MEMORANDUM

Agenda Item No. 11(A)(12)

TO:	Honorable Chairman Jean Monestime and Members, Board of County Commissioners	**DATE:**	December 1, 2015
FROM:	Abigail Price-Williams County Attorney	**SUBJECT:**	Resolution approving terms of and authorizing execution by the County Mayor of an amendment to the ground lease between Miami-Dade County and the Art of Cultural Evolution, Inc., a Florida not-for profit-corporation, for the construction, operation and maintenance of a public art and science facility and providing for a six month extension of certain deadlines set forth therein for property located at 550 NW 22 Street located in Miami-Dade County, Florida; authorizing County Mayor exercise any and all other rights conferred therein and to perform all acts necessary to effectuate same

This item was amended at the 11-13-15 Economic Prosperity Committee to correct the resolution number in the attachment to the item, and additionally, to change the referenced months in the resolution from December to November, and from June to May, in order to properly conform with the time calculation from the effective date of the lease on May 12, 2014.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

Abigail Price-Williams
County Attorney for

APW/cp

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: December 1, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 11(A)(12)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(12)
12-1-15

RESOLUTION NO. _____

RESOLUTION APPROVING TERMS OF AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR MAYOR'S DESIGNEE OF AN AMENDMENT TO THE GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND THE ART OF CULTURAL EVOLUTION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A PUBLIC ART AND SCIENCE FACILITY AND PROVIDING FOR A SIX MONTH EXTENSION OF CERTAIN DEADLINES SET FORTH THEREIN FOR PROPERTY LOCATED AT 550 NW 22 STREET LOCATED IN MIAMI-DADE COUNTY, FLORIDA; AUTHORIZING COUNTY MAYOR OR MAYOR'S DESIGNEE EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN AND TO PERFORM ALL ACTS NECESSARY TO EFFECTUATE SAME

WHEREAS, pursuant to Resolution No. R-351-14, the Board approved the lease between the County and The Art of Cultural Evolution, Inc., a Florida not-for-profit corporation, of a vacant County-owned property located at 550 N.W. 22nd Avenue, located in Miami-Dade County, Florida, (the "Lease") for the construction, operation, and maintenance of a public art and science facility, open to the public (the "Project"); and

WHEREAS, pursuant to the terms of the Lease, The Art of Cultural Evolution, Inc. is required to obtain all permits necessary to commence construction within eighteen months of the Commencement Date of the Lease and to substantially complete the construction of the Project within three years from the Commencement Date of the Lease; and

WHEREAS, the Lease Commencement Date was May 12, 2014, and accordingly, The Art of Cultural Evolution, Inc. is required to obtain all permits necessary to commence construction of the Project by [[~~December~~]][1] >>November<< 11, 2015, and to substantially complete construction of the Project by May 11, 2017; and

WHEREAS, The Art of Cultural Evolution, Inc. has expressed concern about the ability to comply with its current deadlines due to unanticipated delays, and has requested a six month extension to finalize the obtaining of its necessary permits, as well as a six month extension on substantial completion of the Project; and

WHEREAS, the Project is intended to serve the community, providing a centralized hub for collaboration and education of the public regarding conservation, ecology, and the environment, including workshops, community outreach programs, and urban farming in order to promote sustainability in the local community and in South Florida; and

WHEREAS, the requested extension and amendment to the Lease would provide the additional time necessary for The Art of Cultural Evolution, Inc. to complete the permitting and construction of the Project,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board incorporates and adopts the foregoing recitals as if fully set forth herein.

[1] Committee amendments are indicated as follows: Words stricken through and/or [[double bracketed]] are deleted, words underscored and/or >>double arrowed<< are added.

Section 2. This Board approves the terms of and authorizes an Amendment to the Lease providing a six month extension of the date that permits must be obtained from [[~~December~~]]>>November<< 11, 2015 to [[~~June~~]]>>May<< 11, 2016, and a six month extension for completion of the Project from May 11, 2017 to November 11, 2017, in substantially the form attached hereto and made a part hereof as Exhibit "A."

Section 3. This Board authorizes the County Mayor or the Mayor's designee to execute the Amendment to Lease, for and on behalf of Miami-Dade County, and authorizes the County Mayor or the Mayor's designee to exercise any and all other rights conferred therein and to perform all acts necessary to effectuate same.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of December, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

EXHIBIT A

AMENDMENT TO GROUND LEASE

THIS AMENDMENT TO GROUND LEASE (hereinafter "Amended Lease") is entered into and made effective on this _____ day of _____, 2015 by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "Landlord" and/or "County"), and The Art of Cultural Evolution, Inc., a not-for-profit Florida corporation (hereinafter "Tenant").

RECITALS

WHEREAS, by Resolution No. [[~~R-1157-08~~]]>>R-351-14<<, adopted by the Miami-Dade Board of County Commissioners on April 8, 2014, the Board Authorized a Lease Agreement ("Lease") between the above named parties for Premises located at the Landlord is the owner of certain real property, consisting of a vacant parcel of land, located at 550 N.W. 22 Street, Miami-Dade County, Florida, (Folio No.: 01-3125-035-2901); and

WHEREAS, Landlord and Tenant are desirous of amending the Lease in order to provide a six month extension for Tenant to obtain all permits necessary to commence construction, and a six month extension of the date for Tenant to substantially complete the construction of the Project (as defined in the Lease); and

WHEREAS, by Resolution No. ____, adopted _____, 2015, the Board of County Commissioners has authorized this amendment of said Lease,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

***WITNESSETH*:**

1. The foregoing recitals and provisions are hereby adopted and incorporated herein to the Lease.
2. The following paragraphs shall supersede and replace the referenced paragraph in the Lease:
   a. Paragraph 4.05 is hereby amended and restated to read as follows:

7

4.05 Limitation of the Term. Notwithstanding and prevailing over anything to the contrary in this Lease, should the Tenant fail to substantially complete the construction of the Project within forty two (42) months from the Commencement Date of this Lease, as evidenced by a temporary certificate of occupancy or an equivalent document to be determined in Landlord's discretion, such failure shall be an event of default and this Lease shall automatically terminate, and the Tenant shall immediately vacate the Premises. Additionally, should the Tenant fail to obtain all permits necessary to commence construction within twenty four (24) months of the Commencement Date of this Lease, then this Lease shall automatically terminate, and the Tenant shall immediately vacate the Premises. In the event of a termination of this Lease for any reason, the Premises, including all Improvements thereon, shall immediately revert to the Landlord at no cost or expense.

b. Paragraph 9.01 is hereby amended and restated to read as follows:

9.01 Tenant shall complete the construction of the Project, as evidenced by a temporary certificate of occupancy or its equivalent in the Landlord's discretion, within forty two (42) months of the Commencement Date of this Lease. Tenant shall obtain all permits and zoning approvals necessary to commence construction within twenty four months of the Commencement Date of this Lease.

c. Paragraph 21.01, section A, is hereby amended and restated to read as follows:

21.01 **TERMINATION BY LANDLORD:** The occurrence of any of the following shall cause this Lease to be terminated by the Landlord, upon the terms and conditions also set forth below, with the Premises and Improvements reverting to the Landlord at no cost or expense, as follows:

A. Automatic Termination:

1) Institution of proceedings in voluntary bankruptcy by the Tenant.

2) Institution of proceedings in involuntary bankruptcy against the Tenant if such proceedings continue for a period of ninety (90) days or more.

3) Assignment of Lease by Tenant for the benefit of creditors.

4) Failure of Tenant to maintain its not-for-profit tax status.

5) Failure to obtain all permits, including zoning approvals, within twenty four (24)

months from the Commencement Date.

6) Failure to obtain a temporary certificate of occupancy, or equivalent document in the Landlord's sole and absolute discretion, within forty two (42) months of the Commencement Date of this Lease.

3. In all other respects, said Lease shall remain in full force and effect in accordance with the terms and conditions specified therein. In the event of any conflict between this Amended Lease and the Lease, this Amended Lease shall supercede same.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
[ONLY THE SIGNATURE PAGE REMAINS]

9

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, with the intent for it to be legally binding, as of the day and year first above written.

Landlord:

MIAMI-DADE COUNTY

a political subdivision of the State of Florida

_____
Witness/Attest:

By:_____

Name:_____

_____
Witness/Attest:

Title:_____

Date signed: _____

Tenant:

THE ART OF
CULTURAL EVOLUTION, INC.

a Florida not-for-profit corporation

_____
Witness/Attest:

By: _____

_____
Witness/Attest:

Name:_____

Title:_____

10