

Memorandum



Date: April 5, 2016

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

Agenda Item No. 8(C)(1)

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Approval of a Grant Agreement with the Museum of Science, Inc. in the Amount of \$45 million to be funded with bond proceeds from the sale of debt secured by Convention Development Tax revenues for the completion of the new Museum

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached grant agreement with the Museum of Science, Inc. (Museum) (Attachment 1) in the amount of \$45 million to be funded with proceeds from the sale of bonds secured by Convention Development Tax ("CDT") revenues for the completion of the new Museum. In accordance with Resolution No. R-130-06, it is in the best interests of the County and therefore it is recommended that the Board waive the requirements of Resolution No. R-130-06 that the attached grant agreement be approved in final form and executed by all parties.

Scope

The Museum is located at 1075 Biscayne Boulevard, Miami, in District 3, represented by County Commissioner Audrey Edmonson; however, the impact of the Museum is countywide.

Fiscal Impact/Funding Source

This grant agreement is to be funded with proceeds from the issuance of 2016A Bonds, which bond ordinance is a companion item on this agenda to the Board, that will be repaid by CDT revenues on a subordinated "junior lien" basis after payments have been made on (a) previously issued bonds, which are paid for by CDT revenues, and (b) other contractual obligations funded by CDT revenues. Similar to all prior bond issues that are paid for by CDT revenues, the 2016A Bonds also will be secondarily backed by Available Sales Taxes.

Delegation of Authority

The authority for executing the grant agreement resides with the County Mayor or his designee. The authority for exercising all provisions contained in the grant agreement is delegated to the Director of the Department of Cultural Affairs (Department), except where otherwise indicated in the grant agreement. In particular, the Director of the Department has been delegated the authority to allow the Museum to make minor revisions to the project description, grant a time extension on the project completion date by up to one (1) year, monitor the Museum for compliance with the grant agreement and take any and all actions necessary (including suspending or rescinding the grant) for non-compliance, approve the Museum's requests for advance payments of the grant funds, and review and request records from the Museum and undertake audits.

Track Record/Monitor

Miami-Dade County has a track record of working successfully with non-profit cultural organizations on grants for cultural facilities. Michael Spring, Senior Advisor to the Mayor and Director of the Miami-Dade County Department of Cultural Affairs, will be responsible for implementing the County's rights and responsibilities under the grant agreement with Museum of Science, Inc.

The grant agreement includes prerequisites and additional accountability necessary for the use of the grant funds (summarized in Exhibit A), including but not limited to:

- The Museum's Capital Project Manager's confirmation that the plan for completing the capital project is feasible (Exhibit B);
- A written commitment from one or more key donors, including Patricia and Phillip Frost, to establish a project reserve of \$4.25 million to assist in the funding of any unanticipated cost overruns beyond the project's established contingency of \$3.5 million (Exhibit C);
- A written bank commitment from Northern Trust for the financing of not less than \$38,346,223.00 supported by the secured private pledges (Exhibit D);
- A resolution passed by the Museum's Board of Trustees approving the amendments to the bylaws of the Museum's Board of Trustees to restructure its governance and include County and City of Miami representation and oversight on its Board of Trustees and Executive Committee (Exhibits E, F and G) and appointments by each County Commissioner to the Museum's Community Leadership Board (Exhibit E);
- A resolution from the Museum's Board of Trustees affirming that it will cover capital and operational expenditures from the end of the last reimbursement from the County's Building Better Communities General Obligation Bond Program funds (approximately November 2015) to the County's bond closing (anticipated to be April 18, 2016) (Exhibit G);
- A resolution passed by the Museum's Board of Trustees representing and covenanting that it will not seek County operational subsidies or financial support until the County CDT financing is retired, and that it will operate the Museum with a balanced budget (Exhibit G); and
- A resolution by the Museum's Board of Trustees committing to dedicate both the proceeds from future naming rights, in excess of secured, existing donation pledges, and the settlements of existing cases in arbitration/litigation, other than what may need to be conveyed from these proceeds for the bank loan against the secured pledges (including the funding of a debt reserve) and for repayment of the loans made by the principal donors for the project reserve to a restricted Museum endowment dedicated to the Museum's operations and programming (this commitment recognizes that future naming rights gifts that are given for other specific restricted uses can be used for those specified purposes) (Exhibit G).

Background

In 2004, the voters of Miami-Dade County passed the Building Better Communities – General Obligation Bond (BBC-GOB) Program. Included in the list of projects to be undertaken was an allocation of BBC-GOB funding in the amount of \$165,000,000.00 for the Museum (along with another \$10,000,000.00 for HistoryMiami). The plan for the new museum included in the BBC-GOB Program was developed after years of work by the Museum, including site evaluations, feasibility studies, program development (to determine the size and features of the new Museum),

operating and capital funding forecasts, fundraising assessments, public information campaigns, and work with design, exhibit and museum planning consultant teams.

The original BBC-GOB Program Museum project was to consist of “a new 250,000 sq. ft. science and technology museum and planetarium offering participatory exhibits, educational programs and collections; and a 4-acre outdoor science park and wildlife center. Cultural Affairs will assist the Museum of Science and the Historical Museum of Southern Florida to develop 25,000 sq. ft. of exhibition and educational spaces in this facility for exhibits and programs showcasing South Florida’s history, all as part of the Museum Park project. The Museum includes all on-site and off-site improvements as required by regulatory agencies and any mitigation required for Pump Station #2.” On January 20, 2011, the Board passed Resolution R-06-11, amending the BBC-GOB Program Museum project to consist of “a new 250,000 sq. ft. science and technology museum and planetarium offering participatory exhibits educational programs and collections; and a 4-acre outdoor science park and wildlife center. The science museum project includes all on-site and off-site improvements as required by regulatory agencies and any mitigation required for Pump Station #2. Also, renovation and expansion of HistoryMiami which shall provide approximately 30,000 sq. ft. of new indoor and outdoor exhibition space, to include the redesign and construction of the Miami-Dade County Cultural Center and adaptation of the current Miami Art Museum building for use by HistoryMiami.” The effect of this significant modification was to designate \$165 million for the Museum and \$10 million for the renovation and expansion of HistoryMiami at its current location and the Miami-Dade County Cultural Center.

The original Museum project had a project budget of \$272,000,000.00, inclusive of the County’s \$165,000,000 from BBC-GOB Program funds. The chart below accounts for the allocation of BBC-GOB Program funding to the Museum through a series of five (5) grant agreements executed over a six (6) year period. It should be noted that the BBC-GOB Program funding has been provided on a reimbursement basis, requiring thorough documentation from the Museum to substantiate payment draws. The BBC-GOB grants to the Museum are managed by the Department. Additionally, a condition of the grant requires retainage to be held until project completion; as such, the County currently has approximately \$6.9 million in retainage for all five (5) of the agreements.

Museum of Science		
BBC-GOB Program Grant Agreement Summary		
Grant	Amount	Agreement Executed
1	\$3,300,000	June 16, 2008
2	\$9,350,000	December 16, 2009
3	\$8,100,000	March 24, 2011
4	\$30,000,000	February 6, 2012
5	\$114,250,000	April 15, 2013
TOTAL	\$165,000,000	(includes \$6,935,750 of retainage)

Each of the five (5) Grant Agreements had an advance in accordance with the Administrative Rules of the BBC-GOB Program. Advances are not subject to retainage as per the Administrative

BBC-GOB Program Retainage				
Grant	Grant Amount	Advancement Amount	Reimbursement Subject to Retainage	Retainage Held
1	\$3,300,000.00	\$825,000.00	\$2,475,000.00	-\$123,750.00
2	\$9,350,000.00	\$2,337,500.00	\$7,012,500.00	-\$350,624.96
3	\$8,100,000.00	\$2,025,000.00	\$6,075,000.00	-\$303,750.00
4	\$30,000,000.00	\$6,212,500.00	\$23,787,500.00	-\$1,189,375.00
5	\$114,250,000.00	\$14,885,000.00	\$99,365,000.00	-\$4,968,250.00
TOTAL		\$26,285,000.00	\$138,715,000.00	-\$6,935,749.96

Rules and as such, the total retainage amount on the project equates to less than 5% of the \$165 million grant amount. The chart below provides the details on the retainage calculations.

Complementing the \$165 million of BBC-GOB Program funds, the Museum covenanted and warranted to the County in its BBC-GOB Program grant agreements that it had obtained by private fundraising the \$107 million necessary to complete the capital project, and to cover moving and staff transition costs, bringing the total project cost to \$272 million.

The Museum continued fundraising throughout the development of the project and updated the County on its progress. Exhibit 2 to the CDT grant agreement provides an update on the project budget, including the Museum's fundraising. The following summarizes the Museum's private fundraising to date:

- Approximately \$32.6 million in cash from the Museum's fundraising has been expended on the project to date;
- Approximately \$23 million in cash from Museum fundraising will be available before project completion for remaining construction expenses from pledges scheduled to be paid before the end of construction and from cash on hand that is contractually restricted to specific uses (e.g., for the design and fabrication of exhibits); and
- \$40 million has been raised in secured pledges which will not be available before project completion but are serving as collateral for the Northern Trust financing to generate approximately \$38.3 million (there is another approximately \$10 million in pledges that are scheduled to come due at a much later date and that cannot be collateralized at this time).

In addition, Patricia and Phillip Frost have pledged \$4.25 million to serve as a reserve to assist in the funding of any unanticipated cost overruns beyond the project's established contingency of \$3.5 million (Exhibit C).

In early 2015, the Museum reported that due to the nature of private sector pledges, it was pursuing a financing plan to convert pledges due after the completion of construction into the balance of cash now needed for construction. Private pledges typically are committed over a multi-year basis, given the cash flow requirements of and tax incentive benefits planned by donors; also, in some cases, donations are in the form of bequests. Consequently, approximately \$40 million in secured pledges were not scheduled to be received in time to meet capital project expenses and were to serve as the collateral for the part of the Museum's planned bank financing.

In February 2015, the Museum advised the Department that it was beginning a process to select a Financial Advisor to assist the Museum in developing a financing plan to monetize the pledges and complete the project. The Museum selected Longhouse Capital with the goal of securing financing needed to complete the capital project by August 2015.

At the end of September 2015, the Museum met with the Department to report difficulties with finalizing a financing plan for the private pledges. The Museum reported that the plan included both: (1) bank financing of \$40 million already secured by pledges as collateral; and (2) the need for financing of an additional approximately \$60 million to be secured by future pledges through available naming rights opportunities for which there were not yet committed private pledges. At that time, the Museum reported that two (2) banks had expressed interest in loaning \$35 million each, and that the remaining \$30 million would be funded by a junior or subordinate lender. The Museum also reported that financing would be needed by January 2016 to meet the cash flow requirements of construction given that BBC-GOB Program funding allocations would be completed by December 2015.

On October 8, 2015, representatives of the Museum's Board of Trustees, staff, and Longhouse Capital met with the Mayor and County staff to request additional funding and assistance with collateralizing their financing plan through a County guarantee of their debt. Constitutionally, the County cannot guarantee any third party debt and its capital dollars are thoroughly committed to other projects; therefore, their request was rejected. The Museum was also reminded that the private funding commitment was and remains a primary responsibility of its Board of Trustees. As an alternative to seeking additional County assistance, County staff suggested that the Museum pursue possible P3 opportunities with its general contractor and/or potential assistance with its financing plan from the Omni/Midtown Community Redevelopment Agency (CRA), given the ownership of the land by the City of Miami and its location within the CRA's boundaries. At this time, the Museum also disclosed to the County that its project budget had now increased from \$272 million to \$325 million.

On December 3, 2015, the Museum informed us that the two (2) primary lenders in the financing plan fell through and again requested that the County assist with helping it develop financing options. The Museum reported that without financing its only alternative would be to stop construction. Because of the complexity of the building design, the Museum estimates that it would cost approximately \$25 million to secure the construction site and protect work in place. The Museum expressed concern about the impact that this would have on secured, pending, and future pledges, and about the future additional costs of remobilizing construction.

The Proposed Plan

In light of the significant County investment of BBC-GOB Program funds to date and the consequences of stopping construction and the prospect of losing the opportunity to complete this major civic and cultural institution (which is currently scheduled to open by late 2016), a plan is being recommended that can complete the Museum without requiring additional County funding beyond what already has been planned for this project.

This plan has been developed to ensure that these collective investments will result in the great museum promised to the residents of Miami-Dade County by: converting planned CDT operational subsidies into upfront capital completion funds; requiring the Museum to monetize existing pledges for capital completion costs; requiring the Museum to commit to assuming full fundraising responsibility for operating the Museum on a balanced budget without County support; ensuring greater accountability and oversight by including local government representation on the Museum's Board of Trustees and Executive Committee; and requiring the Museum to reduce its project budget from \$325 million to \$304 million.

The Proposed Plan has the new project budget at \$304 million by reducing elements of the scope of the work to complete the project. Exhibit 1 provides an overview of the features included in the updated project and those that have been reduced to conform to the updated project budget (Exhibit 2). In summary, the project budget reduction from \$325 million to \$304 million has been achieved by scaling down some of the exhibition features, including the elimination of the external planetarium projector, the reduction of exhibitions in the Innovation Center, the elimination of planned exhibitions on both indoor and outdoor terraces, roof and plazas (with only basic plantings only on the roof) and the elimination of a major travelling exhibition booked for the Museum's opening.

The new Museum will be a green, Leadership in Energy and Environmental Design (LEED) certified building with 250,000 square feet of internal and external program on an approximately 4-acre site leased from the City of Miami for 99 years. The new building will house a 250-seat planetarium, an aquarium, participatory exhibits, educational programs and collections, and a learning center accompanied by external areas with interactive exhibits and rooftop gardens.

Proposed Bond Issue to Fund \$45 Million Capital Grant to the Museum

CDT-backed bonds, when supported by a secondary pledge of Sales Taxes, have been used to pay the debt service on several bond issues that supported the construction or rehabilitation of the Miami Beach Convention Center, the Adrienne Arsht Center for the Performing Arts, the South Miami-Dade Cultural Arts Center, the Lyric Theatre, the New World Symphony and several other cultural and tourist-related facilities. Since their inception, CDT revenues have also funded operational subsidies to several venues such as the American Airlines Arena, Crandon Tennis Center, Fairchild Tropical Botanic Garden, several museums (i.e. the Pérez Art Museum Miami, Museum of Science, Vizcaya Museum and Gardens, HistoryMiami, and the Children's Museum) and other cultural and tourist-related facilities. On a prospective basis, the Board also provided for the future funding of the currently subsidized operations when it contractually carved out CDT revenues prior to any payments pursuant to a Performance-Based Marquee Event Grant Agreement between the County and the Miami Dolphins organization.

One of these carved-out operating subsidies was an annual contribution to the Museum, projected to have been \$4 million per year, which will be redirected to support a debt issuance to generate funds to provide a \$45 million capital grant to the Museum so that the facility can be completed and successfully opened to the public. A memorandum seeking bonding proposals was distributed to a number of financial institutions and the County subsequently received responses from BankUnited N.A., BBVA Compass Bank, Morgan Stanley, PNC Financial Service Group,

SunTrust Bank, and Wells Fargo Securities. After a thorough evaluation of the proposals, BankUnited was selected as the institution that offered the most viable and cost effective solution.

Summary

The following is a summary of the elements of the plan being recommended and included as prerequisites/requirements of the CDT grant agreement:

- \$45 million from a County bond issue is proposed to help complete the capital project, to be repaid over a period of up to 20 years from CDT proceeds previously earmarked for the Museum's annual operations in the new building. The bond issue will provide the funds for the grant agreement which will be managed by the Department on a reimbursement basis to ensure accountability and oversight by the County (Attachment 1);
- This CDT grant agreement is conditioned on the Museum's receipt of \$38,346,223.00 of financing backed by a private bank and supported by pledges secured by the Museum (Exhibit D);
- The Museum's Capital Project Manager has confirmed that the combined total of County, CDT-backed financing and private pledge-backed bank financing of \$83.3 million is sufficient to complete the Museum and ensure that its major features are operational (Exhibit B);
- The Museum's Board of Trustees and key private donors have committed to cover construction cash flow needs and operational expenditures from the end of County's BBC-GOB funding (November of 2015) to the County's financing closing (anticipated to be April 18, 2016) (Exhibit G);
- The Museum's Board of Trustees has represented and covenanted that it will not seek County operational subsidies or other financial support until the County's CDT financing is retired, and that it will operate the Museum with a balanced budget. This and the other key representations and warranties made by the Museum and included in Section 3 of the grant agreement will require a two-thirds (2/3) vote of the Board to be changed (Exhibit G);
- The Museum's Board of Trustees has been restructured (through amendment of Museum's bylaws) to allow for five (5) County and three (3) City of Miami appointments to improve accountability and oversight. It should be noted that the County's representation on the Museum's board will include the County Commissioner of the Commission District in which the Museum is located (currently District 3), the County's Chief Financial Officer, the Director of the County's Department of Cultural Affairs and two (2) other at-large Board appointments (Exhibit E);
- The modified by-laws also provide for County representation, specifically by the County's Chief Financial Officer and the Director of the Department, on the Museum's Executive Committee, which is the Museum's primary governing authority when the Board of Trustees is not in session, and in addition, provide for an appointment by each County Commissioner to the Museum's Community Leadership Board, a new support group created by the Museum's Board of Trustees (Exhibit E);
- The Museum's board has agreed to dedicate proceeds from future naming rights, in excess of secured, existing donation pledges, and the settlements of existing cases in arbitration/litigation, other than what may need to be conveyed from these proceeds for the bank loan against the secured pledges (including the funding of a debt reserve) and for

repayment of the loans made by the principal donors for the project reserve, to a restricted Museum endowment dedicated to the Museum's operations and programming (this commitment recognizes that future naming rights gifts that are given for other, specific restricted uses can be used for those specified purposes) (Exhibit G);

- Given that the Museum is approximately 72 percent completed, the Museum's Construction Project Manager, Hill International, has advised that the risk of unanticipated construction issues is minimized. Hill International has re-confirmed the viability of the updated capital budget and schedule to complete the project (Exhibit B); and
- As an additional safeguard, there is a commitment from Museum's key private donors to establish a project reserve of \$4.25 million to fund any unanticipated cost overruns beyond the project's established contingency of \$3.5 million (Exhibit C).

Attached as Exhibit 2 is the updated, overall project budget for the Museum. Please note the following:

- This budget accounts for the completion of the Museum with the funding of \$83.3 million in project completion funds provided by the County's CDT grant and the financing of secured private pledges by Northern Trust;
- This budget accounts for the completion of all of the major features of the Museum, including the Planetarium, Living Core (aquarium) and major permanent exhibitions (Exhibit 1 provides a description of the completed Museum);
- Private sector and non-County public sector funding in this budget amounts to approximately \$94 million and public sector funding from the County in this budget amounts to approximately \$210 million; and
- This budget accounts for the extension of construction by approximately four (4) months for a building completion date of November 2016.

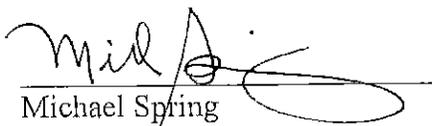
It should be noted that the Museum's staff has worked with ConsultEcon, Inc., a firm specializing in economic, planning, and management consulting for private, non-profit organizations and governmental clients, to develop an operational business plan for the new Museum. This plan has been updated to reflect the Museum's commitment not to seek County operational support and to operate the Museum on a balanced budget (Exhibit H).

The programs of the new Museum of Science will expand the range of learning experiences in science and technology available to our community. Some highlights of the specific benefits of the new Museum include:

- Ongoing educational programs will include one free visit for all fourth graders in the Miami-Dade County school system annually with an in-depth focus on health science content;
- Continued participation in the Department of Cultural Affairs outreach programs, including Culture Shock Miami discount tickets for high school and college students and free Golden Tickets for senior citizens;
- The Museum's Accessibility Program includes design of inclusive K-12 field trips, volunteer and internship programs for adults with disabilities, and an early access (pre-opening) program for individuals on the autism spectrum;

- Its Community Outreach Program features Frost Science participation at county-wide events in all 13 County Commission districts, ranging from Children’s Trust Expo and Book Fair to Youth Fair, Heartwalk, Emerge, and many others;
- The Museum’s Grant-based Programs are based on developing partnerships and delivering services to needs-based targeted groups throughout the community. This also includes its multi-year federal and foundation grants. Existing grant programs include:
 - Open Access Program, covering free admission for needs-based groups and Title 1 schools.
 - Science Stars, delivering school-based outreach programming and a free museum visit with meal and transportation to targeted needs-based communities.
 - Upward Bound, established with its 16th consecutive year of funding from the U.S. Department of Education, delivering science enrichment and mentoring to at-risk, first-generation college-bound youth, expanded in the Digital Futures Lab.
 - CHISPA, a National Science Foundation grant-funded program, extending a Spanish version of Frost-Science developed afterschool curriculum to Hispanic-serving community-based organizations nationwide.
 - RISE, a National Science Foundation grant-funded program, delivering professional development and mini-grants to a national network of science museums to build capacity for engaging girls in STEM learning and careers.
 - GROOVE, a National Institutes of Health grant-funded program, testing the effectiveness of digital and inquiry-based learning strategies to increase STEM engagement and raise health awareness among middle school girls.
 - ECHOS, funded by Kellogg Foundation and state funding, providing early childhood professional development for professionals and parents at HeadStart Centers throughout Miami-Dade.
 - VMAX, NASA grant-funded program, modeling the use of inquiry-based strategies and Virtual Reality technology to enhance curriculum exhibition components focused on the science of exoplanets.

This proposed plan can complete one of the most important civic and cultural projects ever undertaken by our community. It ensures that the investment already made of more than \$159 million of BBC-GOB Program funds is protected. It requires the Museum’s Board of Trustees to raise private funds on an ongoing basis to operate the Museum on a balanced budget. It utilizes Convention Development Tax revenues – generated by visitors staying in hotels and motels – to help complete construction.



Michael Spring
Senior Advisor, Office of the Mayor

- Attachment 1 Convention Development Tax Grant Agreement
- Exhibit 1 Project Description
- Exhibit 2 Project Budget
- Exhibits 3-11 Grant Agreement Forms
- Exhibit A Conditions Precedent for the CDT Grant

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- Exhibit B Confirmation from Hill International Regarding Project Completion
- Exhibit C Frost Reserve Letter
- Exhibit D Loan Document from Northern Trust
- Exhibit E Revised Museum Bylaws
- Exhibit F Officers of the Board of Trustees
- Exhibit G Consent of Board of Trustees
- Exhibit H Updated Operating Forecast
- Exhibit I Revised Project Draw Schedule

ATTACHMENT I - CONVENTION DEVELOPMENT TAX GRANT AGREEMENT

GRANT AWARD AGREEMENT

This Grant Award Agreement (the "Agreement") by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), through its governing body, the Board of County Commissioners of Miami-Dade County, Florida (the "Board") and Museum of Science, Inc., a Florida nonprofit corporation (the "Grantee" and, along with the County, jointly referred to herein as the "Parties") is entered into this ___ day of April, 2016 ("Execution Date").

RECITALS

WHEREAS, on July 20, 2004, the Board adopted Resolution No. R-919-04 authorizing the issuance of general obligation bonds for cultural, library and multicultural educational capital projects and on November 2, 2004, a majority of the voters of Miami-Dade County approved the Building Better Communities General Obligation Bond Program (the "Bond Program");

WHEREAS, the Bond Program specifically included funding for a new Miami Museum of Science and Planetarium Facility to be developed and operated by the Grantee in the list of projects to be undertaken in a total amount not to exceed \$165,000,000 ("Bond Allocation"); and

WHEREAS, per the Bond Program, the Grantee is to develop the new Museum of Science on a 4-acres site as a 250,000 sq. ft. science and technology museum offering a planetarium, an aquarium, participatory exhibits, educational programs and collections, and a learning center, accompanied by external areas to include a wildlife center and a science playground (the "Project"); and

WHEREAS, since 2008, of the Parties have entered into five Bond Program grant agreements totaling \$165 million in Bond Program funding for the Project, with the County providing such funds on a reimbursement basis and requiring thorough documentation to substantiate payments to the Grantee; and

WHEREAS, through 2013, the Project was estimated and budgeted to cost \$272,000,000.00 ("Total Project Cost") and, in order to complement the \$165 million in Bond Program funds that it was to receive from the County and complete the Project, the Grantee was obligated to fund \$107,000,000.00 of the Total Project Cost and the Grantee covenanted and warranted to the County that it had, as of 2013, the \$107,000,000.00 necessary to complete the Project; and

WHEREAS, by September 2015, Grantee's Total Project Cost had increased to \$304,424,601 principally as a result of a change in the projects construction delivery and Grantee had in fact only been able to secure \$56 million in private fundraising that is eligible for use on Project construction expenses prior to the Project completion date, \$33 million of which the Grantee has already expended on construction; and

WHEREAS, to date, the Grantee has also received \$40 million in secured pledges, but these funds are not scheduled to be received in time to meet the existing and future Project Costs; and

WHEREAS, the Grantee has failed to secure sufficient funds to complete construction of the Project and is in peril of having to stop construction and secure the construction site to protect work in place, all of which would place in jeopardy the completion of the Project, the fruits of the Grantee's past fundraising and Grantee's ability to fundraise prospectively; and

WHEREAS, in light of the County's significant investment in the Grantee, and given the consequences of halting construction until the Grantee can fundraise the amounts necessary to continue construction without further County assistance, the County has agreed to enter into this Agreement to provide the Grantee \$45,000,000.00 in County funds ("Funding Allocation"), to be funded from the issuance of bonds secured by Convention Development Tax revenues ("CDT Bonds"), on the terms and conditions specified in this Agreement, including the satisfaction of certain conditions precedent, to be used by the Grantee solely for capital costs necessary to complete the Project; provided, however, that the County's obligation to provide the Funding Allocation is fully subject to and contingent upon the availability of funding; and

WHEREAS, Grantee has revised the Total Project Cost to \$304,424,601.00, which will be funded from the sources listed in Exhibit 1 and used only for the Project Description set forth therein, which is attached to this Agreement (which Project Description has been revised to remove some of the original elements of the Project), within and in accordance with the Project Budget, which is attached to this Agreement as Exhibit 2; and

WHEREAS, the County and the Grantee have authorized, by resolution, their respective representatives to enter into this Agreement,

NOW, THEREFORE, in recognition of the foregoing recitals, which the Parties agree are true and correct and which form a material part of this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

1. Parties, Effective Date and Term: The parties to this Agreement are the Grantee and the County. The County delegates the responsibility of administering this Agreement to the Director of the Miami-Dade County Department of Cultural Affairs, or his/her designee, who shall be referred to herein as the "Director". This Agreement shall take effect ("Effective Date") upon the later of (a) the date this Agreement is executed by both Parties, evidenced by the date on the first page of this Agreement known as the Execution Date or (b) the date that all of the Grant Conditions Precedent (as such term is defined in Section 2 of this Agreement) have been satisfied by the Grantee, as determined in the sole and absolute discretion of the County, and evidenced by the County's execution of a Confirmation of Effective Date (in substantially the form attached as Exhibit 3 hereto). However, failure of the County to execute or insist on such form shall not affect the date of the Effective Date and provided, however, that in no event shall the Effective Date be any later than May 18, 2016. If the Effective Date has not taken place by May 18, 2016, then this Agreement shall be null, void and no force and effect.

Once effective, this Agreement shall expire on the later of (a) twenty-five (25) years from the date the Project is completed, as evidenced by a certificate of final completion, or (b) the expiration or termination of the lease agreement between the City of Miami and the Grantee for the premises upon which the Project is being constructed.

2. Grant Conditions Precedent: As a condition precedent and material inducement to the County's issuance of the CDT Bonds in an amount sufficient to provide the Grantee with the Funding Allocation and to the County's execution of this Agreement, the Grantee shall provide the County with each of the items identified in Section 2 of this Agreement. Each of the following items listed herein shall be referred to, collectively, as the "Grant Conditions Precedent" (Exhibit A) and satisfaction thereof shall be determined by the County in its sole and absolute discretion:

- (a) Documentation from Hill International (project manager) (Exhibit B) representing and warranting that:
 - i. It is in agreement that the Project Budget attached hereto as Exhibit 2 is an accurate and reliable account of expenses necessary to complete the Project; and
 - ii. Acknowledging that its representations and warranties are a material inducement for the County to enter into this Agreement and issue the CDT Bonds and that the County is an express third-party beneficiary of its representations.
- (b) A written commitment from key donors to fund a reserve of \$4,250,000.00 to be used to address any unanticipated cost overruns beyond the contingency in the updated Project Budget (Exhibit 2), which commitment shall acknowledge that their funding commitment is a material inducement for the County to enter into this Agreement and issue the CDT Bonds and that the County is an express third-party beneficiary of their commitment. (Exhibit C),
- (c) A written bank commitment and terms for the financing of the secured pledges in an amount not less than \$38,346,223.00 to be used to complete the Project. (Exhibit D)
- (d) Documentation that the Grantee has restructured its Board of Trustees and has amended the Board of Trustee's by-laws, as evidence by and set forth in Exhibits E and F attached hereto, and that Grantee shall comply with and implement such by-laws,
- (e) A commitment letter from the Grantee's board of trustees and key donors attesting to an approved plan to provide funds sufficient to cover capital and operational expenditures from the end of County's BBC-GOB funding to the County's and bank's anticipated financing closing (anticipated to be April 2016). (Exhibit G),
- (f) Updated Operating Forecast (Exhibit H)
 - i. An updated operating forecast that demonstrates how the Museum will achieve a balanced budget without a County operating subsidy; and
 - ii. A list of the key assumptions underlying this update.
- (g) Revised project draw schedule (Exhibit I) showing project draws from November of 2015 through project completion (now forecasted to be November 2016), based on the updated Project Budget attached as Exhibit 2.

3. Representations of the Grantee: The Grantee covenants and warrants the following, as evidenced by the resolution from the Grantee's Board of Trustees attached hereto as Exhibit G and other exhibits provided by the Museum and attached to this Agreement:

- (a) That it has, in combination with the Funding Allocation, the amount of funding necessary for the completion of the Project as set forth in the updated Project Description. The additional sources of funding are listed in Exhibit 2;
- (b) That the Funding Allocation along with the other funding sources identified in the Project Budget attached as Exhibit 2 are sufficient funds to complete the Project per the updated Project Description and ensure that its major features are operational;
- (c) That it shall cover all of the Project's construction cash flow needs and operational expenditures from the time the balance of the Bond Allocation is used to the time that the Funding Allocation to be provided pursuant to this Agreement is available (anticipated to be April 18, 2016). (Exhibit G);
- (d) That the Grantee shall not, either directly or indirectly, seek operational subsidies or financial support from the County (Exhibit G) before the date that the County completes repayment of the CDT Bonds, and during this time it will operate the Project with a balanced budget;
- (e) That the Grantee shall dedicate both the proceeds from future naming rights, in excess of secured, existing donation pledges, and the settlements of existing cases in arbitration/litigation, other than what may need to be conveyed from these proceeds for the bank loan against the secured pledges (including for the funding of a debt reserve and advanced principal payments as required by the terms of the bank financing obtained by the Museum for the completion of the construction and development of the Museum facilities) and for repayment of the loans made by the principal donors for the project reserve, to a restricted Museum endowment dedicated to the museum's operations and programming (this commitment recognizes that future naming rights gifts that are given for other, specific restricted uses can be used for those specified purposes) (Exhibit G);
- (f) That the Grantee has restructured its Board of Trustees and has amended the Board of Trustees's by-laws, as evidence by and set forth in Exhibit E attached hereto, and that Grantee shall comply with and implement such by-laws;
- (g) That the Grantee and its Board of Trustees shall not modify any of the provisions identified in Article VIII, Section 1 and Article XVII of the Grantee's by-laws without the two-thirds (2/3) approval of the Board; and
- (h) That any service or performance criteria adopted pursuant to Article IV, §10 of the Grantee's by-laws, if applicable to the County's appointees to the Grantee's Board of Trustees, or any other rules or guidelines effecting the County's appointees to the Grantee's Board of Trustees or any committee of the Grantee (including the Executive Committee) shall be subject to the approval of the County Mayor and the Board in order to be effective.

It is understood and hereby agreed that the County lacks an adequate remedy at law for the enforcement of the representations and warranties in this Section 3, and that the County shall be entitled to seek specific performance and/or injunctive relief to ensure compliance with the Grantee's obligations under this section. In addition, it shall require a two-thirds vote by the Board to revise any of the representations and warranties in this Section 3.

4. Funding Responsibilities:

a. **Amount of Funding Allocation:** The total amount of the Funding Allocation is Forty-Five Million Dollars (\$45,000,000.00). Provision of the Funding Allocation to the Grantee shall be contingent upon the Grantee's satisfaction of the Grant Conditions Precedent, as defined in this Agreement, the County's issuance of the CDT Bonds in an amount sufficient to cover the Funding Allocation, the availability of the Funding Allocation, and the Board of County Commissioners' approval of this Agreement and any separate legislation necessary to fund the Funding Allocation. By entering into this Agreement, Miami-Dade County assumes no obligation to provide financial support to the Grantee of any type whatsoever in excess of the Funding Allocation. The Parties understand and agree that the amount of the Funding Allocation represents a portion of the amount necessary to complete the Project and it is the sole responsibility of the Grantee to fund the balance of the Total Project Cost. Cost overruns are the sole responsibility of the Grantee.

b. **Eligible Project Costs.** The Funding Allocation will only be used to pay for capital costs expended for the updated Project Description and on the Project.

i. **Soft Cost Limits.** "Soft Costs" means real and verifiable expenditures for administration, project management (not related to construction supervision), indirect costs (accounting/purchasing/personnel, etc.), imposed fees (e.g., permit processing fees) and those costs NOT related to construction material, labor, equipment or construction sub-contractors. Soft Costs for the purpose of this Program are classified by the following three areas:

- o Project Administration - administration, project management (not related to construction supervision), indirect costs (accounting/purchasing/personnel, etc.) and imposed fees (e.g., Professional Services Agreement selection/permit processing fees). Project management related to construction supervision is not considered a soft cost; and
- o Planning Services - Master Plan development and approval and feasibility studies; and
- o Design Services - schematic design, design development, construction documents, bidding or negotiation and as built drawings.
- o Construction supervision and/or inspection are not considered soft costs. All costs associated with land acquisition such as: appraisals, due diligence, cost of land, project administration related to land purchase, legal fees, etc. are not part of the soft costs.

ii. Project soft costs are eligible Project costs that can be paid from the Funding Allocation provided such costs do not exceed ten percent (10%) of the Funding Allocation, or \$4,500,000.00. No Project Costs may be claimed for, nor consultant fees be paid to, the Grantee's own

employees or to the Grantee for work performed by one of its employees.

- iii. **Construction Supplies and Materials.** Supplies and materials may be purchased directly by the Grantee for the Project, providing that the Grantee seeks to have those costs reimbursed at a cost no higher than that which the Grantee paid for such supplies and/or materials.
- iv. **Construction Activities.** The cost of all necessary construction activities, from site preparation to the completion of the structure and building are eligible for payment from the Funding Allocation.
- v. **Nonexclusive list of Ineligible Project Costs.** The following is a nonexclusive list of costs ineligible for payment from the Grant: (1) staff and operational costs; (2) Grant application costs; (3) ceremonial expenses; (4) expenses for publicity; (5) bonus payments, unless specifically authorized by the Board of County Commissioners; (6) charges for deficits or overdrafts; (7) charges incurred contrary to the policies and practices of the Grantee; (8) interest expense; (9) litigation expenses or judgments; (10) the cost of services, material or equipment obtained under any other program; (11) costs of discounts not taken; (12) lobbyist and lawyer fees; (13) any expenditures not allowable as "Costs of the Project" as that term is defined in Section 403 of Miami-Dade County Ordinance No. [REDACTED]; and (14) any expenditures not otherwise eligible for reimbursement under Miami-Dade County Ordinance No. [REDACTED].

c. **County's Funding Parameters:** Upon the approval of the Board of County Commissioners, the availability of the Funding Allocation, and the occurrence of the Effective Date, the County agrees to provide the Funding Allocation to the Grantee on the terms and conditions specified in this Agreement and as allowed by all applicable laws.

i. Funding Allocation Provided on Reimbursement Basis:

The Funding Allocation, if and when available, shall be provided in accordance with the reimbursement procedures contained in this Agreement and all applicable regulations concerning the use and disbursement of the Funding Allocation. Grantee understands and agrees that reimbursements to the Grantee will be made in accordance with federal laws. Subject to certain exceptions the applicability of which is to be reviewed on a case-by-case basis, any reimbursement to Grantee will be made no later than eighteen (18) months after the later of (a) the date the original expenditure is paid, or (b) the date the Project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid by the Grantee. The Grantee accepts and agrees that all expenditures made by the Grantee prior to the satisfaction of all of the Grant Conditions Precedent, as determined by the County, are made at the Grantee's sole risk and may not be eligible for reimbursement. Reimbursements to the Grantee shall be provided in accordance with the terms of this Agreement, with which the Grantee agrees to comply, and the Grantee shall be responsible for providing all documentation required by this Agreement.

ii. No County Obligation to Use Alternate Funding Sources:

The Grantee may not require the County to use any other source of legally available revenues other than from the CDT Bonds and up to the amount of the Funding Allocation to fund the Project. This Agreement does not in any manner create a lien in favor of the Grantee on any revenues of the County including the CDT Bonds. By making this grant, Miami-Dade County assumes no obligation to provide financial support of any type whatever in excess of the Funding Allocation.

iii. Requirement of Appropriation and Availability:

The County's obligation to pay the Funding Allocation under the Agreement is contingent upon an appropriation by the Board of sufficient funds and on the availability of the CDT Bonds. In the event that County source of funds on which this Agreement is dependent do not materialize or are withdrawn, this Agreement is terminated and the County has no further liability to the Grantee, beyond that already incurred by the termination date.

iv. Loss of Funding in Event of Breach:

Miami-Dade County shall only reimburse the Grantee provided the Grantee is not in breach of this Agreement and the Grantee has demonstrated that it has met all of the conditions set forth in this Agreement.

5. Survival of Obligations: By its acceptance of the Funding Allocation, and continuing after the completion of the Project, the Grantee agrees and hereby covenants that the obligations, covenants and warranties of the Grantee set forth in Section 3(d), (h) and (i) of this Agreement shall survive any early termination of this Agreement and may be fully enforced by the County.

6. Project Description: The Grantee may only use the Funding Allocation for the purpose of purchasing, building, renovating and/or equipping facilities for the Project as specifically described in the updated Project Description set forth in Exhibit 1 and pursuant to the Project Budget set forth in Exhibit 2. Notwithstanding any other agreement between the Grantee and the County to the contrary, including but not limited to any prior Bond Program grant agreements between the Parties for the Project, the Parties agree that the Project Description and Project Budget, along with all other information, set forth in Exhibit 1 and Exhibit 2 attached hereto shall govern and shall supersede any prior or conflicting agreements or exhibits between the Parties. Further, it is expressly understood and agreed, that the Project supported by this Funding Allocation must be open and accessible to the public, provide public exposure and benefit the public. The Grantee shall use the facility and/or equipment acquired and/or improved under the Project for activities benefiting the public, and for no other purposes in perpetuity. The Grantee agrees to: (a) maintain the Project; (b) keep the Project open and safely and properly maintained for all Miami-Dade County residents; and (c) allow all Miami-Dade County residents equal access and use of the Project and not discriminate amongst Miami-Dade County residents when charging facility admission, rental and usage fees.

i. Substantial Revisions to Project: If the Grantee wishes to revise the Project for the purpose of completing the Project and such revisions, in the County's determination, substantially alter the updated Project Description, the Grantee must request in

writing that the Director or the Director's designee review and approve such revisions. Grantee's request must be given at least thirty (30) days prior to implementation of revisions. The Director or the Director's designee will make the final determination on revisions within fourteen (14) business days of the date of receipt of the request in the Director's Office.

ii. **Minor Revisions to Project:** Minor revisions to the Project Description necessary for the purpose of completing the Project, but which in the County's determination do not substantially alter the Project, its quality, impact, or benefit to the Grantee, the County or its citizens, must be requested in writing to the Director sufficiently prior to implementation of revisions for the Director's approval. The Director will make the final determination on revisions within fourteen (14) business days of the date of receipt of the request in the Department of Cultural Affairs' offices. Grantee may only make material or significant revisions to the Project Description with the prior approval of the Board.

7. **Project Budget:** Grantee shall complete the Project in accordance with the updated Project Budget attached as Exhibit 2 that includes details as to all revenues and expenditures (aka, sources and uses). The updated Project Budget assumes that the County shall provide the Funding Allocation and that the Grantee will obtain bank financing in an amount not less than \$38,346,223.00, which will be secured by the Grantee's pledges. The Project Budget depicts expenses incurred to date, costs remaining, the revised Total Project Costs, all revenues spent to date, and that all revenues remaining are sufficient to complete the Project in accordance with the updated Project Description. The Grantee agrees to demonstrate fiscal stability and the ability to administer the Funding Allocation responsibly and in accordance with standard accounting practices. Further, Grantee agrees that all expenditures will be subject to the terms of this Agreement. If Grantee wishes to revise the Project Budget for the purpose of completing the Project, including line item changes the Grantee must request in writing that the Director review such revisions. If, in the judgment of the Director, such revisions substantially alter the Project Description, Grantee's request must be considered and approved by the Board prior to implementation of the revisions.

8. **Grantee Deliverables:** The Grantee shall provide the following deliverables (which shall serve as attachments to this Agreement) upon execution of the Agreement by the Grantee: (1) an updated operating forecast, demonstrating that the Grantee's projected revenues are sufficient to meet expenses and allow the operation of the Project by the Grantee on a balanced budget (Exhibit H); (2) executed Exhibits 10 and 11 (authorized signature form and bank account disclosure forms, respectively); and (3) all applicable affidavits mentioned in this Agreement.

9. **Expenditure Deadline:** The Grantee shall spend or commit all of the Funding Allocation on or before three (3) years from the Effective Date of this Agreement (the "Expenditure Deadline"). Any Funding Allocation not spent or committed by the Expenditure Deadline or for which a Project extension has not been requested shall be retained by the County and this Agreement shall be terminated in accordance with the provisions of this Agreement. A Project extension may be requested in writing from the Director at least thirty (30) business days prior to the Expenditure Deadline. The Director, at the Director's discretion, may grant an extension of up to one (1) year from the Expenditure Deadline so long as such extension will not significantly alter the Project including its quality, impact, or benefit to the Grantee, the County or

its citizens. Additional extensions may be authorized by the Board if the Grantee can document in a written request sufficient Project progress and cause for such an extension to be warranted.

10. Reporting Deadlines for Compliance with Grant Agreement: To demonstrate that the Funding Allocation has been used in accordance with the Project Description and Project Budget information as outlined in Exhibits 1 and 2 and that the Grantee has met and fulfilled all requirements as outlined in this Agreement, Exhibits, and/or other substantive materials as may be attached or included as a condition to this Agreement, the Grantee must submit to the Director a written report documenting that the Grantee is meeting or has fulfilled all Project and financial requirements and updating the current construction status. This report is to be received by the Director monthly. Upon the Grantee's failure to deliver any of the reports or audits required under this Section, the Director may terminate this Agreement in accordance with Section 19.

a. **Business Plans and Updated Pro-Formas:** The Grantee shall submit any updated business plans and/or operating pro-formas, as they become available and/or on a yearly basis, defining and identifying strategies to address the impact the Project will have on the Grantee's operational structure.

b. **Annual Independent Audit Required:** The Grantee shall also submit an annual independent audit of the Funding Allocation to the Director no later than six (6) months after the close of the Grantee's fiscal year for which a Grant was received and each year thereafter until Project completion. The audit report must include the Fund Summary Status Report, (Exhibit 9). The audit must be performed by certified independent auditors and include the following: (1) test for compliance with the Agreement; (2) test to verify compliance with advance requirements; (3) sufficient tests, as determined by the independent auditor to verify true and accurate reflection of Project expenditures; (4) tests to verify expenditure of required match dollars; and (5) verification of the Fund Summary Status Report. The Director may also request that a compilation statement or independent financial audit and accounting for the expenditure of the Funding Allocation be prepared by an independent certified public accountant at the expense of the Grantee.

11. Program Monitoring and Evaluation: The Director may monitor and conduct an evaluation of the Grantee's operations and the Project, which will include visits by County representatives to: observe the Project or Grantee's programs, procedures, and operations; discuss the Grantee's programs with the Grantee's personnel; and/or evaluate the public impact of the Project. The Grantee shall provide the Director with notice of all meetings of its Board of Trustees or governing board, general activities and Project-related events. In the event the Director concludes, as a result of such monitoring and/or evaluation, that the Grantee is not in compliance with the terms of this Agreement or for other reasons which significantly impact on the Grantee's ability to fulfill the conditions of this Agreement, then the Director must provide in writing to the Grantee, within thirty (30) days of the date of said monitoring/evaluation, notice of the inadequacy or deficiencies noted which may significantly impact on the Grantee's ability to complete the Project or fulfill the terms of this Agreement within a reasonable time frame. If Grantee refuses or is unable to address the areas of concern within thirty (30) days of receipt of such notice from the Director, then the Director, at his discretion, may take other actions which may include reduction or rescission of the Funding Allocation, or withholding the Funding Allocation until such time as the Grantee can demonstrate that such issues have been corrected. Further, if the Grantee does not

expend all of the Funding Allocation for the Project or uses any portion of the Funding Allocation for costs not associated with the Project and the Grantee refuses or is unable to address the areas of concern, then the Director may request the return of the full or partial Funding Allocation. The Grantee shall comply with all applicable provisions of municipal, state, federal and County laws, regulations and rules.

If Grantee is not in compliance with the conditions of any other County agreement, the Director, at his discretion, may take other actions, which may include the withholding, reduction or rescission of Grant Funds until such time as the Grantee can demonstrate that such issues have been corrected.

12. Bank Accounts and Bonding: Monies received by the Grantee for completion of the Project, be it from the bank financing or pledges, shall be kept in accounts in established Florida banks, credit unions or savings and loan associations whose identity shall be disclosed in writing, with the identity and title of individuals whom the Grantee authorizes to withdraw or write checks on the Project funds from the banking institution identified on the "Bank Account Disclosure," (Exhibit 11), submitted by the Grantee. These accounts must be segregated from other accounts maintained by the Grantee. All persons authorized to withdraw funds from this Project account must be bonded by a reputable licensed firm.

13. Accounting, Financial Review, Access to Records, and Audits: The Grantee shall maintain accurate and complete books and records for all receipts and expenditures of the Funding Allocation and all other funds used to complete the Project in conformance with reasonable general accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with the Funding Allocation, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in a secure place and in an orderly fashion in a location within Miami-Dade County by the Grantee for at least five (5) years after the later of: (1) the Expenditure Deadline specified in Section 9; (2) the extended Expenditure Deadline, as approved by the Director, if any; (3) the completion of a County requested or mandated audit or compliance review; or (4) the conclusion of a legal action involving this Agreement, the Grantee and/or Project or activities related to this Agreement.

a. **Director's Right to Examine Books and Records:** The Director may examine the books, records, and documents maintained pursuant to this Section at the Grantee's offices or other approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. Furthermore, the Director may, upon reasonable notice and at the County's expense, audit or have audited all financial records of the Grantee, whether or not purported to be related to this Agreement.

b. **Independent Private Sector Inspector General:** Pursuant to Section 2-1076 of the Miami-Dade County Code, the County shall have the right to engage the services of an independent private-sector inspector general ("IPSIG") to monitor and investigate compliance with the terms of this Agreement.

c. **Miami-Dade County Inspector General:** The Miami-Dade County Office of the Inspector General (OIG) shall have the authority and power to review past, present and

proposed County programs, accounts, records, contracts and transactions, and contracts such as this Agreement for improvements some cost of which is funded with County funds. As such, the OIG may, on a random basis, perform audits on this Agreement throughout the duration of said Agreement (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County. The OIG shall have the power to retain and coordinate the services of an IPSIG who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Grantee and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The OIG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the Grantee (and any affected contractor and materialman) from OIG, the Grantee (and any affected contractor and materialman) shall make all requested records and documents available to the OIG for inspection and copying. The OIG shall have the power to report and/or recommend to the Board whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The OIG shall have the power to analyze the need for, and reasonableness of, proposed change orders. The OIG is authorized to investigate any alleged violation by a contractor of its Code of Business Ethics, pursuant Miami-Dade County Code Section 2-8.1. The provisions in this section shall apply to the Grantee, its contractors and their respective officers, agents and employees. The Grantee shall incorporate the provisions in this section in all contracts and all other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the County has under this Section shall not be the basis for any liability to accrue to the County from the Grantee, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the County shall have no obligation to exercise any of its rights for the benefit of the Grantee. This provision shall survive the early termination and/or the expiration of this Agreement.

14. Publicity and Credits: The Grantee must include the following credit line in all promotional marketing materials including web sites, news and press releases, public service announcements, broadcast media, programs, and publications: "With the support of the Miami-Dade County Department of Cultural Affairs and the Building Better Communities General Obligation Bond Program, the Miami-Dade County Mayor and Board of County Commissioners." The Grantee must also use the County's logo in marketing and publicity materials whenever possible. This is available at the County's website (<http://www.miamidade.gov>). Notwithstanding the foregoing, the Grantee shall not include such acknowledgement of the County in circumstances that would embarrass or discredit the County, and the Director shall have the right to direct the Grantee to remove any acknowledgment of the County or use of the County logo from material that the Director, in the Director's sole and exclusive discretion, determines to be embarrassing to or discrediting of the County.

15. Naming Rights, Publicity, and Advertisements: It is understood and agreed between the parties hereto that the Grantee is funded by Miami-Dade County. Further, by acceptance of this Funding Allocation, the Grantee agrees that Project(s) funded by this Agreement shall recognize and adequately reference the County as a funding source. If any naming rights or advertisement space is offered on a facility constructed or improved with this Funding Allocation, then Miami-Dade County's name shall appear on the facility not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser unless waived by the Board. Grantee shall ensure that all publicity, public relations, advertisements and signs recognize and reference the County for the support of all Project(s). This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. The Grantee shall submit sample of mock-up of such publicity or materials to the County for review and approval. The Grantee shall ensure that all media representatives, when inquiring about the Project(s) funded by the Agreement, are informed that the County is its primary funding source.

16. Relationship of the Parties, Liability, and Indemnification: It is expressly understood and intended that the Grantee, as the recipient of the Funding Allocation, is not an officer, employee or agent of Miami-Dade County, its Board of County Commissioners, its Mayor, nor the Miami-Dade County department administering the Grant award. Further, for purposes of this Agreement, the Project or activity, the parties hereto agree that the Grantee, its officers, agents and employees are independent contractors and solely responsible for the Project.

The Grantee shall take all actions as may be necessary to ensure that its officers, agents, employees, assignees and/or subcontractors shall not act as nor give the appearance of that of an agent, servant, joint venturer, collaborator or partner of the department administering this Agreement, the Miami-Dade County Mayor, the Miami-Dade County Board of County Commissioners, or its employees. No party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to complete the Project, including entering into subcontracts with vendors for services and commodities, provided that it is understood by the Grantee that the County shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

The Grantee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs

of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Grantee or its employees, agents, servants, partners, principals, subconsultants or subcontractors. Grantee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

17. Assignment: The Grantee is not permitted to assign this Agreement or any portion thereof. Any purported assignment will render this Agreement null and void and subject to immediate rescission of the full amount of the Funding Allocation and reimbursement by the Grantee of its full value to the County.

18. Compliance with Laws: It shall be a contractual obligation of the Grantee hereunder and the Grantee agrees to abide by and be governed by all Applicable Laws necessary for the development and completion of the Project. "Applicable Law" means any applicable law (including, without limitation, any environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" and "applicable laws" shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, all requirements of Florida Statutes, specifically including, but not limited to, Fla. Stat. § 255.05 related to payment and performance bonds, all requirements of Chapters 119 and 286 of the Florida Statutes, all disclosure requirements imposed by Section 2-8.1 of the Miami-Dade County Code, all requirements of Miami-Dade County Ordinance No. 90-133 (amending Section 2-8.1), County Resolution No. R-754-93 (Insurance Affidavit), County Ordinance No. 92-15 (Drug-Free Workplace), and County Ordinance No. 91-142 (Family Leave Affidavit), execution of public entity crimes disclosure statement, Miami-Dade County disability non-discrimination affidavit, and Miami-Dade County criminal record affidavit, all applicable requirements of Miami-Dade County Ordinance No. 90-90 as amended by Ordinance No. 90-133 (Fair Wage Ordinance), the requirements of Section 2-1701 of the Code and all other applicable requirements contained in this Agreement.

The Grantee shall comply with Miami-Dade County Resolution No. R-385-98 which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 and other laws prohibiting discrimination on the basis of disability and shall execute a Miami-Dade County Disability Non-Discrimination Affidavit confirming such compliance.

The Grantee covenants and agrees with the County to comply with Miami-Dade County Ordinance No. 72-82 (Conflict of Interest), Resolution No. R-1049 93 (Affirmative Action Plan Furtherance and Compliance), and Resolution No. R-185-00 (Domestic Leave Ordinance).

The Grantee shall cause each contract to include a provision that contractor shall comply with all requirements of Section 2-1076 as provided in Section 10 herein, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the work and that such records shall be maintained within Miami-Dade County's geographical area and the County shall have access thereto as provided in this Agreement.

The Grantee has certifiably indicated compliance to certain Applicable Laws by properly executing the affidavits attached hereto. These include: (1) Affirmative Action Plan/Procurement Policy Affidavit; (2) Disability Nondiscrimination Affidavit; (3) Universal Affidavit; (4) Code of Business Ethics Affidavit; and (5) Domestic Violence Leave Affidavit.

Grantee shall provide equal access and equal opportunity in employment and services for the Project, and may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

Grantee will conduct all activities related to the Project in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Miami-Dade County ordinances No. 97-170, § 1, 2-25-97 and No. 98-17, § 1, 12-1-98. By entering into this Agreement, Grantee attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Grantee is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Agreement void.

19. Breach, Opportunity to Cure and Termination: Each of the following shall constitute a default by the Grantee:

(a) **Use of Funding Allocation for Ineligible Costs:** If the Grantee uses all or any portion of the Funding Allocation provided by the County for costs not associated with the Project, not in compliance with the Project Description, not capital in nature, or otherwise for Ineligible Costs (as defined in Section 4(b)(iv) of this Agreement), and the Grantee fails to cure its default within thirty (30) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Grantee commences diligently and thereafter continues to cure.

(b) **Failure to Complete the Project:** If the Grantee fails to complete the Project within three (3) years of the Effective Date of this Agreement.

(c) **Material Adverse Modification of Surviving Obligations:** If the Grantee materially and adversely to the County fails to comply with or modifies the surviving obligations identified in Section 5 of this Agreement.

(d) **Notice and Opportunity to Cure:** If the Grantee shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 19(a) and the Grantee fails to cure its default within thirty (30) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Grantee commences diligently and thereafter continues to cure.

(e) **Remedies for Default:** (1) upon the occurrence of a default as provided in Section 19 and such default is not cured within the applicable grace period, in addition to all other remedies conferred by this Agreement, the Grantee shall reimburse the County, in whole or in part as the County shall determine, all funds provided by the County hereunder; (2) the County may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy); and (3) except with respect to rights and remedies expressly declared to be exclusive in this Agreement, rights and remedies are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default. Any failure of a party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that party of any claim for damages it may have by reason of the default.

(f) **(e) Termination:** Notwithstanding anything herein to the contrary, the County shall have the right to terminate this Agreement by giving written notice of termination to the Grantee, in the event that the Grantee is in material breach of this Agreement. Termination of this Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination. After termination, and until the Grantee reimburses the County the amount of all funds disbursed under this Agreement (plus interest at the statutory rate), the Grantee shall continue to abide by the surviving obligations identified in Section 5 of this Agreement, and the County shall have the right to enforce those obligations as if this Agreement were still in effect. Termination of this Agreement shall not relieve the Grantee of any liability for breach of this Agreement for events or obligations arising prior to such termination. The Grantee will be liable to reimburse Miami-Dade County for all unauthorized expenditures of all or any portion of the Funding Allocation discovered after the expiration or termination of this Agreement, including for lost or stolen funds.

All or any portion of the Funding Allocation which is to be repaid to the County pursuant to this Section or other sections in this Agreement, is to be repaid by delivering to the Director a certified check for the total amount due payable to Miami-Dade County.

20. **Waiver:** There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver

shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

21. Written Notices: Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one (1) business day after being sent by reputable overnight carrier or three (3) business days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:
Mayor
Miami-Dade County
111 NW 1 Street, 29th Floor
Miami, Florida 33128

Grantee:
President
Museum of Science, Inc.
3280 South Miami Avenue
Miami, Florida 33129

And

Director
Miami-Dade County, Department of Cultural Affairs
111 NW 1 Street, Suite 625
Miami, Florida 33128

With a copy to:
Director, Office of Management and Budget
111 NW 1 Street, Suite 2210
Miami, Florida 33128

22. Captions: Captions as used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

23. Litigation: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

24. Grantee's Authority to Enter into Agreement: The Grantee represents that this Agreement has been duly authorized, executed and delivered by the governing body of the Grantee

and it has granted the President, or designee, the required power and authority to execute this Agreement.

25. County's Authority to Enter into Agreement: The County represents that this Agreement has been duly approved, executed and delivered by the Board, as the governing body of the County, and it has granted the County Mayor or the County Mayor's designee required power and authority to execute this Agreement.

26. Invalidity of Provisions; Severability: Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

27. Insurance: The Grantee must maintain and shall furnish upon request to the Director, certificates of insurance indicating that insurance has been obtained which meets the requirements as outlined below:

The Grantee shall furnish to Miami County, Department of Cultural Affairs, , 111 NW 1 Street Suite 625, Miami, FL 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the Grantee as required by Florida Statute 440.

B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

D. Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The policy shall show Miami-Dade County as a Loss Payee A.T.I.M.A.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by Best's Insurance Guide, published by A.M. Best Company,

Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

NOTE: MIAMI DADE COUNTY CONTRACT NUMBER AND TITLE OF CONTRACT MUST APPEAR ON EACH CERTIFICATE.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
 111 NW 1st STREET
 SUITE 2340
 MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the Grantee of his liability and obligation under this section or under any other section of this agreement.

28. Additional Provisions for Use and Reimbursement of the Funding Allocation:

A. **Payment:** Grantee is paid Funding Allocation subject to the following conditions:

1. Grantee will implement their own procurement process; however, such process shall comply with all applicable Federal, State and local laws and regulations.
2. Grantee is responsible for managing the day-to-day operations of the Project, and maintaining communications with the Director or the Director's designee regarding the Project. Grantee must monitor the Project to assure compliance with these rules or the Grant Agreement as the case may be, and all applicable Federal, State and local requirements.
3. Grantee must complete the authorized signature form (Exhibit 10).
4. In general, payment shall be made on a reimbursement basis. The Grantee may submit a Request for Advance Payment form (Exhibit 4) for review and approval by the Director or the Director's designee. If approved the Grantee may receive an advance payment for up to 25% of the value of the Funding Allocation for the subject Project.
5. Field evaluations will be conducted on a regular basis by the Department.

6. All advance payments received by a Grantee shall be maintained in a separate interest-bearing account and may not be commingled with other funds. All advances and interest earned must be fully accounted for. The Grantee shall submit evidence of interest earned to the County with any subsequent reimbursement request. Interest earned on the Funding Allocation shall belong to the County (Exhibit 5).

7. Grantee shall complete, sign, and submit to the County the appropriate Reimbursement Request forms as necessary (Exhibits 6-7) accompanied by supporting documentation as evidence of equipment and/or work having been received or paid for and/or documentation reflecting the amount of design and construction work completed in accordance with items indicated in Exhibit 2 as part of the Project Budget. Documentation shall include, but not be limited to, copies of original bills, invoices, contractor's application for payment, vouchers, receipts, and check payments or other documents that clearly designate payment for expenses associated with the project. Cash transactions are not acceptable unless a copy of a contract, invoice, receipt or other satisfactory documentation supporting such cash payment is received, marked "paid" and signed by the recipient of the cash. The Director reserves the right to request original documentation to substantiate Grant expenditures. In addition, the Grantee must supply the Director with evidence that matching funds as specified in the budgets attached hereto as Exhibit 2, or as revised per written authorization by the Director, have been paid out for project expenses.

8. Grantee shall submit a copy of the pay application and summary information for the same time period being requested out of the Grant Funding Allocation, that was/is being/will be provided to the financing entity so that it is clear that all funds being requested with each Grant Reimbursement Request are unique and not also being requested of the bank Financing entity or any other entity.

9. [reserved]

10. In accordance with State law, five percent (5%) of the value of the Grant funding for the Project shall be retained by the County for all projects in excess of \$100,000. Upon completion of a Project, a signed project completion certificate (Exhibit 8) must be submitted with the final reimbursement request forms in order for the remaining retainage to be released.

11. Grantee will ensure that all contractors and consultants perform in accordance with the terms, conditions, drawings and specifications of their contracts or purchase orders and that all Federal, State and local contracting rules apply.

12. Grantee shall maintain an accounting system, which meets generally accepted accounting principles, and shall maintain all required financial records to properly account for the Funding Allocation and any supplemental funds used for the Project. The Grantee shall at all times maintain a separate accounting of the Funding Allocation.

13. Grantee shall be responsible for reporting, on a continuous, on-going basis, any contractual relationship established to perform work on the project, start dates, progress payments, completion dates, etc. in the system provided by the County.

14. Grantee shall be responsible for completing the Project. If the total cost of the Project exceeds the value of the Grant, then the Grantee must provide any supplemental funds required. In the event that supplemental funds are necessary for completion of a Project, as of the point in time that it is known that supplemental funds are needed, the Grantee must alert the Director or his designee and demonstrate that such supplemental funds have been committed to the Project prior to and as a condition of disbursement or further disbursement of the Funding Allocation. The requirement for a Grantee to provide supplemental funds may be modified, in part or whole, by the Board of County Commissioners, to the extent that it approves in writing any reduction or change to the Project scope of work. Approval of any reduction or change in scope of work is at the sole discretion of the Board of County Commissioners.

15. Payments to the Grantee may be withheld at any time that the Grantee fails to comply with the terms of the Grant Agreement. Funding Allocation withheld for failure to comply with the terms of the Grant Agreement, but without suspension of the Grant shall be released to the Grantee upon subsequent compliance. Grantees will not be required to reimburse the County for payments already received by the County from the Grantee unless the Grantee fails to acquire, purchase, construct, develop and/or operate the Project for the purpose described in this Agreement or is otherwise in default under the Grant Agreement.

B. Licensed Contractors; Contractor Bonds: Duly licensed contractors shall perform all construction. Construction contracts for work in excess of the threshold amounts established in Section 255.05 of the Florida Statutes shall require payment and performance bonds, which comply with the requirements of Section 255.05, Florida Statutes, to the extent applicable.

C. Budget Changes: Grantee shall adjust its Project budgets to reflect actual costs and updated cost estimates on a monthly basis and shall submit adjusted Project budgets to the Director or the Director's designee as soon as the Grantee is aware of a material budget change or on the regular monthly basis.

D. **Consequence of Noncompliance:** If the Grantee materially fails to comply with any term of this Agreement, the Board of County Commissioners or the Director may take one or more of the following actions, as appropriate in the circumstances: (1) temporarily withhold cash payments pending correction of the deficiency by the Grantee; (2) disallow all or part of the cost of the activity or action not in compliance; (3) wholly or partly suspend or terminate the current award for the Grantee's Project; (4) withhold further Funding Allocation awards from the Grantee; or (5) utilize any other remedies that may be legally available.

E. **Right to be Heard:** Any of the enforcement actions listed herein above, taken by the Director or the Director's designee, which are contested and unresolved between the Grantee and the County within thirty (30) days of such action, will result in the Board of County Commissioners providing the Grantee with an opportunity to be heard on the issue. Said hearing will occur within sixty (60) days of the Board receiving the Grantee's written request. Staff will recommend appropriate action to the Board.

F. **Reimbursement of Costs During Suspension/Termination:** Otherwise reimbursable expenses incurred during a period of suspension or termination are not eligible for reimbursement unless the Director or the Director's designee expressly authorizes them in the notice of suspension or termination or subsequently authorizes reimbursement in writing.

G. **Project Close Out:** A Grantee has up to forty-five (45) days after the expiration or termination of the Agreement to submit all final documentation including final reimbursement requests and Project completion certificates. The close-out of a Grant does not affect: (1) the County's right to disallow costs and recover funds on the basis of a later audit or review; (2) the Grantee's obligation to return any Funding Allocation due as a result of later refunds, corrections or other transactions; (3) records retention responsibilities set forth in this Agreement; and continuing responsibilities set forth in this Agreement

H. **Excess Payments:** Any amounts paid to Grantee in excess of the amount to which the Grantee is finally determined to be entitled under the terms of the Grant constitute a debt to the County. If not paid within a reasonable period after demand, the County may reduce the debt by: (1) making an administrative offset against other requests for reimbursement; (2) withholding payments otherwise due to the Grantee under any other agreement with the County; or (3) taking other action provided by law. Any overdue debt of the Grantee shall accrue interest at the maximum rate allowed by law.

29. **Tax Covenants:** Grantee acknowledges that the County has provided the Funding Allocation from the proceeds of the CDT Bonds and that the CDT Bonds were issued as tax-exempt bonds under Section 103 of the Internal Revenue Code of 1996, as amended (“Code”). Grantee further acknowledges the Code and the applicable Treasury Regulations thereunder (“Regs”) impose significant and complex rules governing the use of proceeds of tax-exempt bonds such as the CDT Bonds. Grantee represents and warrants to the County that it will not take any steps or omit to take any steps that would adversely affect the tax-exempt status of the CDT Bonds.

30. **Additional Terms:**

(a) **No Third-Party Beneficiaries:** It is acknowledged and agreed that this Agreement is solely for the benefit of the parties to this Agreement—the County and the Grantee. By entering into this Agreement, neither party intends to confer a benefit, directly or indirectly, on any third-party even if the Funding Allocation to be disbursed pursuant to this Agreement are to be utilized to pay for services provided by third parties (e.g., construction) or to supplement other eleemosynary contributions to the Grantee.

(b) **Grantee’s Release of the County:** The Grantee releases and forever discharges the County from any and all claims, causes of action, demands, disputes and rights of whatever nature and kind, known or unknown, past or future, that the Grantee has or claims to have against County, and its employees, officers, agents, successors and assigns, attorneys, or otherwise. Such release and discharge is made by the Grantee in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, sureties, suppliers, and any and all other persons, firms, corporations, or other entities who may claim by or through the Grantee.

31. **Entire Agreement:** This Agreement, including all sections, special conditions, exhibits and the attachments thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

By: _____
Harvey Ruvín
Clerk of the Board

By: _____
Carlos A. Giménez
Mayor, Miami-Dade County

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Assistant County Attorney

ATTEST:

GRANTEE

By: _____
[Corporate Seal]

By: _____
Chief Executive Officer (or President)

EXHIBIT 1 - PROJECT DESCRIPTION



PROJECT SUMMARY

The Patricia and Phillip Frost Museum of Science, (Frost Science,) previously known as the Miami Science Museum, currently under construction, is located at 1075 Biscayne Boulevard between I-395 MacArthur Causeway and the 11th Street entrance to the Museum Park. The new Frost Science will be a 5-story structure with 250,000 SF indoor and exterior programmable, maintenance and administrative spaces, with 170,000 SF under air. The visitor experience will include an aquarium, planetarium, learning and exhibition spaces, a retail store and a café. Designed as a model of sustainability, the entire building and grounds have been conceived as part of a learning experience.

MAJOR FEATURES AT OPENING

- Building is 250,000 SF indoor and exterior programmable, maintenance and administrative spaces, with 170,000sf under air.
- Living Core Aquarium – completed (21,000 SF internal and external exhibition areas,) additional changing exhibits to follow.
- Planetarium: fully completed indoor projectors, laser and programming, (4650 SF and 250 seats.)
- Baptist Health People and Science Exhibition Gallery – fully completed (8960 SF.)
- Feathers to the Stars Exhibition Gallery – fully completed (6,100 SF.)
- Rivers of Grass Exhibition Gallery – fully completed (3,810.)
- Knight Learning Center – fully completed (4300 SF internal space plus 2200 SF external picnic space.)
- Travelling Gallery – Equipped with technology but no major travelling exhibition booked for opening, venue for major events at opening (9000 SF.)
- Innovation Center – partial completion with one floor of changing programming and one floor of inventors in residence program (10,100 SF)
- Café and Retail open for guests (5600 SF Café and 2200 SF retail store)
- All major event spaces will be available for use at opening (People and Science gallery, travelling exhibition space, meeting rooms and outdoor plazas).

FEATURES REDUCED FROM BUDGET – NOT IN OPENING PROGRAMMING

- External planetarium projection
- Reduced exhibitions in Innovation Center
- No planned exhibitions on both indoor and outdoor terraces, roof and plazas (other than limited furniture)
- Basic plantings only on roof – no interactive exhibitions
- No major travelling exhibition booked for opening – area can function as a major event space

EXHIBIT 2 - PROJECT BUDGET

PROJECT CASH FLOW - Construction Complete Nov 2016

Sources:

GOB - County Grant Reimbursements
 GOB - Retainage Receivable

Non-GOB

(A) Pledge Payments - General Campaign
 (B) Pledge Payments - Restricted to Exhibits
 (C) Financing Need
 County CDT Grant
 Bank Financing
 (D) Vendor Contributions
 (E) Funding for FIU Environmental Center
 (F) Other Governmental
 Sub-Total Non-GOB

Total Sources

Uses:

Construction Costs

Costs to Complete Construction

Design & Management Costs

Project Management
 A/E Design Fees
 Owner Direct Consultants

Sub-Total Design & Management Costs

Owner Provided Costs

Exhibit Design and Fabrication
 Furniture, Fixtures & Equipment
 Batchelor Environmental Center at FIU

Sub-Total Owner Provided Costs

Other Project Soft Costs

Legal
 Insurance
 Permits
 Marketing
 Living Collections
 Operational Transition (includes staffing)
 Financing Costs
 Other Project Costs

Sub-Total Other Project Soft Costs

Sub-Total All Project Costs

Project Contingency

Total Uses

	Incurring thru November-15	Costs Remaining	Total Project Costs
\$ 158,064,290	\$ -	\$ 158,064,290	
-	6,935,750	6,935,750	
158,064,290	6,935,750	165,000,040	
28,890,584	9,432,821	38,323,405	
1,510,140	8,553,984	10,064,124	
-	-	-	
-	45,000,000	45,000,000	
-	38,346,223	38,346,223	
-	1,000,000	1,000,000	
840,456	4,159,544	5,000,000	
1,440,806	250,000	1,690,806	
32,681,986	106,742,572	139,424,558	
\$ 190,746,276	\$ 113,678,322	\$ 304,424,598	
117,222,447	67,100,000	184,322,447	
8,655,717	1,634,722	10,290,439	
31,270,984	1,450,100	32,721,084	
2,242,403	858,143	3,100,546	
42,169,104	3,942,965	46,112,069	
5,842,149	19,581,475	25,423,624	
1,377,188	7,229,334	8,606,522	
840,456	4,159,544	5,000,000	
8,059,793	30,970,353	39,030,146	
2,422,082	600,000	3,022,082	
7,057,723	500,000	7,557,723	
1,069,521	50,000	1,119,521	
628,471	637,000	1,265,471	
-	500,000	500,000	
9,134,836	4,728,005	13,862,841	
107,670	1,050,000	1,157,670	
2,874,631	100,000	2,974,631	
23,294,934	8,165,005	31,459,939	
190,746,278	110,178,323	300,924,601	
-	3,500,000	3,500,000	
\$ 190,746,278	\$ 113,678,323	\$ 304,424,601	

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EXHIBIT 3 - GRANT AGREEMENT FORMS / CONFIRMATION OF COMMENCEMENT DATE

CONFIRMATION OF COMMENCEMENT DATE

Reference is made to the _____ Grant Agreement dated _____, 20 __, by and between Miami-Dade County, acting by and through the department of _____ (“Grantor”), and _____ (“Grantee”). This Confirmation of Commencement Date (“Confirmation of Commencement”) is attached to the Grant Agreement as Schedule _____ thereto, and, when executed and delivered by County to the Grantee shall be incorporated within and made a part of the Grant Agreement. Capitalized terms used in this Confirmation of Commencement without otherwise being defined herein will have the same meanings given to them in the Grant Agreement. The Confirmation Date of the Grant Agreement is _____, 20 __. To confirm the Commencement Date, the County has caused this instrument to be executed and delivered to the Grantor, defining the Commencement Date of the Grant Agreement.

ATTEST:

HARVEY RUVIN, CLERK

COUNTY:

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

By: _____

BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____

Request for Advance Payment

Date	<input type="text"/>
Grantee	<input type="text"/>
Grantee Vendor Number <i>(Federal ID Number)</i>	<input type="text"/>
Funding Source	<input type="text"/>
Project Name & Project Number	<input type="text"/>
Grant Amount	<input type="text"/>
Amount of Advance Requested	<input type="text"/>
Reason For Requested Amount	<input type="text"/>

Certification

I hereby certify that this request is in compliance with the Grant Agreement sections governing the request for advance payments. I also certify that this advance shall be maintained in a separate interest bearing account, that these funds will not be co-mingled with other funds and that all interest earned will be repaid to the County. I further agree to account for this advance within one (1) year of the approval date, indicated below.

AUTHORIZED GRANTEE SIGNATURE

DATE

Administrative Use Only

Amount Approved

Director, Department of Cultural Affairs

Date

Report of Interest Earned on Advance	
<p><i>This form must be submitted with copies of bank statements or certified financial reports from the Grantee that verify the account number, date and amount of deposit, interest rates and total interest earned as of the date of this report.</i></p>	
Grantee	
Funding Source	
Project Name	
Project Number	
Date of Deposit	
Amount of Deposit	
Expenditure To Date	
Interest Rate	
Interest Earned as of (Date)	
Current Balance	
<p>_____ AUTHORIZED GRANTEE SIGNATURE & TITLE</p>	
<p>_____ DATE</p>	

PLEASE SUBMIT THIS FORM ON GRANTEE'S LETTERHEAD

Reimbursement Request Cover Sheet

Date:

Department of Cultural Affairs
Attn: Lisa D'Andrea-Thompson, Construction Projects Manager
111 NW 1st Street, Suite 625
Miami, Florida 33128

Attached please find the required reimbursement forms requesting payment in the amount of \$ _____ for the following:

<u>Project Name & Project Number</u>	<u>Amount</u>

I certify that all the attached documents have not been previously reimbursed or submitted for payment and that all of the expenditures comply with the terms and conditions of the Grant Agreement and Miami-Dade County Ordinance 05-47 and have attached our monthly report (Exhibit 7) providing the latest project update.

Sincerely,

Authorized Grantee Signature/Title

Date

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Project Completion Certificate

Date:

Entity Name

Entity Vendor Number
(Federal ID Number)

Funding Source

Project Name & Project Number

Amount of Final Request

Certification

I hereby certify that the above referenced project was completed in accordance with the Grant Agreement between the Grantee and Miami-Dade County dated _____ and that all expended funds were used in accordance with the Agreement and all its requirements.

AUTHORIZED SIGNATURE

DATE

Administrative Use Only

Final Site Review

Date of Final Site Visit

County Construction Manager

Date

Final Payment Approval

Amount of Final Payment

Director, Department of Cultural Affairs

Date

**OFFICE OF MANAGEMENT AND BUDGET
AUTHORIZED SIGNATURE FORM**

Date:			
Grantee:			
Contact Name:			
Contact Phone & E-mail:			

This form certifies the names, titles and signatures of individuals authorized by the Grantee to sign contracts, and requests for; scope changes, budget revisions, advances, reimbursements, and any other requests that may be required by the Board of County Commissioners for the disbursement of funds. These signature authorizations are retained by the Department of Cultural Affairs for auditing purposes. Entities are required to submit updates to this list as they become necessary.

* I authorize the individuals named below to represent the organization to complete the respective tasks listed herein.

<u>Name (please type or print)</u>	<u>Title (please type or print)</u>	<u>Signature</u>
_____	_____	_____

<u>Name (please type or print)</u>	<u>Title (please type or print)</u>	<u>Signature</u>
Contracts & Amendments		
_____	_____	_____
_____	_____	_____

Requests for Scope Changes		
_____	_____	_____
_____	_____	_____

Requests for Budget Revisions		
_____	_____	_____
_____	_____	_____

Requests for Advances & Reimbursements/Completion Certificate		
_____	_____	_____
_____	_____	_____

Please submit this form with or before your first request for an advance or reimbursement.

Bank Account Disclosure Form

Grantee: _____

Project Name: _____

Project Number: _____

Name Of Bank In Which Grant Funds Will Be Deposited: _____

Account Number: _____

Person(s) Authorized To Withdraw Funds Or To Write Checks:

Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____

GRANTEE AUTHORIZED SIGNATURE & TITLE

Print Name _____

DATE _____

EXHIBIT A - CONDITIONS PRECEDENT FOR THE CDT GRANT

Museum of Science – Conditions Precedent for the Convention Development Tax Grant

1. Updated Project Budget – Revenues and Expenditures (aka, Sources and Uses)
 - a. Assuming County funding of \$45 million and bank financing of pledges;
 - b. Updated to show expenses incurred to date, costs remaining and revised total project costs; and
 - c. All revenues spent, remaining and sufficient to complete the revised total project costs.
2. Documentation from Hill International (project manager) that they are in agreement that the Updated Project Budget is an accurate and reliable account of expenses necessary to complete the project.
3. Updated Project Description
 - a. An outline of the key elements of the project that will be completed under the Updated Project Budget; and
 - b. A list of building features that will not be completed under the Updated Project Budget.
4. An updated operating forecast that demonstrates how the Museum will achieve a balanced budget without a County operating subsidy.
5. Revised project draw schedule showing project draws from November of 2015 through project completion (now forecasted to be November 2016), based on the Updated Project Budget.
6. A written bank commitment and terms for the financing of the secured pledges.
7. A commitment letter from the Museum's board of trustees and key donors attesting to an approved plan to provide funds sufficient to cover capital and operational expenditures from the end of County's BBC-GOB funding to the County's and bank's anticipated financing closing (anticipated to be April 2016).
8. A resolution by the Museum's board of trustees committing to implementation of the agreed-upon restructuring of the board of trustees and implementation of any required changes to the board's by-laws (along with a copy of the amended by-laws).
9. A resolution by the Museum's board of trustees representing and covenanting that it shall not seek County operational subsidies or support until the County retires the financing debt for the \$45 million grant (estimated to be no more than 20 years) and that it will operate the Museum with a balanced budget.
10. A resolution by the Museum's board of trustees committing to dedicate both the proceeds from future naming rights, in excess of secured, existing donation pledges, and the settlements of existing cases in arbitration/litigation, other than what may need to be conveyed from these proceeds for the bank loan against the secured pledges (including for the funding of a debt reserve and advanced principal payments as required by the terms of the bank financing obtained by the Museum for the completion of the construction and development of the Museum facilities) and for repayment of the loans made by the principal donors for the project reserve, to a restricted Museum endowment dedicated to the Museum's operations and programming (this commitment recognizes that future naming rights gifts that are given for other, specific restricted uses can be used for those specified purposes).
11. Documentation of the commitment from Phillip and Patricia Frost to loan an additional \$4.25 million to help address any unanticipated cost overruns beyond the contingency in the agreed upon Updated Project Budget.



Hill International

Hill International, Inc.
 601 Brickell Key Drive
 Suite 600
 Miami, FL 33131
 Phone: (305) 468-4900
 Fax: (305) 468-4919
 www.hillintl.com

February 18, 2016

Gillian Thomas, CEO & President
 Patricia and Phillip Frost Museum of Science
 3280 South Miami Ave
 Miami, FL 33133

Re: HILCSD-0260 Miami Science Museum Project – Opinion of Cost to Complete

Dear Ms. Thomas:

Reference is made to (i) the Construction Takeover Services Agreement dated as of July 23, 2014 (the "Construction Services Agreement"), by and between Museum of Science, Inc. d/b/a Patricia and Phillip Frost Museum of Science, as owner (the "Owner"), and Skanska USA Building, Inc., as contractor (the "Contractor"), and (ii) the Project Cash Flow dated February 17, 2016 (a copy of which is attached hereto) (the "Project Budget"). Capitalized terms used but not defined in this certificate have the meanings assigned to them in the Construction Services Agreement.

In the course of the ongoing performance of our obligations as Owner's Representative and Project Manager on behalf of the Owner, we have made such reviews and examinations of the Project as we deem pertinent to this memorandum, and discussed and reviewed these matters (including the current Project Schedule and the Project Budget) with the Owner, the Owner Consultants, the Contractor, material Subcontractors and any other third party we deemed appropriate.

On the basis of the foregoing, we conclude, in our professional opinion, that:

- (i) \$70.6 million is an amount sufficient to pay the "hard" construction costs to achieve Substantial Completion of the Work (which costs are contemplated and reflected in the Project Budget line items labeled "Construction Costs, Costs to Complete Construction \$67.1M" and "Project Contingency \$3.5M"); and
- (ii) \$43.07 million is an additional amount sufficient to pay the design and management costs, exhibit design, fabrication and installation costs and insurance and permitting costs in respect of the Project (which costs are contemplated and reflected in the Project Budget line items "Design & Management Costs \$3.94M," "Owner Provided Costs \$30.97M" and "Other Project Soft Costs \$8.16M").

Please note that Hill offers this opinion based upon our understanding of the current scope of work (see attached for a detailed description of scope assumptions), excluding any potential time or productivity impact claims, as of the date of this memorandum for costs to complete through November 15, 2016. The date indicated on which the Project is expected to obtain either a temporary or final Certificate of Occupancy, the Owner assumes beneficial use of the property and assumes care, custody and control of the

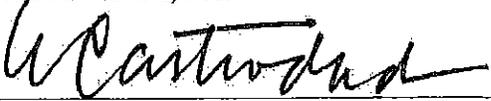
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facility. Should schedule adjustments or developments result in an extension of the completion date into December 2016, an additional \$1.5 million increase to the cost to complete is recommended.

Finally, please note that Hill does not have the ability to influence the contractor's means and methods of delivering the project and we base our opinion on the assumed delivery of the project according to construction best practices, industry standards and our knowledge of project-specific details.

HILL INTERNATIONAL, INC.

By: 

Name: Eladio Castrodad, P.E., PMP

Title: Vice President

Att: Project Cash Flow
Building and Exhibitions to be Completed at Opening



**Patricia and Phillip Frost Museum of Science
Building and Exhibitions to be Completed at Opening**

1. **Building:**
Size: 250,000 SF indoor and exterior programmable, maintenance and administrative spaces, with 170,000 SF under air.
Total building envelope and entire services package, 220 parking spaces, contiguous with PAMM's parking, and native plant landscaping completed. Water from first section of Museum Drive is funneled to a wetland area, as a component of the site wide water trail and highlighting importance of wetlands as a habitat.
(Completion of promenade to south of building is on City land and is City's responsibility.)
2. **Signage and wayfinding**
Size: throughout building and grounds
Completed to a level of adequate for use, dynamic signage to be added later.
3. **Planetarium**
Size: 4650 SF and 250 seats
8K projector and lasers installed as planned and total interior completed, with software for education and training programs as planned. Space Bar special design not completed in pre-show area, use of concession carts instead. Outside projection not completed.
4. **Living Core Aquarium:**
Size: 21,000 SF internal and external exhibition areas
Over three floors completed both building installed large aquaria of five habitats, flexible exhibition furniture, including approximately 30 additional smaller aquaria, interactive exhibits, multi-media and collections installations, with focus on accessibility. Visitors explore the habitats of South Florida, are invited to discover the work of scientists in conserving these and join on a voyage to the Gulf Stream, with the unique 500,000 gallon Gulf Stream Aquarium. Accessible tactile exhibits and iBeacon system of descriptive audio included. Some interactive exhibits omitted with overall budget reduction. Additional flexible exhibits and updates to be added later.
5. **People and Science Gallery**
Size: 8960 SF, including ramp linking to second floor
Major gallery funded by Baptist Health South Florida. The gallery, focused on health and wellness education is completed as planned. Interactive exhibits and programming around five themes of eating, exercising, learning, relaxing and connecting, where visitors explore the decisions they can make, the impact on their lives and how medical science supports health. An additional \$1 million funding is set aside for ongoing education programming, including free visits for all 4th graders and updates. This space is also planned to serve as major entertainment facility out of hours and has an interactive dance floor, a stage, a science bar and an advanced surround sound system. Completed for opening.
6. **Feathers to the Stars Gallery:**
Size: 6100 SF
Major gallery funded jointly by the Batchelor Foundation and Christine Allen. This takes visitors on a journey through the history of flight, from the evolution of dinosaurs to birds, through early aviation and the future of space exploration, exploring how imagination is key to



- technology development and highlighting future opportunities. Gallery is completed. Programming is integrated into operations.
7. **Rivers of Grass**
Size: 3810 SF including inside immersive experience, outside water discovery area and bridge. Gallery funded by the Kenan Charitable Trust. The River of Grass exhibition is a special discovery space for children under 6 and their caregivers. An exploration of the properties of water, an introduction to the animals and plants of the Everglades and a multi-media immersive experience there, by day and by night, exploring water levels and their impact on animal life. Completed for opening. Programming integrated into operations.
 8. **Knight Learning Center**
Size: 4300SF internal space plus 2200 SF external picnic terrace and exhibit area.
Funded by the Knight Foundation. A suite of 2 classrooms, a wet lab and Digital Futures Lab (computer technology space.) These will be used for enhanced educational experiences with schools, grants based programming, professional development and are also available for community groups out of hours. External picnic area has educational resources integrated into space. Completed for use by groups as planned.
 9. **Innovation Labs**
Size: 10,100 SF internal space (external terraces are part of program but not counted here.)
Funded by Innovation partners (4 of projected 10 in place.) Inventors in residence program space and one floor of exhibition and program space completed. Other spaces basic fit out completed and available for programming but no interactive fit-out. Programming and future fit-out under development with partners.
 10. **Traveling Gallery**
Size: 9000SF
A fully air conditioned, high quality flexible space, to receive international touring exhibitions as well as being a venue for major events. Equipped with projectors, sound system, access for large and heavy objects, this has been designed so that it can be a stand-alone space or integrated into the general visit.
 11. **Terraces**
Size: 25,000 SF
On floors 2 through 5, these circulation spaces were also designed as exhibit spaces to provide four trails of interactive exhibits and art installations around water, light, energy and time. Minimal installations, small number of interactive exhibits at opening.
 12. **Atrium and Planetarium Terraces**
Size: 13,200 SF
The main entrance to the museum and major gathering and circulation space at plaza level. Dynamic signage, information station and some seating installed, donor wall presented.
 13. **Roof**
Size: 19,600 SF
Native plants and urban food planting displays in place, but no energy exhibits and minimal interpretation. No roof for rain protection over event space. Portable telescopes for programming, day and night time use.



14. Café

Size: 3,900 SF internal (public and back of house) and 2000 SF external terrace

Open to all, accessible before ticketing from park at first floor level and with views over park.

Accessed from park by ramp and stairs. Family food and also provides catering for events.

Completed for opening.

15. Retail

Size: 2200 SF

Accessible before ticketing, completed for opening. Educational materials and science based

gifts. Completed for opening.

16. Science Plaza

Size: 5600 SF

Adjacent to east end of building, a semi enclosed area and gathering place for groups and the community. Minimal surface treatment, no seating, installations, wall projection or tactile building model.

17. South Plaza

Size: 21,000 SF

Public space, an extension of Knight Plaza and on south side of Living Core Aquarium.

Continuation of planting scheme from Knight Plaza with three additional planters.

18. Sustainability

Size: building and grounds

All key physical features in place including rainwater collection and re-use in AC and irrigation, grey water use in toilets, natural ventilation in circulation and some exhibition spaces. LED lighting fixtures and lighting control systems, rooftop photovoltaics, electric vehicle charging stations and the use of reflective and green roofing material are among the green features of the building. LEED gold is targeted standard. Interpretation across building interpretation of building and grounds of environmental sustainability. On line public access to information streams as a research resource (VEOMAP) not available in this phase.

19. New website and customer management system

This includes include ticketing, online purchases, donor management system etc. Functional and completed for opening. Additional enhanced visitor experiences to be added over time. A museum app is under development, and visitors will be encouraged to use their mobile phones for additional information and site wide discovery trails. The DAS system to enhance mobile signals has been eliminated.

PROJECT CASH FLOW - Opening Nov 2016

	Incurred thru November-15	Amounts Remaining	Total Project Costs
Sources:			
GOB - County Grant Reimbursements	158,064,290	-	158,064,290
GOB - Retainage Receivable	-	6,935,750	6,935,750
Sub-Total GOB	158,064,290	6,935,750	165,000,040
Non-GOB			
(A) Pledges - General Campaign	28,890,584	9,432,821	38,323,405
(B) Pledges - Restricted to Exhibits	1,510,140	8,553,984	10,064,124
(C) Financing Need	-	83,346,223	83,346,223
(D) Vendor Contributions	-	1,000,000	1,000,000
(E) Funding for FIU Environmental Center	840,456	4,159,544	5,000,000
(F) Other Governmental Funding	1,440,806	250,000	1,690,806
Sub-Total Non-GOB	32,681,986	106,742,572	139,424,558
Total Sources	\$ 190,746,276	\$ 113,678,322	\$ 304,424,598
Uses:			
Construction Costs			
Costs to Complete Construction	117,222,447	67,100,000	184,322,447
Design & Management Costs			
Project Management	8,655,717	1,634,722	10,290,439
A/E Design Fees	31,270,984	1,450,100	32,721,084
Owner Direct Consultants	2,242,403	858,143	3,100,546
Sub-Total Design & Management Costs	42,169,103	3,942,965	46,112,068
Owner Provided Costs			
Exhibit Design and Fabrication	5,842,149	19,581,475	25,423,624
Furniture, Fixtures & Equipment	1,377,188	7,229,334	8,606,521
Batchelor Environmental Center at FIU	840,456	4,159,544	5,000,000
Sub-Total Owner Provided Costs	8,059,793	30,970,353	39,030,145
Other Project Soft Costs			
Legal	2,422,082	600,000	3,022,082
Insurance	7,057,723	500,000	7,557,723
Permits	1,069,521	50,000	1,119,521
Marketing	628,471	637,000	1,265,471
Living Collections	-	500,000	500,000
Operational Transition (includes staffing)	9,134,836	4,728,005	13,862,840
Financing Costs/Interest Reserve	107,670	1,050,000	1,157,670
Other Project Costs	2,874,631	100,000	2,974,631
Sub-Total Other Project Soft Costs	23,294,933	8,165,005	31,459,938
Project Contingency	-	3,500,000	3,500,000
Total Uses	\$ 190,746,276	\$ 113,678,322	\$ 304,424,598

EXHIBIT C - FROST RESERVE LETTER

Patricia and Phillip Frost
21 Star Island
Miami Beach, Florida 33139

February 18, 2016

Museum of Science Inc.
Museum of Science Endowment Inc.
3280 South Miami Avenue
Miami, Florida 33129

Ladies and Gentlemen,

Reference is made to (i) our \$35 million pledge dated March 21, 2011, as amended on May 15, 2014 (our "Initial Pledge"), and our additional \$10 million pledge dated February 9, 2016 (the "Planetarium Pledge"); and, together with our Initial Pledge, our "Pledge", in favor of Museum of Science Inc., d/b/a Patricia and Phillip Frost Museum of Science (the "Museum"), and Museum of Science Endowment Inc. (the "Endowment") in support of the campaign to raise capital for the development, construction and operation of the new science museum facility at Museum Park (the "Project"), and (ii) the Project Cash Flow dated February 17, 2016 (a copy of which is attached hereto) (the "Project Budget").

We understand the Museum is negotiating the terms of, and expects to close on or about April 18, 2016, (i) an additional \$45 million grant from Miami-Dade County ("the County") to the Museum (the "County Grant"), and (ii) an up to \$40 million senior secured loan from one or more financial institutions (the "Bank Financing"); and, together with the County Grant, the "Project Financing") and arranged by Northern Trust (the "Arranger"), to complete the funding of the construction and development of the Project. We also understand the Project Budget contemplates up to \$3.5 million as a contingency (primarily to satisfy any overruns in the cost to complete construction) (the "Project Contingency").

The purpose of this letter is to confirm our absolute and irrevocable commitment to loan to the Museum up to an additional \$4.25 million as and when needed by the Museum to satisfy costs in respect of the Project if and to the extent such costs exceed the aggregate amount contemplated in the Project Budget (including the Project Contingency). Our obligation to make each of the foregoing extensions of credit (each, an "Advance" and, collectively, the "Advances") is expressly conditioned on (i) the closing and funding of the County Grant, (ii) the closing, and availability of loans under, the Bank Financing, (iii) repayment in full of loans made by us pursuant to the \$11 million loan commitment pursuant to a letter dated February 9, 2016 and (iv) the funding by the County of the final \$6.9 million retainage amount under the GOB grant, and our obligation will terminate and be of no further force or effect if conditions (i) and (ii) hereof are not satisfied on or before April 30, 2016, or condition (iii) hereof is not satisfied within 10 days after the Project achieves "Substantial Completion" (as evidenced by the issuance of a temporary certificate of occupancy in respect of the Project).

The principal amount of each Advance shall accrue interest from the date of the Advance until the date the Advance is repaid in full at a rate equal to 2.7% per annum. The Advances, together with accrued interest thereon, shall, subject only to satisfying any interest reserve and debt repayment requirements

of the Bank Financing, be repaid by the Museum solely from (i) the proceeds of any future pledges to the capital campaign of the Museum (including those offered in exchange for naming and other branding rights for the principal elements of the Project, but excluding any amounts that are restricted by the donor for specific purposes) and (ii) the net proceeds of any arbitration or litigation awards or settlements in favor of the Museum in respect of the Project (after the payment by the Museum of related or ancillary claims to subcontractors and/or legal and consulting fees incurred by or charged to the Museum). The Museum will provide us a perfected first priority lien on, and in respect of, the foregoing proceeds prior to the initial Advance, which lien shall secure the obligations of the Museum to us hereunder.

The Museum does not expect to need funds in excess of the amounts included in the Project Budget and the Museum will continue to use its reasonable best efforts to reduce all costs and expenses reflected in the Project Budget, and with a view to minimizing to the greatest extent possible both the number of Advances and the principal amount of Advances outstanding at any time pursuant to this commitment.

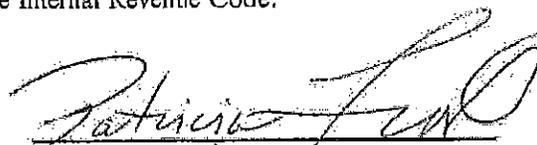
This commitment shall be binding on the parties and our respective successors in interest and assigns. This commitment shall be binding and enforceable on and against us and our estates if the commitment is unmet *inter vivos*.

This commitment may be amended only by a written instrument executed by the parties.

This commitment shall be construed and enforced in all respects in accordance with the laws of the State of Florida.

We recognize that this commitment constitutes an obligation to extend loans to the Museum in the amount stated and that the Museum is acting and will act in reliance upon this commitment. We also consent to the delivery of a copy of this commitment to the County and the Arranger and understand that each of them is also acting in reliance upon this commitment.

This commitment is conditioned upon on a representation by the Museum (which will be confirmed in the definitive naming agreement) that the Museum is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and a public charity under Section 509(a)(2) of the Internal Revenue Code and that contributions, bequests, transfers and gifts to the Museum are deductible under the relevant provisions of the Internal Revenue Code.



Patricia Frost


Phillip Frost

ACCEPTED AND AGREED
as of February 18, 2016

MUSEUM OF SCIENCE INC

By: *[Signature]*
Title: PRESIDENT / CEO

THE MUSEUM HAS COMPLIED WITH THE REQUIREMENTS OF THE FLORIDA SOLICITATION OF CONTRIBUTIONS ACT, FLORIDA STATUTES §496.

A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL FREE (800-435-7325) WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL OR RECOMMENDATION BY THE STATE.

PROJECT CASH FLOW

	Incurring thru November-15	Amounts Remaining	Total Project Costs
Sources:			
GOB - County Grant Reimbursements	158,064,290	-	158,064,290
GOB - Retainage Receivable	-	6,935,750	6,935,750
Sub-Total GOB	158,064,290	6,935,750	165,000,040
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Sub-Total Other Project Soft Costs	23,294,933	8,165,005	31,459,938
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Total Uses	\$ 190,746,276	\$ 113,678,322	\$ 304,424,598



Northern Trust

Carol F. Fine
Senior Vice President
The Northern Trust Company
600 Brickell Avenue - Suite 2400
Miami, FL 33131
(305) 789-1363 Direct
cff1@ntrs.com

February 18, 2016

Ms. Roxanne Ortiz, CPA
Chief Financial Officer
Patricia and Phillip Frost Museum of Science
1040 Biscayne Boulevard -- Suite 400
Miami, FL 33132
rortiz@frostsscience.org

Dear Roxanne:

The Northern Trust Company is pleased to advise you that we have approved tax-exempt bond financing for the Patricia and Phillip Frost Museum of Science (the "Museum") in the amount of \$38,346,223, to be secured, among other things, by capital pledges made to the Museum. The purpose of the financing is to allow for the completion of construction and associated costs of the new Patricia and Phillip Frost Museum of Science ("Museum") in Museum Park.

The approval and subsequent closing are contingent upon approval by Miami-Dade County of the \$45,000,000 grant required to provide the balance of funds needed at this time to complete construction. We would expect to close on these two sources in close coordination with an expected closing to occur in April, 2016 for both sources.

I look forward to working with you on this to a successful conclusion.

Sincerely,

THE NORTHERN TRUST COMPANY

Carol F. Fine
Senior Vice President

EXHIBIT E - REVISED MUSEUM BYLAWS

**AMENDED AND RESTATED BYLAWS
OF
MUSEUM OF SCIENCE, INC.**

Effective as of March 7, 2016

ARTICLE I. NAME

Section 1. The name of this corporation shall be Museum of Science, Inc. (the "Museum").

Section 2. The Board of Trustees of the Museum (the "Board of Trustees" or the "Board") from time to time may adopt additional names which may be used by the Museum for special projects, displays, exhibits and advertising.

ARTICLE II. PURPOSE

The purpose of the Museum shall be to seek the educational, scientific and charitable objectives which are set forth in the articles of incorporation of the Museum and which are set forth from time to time by action of the Board of Trustees.

ARTICLE III. MEMBERS

The Museum shall have no members; *except, however*, the Museum may adopt and publish from time to time one or more classes of membership related to its patrons or donors (including the requirements for qualification in, and any admission or other benefits associated with, any such classes of membership), which shall not be members as contemplated in Florida Statutes §617.0701, shall not be entitled to call or attend any meetings of the Museum or to exercise any voting or other rights related to the business or affairs of the Museum.

ARTICLE IV. BOARD OF TRUSTEES

Section 1. All corporate powers of the Museum shall be exercised by or under the authority of the Board of Trustees.

Section 2. The Board of Trustees shall be comprised of not less than 15 members and not more than 30 members, together with any *ex officio* members that may be appointed or designated from time to time pursuant to these bylaws.

Section 3. Except as otherwise provided herein, the Trustees, other than those appointed pursuant to Sections 5 and 6 of Article IV, shall elect their own members on an annual basis by majority vote at the regular meeting of the Trustees held immediately prior to the end of each Fiscal Year. Except as otherwise provided herein,

vacancies or newly created positions shall be filled by a majority vote of the Trustees, other than those appointed pursuant to Sections 5 and 6 of Article IV, at any regular or special meeting of the Trustees.

Section 4. Members of the Board will be elected to two-year terms, except as otherwise provided herein. The term for each Trustee shall begin following the regular meeting of the Trustees held immediately prior to the end of each Fiscal Year at which each such Trustee is elected. Trustees elected at times other than the regular meeting of the Trustees held immediately prior to the end of each Fiscal Year will be elected to fill unexpired terms.

Section 5. *Miami-Dade County* will make appointments of 5 members to the Board. These appointments are not subject to the requirements of Article IV, Sections 3 or 4 of these bylaws. One member will be the County Commissioner representing the County Commission District embracing the Museum. Two members will be appointed at-large by the Board of County Commissioners of Miami-Dade County. The Mayor of Miami-Dade County shall appoint 2 members of the Board, one of whom will be the individual serving as the County's Chief Financial Officer, and another will be the individual serving as the Director of the Department of Cultural Affairs. Each of the 2 members at-large appointed by the Board of Commissioners of Miami-Dade County will serve a two-year term and may not be elected officials.

Section 6. *The City of Miami* will make appointments of 3 members to the Board. These appointments are not subject to the requirements of Article IV, Sections 3 or 4 of these bylaws. One member will be the City Commissioner representing the City Commission District embracing the Museum. The City of Miami Commission will appoint 2 members of the Board at-large. Each of the 2 members appointed by the City Commission will be appointed for a two-year term and may not be elected officials.

Section 7. For each at-large appointment by the County Mayor, the County Commission and the City Commission, the Board may advise the County Mayor and County and City Commissions of any special characteristics or professional skills that it is seeking in order to strengthen and balance the Board. In addition, the Board may suggest potential nominees for consideration by the County Mayor and the County and City Commissions. After consideration of these recommendations, which are advisory only and which the County and City Commissions shall not be required to follow, the County and City Commissions will select an appointee that, in its best judgment, will best serve the interests of the Museum, the Mayor of Miami-Dade County, the Board of County Commissioners and the City Commission. Upon the expiration of the term of a member appointed by the County and the City, that member will remain on the Board of Directors until such time as he or she is replaced or is re-appointed by the appropriate appointing authority.

Section 8. *Ex officio* members of the Board of Trustees may, in the discretion of the Board of Trustees or the Executive Committee, include a designee of any volunteer group or affiliate group as defined in Article VIII of these bylaws and any other member of

the Board of Trustees designated as *ex officio* by the Board of Trustees or the Executive Committee. *Ex officio* members shall not have voting privileges and may designate substitutes to attend meetings of the Board of Trustees. All *ex officio* members of the Board of Trustees shall serve until their successors are elected or appointed.

Section 9. With the exception of those members appointed pursuant to Article IV, Sections 5 and 6, the members of the Board are expected to devote time, professional knowledge, personal influence, money and/or a combination thereof to attain the goals of the Museum and in electing members consideration shall be given to their abilities to do the following:

- (a) Provide and secure financial support for the operations and activities of the Museum;
- (b) Volunteer their specialized business expertise, advice and guidance to working committees when needed; and
- (c) Lead and to reinforce all community and public relations work of the Museum.

Section 10. The Board of Trustees shall adopt from time to time service and performance criteria with respect to its members, including, without limitation, requirements with respect to service on committees of the Board of Trustees, attendance at meetings of the Board of Trustees and committees of the Board of Trustees, which criteria as adopted from time to time will be deemed part of, and attached to, these bylaws. Any service or performance criteria adopted pursuant to this Section, if applicable to the County's appointees to the Board of Trustees, or any other rules or guidelines effecting the County's appointees to the Board of Trustees or any committee of the Board of Trustees (including the Executive Committee) shall be subject to the approval of the County Mayor and the Board in order to be effective. The Board of Trustees shall adopt from time to time a conflicts of interest policy with respect to its members, which policy as adopted from time to time will be deemed part of, and attached to, these bylaws. The failure of a Trustee to adhere to the service and performance criteria or the conflicts of interest policy adopted by the Board of Trustees from time to time shall constitute a basis for removal from the Board of Trustees.

Section 11. The Chair shall develop and deliver to the Board of Trustees, not later than 30 days prior to the beginning of each Fiscal Year, a schedule of proposed regular meetings of the Board of Trustees for such Fiscal Year (including the date, time and place for each such meeting), which shall include at least four regular meetings in total, one of which should be scheduled to occur during the 30 day period prior to the beginning of such Fiscal Year, and the Board of Trustees shall convene for regular meetings in accordance with the foregoing schedule.

Section 12. Special meetings of the Board of Trustees may be called by or at

the direction of the Chair, any Vice Chair, or upon the written request of one-third of the Trustees, such meetings to be held at such time and place as is designated in the notice thereof.

Section 13. Except as otherwise provided herein, notice of the date, time and place of any regular or special meeting of the Board of Trustees will be delivered by the Secretary or a designee of the Secretary in writing sent by regular or electronic mail or by telephone or other oral communication at least five days prior to the date of the meeting, provided that the giving of any oral notice will be recorded in the minutes of the meeting by statement of the person giving such notice. The notice of special meetings shall state the purpose thereof. Any member of the Board of Trustees may waive notice of any meeting.

Section 14. At least one fourth of the elected members of the Board of Trustees (exclusive, however, of any *ex officio* members) will constitute a quorum for the transaction of business at any meeting of the Board of Trustees, unless otherwise specifically provided by law or these bylaws. Attendance will be either in person or by telephonic connection whereby the distant member(s) and those members present in person all hear and may speak to and be heard on the matters raised therein.

Section 15. The act of the majority of the voting members of the Board of Trustees present at meeting at which a quorum is present will be the act of the Board of Trustees, unless the act of a greater number is required by law or these bylaws. No action of the Board of Trustees will be valid unless taken at a meeting at which a quorum is present, except that any action which may be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all voting members of the Board of Trustees (exclusive, however, of any *ex officio* members). A Trustee may not vote by proxy.

Section 16. Any member of the Board of Trustees may resign from the Board of Trustees at any time by giving written notice to the Chair, any Vice Chair or the Secretary and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. Any member of the Board of Trustees, except for the County and City appointments, may be removed from office at any time, with or without cause, by a majority vote of the Board of Trustees, other than those appointed pursuant to Sections 5 and 6 of Article IV.

ARTICLE V. COMMITTEES

Section 1. The Board of Trustees shall have an Executive Committee comprised of up to 16 members, two of whom shall consist of the County Mayor's appointments, who are the individuals serving as the County's Chief Financial Officer and the Director of the Department of Cultural Affairs, and up to 14 members of the Board of Trustees other than those appointed pursuant to Article VI, Sections 5 and 6, who shall be selected by a majority vote of the Board of Trustees. The Executive Committee has the primary governing authority for the Museum and as such, is

delegated all the authority of the Board of Trustees in the management of the Museum when the Board of Trustees is not in session, except as otherwise provided in these bylaws or as such authority is limited by resolution of the Board of Trustees. The delegated authority and responsibilities shall include, without limitation, the following:

- (a) the development and implementation of an annual business plan and budget for the Museum and the assessment from time to time of the performance of the Museum as measured by the annual business plan and budget;
- (b) the review and approval of the operating procedures, financial controls and other policies and guidelines with respect to the business and administrative functions of the Museum;
- (c) the development and oversight of policy for all personnel of the Museum, including issues related to retention, promotion, compensation and benefits (provided, however, that any decisions regarding the retention of the President of the Museum shall be subject to the approval of the Board of Trustees);
- (d) the approval of any material agreements or other contractual obligations of the Museum;
- (e) the development and implementation of any capital campaigns and other measures intended to secure funding for the Museum, including, without limitation, all matters related to the annual gala or other ancillary or comparable social or fund-raising activities; and
- (f) the development and implementation of an annual business plan and budget regarding the fundraising, financing, development, construction and operation of a new facility or science center for the Museum.

Section 2. The Executive Committee or the Board of Trustees may establish from time to time one or more standing or special committees to assist and advise the Board of Trustees, the Executive Committee and the President and other executive officers of the Museum with respect to their respective functions and obligations. In addition to the Executive Committee, the standing committees shall include a finance and audit committee and a board development and nominating committee. The Executive Committee or the Board of Trustees shall determine the authority, duties and responsibilities of each such standing or special committee, the composition and chair of each such committee and the term of each member of the committee. Any member of a committee may resign from the committee at any time by giving written notice to the Chair or the Secretary and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. Any member of a committee, other than the County Mayor's appointments, who are the individuals serving as the County's Chief Financial Officer and the Director of the Department of Cultural Affairs, may be removed from office at any time, with or without cause, by the Executive Committee or majority vote of those members of the Board of Trustees other

than those appointed pursuant to Article IV, Sections 5 and 6; except, however, any member of the Executive Committee, other than the County Mayor's appointments, who are the individuals serving as the County's Chief Financial Officer and the Director of the Department of Cultural Affairs, may be removed from office only upon a majority vote of those members of the Board of Trustees other than those appointed pursuant to Article IV, Sections 5 and 6. Any vacancies with respect to any such committee (including the chair of any such committee) may be filled by appointment by the Executive Committee. All committee chairs must be members of the Board of Trustees; non-chair members of any such committee are not required to be members of the Board of Trustees.

Section 3. The Chair of the Board of Trustees and the President of the Museum shall each be an *ex officio* member of all committees, volunteer groups and affiliate groups, unless otherwise specified by the Board of Trustees.

Section 4. A meeting of any committee may be called at any time by the chair of the committee or the Chair of the Board of Trustees. Committee meetings will be held at the Museum or at such place as the person giving notice may designate. Reasonable notice of the time and place of any meeting of a committee will be in writing sent by regular or electronic mail or by telephone or other oral communication, provided that the giving of any oral notice will be recorded in the minutes of the meeting by statement of the person giving such notice. The notice need not specify the business to be transacted at, nor the purpose of, any meeting. A written waiver of notice signed by any committee member, whether before or after any meeting, will be equivalent to the giving of timely notice to said committee member. Attendance of a committee member at a meeting will constitute a waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when a committee member attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

Section 5. A majority of the number of committee members entitled to vote will constitute a quorum for the transaction of business at any committee meeting. Attendance will be either in person or by telephonic communication whereby the distant committee member(s) and those committee members present in person all hear and may speak to and be heard on the matters raised therein. A majority of the committee members present whether or not a quorum exists, may adjourn any meeting of a committee to another time and place. Notice of any such adjourned meeting will be given to all committee members, whether or not present at the time of the adjournment. Each committee member who is present at any committee meeting, whether in person or by telephonic communication, will be entitled to one vote on each matter submitted to a vote of the committee members. A committee member may not vote by proxy.

Section 6. All actions of any committee will be recorded in minutes, if taken during a meeting, or in an action by written consent if taken without a meeting, will be made available upon request to any Trustee, and will be filed with the office of the

President of the Museum for maintenance in the Museum's records.

**ARTICLE VI. COMMUNITY LEADERSHIP BOARD;
SCIENCE ADVISORY BOARD**

Section 1. The Board of Trustees does hereby establish a Community Leadership Board (the "Leadership Board") and a Science Advisory Board (the "Science Board;" and together with the Leadership Board, the "Advisory Boards") to assist and advise the Board of Trustees and the President and other executive officers of the Museum with respect to their respective functions and obligations and/or as any of them may from time to time determine. Except as otherwise provided in this Article VI, the Board of Trustees shall determine the authority, duties and responsibilities of each Advisory Board, the composition and chair of each Advisory Board and the term of each member of each Advisory Board.

Section 2. The Leadership Board shall be comprised of not less than five members and not more than 35 members, 22 of whom shall be appointed by the Board of Trustees and 13 of whom shall be appointed by the Board of County Commissioners.

Section 3. The Science Board shall be comprised of not less than five members and not more than 35 members, each of whom shall be appointed by the Board of Trustees (and each of whom shall be individuals with significant credentials in the field of science and technology).

Section 4. Each of the 13 County Commissioners of the Miami-Dade County Board of County Commissioners shall make an appointment to the Leadership Board. Each of these members shall serve a term concurrent with the term of office of the appointing County Commissioner and may not be elected officials. For each appointment by a County Commissioner, the Board may advise the County Commissioner of any special characteristics or professional skills that it is seeking in order to strengthen and balance the Leadership Board. In addition, the Board may suggest potential nominees for consideration by the County Commissioner. After consideration of these recommendations, which are advisory only and which the County Commissioner shall not be required to follow, the County Commissioner will select an appointee that, in his or her best judgment, will best serve the interests of the Museum and the County. Upon the expiration of the term of a member appointed by a County Commissioner, that member will remain on the Leadership Board until such time as he or she is replaced or is re-appointed by the succeeding County Commissioner.

Section 5. The Board of Trustees shall adopt from time to time service and performance criteria with respect to members of each Advisory Group, including, without limitation, requirements with respect to service on committees of the Advisory Group, attendance at meetings of the Advisory Group and committees of the Advisory Group, which criteria as adopted from time to time will be deemed part of, and attached to, these bylaws. The Board of Trustees shall adopt from time to time a conflicts of interest policy with respect to members of each Advisory Group, which policy as adopted from time to

time will be deemed part of, and attached to, these bylaws. The failure of a member of an Advisory Group to adhere to the service and performance criteria or the conflicts of interest policy adopted by the Board of Trustees from time to time shall constitute a basis for removal from the Advisory Group.

Section 6. Any member of an Advisory Board may resign from the Advisory Board at any time by giving written notice to the Chair or the Secretary and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. Any member of an Advisory Board may be removed from office at any time, with or without cause, by the Board of Trustees, except for the members of the Leadership Board appointed by County Commissioners. Any vacancies with respect to any such Advisory Board (including the chair of any such Advisory Board) may be filled by appointment by the Board of Trustees.

Section 7. The Chair of the Board of Trustees and the President of the Museum shall each be an *ex officio* member of each Advisory Board, unless otherwise specified by the Board of Trustees.

Section 8. A meeting of an Advisory Board may be called at any time by the chair of the Advisory Board or the Chair of the Board of Trustees. Advisory Board meetings will be held at the Museum or at such place as the person giving notice may designate. Reasonable notice of the time and place of any meeting of an Advisory Board will be in writing sent by regular or electronic mail or by telephone or other oral communication, provided that the giving of any oral notice will be recorded in the minutes of the meeting by statement of the person giving such notice. The notice need not specify the business to be transacted at, nor the purpose of, any meeting. A written waiver of notice signed by any Advisory Board member, whether before or after any meeting, will be equivalent to the giving of timely notice to said Advisory Board member. Attendance of an Advisory Board member at a meeting will constitute a waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when an Advisory Board member attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

Section 9. A majority of the number of Advisory Board members will constitute a quorum for the transaction of business at any Advisory Board meeting. Attendance will be either in person or by telephonic communication whereby the distant Advisory Board member(s) and those Advisory Board members present in person all hear and may speak to and be heard on the matters raised therein. A majority of the Advisory Board members present whether or not a quorum exists, may adjourn any meeting of an Advisory Board to another time and place. Notice of any such adjourned meeting will be given to all Advisory Board members, whether or not present at the time of the adjournment. Each Advisory Board member who is present at any Advisory Board meeting, whether in person or by telephonic communication, will be entitled to one vote on each matter submitted to a vote of the Advisory Board members. An Advisory Board member may not vote by proxy.

Section 10. All actions of any Advisory Board will be recorded in minutes, if taken during a meeting, or in an action by written consent if taken without a meeting, will be made available upon request to any Trustee, and will be filed with the office of the President of the Museum for maintenance in the Museum's records.

Section 11. The Chair or the Executive Committee shall designate from time to time the members of the board of directors of Museum of Science Endowment Fund, Inc. (each of whom shall be members of the Board of Trustees and shall include the chair of the finance and audit committee and the individuals serving as the County's Chief Financial Officer and the Director of the Department of Cultural Affairs), together with the President of the Museum as an *ex officio* member and the other *ex officio* members described in Article 8 of the Articles of Incorporation of Museum of Science Endowment Fund, Inc.

ARTICLE VII. OFFICERS

Section 1. The Museum shall have a Chair, one or more Vice Chairs, a Secretary, a Treasurer and such other officers as the Board of Trustees from time to time may determine.

Section 2. The Chair and Vice Chairs shall be members of, and be elected by, the Board of Trustees at the regular meeting of the Trustees held immediately prior to the end of each Fiscal Year. Vacancies or any newly created positions shall be filled by election of the Trustees at any regular or special meeting of the Trustees, provided that notice thereof shall have been given at least 10 days prior thereto. This notice requirement may be waived by affirmative vote of two-thirds of the Trustees present at any meeting.

Section 3. The Chair shall preside over all meetings of the Board of Trustees and the Executive Committee, preserve order, appoint all committees, task forces and other groups and perform such other duties as the Board of Trustees may require. The Chair shall represent the Museum at all public functions and serve as an *ex officio* member of all committees, task forces and other groups, except as otherwise provided in these bylaws.

Section 4. The Vice Chair shall perform the duties of the Chair in the Chair's absence and shall perform such other duties as the Chair may designate.

Section 5. The Secretary shall keep, or cause to be kept, correct minutes and records of attendance of all meetings of the Board of Trustees and the Executive Committee.

Section 6. The Treasurer shall be the chief fiscal officer of the Museum; arrange for the orderly accounting of all monies received and disbursed by the Museum; keep the Board of Trustees informed of fiscal matters and adherence to the Museum's annual budget by the use of regular financial statements and such other information as may be called for; and arrange for the Board of Trustees to retain an accounting firm (whose

appointment shall be confirmed by the Board of Trustees) to conduct an annual audit of the Museum's financial records.

Section 7. Any officer may be removed from office by vote of two-thirds of the Board of Trustees present at any meeting.

Section 8. Notwithstanding anything herein to the contrary, the Board of Trustees may, from time to time, authorize that the office and duties of Chair be shared by one or more members of the Board of Trustees and elect and appoint one or more members of the Board of Trustees to serve in such capacity. If the Board of Trustees designates that the office of Chair will or may be shared and elects more than one member of the Board of Trustees to serve in such capacity, either officer in such capacity, acting alone, will have the full authority and responsibility of such office as described in these Bylaws and each such member shall be bound by, and responsible for, the decisions of the other member sharing in such capacity (*provided, however*, if the members of the Board of Trustees sharing any such office disagree or otherwise take contrary positions on any matter that requires the decision, approval or consent of such office, the matter shall be referred to the Board of Trustees for resolution).

ARTICLE VIII. ADMINISTRATION

Section 1. The chief executive officer of the Museum shall be the President and/or the Chief Executive Officer, who shall be appointed by the Board of Trustees and the Mayor of Miami-Dade County.

Section 2. The President shall direct and control the administration and operation of the Museum in accordance with the directions and policies of, and shall report to and be governed by, the Board of Trustees and the Executive Committee.

Section 3. The President shall attend all meetings of the Museum members, the Board of Trustees and the Executive Committee (and may attend any meetings of any other standing or special committees of the Board of Trustees).

Section 4. The President shall submit to the Trustees at the annual meeting each year a report that reviews the work and progress of the Museum for the previous year. The President shall present, at any regular or special meeting of the Trustees, such other reports as the President may deem advisable or as any Trustee may require. The President may from time to time, with the consent of the Board of Trustees or the Executive Committee, designate and appoint a Chief Operating Officer, a Chief Financial Officer, one or more Vice Presidents and other executive officers of the Museum. The President shall cause the executive officers of the Museum to submit periodic financial and operating reports, at least monthly, to the Executive Committee.

ARTICLE IX. VOLUNTEER GROUPS; AFFILIATE GROUPS

The Board of Trustees may authorize from time to time the affiliation of the Museum with one or more volunteer groups or affiliate group and shall prescribe the

terms and conditions of the affiliation of the Museum with any such volunteer groups or affiliate groups.

ARTICLE X. FISCAL YEAR

The fiscal year of the Museum (the "Fiscal Year") shall begin on October 1 of each year and shall end on September 30 of the following year.

ARTICLE XI. COMPENSATION

No Trustee or officer of the Board of Trustees shall receive compensation for services to the Museum. Trustees and officers may be reimbursed for reasonable and necessary expenditures incurred on behalf of the Museum and in accordance with its purpose and needs.

ARTICLE XII. LIMITATION ON EXPENDITURES

In no event shall the Trustees or officers or administrators of the Museum make any expenditures or engage in any activity inconsistent with the corporation's status as a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or as a corporation, contributions to which are deductible under the Internal Revenue Code of 1954, as amended.

ARTICLE XIII. BANK ACCOUNTS, CHECKS AND DRAFTS

All bank accounts of the Museum shall be authorized in writing by the Board of Trustees. All signatures required for such accounts shall be authorized in writing by the Board of Trustees. All checks, drafts and other orders for the payment of money out of the Museum, and all evidence of indebtedness of the Museum shall be executed on behalf of the Museum only in accordance with these procedures.

ARTICLE XIV. INDEMNIFICATION

The Museum hereby indemnifies any and all of its Trustees and officers and former Trustees and officers against any damages or expenses, including, without limitation, reasonable attorneys' fees, actually and necessarily incurred by them or any one or group of them in connection with the defense of any action, suit or proceeding in which they or any of them are made parties, or a party, by reason of being or having been Trustees or officers, except in relation to matters as to which any such Trustee or officer shall be adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct or breach of his or their fiduciary duty to the Museum or its members in the performance of his or their responsibilities, and to such matters as shall be settled by agreement predicated on the existence of such liability.

ARTICLE XV. REGISTERED AGENT

The registered agent of the corporation for purposes of service of legal process

shall be the President of the Museum.

ARTICLE XVI. PARLIAMENTARY AUTHORITY

The rules of procedure of the Board of Trustees and of all other committees and groups of the Museum may be established by majority vote of such group. In the absence thereof, the rules contained in the current "Robert's Rules of Order" shall govern all meetings when they do not conflict with these bylaws or with the articles of incorporation of the Museum.

ARTICLE XVII. AMENDMENTS

Amendments to these bylaws may be made by a two-thirds vote of the Board of Trustees present at any regular or special meeting, provided that the proposed amendments shall have been sent to each voting Trustee at least 10 days prior to any such meeting. Amendments to any of (1) Article IV, Sections 5, 6 and 10, (2) Article IV, Sections 7 and 9, as to the provisions related to the County and City Commission appointments, (3) Article V, Sections 1 and 2, as to the provisions related to the County's Chief Financial Officer and the Director of the Department of Cultural Affairs, (4) Article VI, Sections 4 and 6, (5) Article VII, Section 1, and (6) this Article XVII must be approved by the County Mayor and by a two-thirds vote of the Miami-Dade County Board of County Commissioners.

The County is proposing to extend to the Museum an additional \$45 million grant (the "County Grant") to support the development and construction of the new science museum facility at Museum Park, which grant is expected to fund on or about April 18, 2016. Notwithstanding anything herein to the contrary, each of the provisions in these bylaws related to the powers and rights of the County and the City (including Article VI, Sections 3, 5, 6 and 7, Article V, Sections 1 and 2, Article VI, Section 4, Article VIII, Section 1 and this Article XVII) shall not have any force or effect unless and until the funding date of the County Grant.

Unanimously approved by the Board of Trustees pursuant to unanimous written consent as of the date first above written.

EXHIBIT F - OFFICERS OF THE BOARD OF TRUSTEES

Cesar L. Alvarez Chairman

Richard Pfenniger Vice Chairman

EXHIBIT G - CONSENT OF BOARD OF TRUSTEES

MUSEUM OF SCIENCE INC.

CONSENT OF BOARD OF TRUSTEES

(as of March 8, 2016)

The undersigned, being the sole members of the Board of Trustees of Museum of Science Inc., d/b/a Patricia and Phillip Frost Museum of Science, a Florida not-for-profit corporation (the "Museum"), hereby consent to the following actions taken:

WHEREAS, the Museum is negotiating the terms and conditions of a \$45 million grant from Miami-Dade County (the "County") to the Museum (the "County Grant"), together with a senior secured loan from one or more financial institutions of up to \$40 million (the "Bank Financing"); and, together with the County Grant, the "Project Financing"), to complete the funding of the construction and development of the new science museum project at Museum Park (the "Project");

WHEREAS, as a condition to the closing and funding of the County Grant, the Museum will be required to satisfy certain conditions precedent listed on Exhibit A attached hereto (the "Grant CPs"), including the adoption of certain modifications to its governance structure and bylaws, as well certain affirmative and negative covenants regarding annual operating support from the County and its ongoing capital campaign in regards to the Project, and the County has requested the Board of Trustees indicate their respective approval and authorization of the conditions prior to the initiation of the formal processes required to deliver the County Grant;

WHEREAS, the Project Financing is expected to close and fund in April 2016, and the Museum has secured and delivered to the County written commitments from its principal donors to provide the Museum in a timely manner with \$11.0 million of funds required to continue construction and operations for the period commencing January 1, 2016 through April 30, 2016 (which funds are in satisfaction of item 7 of the Grant CPs), and which funds are in addition to the contributions of donors otherwise scheduled to occur during the foregoing period and are to be repaid from the proceeds of the Bank Financing;

WHEREAS, the Museum has received a letter from its Project Manager for the Project giving their professional opinion with respect to the remaining costs to finish the Project ("Remaining Costs") attached as Exhibit B;

WHEREAS, the principal donors pursuant to a letter dated February 18, 2016 have agreed to loan the Museum up to \$4.25 million as a reserve in case the cost of the Project exceeds the Remaining Costs (the "Frost Reserve Letter") attached as Exhibit C";

NOW, THEREFORE, BE IT

RESOLVED, that the President of the Museum and the Chair(s) or any Vice Chair of the Board of Trustees be, and each of them hereby is, authorized, empowered and directed to negotiate, execute and deliver on behalf of the Museum the grant agreement between the County and the Museum in respect of the County Grant (the "Grant Agreement"), which Grant Agreement shall include the Grant CPs, and to negotiate, execute and deliver on behalf of the Museum any ancillary documents referred to or required by the Grant Agreement in order to effectuate the transactions contemplated therein, in each case upon the terms and conditions as

the President of the Museum and the Chair(s) or any Vice Chair deem necessary and appropriate (as conclusively evidenced by the taking of such action, engaging in such negotiations or the execution and delivery of such instruments and documents, as the case may be); and be it further

RESOLVED, that the President of the Museum and the Chair(s) or any Vice Chair of the Board of Trustees be, and each of them hereby is, authorized, empowered and directed to negotiate, execute and deliver on behalf of the Museum the loan agreement, promissory note, security and other collateral documents and any and all other instruments, agreements, certificates and other documents in respect of the Bank Financing upon the terms and conditions summarized in the term sheet attached hereto as Exhibit D (collectively, the "Loan Documents"), and to negotiate, execute and deliver on behalf of the Museum any ancillary documents referred to or required by the Loan Documents in order to effectuate the transactions contemplated therein, in each case upon the terms and conditions as the President of the Museum and the Chair(s) or any Vice Chair deem necessary and appropriate (as conclusively evidenced by the taking of such action, engaging in such negotiations or the execution and delivery of such instruments and documents, as the case may be); and be it further

RESOLVED, that the requirement specified in Article XVII of the Bylaws that any amendment to the Bylaws be delivered to each voting member of the Board at least 10 days prior to the date of any meeting to consider the amendment be, and it hereby is, waived in respect of the amendment referenced in the following resolution; and be it further

RESOLVED, that the bylaws of the Museum (the "Bylaws") be, and hereby are, amended and restated to the form attached hereto as Exhibit E to effect the following principal modifications, together with the other conforming or ancillary changes that are consistent with, and necessary to implement these modifications (the adoption of which Bylaws are in satisfaction of item 8 of the Grant CPs):

- (1) The Board of Trustees shall be comprised of not less than 15 members and not more than 30 members;
- (2) From and after the funding date of the County Grant (the "Grant Funding Date"):
 - a. the County shall have the right to appoint or designate five members of the Board of Trustees – one member will be the County Commissioner representing the County Commission District embracing the Museum, two members will be appointed at-large by the Board of County Commissioners and two members will be appointed by the County Mayor (one of whom shall be the individual serving as the County's Chief Financial Officer and the other will be the individual serving as the Director of the Department of Cultural Affairs);
 - b. the City of Miami (the "City") shall have the right to appoint or designate three members of the Board of Trustees – one member shall be the City Commissioner representing the City Commission District embracing the Museum and two members shall be appointed at-large by the City Commission;

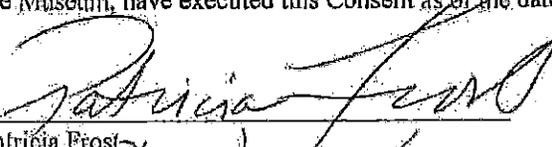
- c. the County appointees who are the individuals serving as the County's Chief Financial Officer and the Director of the Department of Cultural Affairs shall also be members of the Executive Committee;
- d. the County and City appointees to the Board of Trustees and/or the Executive Committee may only be removed or replaced by the appointing party, *i.e.*, by the County or the City, as the case may be;
- e. the County appointees who are the individuals serving as the County's Chief Financial Officer and the Director of Department of Cultural Affairs shall be appointed to the board of directors of Museum of Science Endowment Fund, Inc.;
- f. the chief executive officer of the Museum shall be jointly appointed by the Board of Trustees and the County Mayor; and
- g. each of the thirteen County Commissioners of the Miami-Dade County Board of County Commissioners shall make an appointment to the Museum's Community Leadership Board; and be it further

RESOLVED, that, from and after the date hereof, the officers of the Board of Trustees shall be comprised of the individuals listed on Exhibit F attached hereto; and be it further

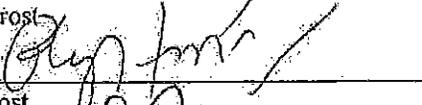
RESOLVED, that, from and after the Grant Funding Date and until and through the period of time required for the County to complete payments to retire the debt, which is expected to be not more than 20 years, the Museum will operate with a balanced budget and not solicit from the County annual or other operational subsidies or support (it being understood and hereby agreed that the County Grant represents the approximate present value of annual operating support otherwise projected to be provided by the County to the Museum for the period of time required for the County to complete payments to retire the debt, which has been used to fund the County Grant)(the adoption of which Resolution is in satisfaction of item 9 of the Grant CPs); and be it further

RESOLVED, that, from and after the Grant Funding Date, (1) the net proceeds of any future material pledges to the capital campaign of the Museum (including those offered in exchange for naming and other branding rights for the principal elements of the Project, but excluding any amounts that are restricted by the donor for specific purposes), and (2) the net proceeds of any arbitration or litigation awards or settlements in favor of the Museum in respect of the Project (after the payment by the Museum of related or ancillary claims to subcontractors and/or reasonable legal and consulting fees incurred by or charged to the Museum), shall be deposited and maintained by the Museum in an endowment or other appropriately restricted account and applied (both principal and proceeds derived from the principal) to annual operating and programming costs and expenses, including the funding of an interest reserve and advanced principal repayments required by the Bank Financing, if any (the adoption of which Resolution is in satisfaction of item 10 of the Grant CPs) and repayment of the loans made by the principal donors pursuant to the Frost Reserve Letter.

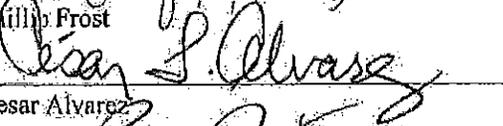
IN WITNESS WHEREOF, the undersigned, being the sole members of the Board of Trustees of the Museum, have executed this Consent as of the date first above written.



Patricia Frost



Phillip Frost



Cesar Alvarez



Richard Pfennigel

EXHIBIT H - UPDATED OPERATING FORECAST
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**Frost Science
Operating Forecast
Updated January 20, 2016**

	Original Forecast Stable Year *	Revised Forecast Stable Year
Sources of Revenue		
Earned Revenue		
Admissions and Memberships	\$ 10,676,275	\$ 10,676,275
Retail, gross	1,903,125	1,903,125
Food Service, net	887,620	887,620
Tuition/Camps	400,000	400,000
Events/Rentals, net	1,165,600	1,165,600
Parking, net	386,683	386,683
Miscellaneous	362,500	362,500
Subtotal Earned Revenue	\$ 15,781,803	\$ 15,781,803
Non-Earned Revenue		
Program and Education Grants	\$ 2,000,000	\$ 2,000,000
Contributions	5,000,000	5,000,000
County Operating Support	2,500,000	-
Local and State Grants	-	500,000
Subtotal Non-Earned Revenue	\$ 9,500,000	\$ 7,500,000
Total Revenue	\$ 25,281,803	\$ 23,281,803
Operating Expenses		
Payroll and Benefits	\$ 12,313,643	\$ 12,313,643
Exhibits and Programs	2,235,550	2,235,550
Occupancy Costs	1,823,962	1,823,962
COGS	1,046,719	1,046,719
Advertising and Promotion	1,087,500	1,087,500
Professional Services	467,813	467,813
General and Administrative	1,585,376	1,585,376
Capital Reserve	616,817	616,817
Total Operating Expenses	\$ 21,177,380	\$ 21,177,380
Net Income Before Interest and Depreciation	\$ 4,104,423	\$ 2,104,423

* Source: Consultecon, Inc. New Frost Science Market and Operating Potential Report

EXHIBIT 1 - REVISED PROJECT DRAW SCHEDULE

	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	TOTAL
Construction Costs Remaining													
Skanska and Subs	4,000,000	2,750,791	6,896,289	9,239,396	10,089,094	9,754,364	8,544,188	6,757,546	4,733,420	2,750,791	1,128,640	195,481	66,850,000
FMOS Costs Museum Drive Completion							83,333	83,333	83,333				250,000
Additional Construction Contingency	4,000,000	2,750,791	6,896,289	9,239,396	10,089,094	9,754,364	8,527,521	6,850,879	4,816,753	2,750,791	1,128,640	195,481	67,100,000
TOTAL CONSTRUCTION COSTS REMAINING	4,000,000	2,750,791	6,896,289	9,239,396	10,089,094	9,754,364	8,627,521	6,850,879	4,816,753	2,750,791	1,128,640	195,481	67,100,000

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MEMORANDUM

(Revised)

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

DATE: April 5, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(C)(1)

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. 8(C)(1)

4-5-16

RESOLUTION NO. _____

RESOLUTION APPROVING TERMS OF AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE A GRANT AGREEMENT WITH THE MUSEUM OF SCIENCE, INC. IN THE AMOUNT OF \$45,000,000.00 TO BE FUNDED WITH PROCEEDS FROM THE SALE OF BONDS SECURED BY CONVENTION DEVELOPMENT TAX REVENUES TO BE USED FOR THE COMPLETION OF THE NEW SCIENCE MUSEUM AT MUSEUM PARK; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXERCISE ALL RIGHTS CONFERRED THEREIN; AND WAIVING PROVISIONS OF RESOLUTION NO. R-130-06

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying Mayor's memorandum, a copy of which is incorporated herein by this reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the terms of and authorizes the County Mayor or Mayor's designee to execute the grant agreement with the Museum of Science, Inc. ("Museum"), in substantially the form attached to the Mayor's memorandum, in the amount of \$45,000,000.00 to the Museum to be funded with proceeds from the sale of bonds secured by Convention Development Tax revenues and to be used by the Museum for the completion of the new Science Museum at Museum Park. This Board further waives the provisions of Resolution No. R-130-06 which require that a contract and authority to execute such contract is completely negotiated, in final form, and executed by all non-County parties prior to placement on the County Commission or committee agenda for approval by the Board.

The foregoing resolution 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 5th day of April, 2016. 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.

MURP

Monica Rizo Perez