

MEMORANDUM

Agenda Item No. 8(C)(3)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

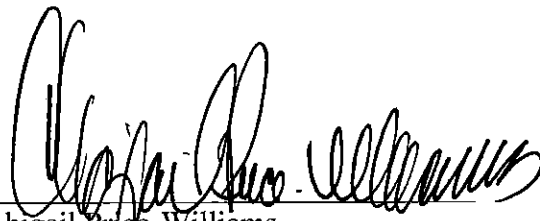
DATE: January 22, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving the
First Amended and Restated
Operating and Management
Agreement between
Miami-Dade County and
Vizcaya Museum and Gardens
Trust, Inc.; and authorizing the
County Mayor to execute the
agreement and to exercise all
provisions contained therein

Resolution No. R-32-20

The accompanying resolution was prepared by the Cultural Affairs Department and placed on the agenda at the request of Prime Sponsor Senator Javier D. Souto, and Co-Sponsors Commissioner Daniella Levine Cava, Commissioner Sally A. Heyman and Commissioner Xavier L. Suarez.


Abigail Price-Williams
County Attorney

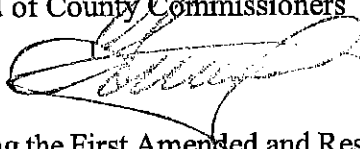
APW/lmp

Memorandum



Date: January 22, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Resolution Approving the First Amended and Restated Operating and Management Agreement between Miami-Dade County and the Vizcaya Museum and Gardens Trust, Inc.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution for the First Amended and Restated Operating Management Agreement (Amended Agreement) between Miami-Dade County (County) and the Vizcaya Museum and Gardens Trust, Inc. (Trust), a Florida not-for-profit corporation. This Amended Agreement includes revisions that address the roles and responsibilities of the County and the Trust in the case of natural and other defined disasters affecting Vizcaya Museum and Gardens (Vizcaya).

Scope

Vizcaya is located in District 7, represented by Commissioner Xavier L. Suarez, and serves all Miami-Dade County residents and visitors. The proposed agenda item will have a countywide impact.

Fiscal Impact / Funding Source

The Amended Amendment includes provisions that the County, as the owner of Vizcaya, shall remain legally responsible for the costs of emergency protective measures, debris removal and restoration of buildings and equipment in the event that the Facility or personal property that is owned by the County and contained within the Facility is impacted by a defined disaster, subject to the availability and appropriation of funds as determined by the County. The County shall not, however, be responsible for the repair or replacement of personal property owned by the Trust. The Amended Agreement is intended to address disaster recovery costs that may not be covered by insurance and maximizes the eligibility of these costs for reimbursement by the Federal Emergency Management Agency (FEMA) or another applicable governmental agency.

Track Record/Monitoring

The County and the Trust are jointly committed to the success and operational viability of the operations of Vizcaya. 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 Amended Agreement with the Trust. The Trust continues to fulfill its obligations and reports to the County on its compliance with the requirements of the Operating and Management Agreement (Agreement).

Background

The Board approved the Operating and Management Agreement by Ordinance No.17-42 on July 6, 2017. This action authorized the Trust, a non-profit organization, to manage Vizcaya on behalf

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of the County under the terms and conditions of the Agreement. This operating structure built upon the County's successful track record of partnering with non-profit organizations for the management of its cultural facilities. It also reflected best practices for the governance of this National Historic Landmark and accredited museum.

It should be noted that Section 3 of Ordinance No. 17-42 states,

"This Board may take any subsequent action in relation to the Operating Agreement, including but not limited to terminating, extending, amending, or otherwise altering the terms of the Operating Agreement, by resolution of this Board."

On September 10, 2017, Miami-Dade County experienced the effects of Hurricane Irma. At the time of the impact of Hurricane Irma, Vizcaya was still operated by the County and the costs of recovery from damages incurred to the property are the responsibility of the County. The County is working cooperatively with the Trust to make the hurricane-related repairs necessary to restore Vizcaya.

Hurricane Irma precipitated the need to clarify the roles and responsibilities of the County and the Trust under the current non-profit governance structure.

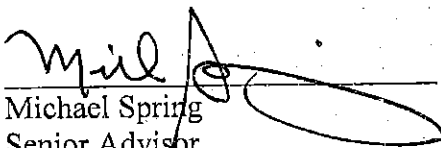
The proposed Amended Agreement is predicated on the facts that the County is the owner of the property and the Trust is empowered under the Agreement to make capital improvements to Vizcaya. The proposed Amended Agreement clarifies these responsibilities by providing that the County will be responsible for covering the costs and the Trust will be responsible for undertaking emergency protective measures, debris removal and restoration of buildings and equipment for defined disasters. It should be noted that after consultation with FEMA, this approach is being recommended in order to maximize the County's eligibility for reimbursement of the costs of addressing these disaster-related preparations, repairs and recovery.

The Amended Agreement also accomplishes the following:

- Section B.3.9. is amended to enable the Trust to access County goods at the sole discretion of the County;
- Section B.4.3 is amended to provide the Mayor or the Mayor's designee with the authority to approve revisions to Vizcaya's mission statement; and
- Section B.5.3. is amended to cover the roles and responsibilities of the County and the Trust in the settlement of insurance claims in order to maximize insurance proceeds and to provide requisite oversight for the use of insurance proceeds.

The Amended Agreement was approved by the Trust's Board of Directors on November 21, 2019.

Attachment 1: First Amended and Restated Operating Management Agreement


Michael Spring
Senior Advisor

**FIRST AMENDED AND RESTATED
OPERATING AND MANAGEMENT AGREEMENT BETWEEN
MIAMI-DADE COUNTY
AND
VIZCAYA MUSEUM AND GARDENS TRUST, INC.**

This First Amended and Restated Operating and Management Agreement (the "Agreement"), is entered into this ____ day of _____, 2020, by and between MIAMI-DADE COUNTY, FLORIDA (the "County"), a political subdivision of the State of Florida, and VIZCAYA MUSEUM AND GARDENS TRUST, INC., a not-for-profit Florida corporation, (the "Corporation").

WITNESSETH

WHEREAS, pursuant to Ordinance No. 17-42 approved on July 6, 2017 by the Board of County Commissioners ("BCC"), the BCC and the Corporation entered into the original Operating and Management Agreement ("Original Agreement") to establish a public-private partnership, whereby the County retains sole ownership of the grounds, buildings and art collections of Vizcaya Museum and Gardens (Vizcaya), but its management and operations, including personnel, are overseen by a single, not-for-profit organization for the enhancement of Vizcaya and for benefit of Miami-Dade residents and visitors; and

WHEREAS, Hurricane Irma precipitated the need to clarify the roles and responsibilities of the County and the Corporation under the current non-profit governance structure for emergency protective measures, debris removal and restoration of buildings and equipment in the event that Vizcaya or personal property that is owned by the County and contained within the Vizcaya is impacted by a defined disaster; and

WHEREAS, the Agreement is revised to address disaster recovery costs that may not be covered by insurance and maximizes the eligibility of these costs for reimbursement by the Federal Emergency Management Agency (FEMA) or another applicable governmental agency; and

WHEREAS, the Agreement also is revised to enable the Corporation to access County goods at the sole discretion of the County and to cover the roles and responsibilities of the County and the Corporation in the settlement of insurance claims in order to maximize insurance proceeds and to provide requisite oversight for the use of insurance proceeds; and

WHEREAS, the Board of Directors of the Corporation ("Corporation's Board") approved this Agreement at its duly noticed public meeting of November 21, 2019; and

WHEREAS, the parties agree that the Agreement is hereby amended as follows¹:

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions remain in effect and remain unchanged.

A. GENERAL TERMS

A.1. PARTIES.

The parties to this Agreement are the County and the Corporation. There are no intended or unintended third-party beneficiaries to this Agreement. The Corporation is formed and governed in accordance with its Articles of Incorporation, which Articles of Incorporation are attached hereto, made a part hereof, and are approved by both parties.

A.2. SCOPE OF AGREEMENT AND DESIGNATED PROPERTY.

This Agreement shall encompass all matters relating to the services to be provided and the obligations to be performed by the Corporation to the County and by the County to the Corporation in connection with the operation and management of the facilities and property owned by the County and known and designated as Vizcaya ("Facility").

The Facility is owned and shall continue to be owned solely by the County and includes:

1. That certain real property acquired by the County on November 1, 1952 by Warranty Deed, recorded in the public records of Miami-Dade County at Book 3673, Pages 64-69 (main house and surrounding gardens), subject to certain restrictive covenants;
2. That certain real property acquired by the County on November 9, 1955 by Warranty Deed, recorded in the public records of Miami-Dade County at Book 4193, Pages 345-351 (Vizcaya Farm Village and surrounding property), subject to certain restrictive covenants;
3. That certain personal property and art objects located in 1952 in the main residential building of Vizcaya, James Deering Estate and subsequently acquired by the County;
4. Those additional art objects accessioned into Vizcaya's collections thereafter; and
5. Any County-owned intellectual property in existence at the time of this Agreement.

Such operation of the Facility may include the Corporation's management of off-site activities, including, but not limited to, off-site collections storage, programming and digital resources.

A.3. TERM.

The initial term of this Agreement shall be twenty (20) years from the date of the effective date of the BCC resolution or ordinance approving this Agreement. The County has the option, in its sole and absolute discretion, to extend the term of this Agreement for two additional terms of twenty (20) years each. Such extensions shall happen automatically unless one party provides written notice to the other of its intent not to renew at least twelve (12) months prior to the expiration of the initial and renewal terms. The County's decision not to renew the

Agreement must be approved by a resolution of the BCC. The Corporation's decision not to renew the Agreement must be approved by a resolution of the Corporation's Board.

A.4. RECOMMENDATION AND APPROVAL.

Where this document provides for approval by the BCC or the County Mayor upon the recommendation of the Corporation, it shall be understood that the procedure shall be as follows. The Corporation shall formulate its recommendation at a duly noticed meeting. Upon consideration of that recommendation, the BCC or the County Mayor (as specified herein) may accept the recommendation, or may reject the recommendation and request that the Corporation furnish a new recommendation for it to consider. This process shall continue until the BCC or the County Mayor (as specified herein) approves a recommendation.

A.5. ASSIGNMENT, SUBLETTING AND DELEGATION.

The Corporation shall not assign or subcontract any portion of its obligations under this Agreement. The Corporation's Board shall not delegate its authority under this Agreement to any committee or to any other person or entity; provided that the Corporation may authorize individuals or committees to take actions, always subject to approval or ratification by the Corporation's Board and without relieving the Corporation's Board of full responsibility for any action taken by such individual or committee. The Corporation may permit use of the Facility by third parties through agreements and may charge reasonable, non-discriminatory fees for such use, so long as such uses and agreements support the mission of Vizcaya, do not prevent the operation of Vizcaya as a public cultural asset and do not extend beyond the term of this Agreement. Revenue-generating concession operations shall constitute a permissible use, including but not limited to operation of café and retail museum shop concessions at the Facility. Additionally, nothing herein shall restrict the ability of the Corporation to enter into contracts with vendors or contractors to perform services typically performed by such contractors such as security, planning, architecture, grounds and facility maintenance, educational programming, fine arts curation and such other services as are currently procured through third-party vendor agreements.

A.6. CLAIMS.

In the event of third party claims brought against either the County or the Corporation in connection with matters arising under this Agreement, each party will be responsible for its own acts and omissions. The Corporation agrees to indemnify the County for any loss which the County incurs as a result of the acts or omissions of the Corporation.

A.7. CORPORATION PERSONNEL.

No employee of the Corporation shall be an employee of the County. The Corporation shall abide by all applicable federal, state, and local mandates with regard to its employment practices. The Corporation must provide equal access and equal opportunity in employment and services, and shall not discriminate in hiring or against any employee 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, or status as victim of domestic violence, dating violence or stalking, 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.

A.8. DEBT.

At no time may the Corporation incur any aggregate outstanding debt in excess of 20% of the Corporation's annual operating budget without the consent of the County. The above limitations shall include lease-purchase agreements. The Facility and its contents owned by the County may not be used to secure any debt. County consent required under this section may be withheld for any reason within the sole discretion of the BCC. The Corporation will not incur any debt that requires funding support from the County's general fund.

B. OPERATIONS

B.1. CORPORATION BOARD COMPOSITION.

The Corporation shall be governed by the Corporation's Board, consisting of no fewer than thirteen (13) individuals. The Board, when it numbers thirteen (13) individuals, shall include one (1) ex-officio staff appointee of the County Mayor, at least six (6) members appointed by majority vote of the BCC and selected from a slate of candidates approved by the Corporation's Board (such slate of candidates to be resubmitted with additional candidate(s) in the event a majority of the members of the BCC does not vote to fill all vacancies from the candidate(s) initially submitted), and one (1) appointee of the Deering Family heirs as conveyed by the President of the Miami Corporation (or its successor); the remaining officers and members of the Corporation's Board shall be elected by majority vote of the Corporation's Board members. In the event that the Corporation's Board grows beyond thirteen (13) individuals, a majority of its members shall always be County appointees, including the appointee of the County Mayor and the appointees of the BCC through the method specified above. In the event that the size of the Board temporarily drops below thirteen (13) individuals or the number of County appointees temporarily drops below a majority of the total Board due to the separation of one or more members, the Corporation shall take expeditious steps in cooperation with the County to restore the majority of its members as County appointees, but shall be empowered to conduct its business in the interim. The Board shall not operate without a majority of County appointees for a period longer than six (6) months, unless the County Mayor and/or the BCC do not make appointments to fill their vacancies. The term of the County Mayor's representative shall coincide with the term of the appointing County Mayor, except that such appointed Board member shall be considered active unless and until the succeeding County Mayor makes an alternative appointment. The terms of individuals appointed by the BCC shall be three years, except that such appointed Board members shall be considered active unless and until the BCC approves an alternative appointment. All members of the Corporation's Board shall be elected or appointed based on their ability to advance the organization through their fundraising capabilities, non-profit governance experience, civic standing, knowledge of museums and/or public gardens, and personal skills, with the goal of having a Corporation's Board that represents the diversity of the Miami-Dade community and the varied needs of the Corporation.

B.2. CORPORATION PERSONNEL.

The Corporation shall select and supervise the Corporation ED, who shall be an employee of the Corporation. This individual shall be in charge of day-to-day operations and shall provide information or reports about Corporation activities to the County Mayor on request. The Corporation ED, on behalf of the Corporation, shall be the liaison with the County through the County Mayor or the County Mayor's designee. This will remain the official and primary means of communication between the respective parties to this Agreement, although the Corporation's Board reserves the right to communicate with the County through the County Mayor or the BCC.

The salary, employment terms and benefits of the Corporation ED shall be determined and paid by the Corporation, with the goal of maintaining appropriate industry standards and providing a competitive and equitable compensation package. The Corporation ED shall report directly to the Corporation's Board.

Under the supervision of the Corporation ED, the Corporation shall select, supervise, set the salary and other employment terms and benefits of, and directly pay all employees of the Corporation, with the goal of maintaining appropriate industry standards and competitive and equitable compensation packages. Employees of the Corporation shall not be employees of the County, nor shall they be considered agents of the County.

B.3. COUNTY OPERATIONAL RIGHTS AND RESPONSIBILITIES.

B.3.1. Ongoing County Ownership of the Facility. The County shall at all times be the sole owner of the Facility.

B.3.2. County Recognition of Corporation's Primacy as Facility Operator and Corporation. The County recognizes the Corporation as the primary operator and Corporation of Vizcaya Museum and Gardens. The County, moreover, supports the Corporation's goal of maintaining and perfecting Vizcaya Museum and Gardens' museum accreditation.

B.3.3. County's Optional Right to Fund Operations and Repairs. The County may, in its sole discretion, continue to provide funding, subject to the availability of funds as determined by the County, and annual appropriation by the BCC, for the Facility's operations and/or structural repairs and repairs to the Facility. It is understood that the County and the Corporation will cooperate to identify and secure additional public and private sector funding to address the Facility's capital needs. The Corporation hereby agrees that any such funding shall be entirely discretionary to the County, and further waives any right to make any claim, for damages or otherwise, due to the County's failure to provide funding to the Corporation pursuant to this paragraph. Repairs required as a result of acts of the Corporation's negligence shall be the responsibility of the Corporation. The Corporation shall provide the County with a recommended capital repair budget and necessary list of repairs as part of its annual budget submittal to the County as set forth in Section B.4.10 below.

B.3.4. County Inspections and Right of Entry. The County shall have the authority to make inspections of the Facility and its operations, along with any and all equipment, furnishings, fixtures, intellectual property, and/or improvements thereof to determine whether the Corporation is operating in compliance with the terms and provisions of this Agreement. The County shall have the right to enter the Facility to make emergency repairs, alterations, replacements, or improvements, as the County deems necessary, but the County assumes no obligation to make any such repairs, alterations, replacements, or improvements, other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with a minimum amount of inconvenience to the Corporation, and that the County will diligently proceed therewith to completion.

B.3.5. Ongoing County Use of Facility. In accordance with Miami-Dade County Rule 9.03 ("Rule 9.03"), Section 2-1 of the County Code and longstanding practice prior to this Agreement, and notwithstanding the provisions of Section B.4.9, the County shall retain the right to grant fee waivers and fee reductions for evening use of the Facility. This Agreement complies with the provisions of Rule 9.03, Section 2-1 at the time of its adoption, a copy of which is attached hereto as Exhibit 1; the parties agree that any subsequent revisions to Rule 9.03, Section 2-1 or its successor shall not expand County Use of the Facility beyond the provisions explicitly stated in this Agreement unless jointly agreed upon by the parties. The Parties acknowledge that Rule 9.03, Section 2-1, or its successor shall not apply to the Corporation's use of the Facility.

The County shall be granted up to two fee waivers and up to four fee reductions for evening use of the Facility per calendar year of this Agreement. However, the County may elect to grant fee reductions in lieu of either or both of the two fee waivers. Events for which the County requests no more than a 50% reduction in the Corporation's prevailing facility rental fees shall constitute a fee reduction as defined herein; any reduction in excess of 50% shall constitute a fee waiver as defined herein. Fee waivers and fee reductions shall be granted only to not-for-profit or governmental organizations, and not to private individuals or for-profit organizations. Fee waivers and reductions shall be granted only to major cultural, governmental, diplomatic, international, military or other events or conferences involving heads-of-state or other similar individuals that will enhance the visibility of the County as a place to live, work, visit or invest or otherwise benefit the entire citizenry of Miami-Dade County. In light of the Corporation's substantial responsibility to raise funds to support the Facility and to protect its capacity to do so, no fee waivers or reductions shall be granted for events whose purpose is, in whole or in part, by ticket purchase or as a sponsorship benefit, to raise funds for entities other than the Corporation.

All County-initiated Facility rental fee waivers and reductions shall comply with the Facility rental rules promulgated by the Corporation and designed to protect the Facility's historic integrity. All organizations that are granted fee waivers or fee reductions shall sign and be bound by the Corporation's Facility rental agreement, except for provisions pertaining to deposits and fees. In the event an organization materially violates said Facility rental rules, thereby jeopardizing the Corporation's management or preservation of the Facility, the Corporation

shall reserve the right to deny said entity's events in the future. Either the County or the party for whom it requests a waiver or reduction shall pay the Corporation for all direct expenses paid by the Corporation to third parties in conjunction with the event.

Such direct expenses are those necessary to be contracted through third parties and are above and beyond the regular operational costs of Vizcaya. These direct expenses may include, but shall not be limited to, independently contracted police, security or maintenance services and tent or other equipment rentals. The Corporation shall generally disclose such fees to the party receiving the facility reduction in advance of the event as part of the Facility rental agreement, addenda to it or in other written communications; however, the Corporation may need to incur such direct expenses without advance notice based on unanticipated changes in the event set up, number of visitors, weather or otherwise. The party for whom the County requests a waiver or reduction shall be responsible for paying the Corporation for direct expenses paid by the Corporation to third parties in conjunction with the event.

All fee waiver and fee reductions shall be processed through the Office of the County Mayor. The County Mayor shall be granted fee waivers upon written request or upon majority vote of the BCC. When initiating a fee waiver or fee reduction, the Office of the County Mayor shall first verify availability of the date through the Corporation's Executive Director or designee and then submit a written request to reserve that date. Any reservations not cancelled within thirty days of the proposed date shall be treated as one of the County's annual fee reductions or waivers, depending on how the cancelation was reserved, in light of the Corporation's loss of use.

B.3.6. County-held Proprietary Account. The County shall retain a proprietary account on behalf of the Facility for the purpose of receiving and disbursing payments in association with the Facility's Trust or County contracts. In addition to any funds transferred from the County to the Corporation at the outset of this Agreement, the County shall transfer to the Corporation within 30 days any unencumbered additional funds that are deposited into the County's proprietary fund held on behalf of the Facility or freed of third-party encumbrance thereto. Any grants or donations made to the County on behalf of the Facility shall, likewise, be transferred to the Corporation within 30 days, unless such grants or donations explicitly prohibit such transfer or are encumbered for Facility expenses that must be paid by the County. Once this proprietary account is free of liabilities, the County shall transfer all remaining funds to the Corporation.

B.3.7. County Participation in Securing Third-party Grant Funding. In light of the County's continued ownership of the Facility, the County shall cooperate with the Corporation to apply for available governmental funding on behalf of the Facility and/or the Corporation[[~~including but not limited to emergency relief funding from the Federal Emergency Management Agency~~]]. Moreover, when possible at the County's sole discretion, the County may cooperate with the Corporation to identify governmental funding sources and act as fiscal agent to the Corporation for funding opportunities not available to a not-for-profit organization.

B.3.8. Provision to Corporation of Beneficial Access to County Contracts. The County shall

permit, but not require, the Corporation to use existing, eligible County contracts for goods and services, including the Equitable Distribution Program and the Miscellaneous Construction Contracts Program, should the Corporation in its sole discretion deem such contracts beneficial in its management of the Facility. In providing such access, the County shall only charge the Corporation for third-party costs and shall not levy administrative charges, except that reasonable administrative charges may be levied under complex circumstances, as defined solely by the County, and with advance notice of such anticipated charges to the Corporation.

B.3.9. >>Acquisition of County Goods and Services<<[[Consultation with County Professionals]]. In light of the County's ongoing ownership of the Facility and its broad base of >>resources and<<expertise, the County, in its sole discretion, may make available to the Corporation, upon the terms and at a cost commensurate with what the County currently makes available to other major County-owned cultural and educational facilities that are managed by independent not-for-profit organizations or other County agencies, >>goods (e.g., gasoline) held by the County and the services<< [[the expertise]] of its [[professional]] staff to support the Corporation's management of the Facility. Such >>services<<[[expertise]] may include, but not be limited to, risk management, emergency preparedness, security, information technology, [[and]] communications>>, disaster recovery, natural areas management, tree trimming/removal and water management<<.

B.3.10. Information Technology Resources. The County shall delegate to the Corporation management of the Facility's technological infrastructure, including oversight of Vizcaya's hardware and software systems, telephone and Internet connections, email and calendar systems, databases, Website, social media accounts, data storage, subject to the Corporation's agreement to address County conditions essential to maintain the integrity of shared infrastructure. The County shall, however, ensure that under such delegation the Corporation will be able to retain current telephone exchanges and email and Web addresses. Moreover, such delegation shall include the Corporation's right to contract with the County for various information technology services, including but not limited to maintaining its telephone and Internet connections, maintaining its telephone hardware, providing data backup services, and hosting its Website and/or email and calendar systems. In the event the Corporation contracts with the County to provide such services, the County shall charge the Corporation no more than the rate it customarily charges County departments or agencies for such services. Furthermore, notwithstanding Section B.4.15, if the Corporation does not contract with the County to provide telephone systems to the Corporation, the County reserves the right to request the return of the Facility's telephone hardware.

B.3.11. Oversight. The County, acting through the County Mayor, and the Commission Auditor or their designees, shall have the right to oversight of the Corporation's operations.

>> **B.3.12. County Responsibility for Natural and Other Defined Disasters.** The County and the Corporation have agreed to purchase insurance for the Facility, per Section B.5.3, and to cooperate on filing claims for insurance-eligible events. It is acknowledged that there are major events that may cause damage to the Facility that may not be covered completely by this insurance.

Consequently, on behalf of the County, the Corporation shall be delegated the responsibility to perform the Facility's emergency protective measures, debris removal and restoration of buildings and equipment in connection with events either: (1) defined by the Federal Emergency Management Agency ("FEMA") as a disaster; or, (2) when a "Declaration of Emergency" is issued by the County Mayor and/or the Governor of the State of Florida ((1) and (2) are individually or collectively "Disaster"). On these occasions, the County shall include the Corporation in emergency communications customarily offered to County departments. The County, as the owner of the Facility, shall remain legally responsible for emergency protective measures, debris removal and restoration of buildings and equipment in the event that the Facility or personal property that is owned by the County and contained within the Facility is impacted by Disaster. The County shall pay for such emergency protective measures, debris removal and restoration of buildings and equipment subject to the availability and appropriation of funds as determined by the County, in its sole discretion. The County shall not, however, be responsible for the repair or replacement of personal property owned by the Corporation.

The Corporation shall serve as contractor to the County, undertaking the emergency protective measures, debris removal and restoration of buildings and equipment necessitated by Disasters on behalf of the County, unless the County and the Corporation mutually agree in writing that there are aspects of this work that are best managed directly by the County. The County shall not bill the Corporation for expenses incurred directly by the County for emergency protective measures, debris removal or restoration of buildings or equipment; but rather the County shall submit these expenses directly to FEMA for reimbursement.

Supplementary to Sections B.3.8 and B.3.9, in the event of Disaster, the Corporation shall have the authority to purchase goods and services from vendors with whom the County has relationships and/or contracts, subject to the Corporation's purchases being eligible under these relationships and/or contracts and subject to the County's determination of available spending authority in these relationships and/or contracts. In either case, the County shall not charge the Corporation administrative fees for such services beyond what is customarily charged to County departments.

In the event that FEMA or other applicable governmental agency determines that the Facility may be eligible for public funding for emergency protective measures, debris removal or restoration of buildings and equipment necessitated by a Disaster, including any mitigation funding directly associated with repairs necessitated by such Disaster, the County shall serve as the applicant responsible for submitting the necessary documentation to said governmental agency. The Corporation shall provide to the County substantiating documentation necessary for the County to submit such applications for public funding with enough time in advance of applicable deadline(s) for the County to review and use the information for its application. To ensure eligibility for and compliance with the funding requirements of FEMA or other governmental agency, the Corporation shall follow the policies and procedures of FEMA or other applicable governmental agency for documenting and procuring emergency protective measures, debris removal or restoration of buildings and equipment.

Relative to work necessitated by a Disaster, the Corporation shall, upon completion of such work, submit to the County documentation of payment for third-party goods or services and the County, upon confirmation that the Corporation has complied with the policies of FEMA or other applicable governmental agency, shall reimburse the Corporation for all expenses within sixty (60) calendar days of the Corporation's submission of satisfactory documentation for reimbursement, subject to the availability and appropriation of funds as determined by the County, in its sole discretion.

The Corporation may submit to the County requests for reimbursement of its administrative costs (personnel and equipment) for emergency protective measures, debris removal and restoration of buildings and equipment in connection with Disasters. The County shall review the Corporation's submission in a timely manner and, upon confirming that the Corporation has complied with the policies of FEMA or other applicable governmental agency, shall reimburse the Corporation for all such costs within sixty (60) calendar days of the Corporation's submission of satisfactory documentation for reimbursement, subject to the approval of the limits of such administrative costs by the County Mayor or the County Mayor's designee and subject to the availability and appropriation of funds as determined by the County, in its sole discretion.

The County, as applicant, shall be responsible for all of the above such reimbursements or repayments requested that are denied by FEMA or other governmental agencies for work pursued in accordance with these policies and procedures, unless such denial is due to negligence in the application for such reimbursement requests caused by the Corporation and subject to the determination of the County Mayor or the Mayor's designee of the costs to be reimbursed and subject to the availability and appropriation of funds as determined by the County, in its sole discretion. FEMA's or other governmental agency's denial of reimbursements or repayments shall not be attributed to negligence on the part of the Corporation if the Corporation subjected its submissions to the County for review and if the County failed to provide a written objection to the Corporation within thirty (30) calendar days.

In the event that the Corporation in its sole discretion determines that it does not have adequate cash-on-hand to incur expenses for specific elements of Disaster-related emergency protective measures, debris removal or restoration of buildings or equipment, it shall notify the County as soon as possible and no later than within fourteen (14) calendar days of such determination. The County Mayor or the County Mayor's designee shall have the authority, but not the obligation, to negotiate and execute agreements with the Corporation for funding allocations for emergency protective measures, debris removal and restoration of buildings or equipment resulting from Disasters in the form approved by the County Attorney.

All improvements to the Facility and all personal property acquired by the Corporation with governmental Disaster funds shall be owned by the County and subject to the inventorying provisions of Paragraph B.4.15.

The Corporation shall report to the County any insurance proceeds it applies for and receives in the aftermath of a Disaster within ten (10) calendar days of receiving the funds. The County shall be responsible for reporting to FEMA or any other relevant governmental agencies any insurance proceeds received by either party in the aftermath of a Disaster.

The Corporation shall generally apply for mitigation funding from FEMA and other governmental entities when such mitigation is not associated with repairs necessitated by Disaster, unless the Corporation is ineligible to do so or the parties mutually agree that it would be beneficial for the County to do so in particular instances.

The County agrees that any Disaster-related expenses initially paid through funds allocated for the Facility's general benefit (e.g., general obligations bonds for the overall improvement of the Facility), rather than for specific Disaster-related projects, and subsequently reimbursed or funded by insurance, FEMA or other entity, shall be credited to said fund allocated for the Facility's general benefit within sixty (60) calendar days of receipt by the County.<<

B.4. CORPORATION OPERATIONAL RIGHTS AND RESPONSIBILITIES.

B.4.1. Corporation Operation and Management of the Facility. The Corporation shall operate and manage the Facility on behalf of the County on an exclusive basis using the highest degree of professionalism. The Corporation shall conduct its business in accordance with local, state and federal law. The Corporation shall operate the Facility in a fiscally responsible manner.

The Corporation shall provide, through its staff and through agreements with third-party vendors, all management required for operation of the Facility, including but not limited to educational, curatorial, horticultural, conservation, property management, security, accounting, advertising, marketing, public relations and legal services; it shall obtain and pay all costs for utilities, water, sewer, trash and garbage collection, as well as all maintenance, security and janitorial services required by the Facility.

The Corporation will have authority and responsibility over the day-to-day operation of the Facility and all activities occurring there. The Corporation shall have the authority to establish and approve its own annual operating budget, with the requirement that it be a balanced budget, and it shall use the revenue generated by programs of the Facility to pay the expenses associated with the operations of the Facility and make improvements thereto. The Corporation shall be responsible for securing public and private funds to help pay for these expenses, with the intent that the Corporation's increased private-sector fundraising is an explicit goal of this Agreement. The Corporation may, at its sole discretion, enter into ancillary agreements with concession operators to provide catering, museum shop, or other revenue-generating services at the Facility, so long as such agreements do not exceed the term of this Agreement. All contracts, licenses and agreements entered into by the Corporation in connection with the management of the Facility shall be in its own name.

~~[[So long as the Trust remains as an active agency of Miami-Dade County, its activities shall be limited to those associated with the conclusion of its affairs, as provided by the Ordinance through which this Agreement has been adopted. All actions of the Trust shall be subject to the approval of the Corporation.]]~~

B.4.2. Corporation's Autonomy. Notwithstanding requirements that the Corporation be transparent and accountable to the County in its oversight of the Facility, the Corporation is and shall remain an independent contractor autonomous of the County.

B.4.3. Corporation Mission Statement. The Corporation's mission statement, which is based on the mission statement of the Trust, shall be:

Preserving the estate of agricultural industrialist James Deering, to engage the public in learning through the arts, history and the environment.

While the Corporation reserves the right to restate or paraphrase the mission statement, formal revisions to the mission statement shall require approval of the ~~[[BCC]]~~>>County Mayor or County Mayor's designee<<.

B.4.4. Corporation Adoption of Core Institutional Documents. The Corporation shall adopt the vision statement, core values, strategic plan, collections management policy, interpretive plan, donor recognition policy, facility rental policy, hurricane preparedness policy, and any other relevant operational policies of the Trust and/or the Facility. However, the Corporation shall have the authority to revise and update these core documents to advance the Corporation's County-approved mission statement. The Corporation shall make reference to any such revisions in its annual report to the County, and the County reserves the right to inspect the Corporation's core documents to ensure compliance with the terms of this Agreement.

B.4.5. Corporation Commitment to Maintaining High Professional Standards. Vizcaya Museum and Gardens is a National Historic Landmark that is recognized locally, nationally, and internationally for its cultural significance and its exemplary approach to preservation and educational programming. The Corporation agrees to operate the Facility in accordance with the rigorous standards set forth by the Secretary of the Interior's Standards for Treatment of Historic Properties, the American Alliance of Museums, the American Public Gardens Association, and the American Institute for Conservation of Historic and Artistic Works or successor standards or organizations, and shall strive to maintain all currently existing or successor accreditations.

B.4.6. Corporation Responsibility to Maintain Regular Public Access to the Facility. The Corporation shall maintain a minimum of 250 days a year of public access to the Facility, except as prevented by Acts of God or as agreed by the County Mayor or Mayor's Designee. The Corporation shall report to the County any changes in said schedule thereafter, with the exception of additional closures that are required due to Acts of God, necessary conservation or capital projects, or other periodic operational needs.

B.4.7. Corporation Recognition of the County's Ownership and Support. The Corporation shall routinely recognize Miami-Dade County's ongoing ownership and support of the Facility in its promotional and educational materials. The County should be recognized at a level commensurate with the recognition accorded a private or institutional donor making contributions at a level of support similar to that of the County.

B.4.8. Scheduling of the Facility. Except as otherwise provided herein, including but not limited to the provisions of paragraph B.4.6, the Corporation shall have the exclusive authority to schedule the spaces within the Facility, and establish policies for collecting and retaining rents, admissions, and fees, all in accordance with its uniform fee policy. The County supports the Corporation's goal to generate through usage charges, charitable solicitations, and other means, sufficient revenue to defray the cost of operating Vizcaya Museum and Gardens and its programs. The Corporation may undertake fundraising activities within the Facility, including but not limited to, parties, benefits, balls, which shall require a donation to attend. The Corporation may levy a charge for building use or general admission to the premises or any portion thereof in accordance with Section B.4.9 below.

B.4.9. Facility Use Fees. The Corporation shall establish uniform rates for admission to and programs at the Facility, for use of spaces within the Facility (including parking), for any services to be performed within the Facility, or otherwise in association with the Facility's operation. Such fees shall be based on and consistent with sound management practice, and with the objectives of maintaining a balanced budget and presenting programs and activities that are affordable to the public. Various classes of rates may be established, so long as the rates are assessed in a non-discriminatory manner within each class so as to provide equitable access to the Facility. The Corporation must provide the County with a statement of non-discriminatory "Admission Pricing Practices" annually with its Financial Statements. In addition, the Corporation shall maintain programs to provide discounted admission for children, students, seniors, and social service organizations that serve low-income individuals for general daytime visitation to the Facility for educational purposes. The County shall not establish any admission charges or fees, nor be entitled to keep any revenues received by the Facility from the rental of spaces therein, the sale of tickets by the Corporation, revenues from concession sales, and any other revenue generated by the Corporation.

The Corporation shall not reduce facility rental rates below the uniform rates for any third-party events, unless such events are deemed by a 2/3 majority of the Corporation's Board to be fundraisers or educational programs that serve the Facility's mission. In light of the Corporation's substantial responsibility to raise funds to support the Facility and to protect its capacity to do so, no fee waivers or reductions shall be granted for events whose purpose is, in whole or in part, by ticket purchase or as a sponsorship benefit, to raise funds for entities other than the Corporation, unless at least 50% of the net proceeds from such event will be directed to the Corporation for the benefit of Vizcaya. The Corporation shall, moreover, establish conflict of interest and fee reduction policies for ensuring that fees are not reduced for the financial gain or personal benefit of Corporation's Board members, staff or their affiliates.

B.4.10. Fiscal Year, Financial Records, Annual Budget Submission and Annual Report. The Corporation shall maintain the same fiscal year as the County. The Corporation shall keep its financial books and records in accordance with generally accepted accounting principles. All books and records of the Corporation shall be kept in Miami-Dade County, Florida, in accounts owned by the Corporation. Failure to submit such reports at the time required or in the form as required herein shall be a material breach and cause for termination under Section F. The County

shall have the right to inspect, to copy or to audit any and all financial books and records of the Corporation during the term of this Agreement and for a period of three years after the expiration of this Agreement. Failure to comply with any provision of this section shall be cause for termination under Section F.

By March 1 of each year, the Corporation shall submit to the County its proposed annual operating budget for the following fiscal year, including all general classes of revenues and expenditures, and a recommended capital repair budget in accordance with Section B.3.3 above. This budget shall be subject to review and approval by the BCC as part of the annual County budget process. The Corporation shall submit to the County annual reports consisting a 1) summary of the programming and marketing activities of the Corporation, which, among other things, demonstrates compliance with this Agreement; 2) a balance sheet; 3) a statement of revenues and expenditures; 4) a statement of changes in fund balance since the prior submittal; 5) audited financial statements; 6) Form 990 as filed with the Internal Revenue Service; 7) applicable filings to the State of Florida. The annual report for the prior fiscal year shall be submitted to the County within six months following the end of such year.

B.4.11. Corporation Responsibility for Unpaid Obligations. The Corporation shall be responsible for the collection of unpaid obligations due as a result of the use or operation of the Facility and the County shall have no responsibility therefore, except that the County shall be responsible for payment of fees that might be due in conjunction with fee waivers or reductions granted by the County in accordance with Section B.3.5 above.

B.4.12. Intellectual Property. The County hereby grants to the Corporation a royalty-free license for the duration of the Agreement to continue using the Marks to identify the Facility and the County's ownership of the Facility (the "License"). All use of the Marks pursuant to the License shall inure to the benefit of the County.

"Marks" is defined as the trademarks, whether based in common law or on registrations at the state or federal level, for the trademarks MIAMI-DADE, , MIAMI-DADE COUNTY, VIZCAYA, VIZCAYA GARDENS, , VIZCAYA MUSEUM AND GARDENS, VILLA VIZCAYA, VIZCAYA CAFÉ AND SHOP, VIZCAYA VILLAGE, VIZCAYA MUSEUM AND GARDENS TRUST, VIZCAYA MAIN HOUSE, VMGT.

The County shall have the right to approve the nature and quality of the services in connection with which the Corporation uses the Marks pursuant to this Agreement and the Facility. Use of the Marks shall comply with the County's quality standards and trademark notice requirements as such may be established from time to time. The Parties agree that the Corporation's continued operation of the Facility in substantial accordance with its past and present operations shall satisfy the County's quality standards, and further agree that the Corporation's use of the Marks shall not require pre-approval by the County. The County may inspect the Facility and marketing materials created by the Corporation to make certain that the Corporation is continuing to meet the County's quality standards.

Except as otherwise provided in the License and subject to the assignment provision in this section, the Corporation shall own any intellectual property related to the Facility or its operations, which is developed or commissioned by the Corporation following the effective date of the Agreement. This shall include the Corporation's right to use, adapt, reproduce and/or reissue for educational, promotional and commercial purposes to benefit the Facility depictions of the Facility and individual elements therein, research, interpretive materials, promotional materials, Web-based content, logos and graphic standards, books, videos, sound recordings and like materials, regardless of their medium. This provision should be liberally interpreted to enable the Corporation to undertake all necessary operations to benefit Vizcaya, without concern that the County shall retain or assert such intellectual property rights. The Corporation will cooperate with the County to ensure that any creative materials that the Corporation creates and any intellectual property rights associated therewith are readily available to the County to promote and educate the public about its cultural assets, at no cost to the County. The Corporation shall be responsible for compliance with the requirements of law with relation to the creation and use of any intellectual property in connection with the operation of the Facility, and shall indemnify the County from any claims made in relation to the Corporation's use of intellectual property during the Agreement. The Corporation shall obtain all waivers, clearances and licenses required for the creation of any of the above-mentioned content, and shall ensure that such waivers, clearances and licenses provide for the County's use of same in perpetuity.

The Corporation shall annually provide to the County a description of any intellectual property developed or commissioned by the Corporation in connection to its operation of the Facility or the rights conveyed pursuant to the Agreement. Upon the termination of the Agreement, the County shall be entitled, at no cost to the County and in the County's sole discretion, to an assignment of any and all intellectual property rights created by the Corporation during the term of this Agreement, and the Corporation shall cooperate in executing all required documents to effectuate such a transfer of rights to the County.

B.4.13. Taxation. The Corporation acknowledges and agrees that it shall be solely responsible for any and all applicable sales and use taxes arising out of programs, events or sales at the Facility and all other applicable taxes relating to its operation and management of the Facility, including but not limited to any ad valorem taxes assessed against the Facility. The Corporation shall also be responsible for all municipal, county or state taxes assessed against any occupancy interest or personal property of any kind or nature, owned by or placed in, upon or about the Facility by the Corporation.

B.4.14. Gift Acceptance and Donor Recognition. The Corporation shall have the right to accept donations and to recognize those donors who have made significant financial commitments to benefit the Facility, whether through the County, the Trust, or an affiliated support organization, whether active or defunct. Such acceptance shall comply with accepted accounting standards for charitable organizations and such recognition shall be through plaques and other vehicles that the Corporation deems appropriate and consistent with the Facility's National Historic Landmark status, and in accordance with BCC policy in this regard. In accordance with donor recognition policies adopted by the Trust, the Corporation shall have the further authority, but not the obligation, to name rooms, buildings, and exterior areas in the

Vizcaya Village on the west side of South Miami Avenue in honor of individuals or organizations making donations of at least \$1 million following the adoption of this Agreement. The Corporation shall not be permitted to rename the main house, the formal gardens, or the Facility in its entirety. The Corporation shall establish policies for performing reasonable due diligence on prospective candidates for naming opportunities to protect the reputations of the County, the Corporation and the Facility, and shall not name any portion of the Facility after businesses engaged in the production of tobacco or adult entertainment products.

B.4.15. Assets: Definition, Ownership and Care. All existing equipment, furniture and other items of personal property at the Facility prior to the Agreement shall be owned by the County. The Corporation has the exclusive right to use all such existing equipment, furniture, and other items of personal property at the Facility during the Agreement. The Corporation may elect to lease, purchase, or lease purchase any other systems, equipment and furnishings for the Facility. Any such systems, equipment, or furnishings purchased by the Corporation during the term of the Agreement shall be owned by the Corporation.

With respect to all such leased or purchased items of the Corporation, on or before the termination of the Agreement, the Corporation shall cause all such leased or purchased items to be conveyed to the County at no cost to the County, free and clear of any liens, claims or encumbrances. Upon the termination or expiration of this Agreement, the Corporation shall leave all such personal property in the Facility free of Liens.

The Corporation shall only dispose of the County's personal property and equipment in accordance with Section 2-11.2.1 of the Code and Administrative Order 8-2. The Corporation shall replace any such disposed property as it deems necessary for the operations of the Facility.

The Corporation shall maintain a detailed inventory of all County-owned personal property and equipment in the Facility in accordance with Applicable Law, including, but not limited to, the applicable provisions of Chapter 274, Florida Statutes and Sections 69I-73.001–69I-73.006, Florida Administrative Code, and Administrative Order 8-2, all as amended from time to time (the "Inventory"), and deliver a copy of the Inventory to the County. The Inventory shall be maintained and updated (annually) throughout the term, and copies of the updated Inventory shall be provided to the County upon the County's request. Upon the expiration or earlier termination of this Agreement, the Corporation and the County shall prepare a final Inventory, and the Corporation shall explain to the County any discrepancies between the most recent Inventory (prior to termination or expiration) and the final Inventory. To the extent the final Inventory discloses missing items (other than items that became unusable, were consumed or otherwise disposed of in accordance with the terms of this Agreement during the last year of the term, or were reported to law enforcement as stolen) the County may, at its sole discretion, require the Corporation to pay the County from its fund balance an amount equal to the depreciated value of the missing items. Any dispute between the County and the Corporation as to the existence of missing items or the replacement cost of missing items shall be submitted to Mediation/Arbitration. The Corporation shall mark all items of Inventory in accordance with Applicable Law, including, but not limited to, the applicable provisions of Section 69I-73.004, Florida Administrative Code, as amended from time to time. Notwithstanding the foregoing,

the County shall have the right, from time to time, to place identification reflecting the County's ownership on all personal property reflected in the Inventory.

B.4.16. Art Collections. The Facility's Art Collections shall be defined as those items specified on a Schedule of Art Collections held by the Facility, owned by the County, and attached to this Agreement as Exhibit 2 ("Collections Schedule"). The Collections Schedule shall include, but not be limited to, those items defined in Section A.2, subparagraphs 3 and 4, above; and it shall be amended by acquisitions or de-accessions reported through the inventories described in Section B.4.17. Such Art Collections shall remain the property of the County. However, the Corporation assumes responsibility for protecting and preserving said Art Collections. Those objects of artistic or cultural value excluded from the Collections Schedule, but reasonably recognized to be a part of the Facility's historic collections, shall be subject to the same provisions as those objects specified on the Collections Schedule, and shall be added to the Art Collections periodically through the inventories described in Section B.4.17. Art objects that are acquired by the Corporation and are intended to become part of the Facility's permanent collection shall be accessioned by the Corporation as County property and reported on said inventories.

The Corporation shall adhere to stringent professional standards in protecting the Facility's Art Collections, including those of the American Alliance of Museums, and shall report on such standards and on protection efforts in its annual report to the County. In the event an object that is part of the Art Collections is stolen, the Corporation shall immediately file a report with the City of Miami Police Department and notify the County Mayor or County Mayor's designee immediately, and in no case more than 2 business days after the theft. In the event an Art Collections object is damaged, the Corporation shall follow professional conservation standards for its treatment. In the event an Art Collection object is seriously damaged or destroyed, the Corporation shall notify the County Mayor or County Mayor's designee immediately, and in no case more than 2 business days after the theft, with an explanation of what occurred. Any theft, serious damage, destruction or loss of an Art Collections item shall also be reported to the County on the Corporation's annual report to the County, and on the inventories as described below.

B.4.17. Art Collections Inventory. The County hereby delegates to the Corporation's Executive Director the role of "Custodian" responsible for inventorying on behalf of the County those objects within the Art Collections that meet the criteria established by the State and the County in accordance with Florida Statutes Chapter 274 or successor legislation. Many of the Art Collections are not subject to State and County inventory requirements due to an appraisal value below the State's minimum threshold or the fact that they are permanently affixed to real property. The Corporation's Executive Director shall provide to the County an inventory of the required Art Collections in the form and frequency specified by the County.

In addition to State requirements, the Corporation shall provide the Office of the County Mayor with a Comprehensive Art Collections Inventory in a form and frequency to be established by the Corporation and approved by the Office of the County Mayor. In accordance with professional museum standards, such Comprehensive Art Collections Inventory shall include

all items on the Schedule of Art Collections, as periodically updated, be maintained in an industry-appropriate art collections database, and shall not be required more frequently than once every three years. In addition to this Comprehensive Art Collections Inventory, the Corporation shall conduct spot-inventory checks of the Art Collections Inventory in a form and frequency to be determined by the Corporation.

Both the inventory required by the State of Florida and the Comprehensive Art Collections Inventory will reflect relevant Art Collections accessions and/or de-accessions, whether by the Corporation's intent or by accidental circumstances. Changes to the Comprehensive Art Collections Inventory shall amend and supersede the Collections Schedule attached to this Agreement.

B.4.18. Sale, Conveyance or Disposal of Art Collection Objects and Management of Proceeds. Museums commonly remove from their collections objects that do not serve their mission or otherwise support institutional needs. The Facility's Collections Management Policies contemplate the de-accession of objects that were not historically at the Facility and that have no connection to the estate or its founder. The Corporation shall be permitted to de-accession individual Art Collections objects that are not original to the Facility, that have no connection to James Deering, and that have been valued by an independent appraiser at \$5,000 or less. Such de-accession shall require majority approval by the Corporation's Board and then written approval by the County Mayor or the County Mayor's designee acknowledging that such criteria have been met. In the event the Corporation wishes to de-accession Art Collections objects valued at more than \$5,000 or otherwise not meeting the above criteria, such de-accession shall require the approval of the BCC. The Corporation agrees that members of its Corporation's Board or its paid personnel shall not acquire de-accessioned Art Collections, whether by purchase or other conveyance. Art Collections that are approved for de-accession by the Corporation and, if necessary as specified above, by the BCC shall be considered surplus property of the County and the County delegates to the Corporation the authority to sell it in accordance with Florida law, including but not limited to Florida Statute Chapter 274.06 or successor legislation.

In the event that Art Collections objects, upon said de-accession are sold by the Corporation, the proceeds from such sale shall be deposited in a segregated account of the Corporation. In accordance with professional museum standards, proceeds from the sale of Art Collections shall only be used by the Corporation for Direct Collections Care, defined herein as: 1) the purchase of other art objects to become part of the Art Collections (including but not limited to the purchase of archival objects, third-party charges for transportation, art handling, conservation treatment, or installation of such objects) or 2) direct care of other Art Collections objects (which shall be limited to third-party charges for professional conservation treatment of such objects, including conservator fees, transport fees, art handling fees, or materials). Under no circumstances shall the Corporation use proceeds from the sale of Art Collections to reimburse costs for Corporation staff to participate in the purchase or direct care of Art Collections or for other operating or capital purposes even as they may be related indirectly to the protection of Art Collections.

Any approved sale of Art Collections shall be reported in the Corporation's annual report to the County. The Corporation shall provide to the County Mayor or the County Mayor's designee on an annual basis or as otherwise requested by the County confirmation that any and all proceeds from the sale of Art Collections are being used exclusively for Direct Collections Care.

Notwithstanding the above, the Corporation may, upon the request of another County agency (e.g., the Deering Estate at Cutler) and with the approval of the County Mayor or the County Mayor's designee, transfer to said other County agency Art Collections that are not original to the Facility.

B.4.19. Marketing Plan. The Corporation shall establish and shall follow a marketing plan to enhance and encourage use of the Facility. The marketing plan shall contain specific long and short-term goals for attracting audience support. At least once each year the Corporation shall present its then current marketing plan to the County and shall report on the results of its past marketing plans.

B.4.20. Corporation's Authority to Procure Goods and Services. The Corporation shall adopt a procurement policy (the "Procurement Policy") prior to entering into any contract for the purchase of goods or services, including without limitation, professional services and capital improvements. The Procurement Policy shall promote the transparency, efficiency and fairness of the contracting of the Corporation, and shall promote the best value for the Facility, all consistent with the best interest of the Facility.

The Procurement Policy shall identify and limit the contracting and purchasing authority of Corporation personnel. The Procurement Policy shall at all times comply with all provisions of applicable law, including those governing the use, construction, maintenance and improvement of public facilities, and at a minimum, and without limitation, shall provide:

(a) except as specifically provided in this Agreement for concession agreements and temporary permits, the Corporation shall not lease, convey or transfer the Facility, or any portion thereof, without the express written approval of the County Mayor or designee;

(b) the purchase of architecture, engineering or landscape architecture services, or any other covered under the Consultants Competitive Negotiation Act, Section 287.055 of the Florida Statutes, shall be done in compliance with all of the provisions of that law when funded in whole or in part with County or other agency funds as defined in the law;

(c) bidding for construction on the Facility shall be governed by the provisions of Section 255.20 of the Florida Statutes;

(d) a payment and performance bond or alternative form of security shall be obtained for any and all construction on the Facility when required under Section 255.05 of the Florida Statutes;

(e) contracts for the design and construction of the Facility shall comply with the requirements of the County Code governing small business enterprises;

(f) contracts for the construction of the Facility shall comply with the County's responsible wages ordinance, Section 2-11.16 of the Code; and

(g) contracts for the construction of the Facility shall comply with applicable County requirements relating to contractor's workforce, including the hiring of personnel from Designated Target Areas pursuant to Section 2-1701 of the Code of Miami-Dade County, and the education and hiring requirements of Section 2-11.17 of the Code which seeks to promote the employment opportunities of local residents.

The adopted Procurement Policy shall be delivered to the County for review at any time upon the County's request. Failure of the Procurement Policy to comply with the requirements of this Section, and any purchase made or contract executed in violation of the Procurement Policy shall be considered a material breach of this Agreement.

B.5. INDEMNIFICATION AND INSURANCE

B.5.1. Indemnification. The Corporation 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 Corporation or its employees, agents, servants, partners principals or subcontractors. Corporation 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 attorney's fees which may issue thereon. Corporation expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Corporation 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.

The County shall indemnify and hold harmless the Corporation and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the Corporation 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 the Agreement by the County. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of the Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000 (or as adjusted by Statute), or any claim or judgment or portions thereof, which when totaled with all other claims or judgments paid by the County arising out of the same incident or occurrence, exceed the sum of \$300,000 (or as adjusted by Statute) from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the County.

The County accepts full legal and financial responsibility for all third-party claims brought against the Facility, the Trust, the County or the Corporation based on matters associated solely with operation of the Facility until sixty (60) days after the effective date of the Agreement, regardless of when such claims are filed.

B.5.2. Worker's Compensation and Liability Insurance. The Corporation shall provide:

- A. Worker's Compensation Insurance for all employees of the Corporation 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.

The Corporation shall be responsible for requiring that permittees, contractors, and other parties entering into an agreement with the Corporation provide appropriate insurance throughout the term of the agreement. Each such agreement shall include an indemnification clause that includes the Corporation and Miami-Dade County.

B.5.3. Property Insurance. Protecting the Facility against physical loss shall be a shared responsibility of the County and the Corporation in light of their respective ownership and management roles.

The County shall provide coverage for the Facility under the Countywide Master Property Insurance Program at its sole expense, in addition to other support specified elsewhere in this Agreement:

- A. Real Property Insurance: Miami-Dade County shall insure the Facility under the County's Master Program. Current deductibles are as follows: \$200 million Countywide for Named Windstorm and \$5 million per occurrence for All Other Perils ("AOP") as of the effective date of this Agreement. As per Section B.3.7, the County shall include the Facility in its disaster-relief applications to the Federal Emergency Management Agency ("FEMA"). The County will provide the Corporation with a copy of the Facility's schedule of values on an annual basis and the Corporation will review, and as necessary revise, to insure the appropriate schedule of values on a replacement cost basis is submitted to the County. The Corporation will hire an independent appraiser at its sole expense to verify property values from time to time in cooperation with the County. Such independent appraiser shall be recommended by the Corporation and

approved by the County, such approval not being unreasonably withheld. Upon receipt of said independent appraisal, the Corporation will revise the schedule and provide to the County for submittal to the insurance carrier.

- B. Flood Insurance: In addition to flood coverage provided in the Countywide Master Property Insurance Program, the County shall purchase flood policies through the National Flood Insurance Program for maximum allowable limits for eligible structures at the Facility.
- C. Art Collections Insurance: The County shall provide coverage for the Facility's Art Collections as identified on the Schedule of Art Collections and as updated from time to time through the Corporation's Collections Inventory (per Section B.4.17). Current deductibles are \$1,000 per loss and increasing to 10% of the value of the lost or damaged item subject to a minimum of \$25,000 each and every loss any one occurrence and/or event in respect of windstorm and storm driven water. The Art Collections insurance purchased by the County shall provide coverage for the Art Collections, based on values stated in the most current independent appraisal of the Art Collections or adjusted from time to time by the Corporation. Such independent appraisal shall be performed at the Corporation's sole expense at such intervals that the Corporation deems prudent but at least once every fifteen years over the term of this Agreement. The independent appraiser shall be recommended by the Corporation and approved by the County, such approval not being unreasonably withheld. Art Collections insurance shall provide the coverage to repair and, if necessary and viable, to replace Art Collections objects.

The Corporation shall provide the following property insurance coverage at its sole expense, in addition to other support specified elsewhere in this Agreement:

- A. Real Property Insurance: To provide coverage below the County's above-specified deductible, the Corporation shall purchase commercial building and property insurance that is supplementary to the County's to insure the Facility against all other perils (on a special causes of loss form), excluding named windstorm coverage. Such insurance shall provide coverage in an amount per occurrence equaling the County's AOP deductible (currently \$5 million per occurrence on the effective date of this Agreement).
- B. Personal Property Insurance: The Corporation is solely responsible for repair or replacement of the Corporation's personal property and of the County's personal property at the Facility as of the effective date of the Agreement.
- C. Art Collections Insurance: To provide coverage below the County's above-specified deductible, the Corporation shall provide Art Collections insurance that is supplementary to the County's to insure Art Collections in an amount of a) \$1,000 per object, per occurrence, or b) the value of the object for those

objects valued at under \$1,000. The Corporation may, alternatively, elect to decline such insurance and assume sole responsibility for repair or replacement of Art Collections objects in an amount not to exceed \$1,000 per object, per occurrence.

Any and all deductibles under the Corporation's insurance policies shall be the sole responsibility of the Corporation.

It is understood that the County's deductibles and the Corporation's responsibility for AOP and Art Collections insurance may change over the term of this Agreement. In the event such deductible(s) increase at a rate that is greater than the aggregate rate of increase of the Consumer Price Index following the inception of this Agreement, the County shall remain responsible for AOP and Art Collections insurance premiums or losses below the deductible but above the aggregate rate of increase of the Consumer Price Index.

>>In accordance with the property insurance provisions of this section, the parties agree to provide each other with at least ten (10) calendar days in advance of applicable deadline(s) for each party to review and present feedback on insurance claims and at least ten (10) calendar days' notice to review settlement offers from insurance claims submitted by either party in the interest of maximizing the proceeds from and timely settlement of insurance claims submitted by either party. Notwithstanding such notice, either party will have the authority to settle insurance claims without the consent of the other. Each party agrees to promptly notify the other party within ten (10) calendar days of settlement and receipt of insurance proceeds. The County delegates to the Corporation the authority to effect repairs or improvements funded by insurance proceeds received by either the County or the Corporation. In the event that the County receives insurance proceeds for a claim associated with the Facility or personal property contained therein, the Corporation shall submit to the County a plan for the use of the insurance proceeds and subject to the review and approval of the plan by the County Mayor or Mayor's designee, the County shall remit such proceeds to the Corporation within sixty (60) calendar days of receipt. In the event that the Corporation has received, spent or retained insurance proceeds in a given fiscal year, the Corporation shall report on such proceeds and their use in its annual report to the County (per Section B.4.10).

The Corporation shall own personal property (i.e., portable equipment and other property that is not built in to or otherwise considered part of the Facility) that is acquired with proceeds from insurance policies held by the Corporation. The County shall own all insurance-funded improvements to the Facility, including all property that is built into or otherwise considered part of the Facility, and all personal property that is acquired with proceeds from insurance policies held by the County. The ownership of personal property (as defined in this paragraph) that is repaired with insurance proceeds shall remain with whichever party owned the property prior to its damage.<<

B.5.4. General Insurance Provisions. The County shall furnish to the Corporation documentation that insurance coverage as required in Section B.5.3 has been obtained. The Corporation shall furnish to the Internal Services Department / Risk Management Division, 111

NW 1st Street, 23rd Floor, Miami, Florida 33128-1987, certificate(s) of insurance indicating that its above-required insurance coverage has been obtained.

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 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.

B.5.6. Business Interruption. The Corporation may, at its sole discretion, elect to purchase business interruption insurance to protect against loss of business revenues in the event of a disaster. Whether or not the Corporation elects to purchase business interruption insurance, the Corporation shall be solely responsible for all losses associated with one month of business interruption due to a disaster. The County, in its sole discretion and subject to the availability of funds, shall strive to provide financial assistance to the Corporation in the event of business interruption losses attributable to disaster that continue for a period greater than one month in light of the Facility's prominent role in providing programs, events and services to Miami-Dade County's residents and visitors.

C. CAPITAL IMPROVEMENTS TO THE FACILITY

C.1. MASTER PLAN.

C.1.1. Description and Incorporation of the Facility's Master Plan in This Agreement. The BCC approved elements of Vizcaya's Master Plan through Resolution >>670-17.<<[[1157-05. ~~The Trust has formulated recommendations to the BCC for refinements and additions to the Master Plan and these refinements and additions shall be adopted by the Corporation if approved by the BCC.]~~ The Corporation agrees to abide by the terms of the Master Plan as approved by the BCC, in the BCC's sole discretion. The Corporation shall present as recommendations for BCC approval any substantive revisions or additions to the BCC's prior Master Plan approvals. The Corporation further agrees to update the County on the progress of the Master Plan as part of its annual report. The revised Master Plan shall include a plan for the development of the entire Facility, and the Corporation shall be required to abide by the Master Plan in developing the Facility.

The Master Plan shall include the ongoing repair, conservation and restoration of the historic elements of the main house, gardens and Vizcaya Village in a manner that is consistent with the

U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties and compliant with all applicable local, state and federal laws, while advancing the operations of Vizcaya as an accredited museum. The Master Plan is focused on preserving the Facility's historic significance and explicitly precludes demolition or major alterations to the historic elements of the main house, gardens and Vizcaya Village.

As of the effective date of this Agreement, the work still to be completed in the main house includes, but is not limited to, repairs to and/or replacement of building envelope (windows, doors, hurricane protection), structural elements, air-conditioning, plumbing, electrical and lighting, fire suppression and various aspects of display, including but not limited to public opening of historic staff quarters. The work still to be completed in the gardens includes, but is not limited to, repairs to and/or replacement of building envelope (Casino building and Fire House), structural elements (Casino building, grottoes, garden walls), fountain pumping and plumbing systems, irrigation, drainage, electrical and landscape lighting, architectural elements (such as gates), and plantings. The work still to be completed elsewhere on the east grounds includes repairs to the Barge and sea arms, restoration of natural areas including estuaries, ticket booth replacement, provision of service facilities, and upgrades to the parking lot and pedestrian and automotive ingress and egress.

The work in the Vizcaya Village includes ongoing restoration and adaptive re-use of the historic buildings in a manner that complies with the Warranty Deeds by which the property was conveyed to the County and supports: 1) Vizcaya's educational programming for the local community, 2) visitor services and experiences, providing insight into the estate's social and agricultural history, 3) the institution's professional functions (such as work spaces and storage that cannot be accommodated in the main house), and 4) earned-revenue activities to help sustain expanded operations. The Master Plan will include the re-establishment of green spaces on the Vizcaya Village property, with the multifaceted intent of interpreting the site's historic agricultural and horticultural uses, providing recreational amenities to the neighborhood, and launching an educational urban farming program for our community and visitors to it.

C.1.2. Corporation's Use of the Site Occupied by the Science Museum Building and Planetarium in the Vizcaya Village. Beginning in the 1950s, the County erected on the site of the Vizcaya Village a museum building and planetarium. In accordance with the Facility's Warranty Deeds, the 2004 Building Better Communities General Obligation Bond program, and the 2007 renewal of the Museum of Science's ("Science Museum") lease and subsequent extensions, and as reiterated in the aforementioned BCC Resolution 1157-05, the site of the Science Museum Building and Planetarium shall be used by the Corporation, on behalf of the County, to advance the Facility's educational mission pertaining to learning through the arts, history and the environment.

C.2. BALANCE OF VIZCAYA'S 2004 BOND ALLOCATION.

The County allocated funding for capital improvements on both sides of the Vizcaya property as part of its 2004 Building Better Communities General Obligation Bond ("Vizcaya's 2004 GOB Allocation")(as approved through Resolution 919-04 and public referendum). The County shall ensure that the entire balance of Vizcaya's 2004 GOB Allocation is made available to the

Corporation prior to September 30, 2017, to advance the Master Plan, subject to the Corporation's demonstration that it has the approved plan and operational capacity to utilize Vizcaya's 2004 GOB Allocation. The Corporation shall enter into a Grant Agreement with the County to spend the balance of Vizcaya's 2004 GOB Allocation.

D. COVENANTS OF CORPORATION

The Corporation agrees that during the term of this Agreement it will abide by the following covenants:

1. The Corporation will not discriminate in either its operations or employment practices and procedures 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, or status as victim of domestic violence, dating violence or stalking, 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.
2. The Corporation will conduct its meetings in accordance with the Florida Government in the Sunshine Statute to the extent required by law.
3. The Corporation will make its records open to public inspection in accordance with the Florida Public Records Act to the extent required by law. To the extent required by Florida Statutes 119.0701(2), the Corporation agrees to comply with Florida's public records law, specifically to: (a) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service; (b) provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Florida Statutes Chapter 119.07, et seq., or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of the Corporation upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.
4. The Corporation's Board shall each file annual Financial Disclosure Statements in accordance with Florida Law and Conflict of Interest and Code of Ethics provisions of the Miami-Dade County Code.



5. The Corporation will conduct its affairs in accordance with all applicable law, statutes, ordinances and regulations of Miami-Dade County, the State of Florida and the United States, as they may be enacted or amended from time to time to the same extent as other, similarly situated not-for-profit organizations.

E. EVENTS OF DEFAULT

Any of the following situations may be defined as an event of Default

1. Either party's material failure to observe a provision of this Agreement.
2. Corporation's failure to comply with the covenants set forth in Article D.
3. Corporation's failure to properly or adequately maintain and secure the Facility.
4. Corporation's failure to operate the Facility as an accredited museum (so long as accreditation remains available) and a National Historic Landmark; provided, however, that the Corporation shall not be held responsible for hurricanes, Acts of God, civil insurrections, riots or other events that are not within the control of the Corporation.
5. Corporation's failure to remain solvent or to operate the Facility in a fiscally responsible manner.

F. TERMINATION

F.1. CORPORATION AND COUNTY TERMINATION FOR CONVENIENCE.

Either party may terminate this Agreement for its convenience upon one year's prior written notice to the other party. The County's decision to terminate the Agreement under the terms of this paragraph must be approved by a resolution of the BCC. The Corporation's decision to terminate the Agreement under the terms of this paragraph must be approved by a resolution of the Corporation's Board. The provisions in paragraphs F.2 and F.3 below shall not apply to a termination under the terms of this paragraph.

F.2. TERMINATION FOR DEFAULT.

If an event of Default, as set forth in Article E, the party asserting Default shall furnish the defaulting party with a written Notice to Cure Default. If the defaulting party has not begun to cure the default within 15 days after the submission of written Notice to Cure Default, or does not proceed diligently in curing the default, then the parties shall institute the Dispute Resolution Procedure described in the following paragraph. If a satisfactory resolution is not achieved as a result of the Dispute Resolution Procedure, then the party asserting default may move to

terminate this Agreement upon 30 days' prior written notice to the defaulting party. The Corporation may appeal this termination, within 15 days, by filing an action in the 11th Judicial Circuit in and for Miami-Dade County.

F.3. DISPUTE RESOLUTION PROCEDURE.

In the event the County and the Corporation are unable to resolve their differences concerning any disagreement or claim arising under or relating to the Agreement, either the Corporation or the County may initiate a Dispute in accordance with the procedure set forth in this section. Exhaustion of these procedures shall be a pre-condition to any lawsuit permitted hereunder. Pending final decision of a Dispute hereunder, the Corporation shall proceed diligently with the performance of the Agreement.

Any and all Disputes shall be decided by a designee ("Hearing Officer") appointed by the Director of the Department of Cultural Affairs, or successor County Department ("Director"). The designee can be any individual selected by the Director, including but not limited to the Director himself, another County employee, an expert in the subject area of the Dispute, an attorney experienced in arbitrations, or a retired judge. The Director shall select and appoint the Hearing Officer upon a timely request made under this Section for the initiation of the Dispute.

As soon as practicable, the Hearing Officer shall adopt a schedule for the Corporation and the County to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. Within twenty (20) working days of the date on which such written submissions are filed, the Hearing Officer shall afford each party an opportunity to present a maximum of one hour of argument. The Hearing Officer may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact and the party is entitled to a favorable resolution pursuant to the terms of this Agreement. As part of such decision, the Hearing Officer shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Hearing Officer shall have the authority to rule on questions of law, including disputes over Agreement interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Hearing Officer is authorized by both parties to strike elements of claims seeking relief or damages not available under the Agreement (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) by summary disposition.

In the event that the Hearing Officer determines that the affidavits or other written submissions present issues of material fact, he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Hearing Officer at his reasonable discretion.

No formal discovery shall be allowed in connection with any proceeding under this Section. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this Agreement shall remain in force and effect throughout the proceeding. The Hearing Officer shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. The continued failure of a party to comply with the document inspection, examination, or submission requirements set forth in this Agreement shall constitute a waiver of that party's claims and/or defenses, as applicable. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

The Hearing Officer shall issue a written decision within fifteen (15) working days after conclusion of any testimonial proceeding and, if no hearing is conducted, within fifteen working (15) days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or claims. The decision of the Hearing Officer shall be conclusive, final and binding on the parties, subject only to the limited right of review specified below.

If either party wishes to contest the decision of the Hearing Officer, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Hearing Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

F.4. EFFECT OF TERMINATION.

Upon termination, the Facility and all its fixtures, furnishings and equipment belonging to the County, including but not limited to Art Collections, shall be returned to the care and custody of the County. Personal property, intellectual property and financial assets of the Corporation shall become the property of the County, solely upon the election of the County.

Should the Corporation be a party to an operating agreement with one or more third parties, the parties to the current Agreement acknowledge that, upon termination, the County will assume all rights, obligations and duties of the Corporation as a party to such operating agreement(s) until termination or expiration of the then-current term of such agreement(s).

G. MISCELLANEOUS PROVISIONS

G.1. NOTICES.

When any notice is required to be given by this Agreement, it shall be delivered by certified mail, return receipt requested to the parties at the addresses listed below, or such other address as is furnished in writing to the other party:

To the County: The Mayor of Miami-Dade County (or Designee)
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128

Copy to: County Attorney

To the Corporation: Director/Chief Executive Officer
Vizcaya Museum and Gardens Trust, Inc.
3251 South Miami Avenue
Miami, Florida, 33129

G.2. INDEPENDENT CONTRACTOR RELATIONSHIP.

The County and the Corporation acknowledge and agree that they are independent entities and neither the Corporation nor any of its employees or officers shall be considered employees, agents or officers of the County.

G.3. COUNTY AS SOVEREIGN.

The Parties understand and expressly hereby agree that the Facility may be subject to various governmental considerations and approvals that are outside of the terms and conditions of this Agreement. Such considerations and approvals may be processed or considered by one or various agencies and/or departments of the County in the normal course of business for those agencies and/or departments. The parties agree that the County shall not be liable in any manner, whatsoever, to any other party or person for the exercise of its governmental authority, regulatory powers and/or police powers.

G.4. HEADINGS.

The headings of the various paragraphs and sections, and the references to paragraphs and sections of this Agreement are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context, or intent of this Agreement, or any part or parts of this Agreement.

G.5. ENTIRETY OF AGREEMENT.

This Agreement along with the documents referenced herein and any subsequently adopted amendments constitute the entire, fully integrated Agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the Parties with respect thereto. This Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida without application of conflict of laws principles.

G.6. AMENDMENTS.

This Agreement may be amended by written document approved by the Corporation at a duly noticed and constituted meeting of the Corporation's Board and approved by the BCC by resolution duly adopted and executed by the County Mayor or County Mayor's designee.

G.7. NO WAIVER OF RIGHT TO ENFORCE.

The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term, or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing by said party, and there shall not be any accord and satisfaction unless expressed in writing and signed by both the County and Corporation. Any waiver of any portion of this Agreement shall be evidenced in writing by the party that made such waiver.

G.8 INSPECTOR GENERAL REVIEW.

G.8.1. Miami-Dade County Inspector General Review. The Corporation shall comply with provisions of the County Code relating to the Office of the Inspector General (IG); however, Corporation contracts shall not be subject to the IG fee. The IG may, on a random basis, perform audits, inspections, and reviews on all County contracts, throughout the duration of said contracts. Upon written notice from the County, the Corporation shall make available to the IG all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IG services and, under no circumstance, shall the Corporation's costs or expenses be inclusive of any charges relating to these IG services. Any reasonable and necessary copies required by the IG shall be made at the IG's expense. The terms of this provision herein apply to the Corporation, its officers, agents and employees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Corporation in connection with this Agreement. The terms of this section shall not impose any liability on the County by the Corporation or any third party.

G.8.2. Independent Private Sector Inspector General Review. The Corporation shall comply with provisions of the County Code and Administrative Orders relating to the County's right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. The IPSIG may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Parties in connection with this Agreement.

G.9. SAVINGS CLAUSE.

In the event any term or provision of this Agreement is determined by an arbitration panel, or appropriate judicial authority, to any extent, to be illegal, ineffective, unenforceable or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

G.10. CHOICE OF VENUE.

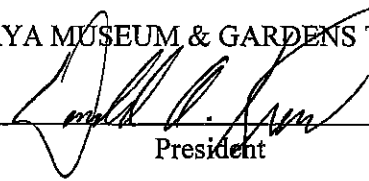
Any litigation between the County and the Corporation relating in any way to this Agreement shall be brought and presented exclusively in a court located in Miami-Dade County, Florida.

G.11. SURVIVAL.

The parties acknowledge that many of the obligations in this Agreement will survive the term, termination and/or cancellation hereof. Accordingly, the respective obligations of the Corporation and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

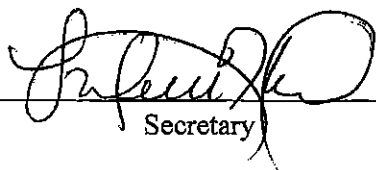
IN WITNESS WHEREOF, the parties have set their hands and seals, and such of them as have caused these presents to be signed by their duly authorized officers as of the date first set forth above.

VIZCAYA MUSEUM & GARDENS TRUST, INC.

By: _____
President

(SEAL)

ATTEST:

By: _____
Secretary

Approved as to Form and Legal Sufficiency

By: _____
County Attorney

MIAMI-DADE COUNTY, FLORIDA BY ITS BCC

By: _____
County Mayor or Designee

ATTEST:

HARVEY RUVIN, CLERK

(SEAL)

By: _____
Deputy Clerk

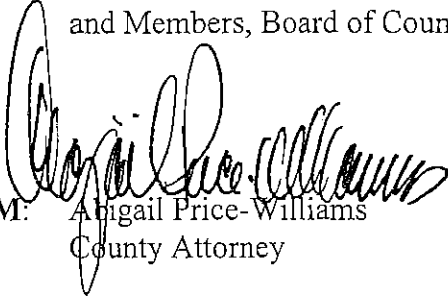


MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: January 22, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(C)(3)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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)(3)
1-22-20

RESOLUTION NO. R-32-30

RESOLUTION APPROVING THE FIRST AMENDED AND
RESTATEd OPERATING AND MANAGEMENT
AGREEMENT BETWEEN MIAMI-DADE COUNTY AND
VIZCAYA MUSEUM AND GARDENS TRUST, INC.; AND
AUTHORIZING THE COUNTY MAYOR OR COUNTY
MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND
TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, Miami-Dade County owns the Vizcaya Museum and Gardens
("Vizcaya"); and

WHEREAS, on July 6, 2017, via Ordinance No. 17-42, this Board approved the
Operating and Management Agreement between Miami-Dade County ("County") and
Vizcaya Museum and Gardens Trust, Inc. ("Trust"); and

WHEREAS, Section 3 of Ordinance No. 17-42 enables the Operating and
Management Agreement to be amended by a resolution of the Board; and

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

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

Section 1. The foregoing recitals are incorporated in this resolution and are approved.

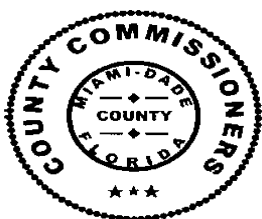
Section 2. This Board hereby approves the First Amended and Restated Operating and
Management Agreement between Miami-Dade County and the Vizcaya Museum and Gardens
Trust, Inc. in substantially the form attached to the Mayor's Memorandum as Attachment 1 and
made a part hereof.

Section 3. This Board authorizes the County Mayor or County Mayor's designee to execute the First Amended and Restated Operating and Management Agreement and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Esteban L. Bovo, Jr.** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	absent
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 22nd day of January, 2020. 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

Linda L. Cave

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MRP

Monica Rizo Perez