as City development regulations (the “Land Use Regulations”). The Project Site is proposed to consist of approximately ninety-six (96) acres including and adjacent to Ken Adam Park. The Project Site consists of parcels owned by City and may be expanded to include parcels owned by the Federal Bureau of Prisons (the “Adjacent Property”) as noted on Exhibit A.

By entering into this ENA, the parties intend to implement the Land Use Regulations.

- B. Coordination of the planning, design and construction of Proposed Project on the Project Site and to maximize its compatibility with the abutting and adjacent uses and to minimize environmental, traffic and other impacts on the abutting and adjacent uses.
- C. Such other provisions regarding the participation and responsibilities of EEG and City necessary to further the purpose of developing the Project Site, including, but not limited to, provisions for processing approvals and permits and possible financial participation by means of deferral of lease/purchase payments and fees.

2. EXCLUSIVE RIGHT TO NEGOTIATE

- A. City hereby grants to EEG, and EEG hereby accepts this ENA for a period of three hundred sixty-five (365) days, commencing on the effective date of this ENA, and continuing in full force until expiration or earlier termination pursuant to Paragraph 6; provided, that, City's City Administrator is authorized to extend the expiration date for up to an additional aggregate total of ninety (90) days if she determines it is in the best interest of the community to do so.
- B. City and EEG agree, for the period set forth in Paragraph 2. A., above, to negotiate diligently and in good faith for the preparation of the Lease/DDA to be entered into by City and EEG for conveyance of the Project Site and development of the Proposed Project. During the term of this ENA, City agrees not to negotiate for the conveyance or development of the Project Site, or portion thereof, with any party other than the EEG, or approve or conduct a public hearing for any other development of the Project Site, or portion thereof. During the term of this ENA, EEG agrees as partial consideration for this ENA not to negotiate with any other party for a similar project within a 250-mile radius of the Project Site; provided, that the parties understand City must process requests for entitlements duly submitted by, or on behalf of, owners of the portion of the Project Site not owned by City.

3. TERMS

City and EEG hereby agree to the following terms:

- A. Master Plan. On or before ninety (90) days after the effective date of this ENA, EEG shall submit to City's City Administrator a master plan approved by EEG's Board of Directors illustrating the Proposed Project at a Conceptual Plan level of detail, including a proposed phasing plan (the "Master Plan").
- B. Pro Forma. Within ninety (90) days after the effective date of this ENA, EEG shall submit to City's City Administrator a complete pro forma showing the fiscal feasibility for all aspects of the Proposed Project.

- C. Necessary Financing. Within one hundred eighty (180) days after the effective date of this ENA, EEG shall submit evidence reasonably satisfactory to City, including the financing structure and preliminary commitments, demonstrating EEG can and will obtain the necessary financing in an amount sufficient to pay for development and operation of the Proposed Project. It is anticipated such evidence will include letters of intent from prospective tenants of the office complex.
- D. Community Outreach. EEG shall conduct several comprehensive programs to obtain input regarding the Proposed Project from surrounding residents, community stakeholders and interested members of the public.
- E. City's Right to Additional Information; Confidentiality of Information. City reserves the right, during the term of this ENA, to request reasonable additional information and data from EEG necessary for review and evaluation of the Proposed Project. EEG agrees to provide such additional information or data as requested in a timely manner. To the extent permitted by law, all information provided by EEG to City shall remain confidential.
- F. Hazardous Materials. City shall not be responsible for conducting or financing any testing of the Project Site for hazardous materials pursuant to any applicable laws, statutes, rules and regulations. As between City and EEG, EEG shall also be responsible for making site conditions suitable for the Proposed Project, including, but not limited to, flood zones, Alquist-Priolo, and similar matters. For purposes of this ENA, "hazardous materials" shall mean asbestos; polychlorinated biphenyls (whether or not highly chlorinated); radon gas; radioactive materials; explosives; chemicals known to cause cancer or reproductive toxicity; hazardous waste, toxic substances or related materials; petroleum and petroleum product, including, but not limited to, gasoline and diesel fuel; those substances defined as a "Hazardous Substance", as defined by section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., or as "Hazardous Waste" as defined by section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; an "Extremely Hazardous Waste," a "Hazardous Waste" or a "Restricted Hazardous Waste," as defined by The Hazardous Waste Control Law under sections 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to section 25140 of the California Health and Safety Code; a "Hazardous Material", "Hazardous Substance," "Hazardous Waste" or "Toxic Air Contaminant" as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code; "Oil" or a "Hazardous Substance" listed or identified pursuant to section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; a "Hazardous Waste," "Extremely Hazardous Waste" or an "Acutely Hazardous Waste" listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations sections 66261.1 - 66261.126; chemicals listed by the

State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to section 25249.8 of the California Health and Safety Code; a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, materially damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public City to be remediated, including remediation which such law or government City requires in order for the property to be put to the purpose proposed by this ENA; any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*; asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*; any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code sections 25800 *et seq.*; hazardous substances regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code sections 6300 *et seq.*; or regulated under the Clean Air Act, 42 U.S.C. 7401 *et seq.* or pursuant to The California Clean Air Act, sections 3900 *et seq.* of the California Health and Safety Code. Any studies and reports generated by EEG’s testing for hazardous materials shall be made available to City.

- G. Commitment by City. Although the City is very interested in pursuing the Proposed Project, the parties understand and agree City legally cannot irrevocably commit to approve or execute the Lease/DDA, commence any action for acquisition or convey any interest in any portion of the Project Site to EEG unless and until, among other legal requirements and as applicable, (i) CEQA requirements are met, (ii) City takes all necessary steps for acquisition of property not currently owned by City that may become part of the Proposed Project, including, but not limited to, offers to purchase, good faith negotiations and public meetings, and (iii) the Lease/DDA is executed by EEG, approved by the City Council, after all required duly noticed public hearings, and executed by City.
- H. City Not Responsible for Costs. Except as expressly set forth in the Lease/DDA, City shall not be liable for any costs associated with the planning, acquisition or development of the Project Site pursuant to or arising from this ENA, including, but not limited to, City's fiscal analysis of the Project by a third party chosen by City.
- I. Lease/DDA to Supersede this ENA. This ENA will be superseded by the Lease/DDA, if and when the proposed Lease/DDA is executed by EEG, approved by

City, in the manner required by law, and executed by City.

- J. EEG Responsible for Paying the Cost of CEQA Compliance. EEG shall be responsible for paying the cost of City's compliance with CEQA in connection with the Project Site and the development of the Project Site. EEG shall cooperate fully and in a timely manner to requests for information from City's consultants.
- K. Real Estate Commissions. Neither City nor EEG shall be liable for any real estate commissions or brokerage fees, which may arise here from. City and EEG each represents it has not engaged a broker, agent or finder in connection with this transaction. Each party agrees to hold harmless the other party from any claim by any broker, agent or finder retained, or claimed to have been retained, by that first party.
- L. Conflicts of Interest. For the Term of this ENA, no member, officer or employee of City, during the term of his or her service with City, shall have any direct or indirect interest in this ENA or obtain any present or anticipated material benefit arising, there from.
- M. Indemnity. EEG agrees to and hereby does defend, hold harmless and indemnify City and each of its officers, agents and employees (the "Indemnified Parties") from damages arising from EEG's acts or omissions; provided, that the obligation to indemnify and hold harmless applies only to the extent damages are the result of EEG's, or EEG's agents or employees, negligent acts or omissions or willful misconduct.
- N. Governing Law. This ENA shall be interpreted and enforced in accordance with the provisions of California laws in effect at the time it is executed, without regard to conflicts of laws provisions.
- O. No Third Party Beneficiaries. City and EEG expressly acknowledge and agree they do not intend, by their execution of this ENA, to benefit any persons or entities not signatory to this ENA, including, without limitation, any brokers representing the parties to this transaction. No person or entity not a signatory to this ENA shall have any rights or causes of action against either City or EEG arising out of or due to City's or EEG's entry into this ENA.

4. TERMS TO BE NEGOTIATED

City and EEG shall meet regularly with each other in order to negotiate the Lease/DDA to include, without limitation, the following provisions:

- A. A single master development plan for the Proposed Project that is functional, aesthetic, and minimizes conflicts with, and is sensitive to, adjoining and adjacent properties. Architectural and site design issues to be resolved shall include, but not be limited to, acceptable architectural and landscape quality, initial size and maturity

of plantings, access and circulation, determination of parcel boundaries, on-site and off-site improvements, Project Site-perimeter treatment, landscaped buffers, signage, lighting, and easements, if applicable.

- B. Public open space and public gathering spaces on the Project Site.
- C. The term of the Lease/DDA and milestones which must be met to continue the Lease/DDA's effectiveness during its term and one or more options for renewal of the lease, if any, for a period of 35 to 55 years. The milestones will include, but not be limited to, such things as timing for submission of Schematic Drawings, Design Drawings and Construction Plans, finalization of funding and commencement and completion of each phase.
- D. The timing and conditions for the conveyance, if any, of the Project Site or portions thereof and for reversion of any interest conveyed.
- E. The possible deferment of lease payments in the early years of the Lease/DDA term or deferment of the payment of the purchase price and deferment of development and other fees applicable to the Proposed Project.
- F. The performance guarantees, amount of liquidated damages and good faith deposit to be required, if any. The Lease/DDA shall require EEG to pay when due all taxes, assessments, and special taxes levied on the portion of the Project Site being conveyed to EEG and all debt service on all bonds outstanding from time to time which have a lien or encumbrance on the portion of the Project Site being conveyed to EEG.
- G. A schedule of performance encompassing appropriate and necessary legal, administrative, financial and construction benchmarks to be met by the appropriate party.
- H. If required for the Proposed Project, then EEG's responsibility to prepare a subdivision tract map subdividing the Project Site into parcels as appropriate and necessary.
- I. If either or both remediation of hazardous materials from and demolition of any improvements on the Project Site are necessary for the Proposed Project, then EEG's responsibility for all costs associated with that remediation and removal.
- J. Appropriate controls to limit the use of the Project Site.
- K. Operational and maintenance plans for the development, including the parking.
- L. A complete financing plan to totally fund the Proposed Project, including financial participation, if any, by one or more any other public agencies or private entities.

M. Use of the Proposed Site or Lease/DDA as subordinate security for financing of the Proposed Project.

N. Ownership of improvements upon termination of the Lease/DDA.

O. Compliance with all Federal, State and local laws, including labor laws.

5. LIMITATION ON REMEDIES FOR BREACH OR DEFAULT AND RELEASE OF CLAIMS

A. Neither party would have agreed to any part of this ENA if it were to be liable to the other party for any amount of monetary damages. Accordingly, both parties acknowledge and agree each party's exclusive right and remedy upon any breach or default of the other party to negotiate in good faith, as set forth in this ENA, is to terminate this ENA or seek specific performance regarding the exclusivity provisions of this ENA, as applicable. The prevailing party in any action brought pursuant to this subparagraph A. shall also be entitled to an award of reasonable attorney's fees and costs.

B. Each party acknowledges it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor.

C. Civil Code Section 1542 notwithstanding, it is the parties' intention to be bound by the limitation on remedies set forth in this Section, and each party hereby releases any and all claims against the other party for monetary damages or other legal or equitable relief, whether or not such released claims were known or unknown to the releasing party as of its entry into this ENA. Each party hereby waives the benefits of Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect.

City Initials

EEG Initials

6. TERMINATION BY CITY

If the City Council, in its discretion, determines it is in the best interests of the community, then City shall have the right to terminate this ENA, with or without cause, upon fifteen-days' (15-days') notice; provided, that the obligations established by subsections 3. F., H., and M. and section 5. will remain in effect.

7. TERMINATION BY EEG

If EEG's Board of Directors, in its discretion, determines it is in the best interests of EEG, then EEG shall have the right to terminate this ENA, with or without cause, upon fifteen-days' (15-days') notice; provided, that the obligations established by subsections 3. F., H., and M. and section 5. will remain in effect.

8. NOTICES

- A. Any formal notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of City and EEG set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.
- B. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.
- C. If to City:

City of Lompoc
Attn: City Administrator
100 Civic Center Plaza
Lompoc, CA 93436
Telephone 805.875.8203
Facsimile 805.736.8681
Email: L_Barcelona@ci.lompoc.ca.us

With a copy to:

Aleshire & Wynder, LLP
Attn: Joseph W. Pannone
1515 W. 190th Street, Suite 565
Gardena, California 90248-4926
Telephone 310.527.6663
Facsimile 310.532.7395
Email: jpannone@awattorneys.com

D. If to EEG:

Environmental Education Group, Inc.
Attn: Alan Tratner, Founder/Director
402 E. Gutierrez Street
Santa Barbara, CA, 93101
Telephone 805.879.1729
Email: alan@green2gold.org

9. COUNTERPART ORIGINALS

This ENA may be executed in two (2) counterpart originals which, when taken together, shall constitute but one and the same instrument.

10. ENTIRE AGREEMENT; AMENDMENT

This ENA represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to development of the Project Site. This ENA may be amended, but only as agreed to in writing and upon the signatures of the parties hereto.

11. EFFECTIVE DATE

The effective date of this ENA shall be the date it is signed on behalf of City, if it has also been signed on behalf of EEG.

THE CITY OF LOMPOC, a municipal corporation

Dated: _____, 2012

By: _____
John H. Linn, Mayor

APPROVED AS TO FORM:

Joseph W. Pannone,
City Attorney

ENVIRONMENTAL EDUCATION
GROUP, INC., a California non-profit corporation

Dated: _____, 2012

By: _____
Alan Tratner,
Its Founder/Director

Dated: _____, 2012

By: _____
_____,
Its _____