

AGREEMENT WITH THE NATURAL SCIENCE CENTER OF GREENSBORO, INC.,  
WITH REFERENCE TO FACILITY IMPROVEMENTS AND DEVELOPMENT OF  
BATTLEGROUND PARKS DISTRICT

THIS AGREEMENT, made and entered into this 18<sup>th</sup> day of July, 2017, by and between the CITY OF GREENSBORO, a North Carolina municipal corporation, hereinafter referred to as the "City" and the Natural Science Center of Greensboro, Inc., hereinafter referred to as the "Science Center".

WITNESSETH:

WHEREAS, on November 8, 2016, the voters of the City passed a bond referendum authorizing the City to provide funds for Parks and Recreation purposes, in the total amount of \$34,500,000, and that \$5,000,000 has been allocated for the initial development of the Battleground Parks District (BPD), and

WHEREAS, the City will provide up to \$615,000 of the BPD allocation to the Science Center and it shall use the funds paid to it by the City pursuant to this Agreement exclusively for design work of the first phase of development of BPD and certain parking lot improvements, (allowable expenditures are specified in Attachment A, hereinafter the "Project"); and Attachment A is hereby made a part of this Agreement, as if fully set out herein.

NOW, THEREFORE, in consideration of the mutual covenants by and between the Parties hereto, it is hereby agreed as follows:

1. The Science Center warrants, represents and covenants that all information provided in compliance with the terms of this Agreement and other papers submitted to the City in connection with this Project and all statements and representations contained in its requests for funds are true.

2. The City shall contribute approximately \$200,000 toward design of first phase of development of BPD and approximately \$415,000 for certain parking lot improvements, which may be matched by other funds raised or contributed to the Science Center.

The construction of the Project shall take place on the real property of the City as defined in the Lease Agreement with the Science Center, dated June 18, 2017. All aspects of the project, including material, structures, equipment and any land purchases shall be the sole

property of the City and shall be deemed leased to the Science Center as set out in the aforesaid Agreement dated June 18, 2017, and any renewals thereof. Furthermore, that any portion of project construction, equipping and furnishing that is solely or partially funded by the City shall be accounted for as an asset of the City and that any portion of the project that is solely funded by the Science Center shall be accounted for as an asset of the Science Center, classified as leasehold improvements or other appropriate assets. None of the City's funds shall be expended for unauthorized acquisitions, including, but not limited to, animals, artifacts and other exhibit items, expendable supplies or materials.

3. With reference to the Project the Science Center shall:

(a) Design, administer, and construct the Project to City, State, and other governmental standards.

(b) The Science Center shall solicit the bids for construction, material and equipment according to law. In such acts the Science Center shall also abide by all local, State and federal laws relevant to Minority/Women's Business Enterprises and comply with anti-discrimination laws on the basis of gender, race, color, religion, national origin, age, and disability. The Science Center, and its contractors, shall comply with all applicable provisions of Section 2-1 17 of the Greensboro City Code (the Minority and Women Business Enterprises ordinance), and the City's Minority and Women Business Enterprise Plan for Construction, Procurement and Professional Services, as amended from time to time. The failure of the Science Center, or its contractors, to comply with that Chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that Chapter, this contract, and State law. The final version of all M/WBE documents and information submitted by the Contractor and approved by the City of Greensboro are a legal and binding part of this contract.

(c) The Science Center shall administer the construction contracts for the Project and shall be responsible for obtaining and dedicating to the City in fee simple, and without charge, all necessary real property for the Project. All construction shall conform to all City Ordinances including the Zoning, Planning and Development Ordinances of the City.

(d) The City shall inspect and approve the construction and acquisitions.

4. The City shall reimburse the Science Center for approved expenses as shown on Attachment A, for the actual design, administration and construction costs for the Project as reflected on Attachment A, in a total amount, not to exceed \$615,000. Any expenditure for the Project over and above \$615,000 shall be the sole responsibility of the Science Center. Payment shall be made by the City within thirty (30) days of the presentation to it by the Science Center

of the related invoices (net of sales tax) on a monthly basis, provided all other provisions of this Agreement are met.

(a) The City will pay or reimburse, only for expenses directly related to the Project as set out in Attachment A, or as amended from time to time by joint agreement of the Science Center and the City, and it is determined to be an eligible expenditure of tax-exempt bond proceeds.

(b) All purchases, plans, specifications, and designs are subject to prior review and approval by the City, or other responsible governmental authority, and shall be in a form acceptable to them. The review and approval shall be made before any bids are solicited, or contract signed, by the Science Center.

(c) A retainage of 10% of the total construction price shall be held by the City pending final total completion and acceptance by the City.

5. Prior to requesting reimbursement, or payment by the City, all construction shall be approved by City, County, State or governmental inspectors as required by law. The Science Center shall be responsible for acquiring all governmental and environmental permits and requirements.

6. All construction shall be bid in compliance with the Federal and North Carolina municipal bidding laws, including, but not limited to, bonding, specifications, and advertisement. .

7. Duration of Agreement. The Science Center shall comply, by September 30, 2019, with all of the requirements imposed on it by this Agreement, except to the extent, if any, that this Agreement indicated a different time for performance.

8. Payment. The City, in its sole discretion, and without affecting its other rights and remedies, may delay or cancel any or all payments for failure by the Science Center to comply with any of the provisions of this Agreement including but not limited to deadlines for submitting any accounting, audit, statement, information, record, documentation or report. Unless the City otherwise specifies, if the withholding is designated to be a delay of payment instead of a cancellation of payment, the payment so delayed shall be made when the Science Center has submitted the missing items, provided that such items are received by the City within 45 days after the date that they were due. If any said missing items is not received by the City before the expiration of the additional 45-day period, then the amounts so withheld shall not be paid to the Science Center even if the missing items are later received by the City. If the City does not delay or cancel in one instance, the City shall still have the right to delay or cancel after any other instance of failure by the Science Center.

9. Reporting. The Science Center shall account to the satisfaction of the

Director of Internal Audit of the City (hereinafter "Director") for all funds received from the City under this Agreement and all expenditures made from such funds. Such accounting shall be in a form prescribed by the Director, shall include but not be limited to a complete audit, at least annually, of all funds, said audit to be performed by a person or firm, who is approved by the Director, including the City Internal Audit Division itself, and shall include quarterly financial statements with information specified by the City for all obligations and expenditures related to the Project. The audit shall comply with all Federal and State regulations and procedures required of the City; Federal and State regulations which the City has adopted as its own; any special city regulations, and any and all other generally accepted accounting principles and standards promulgated by the State or nationally recognized standard setting boards and organizations. The Science Center shall deliver over to the City all information from the auditor without exception, including any Management Letters.

10. Program Reports. The Science Center shall submit quarterly reports of program activities and accomplishments associated with the expenditure of the City's funds to the Director of Internal Audit, the Budget and Evaluation Department, and the Finance Department of the City. Such reports shall be submitted no later than forty-five (45) days following the close of each calendar quarter, commencing with the calendar quarter ending September 30, 2017 and every quarter thereafter. The reports shall be in such form and detail as the Internal Audit Department may require.

11. Applicable Laws. In carrying out any services or activities funded in whole or part under this Agreement, the Science Center shall be responsible for compliance with all applicable federal, North Carolina, and local laws, regulation, and ordinances.

12. Repayment of Funds. The Science Center shall repay to the City the full amount of any of the City's funds lost, misapplied, unaccounted for, or inadequately accounted for in violation of this Agreement or law.

13. Indemnification.

(a) To the maximum extent allowed by law, the Science Center shall defend, indemnify, and save harmless the City, its employees, Officers, and agents from and against all charges that arise in any manner from, in connection with, or out of this Agreement or the Project as a result of acts or omissions of the Science Center or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", the Science Center shall at its sole expense defend the Indemnitees with legal counsel reasonably acceptable to the City.

(b) Definitions. As used in subsections "a" above and "c" below—"Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations,

finances, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders—including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Science Center.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

(d) Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Science Center under this Agreement.

(e) Limitations of the Science Center's Obligation. Subsection "a" above shall not require the Science Center to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury, or death, to persons or damage to property proximately caused by or resulting from the sole negligence, in whole or in part, of Indemnitees.

14. Termination. The City, in its discretion and for its convenience, may terminate this Agreement at any time by giving written notice of termination to the Science Center. If termination is for convenience and not due to a breach of contract by the Science Center, then the City shall pay to the Science Center a pro rata share of the expenses to reflect the proportion of the services performed and authorized expenditures incurred, if any, by the Science Center in accordance with this agreement prior to such termination.

15. Assignment. The Science Center may not assign, transfer or delegate any of its duties under this Agreement without the prior written consent of the City. It shall be within the sole discretion of the City whether to consent to such assignment, transfer or delegation. Nothing in this Agreement, including references to subcontracting and assignment, constitutes such consent.

16. Miscellaneous.

(a) Choice of Law and Forum. This agreement shall be deemed made in Guilford County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Guilford County. Such actions shall neither be commenced in, nor removed to, federal court.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach by the Science Center, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing Contained in this Agreement shall be deemed or construed as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(e) No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Science Center, and not any other person.

(f) Notice. All notices and other communications required or permitted by this contract shall be in and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

The City:	Chris Wilson Assistant City Manager City of Greensboro P.O. Box 3136 Greensboro, NC 27402 The fax number is (336) 373-2117
The Science Center:	Glenn D. Dobrogosz Chief Executive Officer Natural Science Center and Animal Discovery of Greensboro 4301 Lawndale Drive Greensboro, NC 27455 The fax number is (336) 288-2531

(g) Modification. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the Mayor, City Manager, or a Deputy or Assistant City Manager, and the City Clerk, according to due authorization, signs it for the City.

(h) Entire Agreement. This Agreement contains the entire Agreement between the parties pertaining to its subject matter. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings between the parties, written or oral, expressed or implied, other than as set forth or referenced in this Agreement.

(i) Headings. All headings that appear after section numbers and section letters in this Agreement are included for convenience only and shall not affect the interpretation of this Agreement.

(j) No Discrimination. The Science Center agrees that it will not discriminate on the basis of age, gender, race, religion, color, nation origin, or disability in its hiring, employment, and contracting practices.

17. Iran Divestment Act Certification. As of the date of this Agreement, the Science Center certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to North Carolina General Statutes § 147-86.58 and that the Science Center will not utilize any subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Agreement on behalf of Science Center certify that they are authorized by Science Center to make this certification.

18. E-Verify. The Science Center certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Science Center also certifies that it will require that all of its subcontractors that perform any work to be reimbursed pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violations of this section shall be deemed a material breach of this Agreement.

19. The City and the Science Center represent and warrant that the persons executing this Agreement on their behalf have the full authority and consent of the City and the Science Center, respectively, to do so.

IN WITNESS WHEREOF, this Agreement is hereby signed and sealed by its duly authorized officials, all on the day and year first above mentioned and this Agreement is executed in triplicate originals with the appropriate corporate seal affixed hereto.

ATTEST:

NATURAL SCIENCE CENTER OF GREENSBORO, INC.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Chairman of the Board Chief Executive Officer

Recommended By: \_\_\_\_\_  
Chris Wilson, Assistant City Manager

ATTEST:

CITY OF GREENSBORO

\_\_\_\_\_  
City Clerk Mayor

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Approved as to Form:

\_\_\_\_\_  
Finance Officer City Attorney



## ATTACHMENT A

Funds contributed by the City may be used for:

- A. Construction and renovation costs;
- B. Design costs;
- C. Utilities;
- D. Site preparation;
- E. Paving;
- F. Permits and fees;
- G. Project administration