

MUSEUM FUNDING, OPERATION AND MAINTENANCE AGREEMENT

THIS IS AN AGREEMENT, entered into on 30 March  
1991, between:

THE CITY OF FORT LAUDERDALE, a municipal  
corporation of the State of Florida,  
hereinafter referred to as "CITY",

and

THE DISCOVERY CENTER, INC., a non-profit  
corporation organized pursuant to the  
laws of the State of Florida, herein-  
after referred to as "DISCOVERY CENTER".

WHEREAS, the parties hereto previously entered into an  
Agreement dated February 26, 1988 and a PECO Funding, Operation and  
Maintenance Agreement dated September 7, 1989 concerning the funding  
construction, development, and operation of the Project (the Prior  
Agreements); and

WHEREAS, the parties hereto desire to replace and update  
the terms and conditions of the Prior Agreements with this Agreement  
and terminate the Prior Agreements.

NOW, THEREFORE, in consideration of the mutual promises and  
conditions contained in this Agreement and other good and valuable  
consideration, the receipt of which is acknowledged, CITY and  
DISCOVERY CENTER agree as follows:

ARTICLE 1

PREAMBLE

1.1 On November 4, 1986, the qualified electors of the  
City of Fort Lauderdale, Florida authorized by majority vote the  
issuance of an amount not exceeding \$44,700,000 of general obliga-  
tion bonds to finance the cost of various municipal projects.

1.2 A portion of the authorized general obligation bond  
funds in an amount of \$8,000,000 was authorized to pay a share of  
the cost of acquiring land and constructing a comprehensive science  
and technology complex consisting of a museum and a state-of-the art  
IMAX film theatre ("Museum").

1.3 Pursuant to Resolution No. 88-11 adopted by the City  
Commission of the City of Fort Lauderdale on January 20, 1988, the  
City entered into an Agreement dated February 26, 1988 with the Dis-  
covery Center, Inc. for utilization of the bond funds for develop-  
ment of the Museum.

1.4 Pursuant to Section 235.196, Florida Statutes (here-  
inafter referred to as "Act"), the Board submitted applications to  
the Commissioner of Education of the State of Florida from the Pub-  
lic Education Capital Outlay and Debt Service Trust Fund (PECO) for  
the planning, construction, construction administration and furnish-  
ing of a community education facility. Funds were granted by the  
State of Florida at the time, in the amounts and for the purposes as  
follows:

1987	\$ 760,000.00	(planning)
1988	\$10,279,700.00	(planning)
1989	11,950,000.00	(planning, property adminis- tration, construction, furnishing).

1.5 The Museum is a part of the community education facility, and a portion of the PECO funds in amount of \$387,100 for planning and \$10,750,000 for all property and services was authorized to pay a share of the cost of development of the Project.

1.6 As a condition for the grant of PECO Funds, as provided in Section 235.196, Florida Statutes, the CITY agreed to act as the non-educational governmental agency to participate in the funding, operation, maintenance and control of the Facility.

1.7 As the non-educational governmental agency the CITY must commit to provide at least one-half of the cost of the site acquisition, planning and construction of the Facility.

1.8 As a condition to the submission of the application, the Board has required the CITY to agree to designate itself as the agency responsible for the operation, maintenance and control of the Facility.

1.9 DISCOVERY CENTER is a not-for-profit corporation organized pursuant to the laws of the State of Florida and has developed and presently operates a Science and Technology Museum in the City of Fort Lauderdale.

1.10 As an incentive for the CITY to agree to act as the non-educational governmental agency in the application for PECO funds, the DISCOVERY CENTER proposed to solicit and secure the funds, services and materials needed, over and above the Bond Funds and PECO funds, to complete the Project.

1.11 CITY finds that DISCOVERY CENTER is uniquely qualified for these purposes, and it would be in the best interest of the public for the DISCOVERY CENTER to implement, develop and complete the Project pursuant to the terms of this Agreement.

1.12 Pursuant to Resolution No. 88-320, adopted by the City Commission of the City of Fort Lauderdale on December 20, 1988, the City entered into a PECO Funding, Operation and Maintenance Agreement dated September 7, 1989 with the Discovery Center, Inc. providing the method, terms and conditions by which DISCOVERY CENTER will assist CITY in the acquisition of the Premises and how the DISCOVERY CENTER shall implement, develop, construct, administer construction, complete and open the Museum. In addition, that the DISCOVERY CENTER will provide Cash Funds which, combined with the Bond and PECO Funds, shall equal the cost of the Project. Finally, that the DISCOVERY CENTER agrees to operate, maintain and control the Museum on behalf of the CITY in consideration of the CITY joining with the Board in the application for PECO Funds.

1.13 Pursuant to motion approved by the City Commission at its meeting of March 19, 1991, the City Commission approved the execution of an agreement combining the prior agreements between the CITY and DISCOVERY CENTER for utilization of bond funds and the PECO Funding, Operation and Maintenance Agreement and making certain amendments thereto.

## ARTICLE 2

### DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions contained herein, the following words or phrases have the meanings as set forth below:

2.1 Agreement. The contract, represented by this writing, between the DISCOVERY CENTER and the CITY.

2.2 Board. The School Board of Broward County, Florida.

2.3 Board Agreement. The Community Educational Facility Agreement between the CITY and the Board dated April 7, 1988 and

attached hereto as Exhibit "A" as the same may be amended from time to time.

2.4 Board of Trustees. The governing body of the DISCOVERY CENTER authorized to exercise all corporate power and to manage the affairs of the DISCOVERY CENTER.

2.5 Bond Funds. The portion of the CITY'S General Obligation Bonds, as authorized by Resolution No. 86-277, duly adopted by the Commission on December 16, 1986, in the aggregate principal amount of \$44,700,000, of which \$8,000,000 was authorized to pay a share of the costs of development of the Museum. The provisions of this Agreement regarding Bond Funds shall apply to any interest earned on Bond Funds ("Interest on Bond Funds") and appropriated by CITY for development of the Project.

2.6 Cash Funds. Those funds which must be raised by the DISCOVERY CENTER as provided in this Agreement which funds may include cash, stocks and bonds which may be converted into cash without restriction, irrevocable letter of credit from a financial institution authorized to do business in the State of Florida, other negotiable instruments and third party guarantees which may be immediately converted into cash, and such other instruments approved by the CITY'S Finance Director.

2.7 City. The City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida.

2.8 Commission. The governing body of CITY. Also known as the City Commission.

2.9 Completion of Museum. The date a certificate of occupancy or an equivalent certificate is issued by such governing authority with jurisdiction over the construction of the Museum and approval by the Contract Administrator that Museum has been completed in accordance with this Agreement, which approval will not be unreasonably withheld.

2.10 Construction Manager. A person selected and retained by DISCOVERY CENTER as the Consultant's and DISCOVERY CENTER'S on-site representative to monitor and administer construction activities. This person will be the on-site sole source contact through which inspections, comments and the construction contract is administered for the Contractor. Such person may also serve as the Project Director.

2.11 Consultant. Qualified architects, engineers, planners and consultants retained by DISCOVERY CENTER, CITY, or both, in accordance with the provisions of this Agreement to prepare the Plans and Specifications or any part thereof, for the Facility and all plans, drawings and directions for the interior design and the programs and exhibits to be a part of the Facility.

2.12 Contract Administrator. The City Manager of CITY, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon the instructions or determinations made by the Contract Administrator.

2.13 Contractor. One or more individuals or firms constituting a general contractor or other type of contractor properly licensed by Broward County, the State of Florida or other appropriate jurisdiction to the extent required by applicable law, authorized to perform contracting services in Broward County and the State of Florida, bonded to the extent required by applicable law and contract specifications and selected by DISCOVERY CENTER through competitive bidding procedures as provided in this Agreement to construct all or any part of the Museum.

2.14 Discovery Center. Discovery Center, Inc. is a non-profit corporation organized pursuant to the laws of the State of Florida.

2.15 Engineering Inspector. A person appointed by CITY who shall certify the amount of construction completed on the Museum upon each request for a construction draw received by CITY, who shall perform such other duties as directed by CITY in connection with the Project and who may also serve as the Project Representative.

2.16 Esplanade. An outdoor education and performance park as more particularly described in the Proposal.

2.17 Facility. The community educational facility to be planned and constructed and paid for in part with PECO Funds. The Facility includes but is not limited to the Museum, Esplanade, community hall, and small theater, and infrastructure and street improvements.

2.18 Museum. The improvements and structures which shall include approximately 84,000 gross square feet of building, an IMAX theater building to seat at least 300 people, the exhibitry, and the interior equipment and furnishings including the IMAX theater (including sound system, control seating, special lighting) which improvements and structures shall serve as a regional comprehensive science and technology facility.

2.19 PECO Funds. Public Educational Capital Outlay funds granted by the State of Florida to develop the Facility and, specifically, that portion allocated for development of the Museum.

2.20 Person. When used herein shall mean an individual, partnership, corporation, firm or other entity capable of entering into a legally binding agreement.

2.21 Plans and Specifications. The documents setting forth the predesign plans and drawings, the concept documents, preliminary plans and construction documents for the Museum, together with all amendments and modifications thereof, reviewed and accepted by CITY and DISCOVERY CENTER as provided in this Agreement.

2.22 Premises. The real property legally described in Exhibit "B" attached hereto and incorporated herein where the Museum will be located and when located thereon, all improvements and structures located thereon.

2.23 Project. Acquisition of the Premises, planning, design and construction of the Museum and purchase and installation of all furniture, furnishings, fixtures and exhibitry and operations and maintenance of the Museum.

2.24 Project Director. A person selected and retained by DISCOVERY CENTER who shall administer the management responsibility of the Project as more particularly described in this Agreement and may also serve as the Construction Manager.

2.25 Project Representative. A Person selected, employed, compensated by and directed to perform services on behalf of CITY to monitor work at the Museum site to completion. Such Person may also serve as the Engineering Inspector.

2.26 Proposal. The application as amended and submitted by the Board to the Commission of Education of the State of Florida requesting funds for development of a community educational facility and defining the planning, acquisition of property, construction, funding and operation of such facility as such proposal relates to the development of the Facility.

2.27 Purchasing Code. Division 2. Purchasing, Section 2-171 through 2-199, inclusive.

2.28 State. The State of Florida, Department of Education or other agency designated by the State to monitor the expenditure and use of PECO Funds.

## ARTICLE 3

### THE PROJECT

3.1 Project Phases. The Project shall consist of the following phases:

3.1.1 Procuring the funding, contribution of services, contribution of materials or any combination of the three necessary to develop and complete the Project.

3.1.2 Procuring consultant services for the preparation of the Plans and Specifications for the implementation, development and construction of the Museum and all other plans, drawings and direction needed to complete the Project.

3.1.3 Acquisition of the Premises.

3.1.4 Procuring the services of a Contractor and other personnel necessary to construct the Museum in accordance with the Plans and Specifications.

3.1.5 Purchase and installation of all personal property including, but not limited to, fixtures, furnishings, cooling and heating system, lighting system, programs, and exhibits necessary to make the Museum fully operational.

The aforementioned phases need not be completed in the aforementioned order and may be conducted concurrently.

3.2 Project Management. DISCOVERY CENTER shall be responsible for soliciting, arranging, managing, overseeing, coordinating and administering the total development of the Project subject to the terms and conditions provided in this Agreement. DISCOVERY CENTER recognizes the CITY'S ownership of the Premises and agrees to coordinate with CITY the total development of the Project in accordance with this Agreement.

3.3 DISCOVERY CENTER as Developer. The DISCOVERY CENTER shall act as the developer of the Museum in accordance with the terms of this Agreement. It is further agreed and understood that the acquisition of all services, materials and property for the development of the Project shall be in accordance with the procedures as described in this Agreement. During Project development, DISCOVERY CENTER shall not cause by contract, agreement or act, the encumbrance of any funds for the Project unless the amount of funds to be encumbered pursuant to the terms of a contract or agreement is available in cash or cash equivalent at the time the contract is executed and the contract or agreement has been approved by CITY. CITY shall provide such services and materials in furtherance of the Project if the CITY and DISCOVERY CENTER agree that such services and materials may be provided more efficiently and at a lower cost.

3.4 Acquisition of Premises. The CITY and DISCOVERY CENTER were responsible for locating and negotiating the purchase of the Premises where the Museum is to be located. The property was conveyed to and titled in the name of the City and is held by the CITY subject to the forty (40) year lease for its use in favor of the Board in accordance with the Board Agreement. All negotiations to purchase or otherwise acquire such property were expressly approved by CITY.

3.5 Personal Property. Unless identified as part of any agreement, contract or otherwise approved by CITY, all personal property purchased with Bond or PECO Funds shall be purchased in accordance with CITY'S Purchasing Code.

Notwithstanding anything to the contrary contained in this Agreement, all personal property, including exhibits, purchased with

funds other than Bond or PECO Funds and not needed for the operation of the Museum may be purchased at the DISCOVERY CENTER'S discretion and shall be owned and controlled by DISCOVERY CENTER and neither CITY nor Board shall have any interest therein.

**3.6 Consultant Services.** DISCOVERY CENTER, has solicited and procured, and CITY has approved of, E. Verner Johnson and Associates, Inc. and Museum Design Resources, Inc. to provide services related to the acquisition of the Premises and the design, construction, inspection, programming, and master planning of the Museum. The selection of and negotiation with the Consultant has been and will continue to be in accordance with the provisions of Section 287.055, Florida Statutes and the Purchasing Code, as they may be amended from time to time.

DISCOVERY CENTER shall be responsible for the administration of any and all agreements between DISCOVERY CENTER and Consultant in accordance with the terms of said agreements, however, all such agreements shall be submitted to Contract Administrator for review and approval prior to execution and all plans and specifications shall be submitted to Contract Administrator for review and approval at each stage of preparation. All changes in the plans and specifications, including those not involving an adjustment in the contract sum or an extension of contract time, must be approved by the Contract Administrator. Any amendments or revisions of the agreement between the Consultant and DISCOVERY CENTER which involve an increase in the expenditure of CITY Funds or an extension of time to perform services must be made in compliance with the ordinances, rules and regulations of CITY and must receive the prior approval of Contract Administrator. All changes, diminutis or otherwise shall be furnished to the Contract Administrator for review. All actions, approvals, recommendations and determinations to be taken by DISCOVERY CENTER pursuant to the terms of any agreement between DISCOVERY CENTER and Consultant relating to the Project must be submitted to the Contract Administrator for review prior to DISCOVERY CENTER taking such action or making a recommendations, determination or approval.

DISCOVERY CENTER shall solicit and procure the services of any and all other consultants necessary to provide services related to the design, construction, inspection, programming and master planning of the Complex, which consultants shall be licensed by the State of Florida to provide the services proposed to be delivered by consultants. The selection of and negotiation with any and all Persons or firms to provide consultant services relating to the Project shall be in accordance with the provisions of Section 287.055, Florida Statutes, Purchasing Code, and any other federal, state or local statutes, ordinances, rules or regulations which may be in effect at the time such services are procured. All agreements with such consultants shall be subject to the review and approval of CITY.

Any items requiring CITY review and approval under this Article 3.6 shall be reviewed and approved or rejected (with explanation) by CITY within thirty (30) days of submission. CITY'S failure to review and approve or reject (with explanation) within said thirty (30) days shall be deemed to constitute approval by CITY.

Notwithstanding anything to the contrary contained in this Agreement, in the event any item is required by ordinance, rule or regulation to be reviewed, approved or rejected by the CITY Commission, the Contract Administrator will advise DISCOVERY CENTER of same and the time period for such review, approval or rejection shall be that which is reasonably necessary in order for the CITY Commission to take such action.

**3.7 Construction Services.** DISCOVERY CENTER shall solicit and procure the services of a Contractor or Contractors to construct the Museum on the Premises in accordance with the Plans and Specifications reviewed and accepted by CITY.

The selection of a Contractor to construct any portion of the Museum shall be through the competitive bidding procedures in accordance with the provisions of the Purchasing Code and the procedures prescribed by the Office of the City Engineer. DISCOVERY CENTER, in conjunction with the Consultant, shall prepare the bidding forms, the conditions of contract and the form agreement between DISCOVERY CENTER and Contractor. DISCOVERY CENTER shall use only forms approved prior to bidding by the City Engineer.

DISCOVERY CENTER shall be responsible for the solicitation, negotiation and administration of any and all agreements between DISCOVERY CENTER and Consultant or Contractor in accordance with the terms of said agreements. However, all such agreements shall be submitted to CITY for review and approval prior to execution. Any amendments or revisions of the agreement between the Contractor or Consultant and DISCOVERY CENTER which involve an increase in the expenditure of Bond or PECO Funds or an extension of time to perform services must be made in compliance with the ordinances, rules and regulations of CITY and must receive the prior approval of CITY. All changes, diminutives or otherwise shall be furnished to the Project Representative for review. All actions, approvals, recommendations and determinations to be made or taken by DISCOVERY CENTER pursuant to the terms of any agreement between DISCOVERY CENTER and the Consultant or Contractor which agreement relates to the Project must be submitted to the Contract Administrator for review and approval prior to DISCOVERY CENTER taking such action or making such recommendation.

Any items requiring CITY review and approval under this Article shall be reviewed and approved or rejected (with explanation) by CITY within thirty (30) days of submission. CITY'S failure to review and approve or reject within said thirty (30) days shall be deemed to constitute approval by CITY.

Notwithstanding anything to the contrary contained in this Agreement, in the event any item is required by ordinance, rule or regulation to be reviewed, approved or rejected by the City Commission, the Contract Administrator will advise DISCOVERY CENTER of same and the time period for such review, approval or rejection shall be that which is reasonably necessary in order for the Commission to take such action.

DISCOVERY CENTER and CITY shall assist the Contractor in obtaining the building permits and any other required governmental approvals for the construction of the Museum.

**3.8 Project Director.** A Project Director may be appointed by DISCOVERY CENTER with the approval and consent of City Engineer to administer the Project management responsibilities described in Article 3.2. The Project Director shall certify the amount of construction completed on the Museum upon each construction draw request received by CITY, and perform such other duties in connection with the Project, as provided by written agreement. The Project Director shall coordinate his efforts with the CITY in order to cause the Project to be completed in an expeditious manner.

**3.9 Contract Terms.** All agreements and contracts for the procurement of property, services or material related to the development of the Project between DISCOVERY CENTER and any Person shall, unless waived in writing by the CITY, include the following provisions:

**3.9.1** CITY is a third party beneficiary of all obligations, responsibilities and undertakings of the Person entering into the agreement with DISCOVERY CENTER to provide the services set forth in the agreement.

**3.9.2** CITY and Board shall be named as an additional insured on all insurance policies provided by the Person entering into an agreement with DISCOVERY CENTER and the Person shall provide to DISCOVERY CENTER and CITY Certificate(s) of Insurance reflecting such insurance requirements upon execution of such agreements.

3.9.3 In the event DISCOVERY CENTER defaults in the performance of the Agreement between itself and CITY, CITY shall have the option to continue the agreement with any Person who entered into an agreement with DISCOVERY CENTER and CITY may assume all obligations, responsibilities and undertakings previously assumed by DISCOVERY CENTER. If CITY exercises the option, CITY shall notify the Person with whom DISCOVERY CENTER has entered into such agreement and such Person shall continue to perform pursuant to the terms of the agreement as if the agreement was between CITY and the Person performing the services.

3.9.4 Any notice or demand which under the terms of any agreement between DISCOVERY CENTER and a Person is required to be given or made by any Person, shall be in writing and shall be given by certified or registered mail to DISCOVERY CENTER and CITY.

3.9.5 In the event DISCOVERY CENTER receives any notice required to be given by a Person providing services related to the Project pursuant to the terms of an agreement with such Person, or if DISCOVERY CENTER becomes aware of any act or failure to act on the part of any Person at variance with the terms of any agreement between DEVELOPER and such Person, DISCOVERY CENTER shall immediately notify CITY.

3.10. Form of Agreements. All agreements between DISCOVERY CENTER and the Person shall be in a form as approved by the City Engineer, and DISCOVERY CENTER shall provide to CITY a statement of any deviations in the agreement form provided by DISCOVERY CENTER from the agreement form provided by CITY to DISCOVERY CENTER. No agreement encumbering Bond or PECO Funds shall be entered into by DISCOVERY CENTER without the prior written consent of the Contract Administrator. It is understood by the parties that the amount and type of insurance and bond coverages to be provided by those Persons providing services relating to the Project must be approved by the CITY'S Risk Manager.

#### ARTICLE 4

##### FUNDING

4.1 The total budgeted amount of the Project as of the date of this Agreement is approximately \$27,245,000. Approximately \$5,000,000 of this amount is required for the exhibitry. The DISCOVERY CENTER and CITY agree that funding of the Project shall be in accordance with the following:

Bond Funds	\$ 8,000,000	
Interest on Bond Funds	500,000	
PECO Funds	11,137,100	
DISCOVERY CENTER Funds	4,000,000	plus such additional funds necessary to complete the Project.

4.2 CITY agrees that upon proper submission of invoices by DISCOVERY CENTER in accordance with this Agreement, it shall make Bond Funds and Interest on Bond Funds in amounts provided herein available for the Project. It is understood by the CITY and DISCOVERY CENTER that upon submission of proper requests submitted by the CITY, the Board will make PECO Funds available to CITY for the Project. The CITY agrees that upon proper submission of invoices by DISCOVERY CENTER, the CITY shall take such actions necessary to obtain PECO Funds from the Board for the Project up to the amount provided herein.

4.3 It is understood by the parties that CITY provision of PECO Funds is contingent upon receipt of same from the Board. In the event invoices become due to Consultants, Contractors or other third parties for services rendered in connection with the Project, DISCOVERY CENTER shall be responsible for their payment but shall be reimbursed by PECO funds up to an amount provided herein when such



funds are received by CITY. DISCOVERY CENTER may request and CITY shall have the option to authorize the use of funds not specified in this Agreement, including additional bond interest for the payment of expenses incurred in connection with the Project.

4.4 As provided by the Act, PECO Funds may be authorized to fund up to one-half of the cost of the Facility. The remaining cost of the Facility ("matching funds") must be provided from another source. It is understood and agreed by DISCOVERY CENTER that DISCOVERY CENTER shall contribute matching funds for the Project as follows:

4.4.1 As of March 5, 1991 DISCOVERY CENTER has identified Cash Funds in the amount of \$2,176,938 and pledges in the amount of \$4,717,440 committed to be expended for development of the Project. DISCOVERY CENTER shall deposit all Cash Funds in the construction reserve account as provided in Article 4.5 on the date this Agreement is executed by CITY and DISCOVERY CENTER.

4.4.2 On or before December 31, 1991, DISCOVERY CENTER shall place additional Cash Funds in the construction reserve account to be used for development of the Project in an amount necessary to bring the total amount of Cash Funds in the construction reserve account to \$3,000,000.

4.4.3 On or before June 30, 1992, DISCOVERY CENTER shall place additional Cash Funds in the construction reserve account to be used for development of the Project in an amount necessary to bring the total amount of Cash Funds in the construction reserve account to \$4,000,000.

4.4.4 On or before the date of Completion of Museum, DISCOVERY CENTER shall purchase and install the Exhibitory necessary to complete the Project.

4.4.5 It is understood and agreed that DISCOVERY CENTER shall provide at least \$4,000,000 in Cash Funds as a condition of this Agreement regardless whether such funds are in excess of funds necessary to be provided as a match for PECO funds pursuant to the Act. It is also understood and agreed that if the Project costs exceed the estimated total, DISCOVERY CENTER shall be solely responsible and agrees to raise and expend such funds necessary to complete the Project.

4.4.6 DISCOVERY CENTER shall be permitted to encumber and expend up to twenty-five percent (25%) of the Cash Funds it has placed in the construction reserve account for fundraising, legal, administrative and other services if such services are in furtherance of the Project as determined by the CITY but are not authorized to be paid for with Bond Funds or PECO Funds, if DISCOVERY CENTER has received the written approval of the City for such expenditure.

4.4.7 It is understood that legal fees incurred by DISCOVERY CENTER for negotiations or disagreements between DISCOVERY CENTER and the CITY regarding the Project shall not be payable from PECO, Bond or Cash Funds raised by DISCOVERY CENTER as described herein.

4.5 Construction Reserve Account(s). The construction reserve account refers to one or more accounts identified by DISCOVERY CENTER where the Cash Funds are held. Income earned on the construction reserve account shall be credited towards the amount required to be raised by the DISCOVERY CENTER as required in this Agreement. Cash Funds placed by the DISCOVERY CENTER in the construction reserve account shall remain in such account until all Bond Funds and PECO Funds have been expended or encumbered for the Project unless otherwise approved by the Contract Administrator. DISCOVERY CENTER shall in no way transfer, expend, encumber, place a lien on or pledge any Cash Funds without the prior written consent of the Contract Administrator. Upon completion of the Project, any

Cash Funds in the construction reserve account not needed or utilized for the Project shall be transferred to the Operation and Maintenance Reserve Account provided in this Agreement.

4.6 Additional Funds. CITY may provide such additional funds to the DISCOVERY CENTER for the Project, which funds shall be expended in accordance with the provisions of this Agreement.

## ARTICLE 5

### FINANCIAL MATTERS

5.1 Procedures for Invoicing and Payment. During the development of the Project, DISCOVERY CENTER shall submit to the CITY itemized statements for payment as follows:

5.1.1 DISCOVERY CENTER shall submit copies of invoices for all services rendered and purchases made during the preceding month, which shall include the date the services were rendered or purchases made. Additionally, DISCOVERY CENTER shall furnish a description of all construction improvements at the site of the Project which have been completed or are currently being worked on.

5.1.2 DISCOVERY CENTER shall, through its Project Director, certify in writing to CITY that the work for which an invoice is submitted has been completed or that the materials purchased have been received on site or in a bonded warehouse and is incorporated in the Project within thirty (30) days, unless otherwise mutually agreed to by the parties.

5.1.3 Upon receipt of a monthly statement as described in this Article, the CITY shall review such statement, including supporting documentation, to determine whether the items for which invoices are submitted have been completed or received and that the invoiced items should, therefore, be paid.

5.1.4 Upon the approval of the Office of the City Engineer, the Contract Administrator may authorize the payment of an invoice from Bond Funds or submit the invoice to the Board for their review for payment from PECO Funds. It is understood that PECO Funds may only be made available for payment of a part or all of an invoice contingent upon Board review, approval and transfer of funds to the CITY. Upon authorization of Bond Funds or receipt of such PECO Funds authorized to be provided by Board, the Contract Administrator shall authorize the CITY Finance Department to deliver payment to DISCOVERY CENTER. The funds shall be made payable to the Person performing the services or providing property related to the Project and entitled to receive the authorized payment. The CITY Finance Department may, in its discretion authorize payment of an invoice submitted by DISCOVERY CENTER with Bond or Cash Funds prior to receipt of PECO Funds from the Board.

5.1.5 When Bond and PECO Funds have been encumbered or expended or if the Board denies payment of PECO Funds for all or any portion of an invoice, the Contract Administrator shall, after review of an invoice submitted by the DISCOVERY CENTER as provided in this Article, return such invoice to DISCOVERY CENTER for payment from DISCOVERY CENTER funds.

5.1.6 CITY shall make its best efforts to make payment for the amount authorized within sixty (60) days of submittal of an approved statement by DISCOVERY CENTER pursuant to the provisions of this Article.

5.1.7 DISCOVERY CENTER agrees to perform such services or take such actions required by the Board in connection with the Board's authorization of payment of PECO Funds.

5.2 Responsibility for Payments. DISCOVERY CENTER acknowledges and agrees that all costs and expenses incurred as a result of this Agreement shall be the responsibility of DISCOVERY

CENTER, conditioned upon DISCOVERY CENTER'S receipt of the Bond Funds from CITY and any PECO Funds received by CITY from Board, pursuant to the terms of this Agreement. CITY shall only be responsible to fund up to \$8,000,000 of Bond Funds and \$500,000 interest on Bond Funds in accordance with the terms and conditions of this Agreement and shall administer transfer of PECO Funds in an amount not to exceed \$11,137,100, as so authorized by Board, and unless otherwise agreed to in writing by CITY, CITY shall incur no other costs, liabilities or responsibilities with regard to the Project in excess of these amounts. Only those costs and expenses directly attributable to the Project and not attributable to the operating expenses of DISCOVERY CENTER are payable from Bond, PECO and Cash Funds.

**5.3 Disbursement of Funds.** Prior to DISCOVERY CENTER entering into any agreement which commits or encumbers any portion of Bond or PECO Funds, DISCOVERY CENTER shall submit to CITY a budget which provides the anticipated costs and expenses associated with the completion of the Project. In the event the budget is more than the Bond or PECO Funds allocated for the Project, DISCOVERY CENTER shall provide evidence satisfactory to CITY that funds, property or services are available to complete the Project.

All agreements committing or encumbering any portion of the Bond or PECO Funds shall be in an amount which does not exceed the amount provided on the budget approved by CITY unless additional funds are provided by a source other than CITY or upon the written approval of the Contract Administrator.

**5.4 Budgetary Management.** The DISCOVERY CENTER shall be responsible for the financial management and budgetary control of the operations of the Premises which responsibilities shall include but not be limited to the following:

- (a) Establishment of an annual budget of revenue and expenditures.
- (b) Responsibility for all maintenance and operational costs. The operational cost shall include, but not be limited to, the total budgetary responsibility for staffing and programming, and maintaining the physical plant and grounds of the Premises.
- (c) Establishment and collection of user fees for all groups, individuals and activities in accordance with the provisions of the Board Agreement.
- (d) Purchasing necessary services, equipment, and supplies for operation of the Premises.

No costs related to the performance of these responsibilities as described herein shall be the responsibility of the CITY.

**5.4.1** The DISCOVERY CENTER shall prepare and submit to the CITY for approval a budget for the operation of the Premises for the next fiscal year. After approval by the Board of Trustees of the DISCOVERY CENTER, the budget shall be submitted to the CITY at least sixty (60) days prior to the end of the DISCOVERY CENTER'S fiscal year. The budget shall contain the type of information required to be submitted by all CITY departments and shall include all receipts by source reasonably anticipated to be received from all sources, existing balances and an itemized estimate of expenditures that will need to be incurred to carry on all functions and activities of the Premises during the year and any provision for reserves for contingencies and the balances which should be carried forward at the end of the year.

## **5.5 Financial Reporting.**

**5.5.1** DISCOVERY CENTER shall submit to the CITY on or before the forty-fifth day following the end of each of the first,

second and third quarters of the DISCOVERY CENTER'S fiscal year, financial statements showing a comparison of actual revenues from the beginning of the fiscal year to date to estimated revenues as shown on the budget approved by CITY and actual expenditures from the beginning of the fiscal year to date to estimated expenditures as shown on the budget approved by CITY. Further, on or before the ninetieth day following the end of each fiscal year, the DISCOVERY CENTER shall submit a financial statement for the entire preceding year, consisting of a balance sheet, income statement and a statement of cash flows which occurred during the year preceding the submission, which financial statement is required to be certified in accordance with the Codification to Auditing Standards as adopted by the American Institute of Certified Public Accountants by a certified Public Accountant licensed in the State of Florida. DISCOVERY CENTER is responsible for costs associated with the financial reporting requirements provided herein and it shall not be payable from Bond Funds or PECO funds allocated for the Project. Neither PECO nor Bond Funds shall be expended for the operational expenses or salaries of DISCOVERY CENTER that are not related to the Project.

5.5.2 If the DISCOVERY CENTER has an accumulated fund deficit at the end of any fiscal year it shall submit a plan to the CITY Finance Director of the CITY within thirty days of CITY'S receipt of the financial statement evidencing such deficit which plan provides the means by which the DISCOVERY CENTER proposes to eliminate the accumulated fund deficit and the time within which the plan will be accomplished. The CITY Finance Director shall advise the DISCOVERY CENTER of any additional information he deems necessary to determine whether the plan is acceptable. The CITY Finance Director will determine whether the plan is acceptable and may impose such conditions as he deems necessary in order to approve the plan. If the CITY Finance Director does not approve the plan or DISCOVERY CENTER does not agree to the conditions imposed by the CITY Finance Director, the CITY Finance Director shall bring the matter to the Commission and if the Commission votes not to approve the plan submitted by DISCOVERY CENTER, such vote shall constitute a default by DISCOVERY CENTER of the terms of this Agreement, and the provisions of Article 14 shall immediately take effect. If the plan is approved by either the CITY Finance Director or the Commission, failure on the part of the DISCOVERY CENTER to abide by the terms of the plan or any conditions imposed as part of the plan, shall constitute a default and the provisions of Article 14 shall immediately take effect.

5.5.3 The DISCOVERY CENTER shall keep such records and accounts as may be necessary to record complete and correct entries as to all costs, expenses attributable to planning, construction and administration of the Project and all costs, expenses and revenue associated with the operation, maintenance and use of the Premises. Such books and records shall be available at all reasonable times for examination and audit by CITY and shall be kept for a period of seven (7) years after the expenditure or receipt of funds which the entry represents. Incomplete or incorrect entries in such books or records shall be corrected within thirty (30) days of notice to the DISCOVERY CENTER of such incomplete or incorrect entry. Failure to correct such entry within this time will be a default of this Agreement. Such records and accounts shall be available to the CITY at mutually convenient times.

5.5.4 DISCOVERY CENTER shall provide to organization-wide annual financial statements containing the opinion of a certified public accountant stating that he has examined the financial statements of DISCOVERY CENTER and they are fairly stated in accordance with generally accepted accounting principles. Such financial disclosure information shall be filed with CITY within ninety (90) days after the close of DISCOVERY CENTER'S fiscal year. DISCOVERY CENTER is responsible for costs associated with the above-mentioned audit and it shall not be payable from CITY Funds allocated for the Project. Neither PECO or Bond Funds shall be expended for the

operational expenses or salaries of DISCOVERY CENTER related to the DISCOVERY CENTER science museum operating on the date of this Agreement.

5.6 Operation and Maintenance Reserve Account.

5.6.1 On or before the end of the first year following the Completion of Museum, the DISCOVERY CENTER shall identify a reserve account(s) at a financial institution located in Broward County or at such other location as approved by the Finance Director, and have deposited in said account Cash Funds, negotiable securities, or both of at least \$2,000,000 to be used solely for operation and maintenance expenses of the Premises subject to the terms of this Agreement.

5.6.2 The principal amount of the operation and maintenance reserve account is for the benefit of the CITY to use for operation and maintenance expenses in the event of termination of this Agreement. Except for the expenditure provided in Section 5.6.4, DISCOVERY CENTER shall not spend or encumber or cause a lien against the funds in the operation and reserve account to occur for any purpose without the written consent of the CITY. In the event of termination of this Agreement, DISCOVERY CENTER shall turn over all funds in the operation and maintenance reserve account to the CITY to be placed in an account and utilized by the CITY for the operation and maintenance of the Premises.

5.6.3 At CITY'S request, but no less than annually, the DISCOVERY CENTER shall provide evidence of the balance of Cash Funds in the reserve account.

5.6.4 Income on the funds in the operation and reserve account may be accumulated and expended by the DISCOVERY CENTER for exhibits, programs, operation and maintenance of the Premises in conformance with the budget approved as provided in this Agreement.

5.7 Review of Contributions. No donation or contribution of money, services, materials or supplies shall be accepted for the Project which is given with a condition which would in any way interfere with the public's use of the Premises for the purposes provided in this Agreement.

ARTICLE 6

THE PREMISES

6.1 Term and License for Premises. The term of the license to occupy and use the Premises by DISCOVERY CENTER shall be forty (40) years beginning on the date the City Commission adopts a resolution approving the terms of a license for use of the Premises after public hearing in accordance with Section 8.13 of the City Charter. DISCOVERY CENTER shall have the option to renew this license for an additional ten (10) years, upon the same terms and conditions contained in this Agreement provided DISCOVERY CENTER is not in default of any of the terms of this Agreement.

6.2 Lease to School Board. It is acknowledged and understood by DISCOVERY CENTER that the proposed Museum is a part of the Facility. That pursuant to the Board Agreement and the Act, the Facility has been leased for use to the Board. The use of the Premises by DISCOVERY CENTER is subject to the terms and conditions of the Board Agreement and that no action by DISCOVERY CENTER shall interfere with nor shall DISCOVERY CENTER'S use of the Premises be in conflict with the terms of the Board Agreement or interfere with the CITY'S performance of the terms of the Board Agreement.

6.3 Use of Premises.

6.3.1 Subject to the provisions of this Agreement and the Board Agreement, DISCOVERY CENTER shall use the Premises as a

science and technology Museum for the benefit of the public to promote public and professional knowledge and appreciation of science and technology through the public presentation, exhibition and display of scientific and technological subjects, the conduction of lectures, seminars, classes and workshops for development of skills and techniques related to the foregoing scientific and technological subjects and through the public dissemination of any and all media or materials related to the foregoing. DISCOVERY CENTER shall endeavor to maintain prices for tickets to the events and activities conducted on the Premises at levels which will encourage attendance by a broad segment of the population of the CITY and Broward County, Florida. Further, DISCOVERY CENTER shall be permitted to use a portion of the Premises as office space for the administrative duties connected with the operation of the Premises, the size and location of such office space to be approved by the Contract Administrator.

6.3.2 DISCOVERY CENTER agrees that it shall assume and take responsibility for organizing and ensuring that the Premises are available for the use of the Board as provided in the Board Agreement and DISCOVERY CENTER assumes the responsibilities of the CITY provided in the Board Agreement as they relate to the Premises.

#### 6.4 Rent.

6.4.1 DISCOVERY CENTER shall pay to the CITY a yearly rental of One Dollar (\$1.00) per year. The first payment to be made by DISCOVERY CENTER to the CITY on the first day of the month following the commencement of the term of the license to use the Premises, and on the same date each year thereafter that this Agreement shall remain in force.

6.4.2 In addition to the annual rent hereinabove provided to be paid by the DISCOVERY CENTER to the CITY, the DISCOVERY CENTER shall pay all taxes and assessments imposed or levied against the Premises by any governmental entity having jurisdiction to levy such taxes or assessments, together with any commercial lease, tax or sales tax, if applicable. Notwithstanding the above, unless such taxes and assessments are required to be paid as provided by law regardless of ownership of the Premises, nothing contained herein shall be deemed to require the DISCOVERY CENTER to pay any taxes or assessments or to make payments in lieu thereof during the term of this Agreement. The DISCOVERY CENTER shall, from time to time, upon reasonable request by the CITY, exhibit vouchers and receipts to the CITY for said payments and, in default of the payment of any such sums by the DISCOVERY CENTER, the CITY may, at the CITY'S option, upon written notice to the DISCOVERY CENTER, pay the same, in which event the provisions contained in Article 7 shall apply.

6.4.3 The DISCOVERY CENTER shall have the right in good faith to review by appropriate legal or administrative proceedings or in such other manner as the DISCOVERY CENTER deems suitable, at the DISCOVERY CENTER'S expense, and to contest any and all taxes, assessments, and other charges levied against the Premises which the DISCOVERY CENTER is required to pay pursuant to the provisions of Section 6.4.2 hereof, provided that such protest or contest is conducted in the manner provided by law and provided, further, that the Premises are kept free from default for failure to pay such taxes, assessments or levies. Upon request by the DISCOVERY CENTER, the CITY may join in any contest or protest as provided in this Article, but at the DISCOVERY CENTER'S sole cost and expense, and as a condition of such joinder, the CITY may request reasonable indemnity against costs or other damages which CITY may incur as a result of such joinder.

6.4.4 This Agreement is an absolute net license and it is the intention by these presents that the CITY shall receive the rents herein provided to be paid and all sums which shall or may become payable hereunder by the DISCOVERY CENTER under any contingency free from all taxes, charges, expenses, damages and deductions of any kind or sort whatsoever, and that the DISCOVERY CENTER

shall and will, and hereby expressly agrees to, pay all such taxes, charges, expenses and such other sums, including certified improvements, if any, and sales taxes, if applicable and required by Florida law and the DISCOVERY CENTER shall perform all duties and obligations with relation to the Premises, the improvements thereon and appurtenances thereto, maintenance and operation thereof, whether such duties and obligations would otherwise be construed to be those of the CITY or the DISCOVERY CENTER, so that no matter from what source arising, if anything shall be required to be done in, upon or about the Premises, the improvements thereon or appurtenances thereto, the same shall be done and fulfilled at the sole expense and responsibility of DISCOVERY CENTER, without any expense, liability or obligations whatsoever to or on the CITY, except for such obligations as are expressly assumed by the CITY herein.

#### 6.5 Operation and Maintenance.

6.5.1 DISCOVERY CENTER shall have full and exclusive responsibility for the management, supervision, maintenance and any and all other acts which are necessary for the operation of the Premises and all costs associated thereto. DISCOVERY CENTER agrees to supervise and maintain all of the exhibits and the fountain located in the Esplanade pursuant to an agreement to be negotiated between and executed by the CITY and DISCOVERY CENTER. DISCOVERY CENTER covenants that it shall cause all areas of the Premises to be maintained, adequately lighted, painted, in good condition, repair, properly drained, free of rubbish and other hazards to persons using the area. The maintenance and repair of the Premises shall include but not be limited to the following:

- (a) Replacement, repairs or refurbishment to all structures on the Premises including roofs, outside walls, interior walls, floors, doors, windows, ceilings, electrical, air conditioning, plumbing, inside and outside lighting, mechanical systems, and hot water systems;
- (b) Maintenance of the surface of the parking areas and sidewalks in a smooth and even condition;
- (c) Performance of maintenance of landscaping necessary to maintain same in a first-class condition;
- (d) Construction and maintenance of a watering system, including sprinklers, necessary to keep the landscaping in first-class condition.

6.5.2 DISCOVERY CENTER acknowledges and agrees that CITY shall in no way be responsible for making, or be liable for the cost of making any improvements, repairs, replacements, landscaping, maintenance or alterations to the Premises or the structures located thereon.

6.5.3 DISCOVERY CENTER, upon the consultation and consent of the Contract Administrator, may establish policies and guidelines for the operation and use of the Premises, including mutually agreed upon guidelines for the interface of Board and DISCOVERY CENTER operations.

6.5.4 DISCOVERY CENTER shall make all arrangements for and pay timely all costs of all utilities and services furnished to or used in connection with the operation of the Premises including, without limitation, gas, electricity, water, telephone services, trash collection, sewer services and for all connection charges pertaining thereto. CITY does not guarantee that the service of such utilities will be adequate or continuous. DISCOVERY CENTER may not install, extend or make arrangements for the installation or extension of any utility services to, or on the Premises without the prior written consent of the CITY. Any utility easements are subject to the review and approval of the CITY. All costs for the connection, installation or extension of any such utility services shall be borne by the DISCOVERY CENTER.

6.5.5 The DISCOVERY CENTER shall be responsible to provide security for the Premises as deemed necessary and reasonable by the DISCOVERY CENTER.

**6.6 Alterations and Improvements to Premises**

6.6.1 The DISCOVERY CENTER shall furnish the Museum with exhibitry, furniture, fixtures, including floor and window treatments and all other museum and program related personal property (referred to in this Agreement as "Fixtures") necessary to complete the Museum in accordance with standards commonly accepted for a completed museum of the type, size and kind proposed by Discovery Center which Museum is ready to be opened to the public and which are necessary to be installed in order for the Museum to be ready for use by the Board in accordance with the terms of the Board Agreement. On or before the Completion of Museum, DISCOVERY CENTER shall prepare for written approval by CITY an inventory of such fixtures which shall include a description of each Fixture, its size, function and monetary value which inventory shall be attached to and become a part of this Agreement. Upon the written approval by CITY, the inventory of Fixtures shall become a part of this Agreement. DISCOVERY CENTER shall be required to maintain, repair and replace such Fixtures identified in the inventory approved by CITY in accordance with the provisions of this Article.

(a) Prior to removal, replacement, maintenance or installation of any Fixture or improvement on the Premises which cannot be completed without structural damage to the Museum, DISCOVERY CENTER shall submit plans describing such removal, replacement, maintenance or installation for review and approval by the Contract Administrator.

(b) DISCOVERY CENTER shall be permitted to maintain, repair and replace such Fixtures and improvements which can be completed without structural damage to the Museum, without the prior approval of the CITY, so long as the Fixtures on the Premises are comparable in size, function and value to those identified in the inventory and approved by CITY and include those Fixtures necessary in order for the Museum to be used by the Board in accordance with the terms of the Board Agreement.

(c) At no time shall DISCOVERY CENTER remove or replace a Fixture or improvement if removal or replacement would result in the inventory of Fixtures being less than reasonably comparable to the inventory approved by CITY or would result in the Museum failing to have the programs and exhibits necessary for DISCOVERY CENTER to comply with the CITY'S obligations pursuant to the terms of the Board Agreement.

6.6.2 Except for repairs, replacement and maintenance as provided in this Agreement and removal, replacement and repair of Fixtures as provided for in this Article, DISCOVERY CENTER may not make any alterations, adjustments, partitions, additions or improvements to the Premises, or any part thereof, without obtaining the prior written consent of the CITY. All requests by the DISCOVERY CENTER shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions or improvements shall be and remain the exclusive property of the CITY. All such alterations or improvements shall be made at the sole cost and expense of DISCOVERY CENTER.

6.6.3 DISCOVERY CENTER, at its expense, agrees to deliver the Premises to the CITY upon termination of this Agreement in a good state of repair and condition.

6.6.4 DISCOVERY CENTER shall, upon written demand by the CITY, obtain and deliver to the CITY receipts, satisfactions and



discharges showing payment of any obligation required by the DISCOVERY CENTER.

#### 6.7 Ownership at Termination

6.7.1 At the end of the term of this Agreement or earlier termination of this Agreement for any reason, all exhibitry, furniture and fixtures located on the Premises which are comparable to the inventory mutually agreed to by the CITY and DISCOVERY CENTER and which are necessary to be located in the Museum in order to comply with the CITY'S performance of its obligations under the Board Agreement shall become and remain the exclusive property of the CITY regardless of the source of funding for such Fixtures. In the event this Agreement is terminated prior to the end of the term of the license for use of the Premises due to DISCOVERY CENTER'S relocation of museum operations to another location without the consent of the CITY, all property located on the Premises of any type, source or kind shall become the exclusive property of the CITY.

6.7.2 Except as provided in Section 6.7.3, hereof, at the end of the term of the license for use of the Premises or earlier termination of this Agreement for any reason, all buildings, structures, improvements and fixtures of every kind erected or placed on the Premises shall become and remain the property of CITY and shall be left in good condition and repair, ordinary wear by the elements excepted.

6.7.3 DISCOVERY CENTER may acquire and install exhibitry and other personal property which is in addition to the Fixtures described in Section 6.6 hereof. Such personalty shall be identified and reported to CITY annually and shall remain the property of DISCOVERY CENTER except as provided in this Article.

6.8 Hold Over. DISCOVERY CENTER may not hold over or remain in possession of the Premises after the expiration of the original term or any additional term of this Agreement.

6.9 Assignment and Subleasing. DISCOVERY CENTER shall not assign, transfer, sublet, sublease, mortgage, permit to use, or convey this Agreement or the Premises in whole or in part, in any manner, without the written consent of the CITY. Such consent shall not be unreasonably withheld, provided, however that the DISCOVERY CENTER expressly acknowledges and agrees that the use of the Premises for the purposes stated herein are an essential consideration of the CITY in entering into this Agreement and that no sublease or assignment of this Agreement shall be approved by the CITY which contemplates the use other than that stated herein.

6.10 Liens. At all times, DISCOVERY CENTER agrees that it shall not mortgage, encumber, finance, place a security interest of any kind, or cause a lien of any kind or nature to be placed on the Premises or any improvements constructed thereon. At all times, the DISCOVERY CENTER shall not create or permit to be created, and shall do all things necessary to prevent the filing of any mechanics or other liens against the Premises or any part of the Premises or the interest of the CITY for any reason including any work, labor, services or materials performed, supplied or claimed to have been performed or supplied to DISCOVERY CENTER. If any claim of lien is filed, DISCOVERY CENTER shall have it cancelled of record within fifteen (15) days after date of the filing or if DISCOVERY CENTER, in good faith, determines that the lien should be contested, DISCOVERY CENTER shall furnish security to release the claim of lien as a lien against the real property and to prevent any foreclosure of it during the pendency of the contest. Failure to discharge any such lien shall constitute a default under this Agreement. If, DISCOVERY CENTER does not cause the release of the claim of lien, CITY may, but shall not be obligated to cause the release of the claim of lien either by paying the amount claimed to be due or by procuring the release of the claim of lien by giving security or in such other manner as may be prescribed by law. DISCOVERY CENTER shall repay to

CITY all sums disbursed or deposited by CITY pursuant to the foregoing provisions of this paragraph, including CITY'S cost and expenses and attorneys' fees incurred in connection therewith of additional rent hereunder on demand. Nothing contained herein shall imply any consent or agreement of CITY as the owner of the Premises to subject its interest in the Premises to liability under any mechanics or other lien law whether or not performance or the furnishing of such work, labor, services, materials furnished to DISCOVERY CENTER has been consented to by CITY.

#### 6.11 Damage to Premises

6.11.1 DISCOVERY CENTER agrees that all personal property, other than Fixtures, purchased by the DISCOVERY CENTER with funds outside of the funding provided in accordance with the terms of this Agreement and placed upon the Premises, shall be placed upon the property at the risk of the DISCOVERY CENTER, and shall remain the property of the DISCOVERY CENTER except as provided for in Section 6.7.2 hereof. The DISCOVERY CENTER shall give the CITY or its agent prompt written notice by certified mail of any occurrence, incident or accident occurring on the Premises.

6.11.2 If the Premises or any portion thereof is damaged or destroyed by casualty covered by insurance carried pursuant to this Agreement, DISCOVERY CENTER shall repair or restore such damage or destruction with reasonable promptness from the proceeds of such insurance, provided that within sixty (60) days after such casualty which would require substantial reconstruction of the Premises, the CITY may elect to terminate this Agreement by giving DISCOVERY CENTER notice and this Agreement shall terminate thirty (30) days after such notice is given. If this Agreement is terminated pursuant to CITY'S election, DISCOVERY CENTER shall be entitled only to the portion of the proceeds payable under the insurance for the personal property purchased solely with funds outside the funding provided in accordance with the terms of this Agreement.

6.12 Eminent Domain. In the event any one or more of the buildings, the Premises or any part thereof, is taken by eminent domain, this Agreement shall be considered terminated as to that building, the Premises, or part thereof. DISCOVERY CENTER shall not be entitled to any apportionment made in connection with such condemnation or taking, or any part thereof, nor the payment of any other compensation except payment made for loss of any personal property or fixtures owned by DISCOVERY CENTER as provided in Section 6.7.3 and located on the Premises at the time of taking.

### ARTICLE 7

#### EVENTS OF DEFAULT OR TERMINATION

7.1 Event of Default. The occurrence of any one or more of the following events shall constitute a default of the terms of this Agreement:

7.1.1 The DISCOVERY CENTER shall default in the due and punctual payment of any sum which is required to be paid by DISCOVERY CENTER, and such default shall continue for more than thirty (30) days;

7.1.2 The DISCOVERY CENTER fails to administer and enforce any contract or agreement entered into between DISCOVERY CENTER and any Person related to the Project;

7.1.3 The DISCOVERY CENTER discontinues the development of the Project for more than thirty (30) days for any reason other than strikes, material shortages, act of God, fires, floods or other similar delays or catastrophes not within the control of the DISCOVERY CENTER;

7.1.4 The DISCOVERY CENTER shall default in the due performance or observance of any covenant or condition contained in

this Agreement and such default shall continue for more than thirty (30) days;

7.1.5 The DISCOVERY CENTER abandons or vacates the Premises for a period in excess of five (5) days after Completion of Museum;

7.1.6 If the Museum is totally or partially destroyed rendering the Museum substantially inaccessible or unsuitable for use and

(a) The existing laws do not permit the restoration of the Museum; or

(b) The Museum was totally or partially destroyed from a risk not covered by insurance and CITY or DISCOVERY CENTER is unwilling to pay the cost of restoration; or

(c) The estimated cost of the restoration exceeds the amount of proceeds received from the insurance maintained by DISCOVERY CENTER according to the terms of this Agreement and DISCOVERY CENTER is unable to pay the additional costs of restoration;

7.1.7 The DISCOVERY CENTER fails to use the Premises for the purposes described herein in accordance with commonly accepted museum practices as promulgated by the American Association of Museums;

7.1.8 The DISCOVERY CENTER fails to operate and use the Museum on the Premises for the purposes provided herein for more than thirty calendar days within a one year period;

7.1.9 The DISCOVERY CENTER becomes insolvent or shall file bankruptcy or reorganization proceedings or shall be adjudicated a voluntary or involuntary bankrupt or shall assign for the benefit of creditors or any court takes jurisdiction of the DISCOVERY CENTER or any of DISCOVERY CENTER'S assets or property pursuant to any proceeding brought under the provision of any bankruptcy or insolvency act; or a Receiver or Trustee of the DISCOVERY CENTER'S assets or property shall be appointed; or the DISCOVERY CENTER shall be divested of its rights under this Agreement as a result of any action or proceeding at law or in equity; or any execution or sequestration or attachment shall be issued against the DISCOVERY CENTER'S property; or the Premises or any part thereof shall be taken or occupied or attempted to be taken or occupied or in danger of being taken or occupied by someone other than DISCOVERY CENTER;

7.1.10 The DISCOVERY CENTER shall fail to complete the Project by December 31, 1992.

7.2 Remedies. In the event of a default, and after the stated cure period has elapsed, the CITY at any time thereafter may give a written notice to DISCOVERY CENTER specifying a date on which this Agreement shall terminate. On such date, unless such date has been extended by CITY in writing or if it is determined by the Contract Administrator that the default cannot with due diligence be cured by such date and the DISCOVERY CENTER has commenced to eliminate the cause of such default and is proceeding diligently, continuously and with reasonable dispatch to take all steps and do all work required to cure such default, this Agreement shall expire and terminate and DISCOVERY CENTER shall forthwith surrender the Premises and structures located thereon to the CITY, unless before the date identified in the notice all defaults at the time existing shall have been cured.

7.2.1 Transfer of the Project to City. If this Agreement is terminated prior to completion of the Project, then CITY shall have the right to take over the development and completion of the Project. DISCOVERY CENTER hereby agrees that in the event CITY finds DISCOVERY CENTER in default of this Agreement and CITY exercises its right to take over the completion of the Project,

DISCOVERY CENTER shall assign to CITY all rights and interest it may have pursuant to any agreement entered into between DISCOVERY CENTER and any party to perform services related to the Project and CITY may proceed with the development and completion of the Project pursuant to the terms of said agreements and pay out those sums appropriated by CITY for the Project or Cash Funds in a manner so deemed appropriate by CITY.

7.2.2 Upon termination of the Agreement as provided herein, DISCOVERY CENTER shall pay or be responsible to pay to CITY without condition or restriction all funds held in or required to be held in the Construction Reserve Account and the Operation and Maintenance Reserve Account as provided in this Agreement.

7.3 Ownership of Documents. In the event this Agreement is terminated or upon completion of the Project, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by DISCOVERY CENTER or anyone contracting with DISCOVERY CENTER to perform any services related to the Project shall become the property of CITY and shall be delivered upon CITY'S request to CITY.

## ARTICLE 8

### MISCELLANEOUS

#### 8.1 Indemnification.

8.1.1 DISCOVERY CENTER shall indemnify, defend and hold harmless the CITY, its officers, servants, agents and employees from and against any and all claims, suits, actions, damages, liabilities, expenditures or causes of action of any kind arising from this Agreement in or arising out of the operation, maintenance or use of the Premises and resulting or accruing from any negligent act, omission or error of DISCOVERY CENTER, its officers, servants, agents and or employees resulting in or relating to injuries to body, life, limb or property sustained in, on or upon the Premises.

8.1.2 DISCOVERY CENTER shall defend, at its own cost and expense, any legal action, claim or proceeding instituted by any person against the CITY as a result of any claim, suit or cause of action occurring during the term of this Agreement in or arising out of ownership, operation, maintenance or use of the Premises, for injuries to body, life, limb or property set forth above.

8.1.3 DISCOVERY CENTER shall indemnify and save the CITY, its officers, servants, agents and employees, harmless from and against all judgments, orders, decrees, attorneys' fees, costs, expenses and liabilities incurred in or about any such claim, investigation the defense thereof which may be entered, incurred or assessed as a result of the foregoing.

8.1.4 The covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as DISCOVERY CENTER'S responsibility to indemnify the CITY, its officers, servants, agents and employees for occurrences occurring during the term of this Agreement.

8.2 Insurance. DISCOVERY CENTER agrees to provide the following insurance coverage:

#### 8.2.1 Premises Coverage.

(a) Fire and Extended Coverage. DISCOVERY CENTER, at its expense shall provide Builder's Risk Insurance on any and all improvements constructed and personal property located on the Premises for the benefit of the CITY and the DISCOVERY CENTER as each party's interest may appear in an amount satisfactory to the CITY up to 100% but not less than 90% of the replacement value of the improvements.

Such insurance shall provide that the interests of the CITY are included as a loss payee and contain a waiver of subrogation rights by the DISCOVERY CENTER carrier against the CITY. The DISCOVERY CENTER may, at its option, require the Contractor of the Project to provide this insurance.

(b) On or before the Completion of Museum, DISCOVERY CENTER shall deliver an all risk property coverage policy on the Premises which provides the same coverage as described in Article 18.2.1(a) above, for the benefit of the CITY and the DISCOVERY CENTER as each party's interest may appear in an amount satisfactory to the CITY up to 100% but not less than 90% of the replacement value of the improvements. Such insurance shall provide that the interests of the CITY are included as a loss payee and contain a waiver of subrogation rights by the DISCOVERY CENTER carrier against the CITY.

8.2.2 Workers' Compensation: DISCOVERY CENTER shall provide, carry, maintain and pay for all necessary Workers' Compensation insurance for the benefit of its employees with the following limits: Workers' Compensation - statutory limits; Employer's Liability - One Hundred Thousand Dollars (\$100,000).

8.2.3 Liability Insurance: DISCOVERY CENTER shall, at its own expense, provide, pay for, and continuously maintain comprehensive and all inclusive public liability and property damage insurance for the benefit of the DISCOVERY CENTER and CITY, with a policy limit of not less than one million dollars (\$1,000,000), combined single limits, which coverage shall include property damage and personal injuries, including death, and shall name the CITY as an additional insured.

8.2.4 Policies: Whenever under the provisions of this Agreement, insurance is required of the DISCOVERY CENTER, the DISCOVERY CENTER shall promptly provide the CITY with the following:

- (a) Certificates of insurance evidencing the required coverages;
- (b) Names and addresses of companies providing coverages;
- (c) Effective and expiration dates of coverage;
- (d) A provision in all policies according the CITY thirty (30) days' advance written notice by any carrier of any cancellation or material change in any policies; and
- (e) Ensure that Certificates are submitted to the Risk Manager of the CITY.

The CITY'S Risk Manager may reject any policies provided if in his judgment the policy, financial strength of the insurance carrier or both is insufficient to meet the obligations of this Agreement.

8.2.5 In addition to the insurance required herein by the DISCOVERY CENTER, during the construction of the Project, the DISCOVERY CENTER shall require the Contractor to provide the insurance and comply with the insurance requirements provided in Articles 8.2.2, 8.2.3 and 8.2.4.

8.2.6 Collection of Insurance: In the event of destruction of or damage to any of the Premises and contents covered by insurance, the funds payable in pursuance of insurance policies for repair and reconstruction shall be deposited in a commercial national bank located in Fort Lauderdale, Florida, selected by the CITY, as a trust fund, and funds shall be used for the purpose of reconstruction or repair, as the case may be, of first, all or any portion of the Premises, second, improvements and third, personal property, so damages or destroyed. Such reconstruction and repair

work shall be done by DISCOVERY CENTER in strict conformity with the ordinances of the CITY and all governmental agencies having jurisdiction. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then, unless the provisions of Article 7.1.6 come into effect, such funds shall be used as far as the same will permit in paying the cost of reconstruction or repair. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived from such insurance policies, the surplus shall be payable to DISCOVERY CENTER.

**8.2.7 Precautions.** In order to reduce the hazards and risks of interruption of business occasioned by windstorm and other acts of God, the DISCOVERY CENTER agrees that it will at its expense take all reasonable precautions to protect the premises from such damage or destruction by the elements.

**8.2.8 Primary Coverage.** All insurance referred to in this Agreement shall apply as primary coverage and shall not be affected by any insurance which CITY may carry in its own name.

**8.3 Access to Books and Records.** DISCOVERY CENTER gives to CITY, access to and the right to examine all records, books, papers or documents relating to the Project. DISCOVERY CENTER agrees to maintain books, records and documents in accordance with accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by CITY and any other source for Project.

**8.4 Representative of CITY and DEVELOPER.**

**8.4.1** It is recognized that questions in the day-to-day conduct of the Project will arise. The Contract Administrator shall designate in writing one or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

**8.4.2** DISCOVERY CENTER shall inform the Contract Administrator in writing of the representative of DISCOVERY CENTER to whom matters involving the conduct of the Project shall be addressed.

**8.5 Nondiscriminatory Use of the Property and Minority Participation in the Project.** DISCOVERY CENTER shall not discriminate in the use of the Premises on the basis of race, color, religion, sex or country of national origin as provided by applicable law. Furthermore, when purchasing commodities and contractual services, the DISCOVERY CENTER will seek to promote the full and equitable economic participation of all segments of the community. With these objectives in mind, the DISCOVERY CENTER will use its best efforts to ensure that minority-owned and women-owned business enterprises have an equitable opportunity to participate.

**8.6 Amendments.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto with the same formality and of equal dignity herewith.

**8.7 Inspections.** The CITY or its agents, or any authorized employee of said agent, may enter upon the Premises at all reasonable times and hours to examine same to determine if DISCOVERY CENTER is properly maintaining the Premises according to this Agreement.

**8.8 Non-profit Corporation.** DISCOVERY CENTER represents and warrants that it is a non-profit corporation organized pursuant to the laws of the State of Florida, and no trustee of DISCOVERY CENTER shall receive any salary or other compensation for action as such trustee except for services actually rendered, and the DISCOVERY CENTER'S revenue from the operation of the Premises shall not inure to the benefit of any individual corporation, shareholder, director, officer, or trustee.

## 8.9 Independent Contractor

8.9.1 The DISCOVERY CENTER is an independent contractor under this Agreement. The services provided by the DISCOVERY CENTER shall be by employees of the DISCOVERY CENTER and subject to the supervision by the DISCOVERY CENTER, and not as officers, employees or agents of CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, travel, per diem policies, purchasing policies and other similar administrative procedures applicable to services rendered pursuant to this Agreement shall be those of the DISCOVERY CENTER.

8.9.2 Nothing contained in this Agreement shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between CITY and DISCOVERY CENTER, it being expressly understood and agreed that neither the method of computation of rent or any of the other provisions contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between CITY and DISCOVERY CENTER except as provided by the terms of this Agreement.

8.10 Waiver. Failure of the CITY to insist upon strict performance of any covenant or condition of this Agreement or the exercise of any right herein contained shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

8.11 Laws and Ordinances. DISCOVERY CENTER shall comply with and observe and this Agreement shall be subject to any and all relevant laws, resolutions, rules, regulations and orders, present or future of the CITY and of any and all administrations, departments, bureaus, boards, bodies and offices of the federal, state and municipal governments in (collectively, "governmental regulations") including those governmental regulations whose compliance with and observance entail, require or necessitate the making of any extra-ordinary or structural repairs to the roof columns, bearing walls and other structural elements of the building and its mechanical, electrical, plumbing and heating facilities and systems, and DISCOVERY CENTER shall observe all sanitary, health and public safety laws and ordinances directly related to the operation and maintenance of the Premises. Further, DISCOVERY CENTER shall not perform any act which would violate the covenants provided in connection with the Bonds issued by the City as referenced in Article 1 of this Agreement.

8.12 Successors in Interest. The covenants and agreements contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

8.13 Notices. All notices required by law and by this Agreement to be given by one party to the other shall be in writing and the same may be served as follows:

(a) By certified mail, return receipt requested to the persons and addresses as follows:

CITY:

City Manager  
City of Fort Lauderdale  
P. O. Drawer 14250  
Fort Lauderdale, Florida 33302

DISCOVERY  
CENTER:

Executive Director of Discovery Center, Inc.  
231 S. W. 2nd Avenue  
Fort Lauderdale, Florida 33301

or to such other addresses as the parties may by writing to the other designate. Notice shall be deemed to be delivered five (5) days after mailing as provided herein.

8.14 Subrogation. CITY shall have the option without waiving or impairing any of its rights, to pay any sum or perform any act required of the DISCOVERY CENTER, except when DISCOVERY CENTER has in good faith determined the payment or act required should be contested and has furnished security satisfactory to the CITY to ensure that the CITY'S rights and interests to the Premises are protected and the CITY'S contractual obligations to the Board pursuant to the Board Agreement are performed. The amount of any such payment by CITY on behalf of DISCOVERY CENTER and the value of any performance together with such interest as determined by CITY shall be secured by this Agreement and shall be promptly due and payable by the DISCOVERY CENTER.

8.15 Invalid Provision. In the event that any covenant, condition or provision herein contained is held invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained.

8.16 Persons Bound. The covenants and agreements, benefits and obligations of this Agreement shall inure to and bind the successors of the parties hereto. Whenever used, the singular number shall include the plural, the plural, the singular and the use of any gender shall include all genders.

8.17 Entire Agreement. This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. It is further understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether oral or written. Furthermore, the parties hereby agree that the Prior Agreements are hereby terminated and replaced with the provisions of this Agreement.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

[Signature]

[Signature]

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By [Signature]  
Mayor

By [Signature]  
City Manager

ATTEST:

[Signature]  
City Clerk

Approved as to form:

[Signature]  
City Attorney



STATE OF FLORIDA:  
COUNTY OF BROWARD:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared JIM NAUGLE, GEORGE L. HANBURY, II and KRIS L. MILLS, Mayor, City Manager and City Clerk, respectively, of the City of Fort Lauderdale, Florida, a municipal corporation of Florida, and acknowledged they executed the foregoing Agreement as the proper officials of the City of Fort Lauderdale, and the same is the act and deed of the City of Fort Lauderdale.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at Fort Lauderdale, in the State and County aforesaid on April 1, 1991.

(SEAL)



"OFFICIAL NOTARY SEAL"  
PRISCILLA M. ROYAL  
MY COMM. EXP. 8/30/93

Priscilla M. Royal  
Notary Public

My Commission Expires: 8/30/93

WITNESSES:

Nancy Kaufman  
Tracy J. Benke

(CORPORATE SEAL)

THE DISCOVERY CENTER, INC.

By E. B. Rudner Pres.

ATTEST:

Kim L. Miller

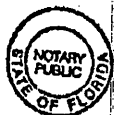
STATE OF FLORIDA:  
COUNTY OF BROWARD:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared E. B. Rudner as PRESIDENT and Kim L. Miller as EXEC. DIRECTOR, respectively, of THE DISCOVERY CENTER, INC., a non-profit corporation organized pursuant to the laws of the State of Florida, and acknowledged they executed the foregoing Agreement as the proper officials of THE DISCOVERY CENTER, INC., for the use and purposes mentioned in it and they affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at Fort Lauderdale, in the State and County aforesaid on 30 March, 1991.

(SEAL)

Faith A. Handyside  
Notary Public  
My Commission Expires:



FAITH A. HANDYSIDE  
My Comm. Exp. 7-22-94  
Bonded Thru Service

SPM:6369E  
3/29/91

LEGAL DESCRIPTION FOR DISCOVERY CENTER

Parcel A of "THE DISCOVERY CENTER PLAT" according to the Plat thereof, as recorded in Plat Book 145 at Page 34 of the Public Records of Broward County, Florida;

TOGETHER WITH

Lots 5 and 20 of Block 18 of "TOWN OF FORT LAUDERDALE" according to the Plat thereof, as recorded in Plat Book B at Page 40 of the Public Records of Dade County, Florida;

Situate in the Northwest one-quarter (NW 1/4) of Section 10, Township 50 South, Range 42 East, the City of Fort Lauderdale, Broward County, Florida.

7027E

Exhibit "A"

RESOLUTION NO. 92-121

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPROVING A LEASE OF CERTAIN LANDS LOCATED AT S.W. 2ND STREET BETWEEN S.W. 5TH AVENUE AND S.W. 4TH AVENUE TO THE DISCOVERY CENTER, INC. FOR DEVELOPMENT, USE, OPERATION AND MAINTENANCE OF A HISTORY, SCIENCE AND TECHNOLOGY MUSEUM.

WHEREAS, on July 21, 1992, the City Commission approved Resolution No. 92-117 which declared the City's intent to lease certain City-owned property located at S.W. 2nd Street between S.W. 5th Avenue and S.W. 4th Avenue ("Premises") to The Discovery Center, Inc. ("Discovery Center"), a non-profit corporation, for development of a history, science and technology museum ("Museum") subject to the terms and conditions of the Agreement between the City and Discovery Center dated March 30, 1991 ("Museum Agreement"); and

WHEREAS, in accordance with Section 8.13 of the City Charter, a public hearing was held on this date wherein citizens and taxpayers were given the opportunity to object to the Museum Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That each WHEREAS clause set forth above is true and correct and herein incorporated by this reference.

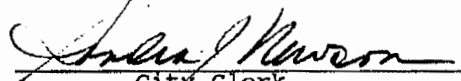
SECTION 2. That the City Commission hereby approves the lease of the Premises for the development, use, operation and maintenance of the Museum subject to the terms and conditions of the Museum Agreement described herein.

SECTION 3. That the lease term shall commence on the date this Resolution is adopted.

ADOPTED this the 1st day of September, 1992.

  
Mayor  
JIM NAUGLE

ATTEST:

  
City Clerk  
SANDRA J. NEWSOM

PH-3

MEMORANDUM NO. 92-942

DATE: August 13, 1992

TO: Mayor Jim Naugle  
Vice-Mayor Jack Latona  
Commissioner John E. Aurelius  
Commissioner Cary Keno  
Commissioner Carlton Moore

FROM: City Manager/George L. Hanbury, II *George L. Hanbury, II*

BY: Cynthia Just, Assistant GOB Coordinator

VIA: Richard H. Brossard, P.E., Director of Public Works

SUBJECT: The Museum of Science and Discovery  
(Discovery Center) Facility Use Agreement

At the July 21, 1992 meeting, the City Commission approved Resolution 92-117 to begin the process, as provided in the City Charter, Section 8.13, to allow the Discovery Center, Inc. to use, operate and maintain the new Museum for forty (40) years. The Charter calls for a public hearing to be held concerning the proposed lease and, if there are no objections, a resolution be introduced approving such lease.

Below is a summary of the provisions of the agreement dated March 31, 1991 between the City and The Discovery Center, Inc. for the development, use, operation and maintenance of the city property located at S. W. 2nd Street between S.W. 5th Avenue and S.W. 4th Avenue ("Premises") as a History, Science, and Technology Museum.

The Discovery Center's use and administration of the Premises and Museum is subject to the terms and conditions of the agreement and also subject to the terms and conditions of the use agreement for the Premises and the Museum between the City and the School Board of Broward County dated April 7, 1988. The rent for the use of the Premises and Museum is Forty Dollars (\$40.00) payable in yearly installments of One Dollar (\$1.00) starting on the commencement date and each subsequent yearly anniversary of the commencement date. The commencement date will be the date the City Commission holds a public hearing and subsequently adopts the confirmation resolution (scheduled for September 1, 1992).

The agreement may be terminated by the City if Discovery Center breaches any covenant of the agreement, abandons or vacates the Premises, fails to pay rent, or the Premises or Museum are destroyed. Furthermore, the Discovery Center is required to maintain insurance during the term of the agreement and indemnify the City for any damages sustained. Finally, the Premises, the Museum and all Museum-related fixtures on the Premises revert to City ownership at the conclusion of the agreement.

Memorandum No. 92-942  
August 13, 1992  
Page No. Two

Therefore, if there are no persuasive objections to the contrary, we request a resolution be introduced approving lease of the premises to The Discovery Center, Inc., for use, operation and maintenance of the Museum, commencing on the date this resolution is adopted.

GLH/CJ/RHB/jj/ccm-92-942