

Monica Luff

From: William Clague
Sent: Friday, August 25, 2017 2:08 PM
To: Monica Luff
Cc: Mitchell Palmer; Alex Nicodemi; Dan Schlandt; Elliott Falcione; Juliet Shepard
Subject: South Florida Museum Agreement; RLS-2017-0428
Attachments: 2017 Amended and Restated Museum Agreement v1.doc

Monica:

Pursuant to the above Request for Legal Services you have asked this office to draft an Amended and Restated Reimbursement Agreement for the Maintenance of Manatees and/or Travelling Exhibits (Agreement) between the County and the South Florida Museum (Museum). I provide the following in response:

1. Attached is a draft Agreement which largely follows the format we have used in past transactions, with redlining against the most recent amended and restated agreement between the County and the Museum.
2. As requested in the RLS, the Agreement removes language restricting the County's reimbursement to costs associated with a "second manatee". Also, in Section 1.B, we have added language that allows reimbursement for "back-dated" costs incurred on or after July 1, 2017.
3. The RLS notes that the need for the Agreement was prompted by the recent tragic death of Snooty the Manatee. We understand that the Museum is in the process of receiving review of its manatee program by an independent outside party. We suggest that you consider whether it would be better to wait until that outside review is complete before scheduling the Board's approval of the Agreement. It is possible that the outside review may prompt additional changes to the Agreement, such as funding of improvements to the facilities that house manatees.

Subject to resolution of the business issue described above, I have no objection from a legal standpoint to the Agreement being scheduled for consideration by the Board. I express no opinion as to the business judgment of entering into the Agreement.

This concludes my response to the RLS.

Bill Clague
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**AMENDED AND RESTATED
REIMBURSEMENT AGREEMENT FOR THE
MAINTENANCE OF MANATEES
AND/OR TRAVELLING EXHIBITS**

**SOUTH FLORIDA MUSEUM AND BISHOP PLANETARIUM, INC.
MANATEE COUNTY**

THIS AMENDED AND RESTATED REIMBURSEMENT AGREEMENT (“Agreement”), is made and entered into as of **DATE**, 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”).

WITNESSETH

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, payments to the Museum to fund the costs of care, feeding, and maintenance associated with manatees at the Museum, in an amount not to exceed thirty thousand dollars (\$30,000) in each fiscal year; and

WHEREAS, the Museum is a not-for-profit corporation, operating a museum that is open to the public, and the expenses of feeding and maintenance of manatees constitutes operating expenses of such museum, all within the meaning of Section 125.0104(5)a.1. of the Act; and

WHEREAS, the Museum also creates and builds, or leases, travelling exhibits to be displayed at the Museum constituting operating expenses of such museum, all within the meaning of Section 125.0104 of the Act; and

WHEREAS, the parties to this agreement entered into a Reimbursement Agreement for the Maintenance and/or Travelling Exhibits, dated **DATE** (the “Prior Reimbursement Agreement”); and

WHEREAS, the County and the Museum wish to enter into this Agreement, in order to amend and restate the Prior Reimbursement Agreement in its entirety, to implement the use of tourist development tax proceeds for the purpose of funding care, feeding, and maintenance of manatees by the Museum, and/or to create, build, or lease travelling exhibits to be displayed at Museum 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. MANATEES.

A. Maintenance of Manatees: The Museum shall be solely responsible for the care and management of the manatees housed in its facilities. The County shall reimburse the Museum for costs pursuant to Section 3.B. In the event that, for whatever reason, the Museum ceases to house and maintain any manatees in its facilities, the County's obligation under this Agreement shall terminate within thirty (30) days of such occurrence, and the County shall not be responsible for reimbursing any expenses incurred by the Museum after such occurrence.

B. Reimbursable Costs: The actual and direct costs incurred by the Museum in feeding and maintaining the manatees, incurred on or after July 1, 2017, shall be considered "Reimbursable Costs" for the purposes of this Agreement, and no other costs shall be considered Reimbursable Costs. Pursuant to Section 3, hereof, the County shall reimburse the Museum monthly for a portion of such Reimbursable Costs.

2. PERIODIC TRAVELLING EXHIBITS.

A. Periodic Travelling Exhibits: From time to time, the Museum shall create, build, display, and or lease travelling exhibits to display at the Museum.

B. Reimbursable Costs: The actual and direct costs incurred by the Museum in creating, building, leasing, displaying, and maintaining travelling exhibits, shall be considered "Reimbursable Costs" for the purposes of this Agreement. Pursuant to Section 3, hereof, the County shall reimburse the Museum for a portion of such Reimbursable Costs.

3. REIMBURSEMENT. The County shall reimburse the Museum for Reimbursable Costs, in an aggregate amount not to exceed a total of thirty thousand dollars (\$30,000.00) per County fiscal year, 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. Submission of Written Request and Invoices: In order to receive reimbursement, the Museum shall provide the County with a written request, to be submitted to the County, together with reasonable documentation of expenses for the period of reimbursement. The Museum shall apportion Reimbursable Costs on a monthly basis, and shall submit requests for reimbursement no more frequently than once every three (3) months.

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 forty five (45) 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) requirements of the Act.

4. FINANCIAL RECORDS AND ACCOUNTING. The Museum shall keep and maintain financial records related to the expenditures reimbursed pursuant to this Agreement, in accordance with generally accepted accounting principles, 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 its operations, including without limitations the activities funded in part by reimbursements pursuant to this Agreement.

5. DURATION AND TERMINATION. This Agreement shall remain in effect for an initial term of five (5) years from the effective date set forth above, with three (3) options to extend for an additional year, for a total of eight (8) years. Either party may upon giving notice ninety (90) calendar days prior to the expiration of the term, elect to not renew this Agreement without cause for any reason. 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.

6. 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, defend, 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.

7. 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.

8. 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: Office Manager
 South Florida Museum and Bishop Planetarium, Inc.
 201 10th Street West
 Bradenton, Florida 34205
 (941) 746-4131
 (941) 747-2556 (fax)

9. 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.

10. 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 Museum regarding the matters addressed herein, including without limitation the "Agreement for Use of Tourist Development Tax Revenues", dated as of November 18, 1997; which the County and Museum agreed to terminate as of the effective date of the Prior Reimbursement Agreement.

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.

11. 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.

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

13. **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.

14. **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.

15. **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.

16. **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.

17. AMENDMENT AND RESTATEMENT.

This Agreement constitutes the amendment and restatement of the Prior Reimbursement Agreement in its entirety, and this Agreement shall replace and supersede the Prior Reimbursement Agreement in its entirety. Upon the effective date hereof, all matters addressed herein shall be governed solely by the terms and provisions of this Agreement, and no term, condition, or obligation of any party set forth in this Agreement shall be conditioned upon or subject to any term, condition, or obligation of the Prior Reimbursement Agreement.

18. **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: _____
County Administrator**

**SOUTH FLORIDA MUSEUM
AND BISHOP PLANETARIUM, INC.,
a Florida Not-For-Profit Corporation**

By: _____