

**REIMBURSEMENT AGREEMENT FOR
CAPITAL IMPROVEMENTS**

SOUTH FLORIDA MUSEUM

MANATEE COUNTY

THIS REIMBURSEMENT AGREEMENT (“Agreement”), is made and entered into as of _____, 2015, by and between South Florida Museum and Bishop Planetarium, Inc., a Florida not-for-profit corporation (hereinafter, the “Museum”), and Manatee County, a political subdivision of the State of Florida (hereinafter the “County”).

W I T N E S S E T H

WHEREAS, the County levies and collects a tourist development tax pursuant to Section 125.0104, *Florida Statutes* (the “Act”), and has adopted a tourist development plan that authorizes the use of proceeds of the tourist development tax for, among other things, reimbursement to the Museum to fund the costs of capital improvements to the publicly-owned land on which the South Florida Museum facilities are located at 201 10th Street West, Bradenton, Florida (the “Facility”) in an amount not to exceed two hundred thousand dollars (\$200,000) per year for five (5) years; and

WHEREAS, the County and the Museum wish to enter into this Agreement in order to implement the use of tourist development tax proceeds for the purpose of funding capital improvements for the Facility, subject to the Museum providing matching funds in an amount equal to such funding, as authorized in the County’s tourist development plan.

NOW, THEREFORE, the County and the Museum, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, agree as follows:

1. CAPITAL IMPROVEMENTS.

A. **Improvements**: The Museum shall be solely responsible for the design, permitting, construction, operation and maintenance of the improvements to the Facility funded pursuant to Section 1.B.

B. **Reimbursable Costs**. Fifty percent (50%) of the actual and direct costs incurred by the Museum for capital improvements to the Museum’s Facility, as more particularly described on Exhibit A, shall be considered “Reimbursable Costs” for the purposes of this Agreement, the

other fifty percent (50%) of such costs to be paid with matching funds to be provided by the Museum, and no other costs shall be considered Reimbursable Costs.

C. Branding. Museum is required to review their Branding by contracting with a third party firm or higher education institution to confirm or recommend Brand elements that embody the Museum's mission and resonate with the marketplace.

2. REIMBURSEMENT. The County shall reimburse the Museum for Reimbursable Costs, in an aggregate amount not to exceed two hundred thousand dollars (\$200,000) per year for five (5) years commencing October 1, 2015, subject to the following provisions.

A. Compliance With Obligations: The County's obligation to provide such reimbursement shall be subject to compliance by the Museum with its obligations under this Agreement.

B. Invoice and Payment. The County shall reimburse the Museum for the Reimbursable Costs described in Exhibit A within ninety (90) days of receipt of an application for payment that meets the requirements of this Section. The Museum's applications for payment shall be submitted as written requests to the Bradenton Area Convention & Visitors Bureau and shall: (i) identify all costs funded by the Museum for which a fifty percent (50%) matching fund reimbursement is requested; and (ii) include detailed invoices (indicated as paid with reference to date of payment and check number), a completed W-9 (required upon the first request only) and any other documentation acceptable to the County reasonably necessary to identify the Reimbursable Costs incurred and funded by the Museum. The Museum shall apportion Reimbursable Costs on a monthly basis, and may submit requests for reimbursement on a monthly basis.

C. Processing and Payment: The County shall, within ten (10) days of receipt, review the invoice and either approve the invoice for payment or request from the Museum additional information. If the invoice is approved for payment, the County shall remit payment to the Museum within ninety (90) days of the date of the original submittal to the County representative. If any amount in the request is disputed by the County, the County shall, as soon as practical, notify the Museum and make partial payment of the amount which is not in dispute pursuant to this paragraph. The Museum and the County shall meet within seven (7) days of the County notification to attempt to resolve any disputed amounts.

D. Availability of Funds: The County intends to fund the reimbursements to be made hereunder with proceeds of the County's tourist development tax. The obligation of the County to reimburse the Museum for Reimbursable Costs hereunder is subject to the discretion of the Board of County Commissioners to budget legally available funds, including without limitation proceeds of the County's tourist development tax, as well as other revenues, in amounts sufficient to fund such reimbursements. Accordingly, this Agreement shall not be construed to constitute a debt or general obligation of the County, or to result in a pledge of or lien upon any revenues of the County, including without limitation general revenues or proceeds of the

County's tourist development tax. The County's obligation to pay such funds hereunder shall be limited by, and shall be subordinate to: (a) all senior funding priorities set forth in the tourist development plan, (b) any covenants of the County to budget and appropriate legally available revenues to service County debt obligations, and (c) and requirements of the Act.

3. FINANCIAL RECORDS AND ACCOUNTING. The Museum shall keep and maintain financial records related to the expenditures reimbursed pursuant to this Agreement, for a period of five (5) years, in accordance with the records retention schedule as outlined in the Florida Department of State Division of Library and Information Services, and shall allow the County or its agents to review and audit same at any time upon reasonable notice. The Museum shall make all such records available for inspection as otherwise may be required by law. The Museum shall be responsible for any governmental/regulatory fees or taxes associated with the Facility, including without limitations the activities funded in part by reimbursements pursuant to this Agreement..

4. DURATION AND TERMINATION. This Agreement shall remain in effect for a term of five (5) years commencing October 1, 2015. Upon termination, the Museum shall provide a final invoice to the County, and the County shall make a final reimbursement then due to the Museum for all Reimbursable Costs incurred on or prior to the date of termination under this Agreement and not previously invoiced.

5. INDEMNIFICATION. To the extent permitted by law (and in the case of the County, the tort liability limitations set forth in Section 768.28, *Florida Statutes*, shall also apply to any actions to enforce this Agreement, or any provisions herein) each of the parties hereto shall indemnify and hold harmless the other, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the indemnifying party and other persons employed or utilized by the indemnifying party in the performance of this Agreement. The Museum shall maintain insurance policies in amounts and coverages necessary and sufficient to fund its obligations pursuant to this Section, and shall name the County as an additional insured on such policies.

6. CATASTROPHIC EVENTS. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by a hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

7. NOTICES. All notices, comments, consents, objections, approvals, waivers, and elections which any party shall be required or requested or may desire to make or give under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or facsimile transmission. All such communications shall be addressed to the applicable addresses set forth below or as any party may otherwise designate in the manner prescribed herein.

To the County: Executive Director
Bradenton Area Convention and Visitors Bureau
P.O. Box 1000
Bradenton, FL 34206
(941) 729-9177
(941) 729-1820 (fax)

To the Museum: Executive Director
South Florida Museum
201 10th Street West
Bradenton, FL 34205
(941) 746-4132
(941) 747-2556 (fax)

8. DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit of any third party, including without limitation any subcontractors of the Museum. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

9. CONSTRUCTION.

A. Entire Agreement: This Agreement represents the full agreement of the parties, and supersedes and replaces any and all prior agreements between the County and the Museum regarding the matters addressed herein.

B. Equal Construction: Each of the parties hereto has had equal input into drafting of this Agreement such that no provision of this Agreement shall be construed strictly against one party as the drafter thereof.

C. Headings and Captions: The headings and captions of articles, sections, and paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or be taken into consideration in interpreting this Agreement.

10. AMENDMENTS; WAIVERS; ASSIGNMENT.

A. Amendments: This Agreement may be amended only pursuant to an instrument in writing that has been jointly executed by the parties hereto and duly authorized and approved by the Board of County Commissioners of the County and by the Museum.

B. Waivers: Neither this Agreement nor any portion of it may be modified or waived orally. However, each party (through its governing body or properly authorized officer) shall have the right, but not the obligation, to waive, on a case-by-case basis, any right or condition herein reserved or intended for the benefit or protection of such party without being deemed or considered to have waived such right or condition for any other case, situation, or circumstance

and without being deemed or considered to have waived any other right or condition. No such waiver shall be effective unless made in writing with an express and specific statement of the intent of such governing body or officer to provide such waiver.

C. Assignment: The rights and obligations of either party to this Agreement may be assigned to a third party only pursuant to a written amendment hereto.

11. VALIDITY. Each of the County and the Museum represents and warrants to the other its respective authority to enter into this Agreement.

12. SEVERABILITY. The provisions of this Agreement are declared by the parties hereto to be severable. In the event any term or provision of this Agreement shall be held invalid by a Court of competent jurisdiction, such invalid term or provision should not affect the validity of any term or provision hereof; and all such terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been part of this Agreement; provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent here thereof, then, to the extent permitted by law, such term or provision shall be automatically deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

13. GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Florida. Venue for any action to enforce any of the provisions of this Agreement shall be in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, or, to the extent any proceeding is removed to federal court, the United States District Court for the Middle District of Florida, Tampa Division.

14. REMEDIES. Each party hereto shall have such remedies as are available pursuant to applicable law for any breach or non-performance by the other party.

15. ATTORNEYS FEES AND COSTS. Each party hereto shall be solely responsible for paying its attorneys fees and costs in any dispute, litigation, dispute resolution proceeding, settlement negotiation or pre-litigation negotiation arising under this Agreement.

16. EFFECTIVE DATE. This Agreement shall take effect as of the date set forth above.

[Signature Page to Follow]

WHEREFORE, the parties hereto have executed this Agreement as of the date and year first above written.

**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: Board of County Commissioners

By: _____
Ed Hunzeker, County Administrator

**SOUTH FLORIDA MUSEUM AND
BISHOP PLANETARIUM, INC.,
a not-for-profit corporation**

By:  _____
Executive Director

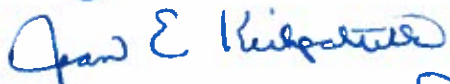

Museum Board President

EXHIBIT “A”
Description of the Project

- Creation of new spaces:
 - The Mosaic Backyard Universe
 - The Commons
 - Special Exhibition Gallery
 - Education Center
 - New Aquatic Exhibits
- Renovating current exhibitions
- Upgrading portions of the Aquarium
- Planetarium upgrade
- Developing a pilot for the innovative *Pathways* program
- Related soft costs such as permitting, architectural design, engineering and insurances related to such components.