

LOAN FORGIVENESS AGREEMENT

THIS LOAN FORGIVENESS AGREEMENT (the "Agreement") is made as of _____, 2015 (the "Effective Date"), by and among the **ORLANDO SCIENCE CENTER, INC.** a Florida corporation not for profit (the "Borrower"), and the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation (the "City"). The parties hereto agree as follows:

WHEREAS, the Borrower and City entered into a Loan Agreement dated December 16, 2009 (the "Loan Agreement"), wherein the City agreed to lend borrower \$1,200,000.00 (the "Loan") to be used by the Borrower for capital improvements to the Orlando Science Center located in Orlando, Florida (the "Center"); and

WHEREAS, in connection with the Loan the Borrower executed a Promissory Note, dated December 16, 2009 (the "Note");

WHEREAS, the City has determined to forgive the remaining outstanding balance (principal and interest) due under the Note in the amount of \$675,913.02; and

WHEREAS, in exchange for the City's forgiveness of the Loan and cancellation of the Note, the Borrower has agreed to deposit funds into a Renewal & Replacement Account and Capital Campaign Account established by the City for improvements to the Center in accordance with and in amounts specified on the schedule attached hereto, and incorporated herein, by reference, as Exhibit A (the "Payment Schedule"); and

WHEREAS, the Borrower may withdraw funds from the accounts in order to make improvements to the Center as set forth herein; and

WHEREAS, the Center is owned by the City and leased to the Borrower, and will remain a City Asset at the end of the lease in 2043; and

WHEREAS, the Center is a regional destination drawing people from across Central Florida and the State to its educational activities, exhibits and events; and

WHEREAS, the Center will train the workforce of tomorrow by reaching more students and teachers and making a bigger impact on Science Technology Engineering and Math (the "STEM") industries by expanding programs and updating exhibits; and

WHEREAS, to continue to stay proactive, relevant and engaging, the Borrower must substantially invest in its core experience. Science is constantly changing and the Center content must reflect that excitement; and

WHEREAS, to meet the growing needs of its community, increase impact and create robust experiences, the Borrower has launched a multi-million dollar comprehensive campaign to tackle the national STEM learning priority.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto, intending to be legally bound, agree as follows:

1. LOAN FORGIVENESS, CANCELLATION OF NOTE, TERMINATION OF LOAN AGREEMENT.

(a) Loan Forgiveness. The City hereby agrees to forgive the remaining outstanding balance (principal and interest) due under the Note.

(b) Cancellation of Note. Upon the Effective Date, the Note is hereby cancelled, voided and of no further force or effect.

(c) Termination of Loan Agreement. Upon the Effective Date, the Loan Agreement is hereby terminated and of no further force or effect.

2. DEPOSIT OF FUNDS BY BORROWER.

(a) Establishment of R & R Account. The City will continue to maintain the Renewal and Replacement Account (the "R & R Account") previously established in the Loan Agreement.

(b) Establishment of Capital Campaign Account. The City will establish and maintain an account, which shall be known as the "Orlando Science Center Unlock Science Capital Campaign Account" (the "Capital Campaign Account").

(c) Deposits to Accounts. The Borrower shall pay the City the amounts set forth in the Payment Schedule, and the City shall deposit such payments in the R & R Account and Capital Campaign Account as set forth in the Payment Schedule.

(d) Withdrawals from R & R Account. Borrower may from time to time request in writing to the City to allow withdrawals from the R & R Account in order to make general repairs and replacement of current equipment. Access to the funds in the R & R Account may only be granted by the City's Chief Financial Officer or designee (the "CFO"). Borrower's request shall be in writing and include a detailed description of the proposed use of funds. The approval is automatic if the CFO has not issued a written disapproval of the request within thirty (30) days of City's receipt of the request.

(e) Withdrawals from Capital Campaign Account. Borrower may from time to time request in writing to the City to allow withdrawals from the Capital Campaign Account for new construction and expanded development of the Center. Access to the funds in the Capital Campaign Account may only be granted by the CFO. Borrower's request shall be in writing and include a detailed description of the proposed use of funds. The approval is automatic if the CFO has not issued a written disapproval of the request within thirty (30) days of City's receipt of the request.

3. CONDITION TO BORROWER'S PAYMENT OBLIGATION. The obligation of the Borrower to deposit funds with the City pursuant to Section 2 of this Agreement is subject to the City's annual appropriation and payment of funds to Borrower in a minimum amount of \$200,000 for use in the operation of the Center (the "City Payment").

4. REPRESENTATIONS AND WARRANTIES. The Borrower represents and warrants to the City the following:

(a) Existence, Good Standing, Due Qualification and Authorization. The Borrower is a duly organized and validly existing corporation in good standing under the laws of the state of Florida, and has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged. Borrower has completed all steps necessary to enter into this Agreement, and the parties signing on behalf of Borrower have been fully authorized to do so thereby binding Borrower to abide by all terms and conditions of this Agreement.

(b) Litigation. There is no pending or threatened litigation or proceeding against or affecting the Borrower, which could impact the Borrower's ability to strictly comply with the terms of this Agreement.

(c) No defaults on outstanding judgments or orders. The Borrower is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

(d) Taxes. The Borrower has filed all tax returns (federal state, and local) required to be filed and has paid all taxes, assessments, and governmental charges and levies thereon due, including interest and penalties.

5. AFFIRMATIVE COVENANTS. The Borrower will do the following:

(a) Maintenance of existence. Preserve and maintain its existence and good standing as a corporation under and pursuant to the laws of the State of Florida.

(b) Maintenance of records. Keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied ("GAAP"), reflecting all financial transactions of the Borrower.

(c) Right of inspection. At any reasonable time and from time to time, permit the City or any agent or representative thereof to examine and make copies of or abstracts, from the records and books of account, and visit the properties, of the Borrower and to discuss the affairs, finances, and accounts of the Borrower with any of its respective officers and directors and the Borrower's independent accountants.

(d) Environment. Be and remain in compliance with the provisions of all federal, state, and local environmental, health, safety laws, codes and ordinances, and all rules and regulations issued thereunder; and Borrower shall notify the City immediately of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party.

6. REPORTING REQUIREMENTS. The Borrower shall furnish to the City:

(a) Borrower tax returns. Within thirty (30) days after the filing of its tax returns with the Internal Revenue Service, the income tax returns of the Borrower; provided however, that if the tax return is not filed by its due date in the year in which it is due, the Borrower shall provide the City the supporting documentation used to determine the Borrower's income for inclusion in Borrower's income tax extension request and also a copy of the request and any other relevant documentation in form acceptable to the City, to be delivered to the City within fourteen (14) days after the filing of the extension request, which Borrower agrees to file in a timely manner;

(b) Notice of litigation. Promptly after the commencement thereof, written notice of all actions, suits, and proceedings affecting the Borrower;

(c) Notice of defaults and events of default. Within five (5) days after the occurrence of each Default or Event of Default, written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto;

(d) General information of Borrower. Such other information respecting the condition or operations, financial or otherwise, of the Borrower, as the City may from time to time reasonably request.

7. EVENTS OF DEFAULT. It shall be an Event of Default by the Borrower if any of the following events shall occur:

(a) Failure to pay. The Borrower fails to deposit the funds set forth in Section 2(c) and the Payment Schedule after written notice and opportunity to cure within ten (10) days of providing such notice;

(b) Incorrect or misleading representation or warranty. Any representation or warranty made or deemed made by the Borrower in this Agreement shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date made or deemed made;

(c) Failure to perform agreements. Except for the deposit of funds as provided for herein, the Borrower fails to perform or observe any other material term, covenant, or agreement contained in this Agreement after written notice and opportunity to cure within thirty (30) days of providing such notice;

8. REMEDIES UPON EVENT OF DEFAULT. Upon an Event of Default by the Borrower, the City may, by notice to the Borrower declare all funds due under Section 2(c) and the Payment Schedule of this Agreement to be forthwith due and payable, whereupon all such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Borrower. Upon the occurrence and during the continuance of any Event of Default, but only after the expiration of any applicable cure periods, the City is hereby authorized at any time and from time to time, without notice to the

Borrower (any such notice being expressly waived by the Borrower), to set off and apply any and all City Payment and any and all deposits at any time held and other indebtedness at any time owed to the City to or for the credit or the account of the Borrower, against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, irrespective of whether or not the City shall have made any demand under this Agreement and although such obligations may be unmatured. The City agrees promptly to notify the Borrower after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the City under this Section are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the City may have.

9. MISCELLANEOUS.

(a) Lien setoff by City. The Borrower hereby grants City a continuing lien for all indebtedness and other liabilities of the Borrower to the City upon any and all money, securities, and other property of the Borrower and the proceeds thereof, now or hereafter held or received by or in transit to the City from or for the Borrower, whether for safekeeping, custody, pledge, transmission, collection or otherwise, and also upon any and all deposits (general, special or otherwise) and credits of the Borrower with, and any and all claims of the Borrower against the City at any time existing. Upon the occurrence of an Event of Default, the City is hereby authorized at any time and from time to time, without notice to the Borrower, to setoff, appropriate, and apply any or all items hereinabove referred to against all indebtedness and other liabilities of the Borrower to the City, whether under this Agreement, or otherwise, and whether now existing or hereafter arising.

(b) Amendments, etc. No amendment, modification, termination, or waiver of any provision of this Agreement nor consent to any departure by the Borrower from this Agreement, shall in any event be effective other than in the specific instance and for the specific purpose for which given.

(c) Notices, etc. All notices and other communications provided for under this Agreement shall be in writing (including telegraphic, telex, and facsimile transmissions) and mailed or transmitted or delivered, if to the Borrower, at its address at 777 East Princeton Street, Orlando, FL 32803, Attention: Chief Executive Officer and also with a copy to the Chief Financial Officer; and if to the City, at its address at City of Orlando, Orlando City Hall, 400 S. Orange Avenue, Orlando, FL 32801, Attention: Chief Financial Officer; if to the City, also to City Attorney, City of Orlando, Orlando City Hall, Third Floor, 400 S. Orange Avenue, Orlando, FL 32801; or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. Except as is otherwise provided in this Agreement, all such notices and communications shall be effective when deposited in the mails or delivered to the telegraph company, or sent, addressed as aforesaid, except that notices to the City shall not be effective until received by the City.

(d) No waiver. No failure or delay on the part of the City in exercising any right, power, or remedy hereunder shall operate as a waiver thereof. The rights and remedies provided herein are cumulative, and are not exclusive.

(e) Successors and assigns. This Agreement shall be binding upon and inure to the benefit of the Borrower, the City and their respective successors and assigns.

(f) Costs, expenses, and taxes. The Borrower agrees to pay on demand all costs and expenses incurred by the City in connection with the preparation and administration of this Agreement. The Borrower also agrees to pay all such costs and expenses, including court costs, incurred in connection with enforcement of this Agreement. This provision shall survive termination of this Agreement.

(g) Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersede all oral statements and prior writings with respect thereto.

(h) Indemnity. The Borrower hereby agrees to defend, indemnify, and hold the City, its elected and appointed officials, employees, contractors and other agents harmless from and against any and all claims, damages, judgments, penalties, costs, and expenses (including court costs now or hereafter arising from the aforesaid enforcement of this clause) arising directly or indirectly from Borrower's use of the funds set forth in the Payment Schedule, and the activities of the Borrower, its successors in interest, assigns and third parties with whom it has a contractual relationship, or arising directly or indirectly from the violation of any environmental protection, health, or safety law, whether such claims are asserted by any governmental agency or any other person. This indemnity shall survive termination of this Agreement.

(i) Governing law. This Agreement shall be governed by, and construed in accordance with the law of the State of Florida.

(j) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by applicable law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

(k) Headings. Article and section headings in this Agreement are included in such documents for the convenience of reference only and shall not constitute a part of the documents for any other purpose.

(l) JURY TRIAL WAIVER. THE CITY AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND OTHER AGREEMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY AGREEING TO FORGIVE THE LOAN REFERENCED IN THIS AGREEMENT. NO OFFICER OF THE CITY HAS AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.

* * *

IN WITNESS WHEREOF, the parties have executed this Loan Forgiveness Agreement on the day and year first indicated above.

WITNESSES:

ORLANDO SCIENCE CENTER, INC., a Florida corporation not for profit

Sign Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Sign Name: _____

Print Name: _____

CITY OF ORLANDO, FLORIDA

a Florida municipal corporation

By: _____
Mayor/ProTem

Attest:

By: _____
Celeste Brown, City Clerk

**EXHIBIT A
ORLANDO SCIENCE CENTER
PAYMENT SCHEDULE**

<u>PAYMENT NUMBER</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>R&R ACCOUNT</u>	<u>CAPITAL CAMPAIGN ACCOUNT</u>
1	11/01/15	\$100,000.00	\$0.00	\$100,000.00
2	02/01/16	\$100,000.00	\$0.00	\$100,000.00
3	11/01/16	\$100,000.00	\$0.00	\$100,000.00
4	02/01/17	\$100,000.00	\$0.00	\$100,000.00
5	11/01/17	\$100,000.00	\$0.00	\$100,000.00
6	02/01/18	\$100,000.00	\$0.00	\$100,000.00
7	11/01/18	\$100,000.00	\$24,086.98	\$75,913.02
8	02/01/19	\$100,000.00	\$100,000.00	\$0.00
9	11/01/19	\$100,000.00	\$100,000.00	\$0.00
10	02/01/20	<u>\$100,000.00</u>	<u>\$100,000.00</u>	<u>\$0.00</u>
TOTALS:		\$1,000,000.00	\$324,086.98	\$675,913.02