


TO: Mayor Jerry L. Demings
and
Board of County Commissioners

FROM: Fred Winterkamp, Fiscal & Business Services Division Manager 

DATE: June 3, 2019

RE: **Consent Agenda Item - June 18, 2019**
Tourist Development Tax Grant Application Review Committee Funding
Agreement for Orlando Science Center

On November 29, 2016, the Board of County Commissioners (“Board”) adopted Ordinance No. 2016-30 (“Ordinance”), which amended the County’s Tourist Development Plan to authorize funding from available unallocated Tourist Development Tax (TDT) revenue for legally authorized capital projects and events pursuant to a grant application process set forth in Section 25-147 of the Orange County Code (Code). Pursuant to the Ordinance, on October 31, 2017, the Board adopted Resolution No. 2017-M-44, which established the Tourist Development Tax Grant Application Review Committee (ARC) to serve in an advisory capacity to the Board by evaluating applications for excess TDT revenue funding pursuant to established application review criteria and to make recommendations on same.

At its March 15, 2019 meeting, the ARC considered an application from the Orlando Science Center for excess TDT revenue and performed an evaluation of the proposal. Orlando Science Center requested up to \$10,000,000 toward construction of the “*Life*” project at the Orlando Science Center. Following its evaluations of the grant application, the ARC approved recommending the funding request to the Orange County Tourist Development Council (TDC). On March 27, 2019, the TDC approved recommending the funding request to the Board. Then, on April 23, 2019, the Board approved the funding request recommended by ARC and TDC and directed staff to develop a funding agreement. Orlando Science Center has executed that funding agreement for which final Board approval is now requested.

The Board appropriated \$8,000,000 per year beginning in Fiscal Year 2017-18 through Fiscal Year 2022-23 for applicants that apply for funding to the ARC pursuant to Section 25-147 of the Code. The use of TDT revenues for auditoriums and museums is authorized pursuant to section 125.0104(5)(a)1.b. and c., Florida Statutes, respectively. If approved, the Comptroller will disburse TDT funds in accordance with the terms of the funding agreement.

June 3, 2019
Re: Consent Agenda Item June 18, 2019
Page 2

If you have any questions, please contact me at (407) 836-2920.

ACTION REQUESTED:

Approval and execution of Agreement between Orange County, Florida and Orlando Science Center, Inc. *Life* exhibit at the Orlando Science Center

FMW

C: Byron Brooks, County Administrator
Jeffrey Newton, County Attorney
Randy Singh, Deputy County Administrator
Lila McHenry, Senior Assistant County Attorney

AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
ORLANDO SCIENCE CENTER, INC.

LIFE EXHIBIT AT THE ORLANDO SCIENCE CENTER
(777 E. Princeton Street, Orlando, FL 32803)

THIS AGREEMENT, made and entered into as of the date of last execution below, by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“County”), and ORLANDO SCIENCE CENTER, INC., a not-for-profit corporation organized and existing under the laws of the State of Florida (“Science Center”).

WITNESSETH:

WHEREAS, the County currently collects the tourist development taxes authorized by Section 125.0104(3)(c), (d), and (m), Florida Statutes (“Tourist Development Tax” or “TDT”) and authorized uses of such Tourist Development Tax include the construction and extension of museums that are owned and operated by not-for-profit organizations and open to the public within the county in which such tax is levied; and

WHEREAS, on November 29, 2016, the Orange County Board of County Commissioners (“Board”) adopted Ordinance No. 2016-30 (“Ordinance”), which amended the Tourist Development Plan to authorize funding from legally available unallocated TDT revenue for legally authorized capital projects and events pursuant to a grant application process set forth in Section 25-147 of the Orange County Code (“Code”); and

WHEREAS, Science Center applied for TDT capital funding for the design and construction of *Life*, the Science Center’s new, permanent nature and environment exhibit hall (“*Life Exhibit*”), an authorized expenditure pursuant to the Local Option Tourist Development Act, § 125.0104, Florida Statutes (2018); and

WHEREAS, on March 15, 2019, the County’s TDT Application Review Committee (“ARC”), evaluated Science Center’s application and recommended approval to the Tourist Development Council (“TDC”); and

WHEREAS, on March 27, 2019, the TDC recommended approval of Science Center’s application.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and Science Center agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

2. **County Contribution.** Subject to all terms and conditions set forth in this Agreement, the County agrees to contribute a total aggregate amount not to exceed Ten Million Dollars (\$10,000,000.00) (“County Contribution”) from Excess TDT Revenue pursuant to the installment schedule set forth in Section 5 herein. For purposes of this Agreement, “Excess TDT Revenue” shall mean those TDT revenues appropriated by the Board in 2018 in the amount of \$8,000,000.00 per year beginning in Fiscal Year 2017-18 through Fiscal Year 2022-23 for capital projects that apply for funding to the ARC pursuant to Section 25-147 of the Code.

3. **Restrictions on Use of County Contribution.** Science Center shall use the County Contribution only to pay for capital costs associated with the design and construction of the *Life* Exhibit in accordance with Section 125.0104(5)(a)1.c., Florida Statutes, as described in Science Center’s “Orange County Tourist Development Tax Grant Application” dated November 5, 2018 (“Grant Application”). Capital costs shall include: construction; design and engineering expenses; and furnishings, fixtures and equipment for the *Life* Exhibit. The County Contribution shall not be used for construction cost overruns; operating costs; or maintenance costs of any type whatsoever in connection with the construction or operation of the *Life* Exhibit. Furthermore, the County Contribution shall not be used or pledged to secure any debt whatsoever.

4. **Limitations on County's Obligation.** The County's obligation to make the County Contribution shall not constitute a lien on Tourist Development Taxes and will not be on parity with any existing or future debt of the County. The obligations of the County under this Agreement are limited solely to Excess TDT Revenue and no general fund revenues or other funds whatsoever of the County are obligated. Nothing provided herein shall obligate or require the County to levy any ad valorem taxes, fees or assessments whatsoever. This Agreement and any payments provided for in this Agreement are contingent upon the availability of Excess TDT Revenues derived from the tax levied under Section 25-136 of the Code and made available under Section 25-147 of the Code to make the payments hereunder. The County shall not cause such Excess TDT Revenues to be unavailable as a result of dilution of the funds made available through the application process set forth in Section 25-147 of the Code through funding other projects through such process.

5. **Disbursement of County Contribution.**

(a) *Initial Grant Installment.* Science Center may request an initial installment of the County Contribution in an amount not to exceed \$2,000,000.00 (“Initial Installment”). Any such request shall be submitted in writing to the County Administrator or designee, with a copy to the Orange County Comptroller (“Comptroller”), at the notice address set forth in Section 8 herein, and shall be accompanied by a current budget, contractor invoices, and/or any other supporting documentation identifying the authorized design, architectural, or construction costs for which the Initial Installment will be used. After review and approval of Science Center’s request, the County Administrator or designee shall instruct the Comptroller to make payment to Science Center within 15 business days thereafter. After payment of the Initial Installment, no subsequent disbursements

of the County Contribution shall be made until Science Center has submitted to the County Administrator or designee documentation acceptable to the County identifying the actual authorized expenditures to which the Initial Installment was applied.

(b) *Subsequent Grant Installments.* Subsequent installments of the County Contribution may be disbursed according to the schedule set forth below after Science Center submits cost requisitions reflecting valid design, architectural, or construction costs with certification from the project manager that work invoiced has been satisfactorily performed. Said requisitions shall be signed by an authorized representative of Science Center and accompanied by invoices or receipts evidencing completion of work, and shall be in substantially the form attached hereto as **EXHIBIT "A."** All such requisitions shall be submitted to the County Administrator or designee with a copy to the Comptroller at the notice address set forth in Section 8 herein. After review and approval of each requisition, the County Administrator or designee shall instruct the Comptroller to make payment to Science Center within 15 business days thereafter.

Upon approval of requisition(s) by the County Administrator or designee, the Comptroller is authorized to disburse the County Contribution to Science Center according to the following installment schedule:

- (a) Not to exceed \$7,000,000.00 in the aggregate on or after October 1, 2019;
- (b) Not to exceed \$9,000,000.00 in the aggregate on or after October 1, 2020; and
- (c) Not to exceed \$10,000,000.00 in the aggregate on or after October 1, 2021.

No later than 45 days following a disbursement for unpaid invoices, Science Center shall provide the County with evidence of payment demonstrating that any such invoice was paid.

6. Science Center Representations and Obligations. Science Center has represented that it has received a determination from the Internal Revenue Service that it meets the requirement of Section 501(c)(3) of the Internal Revenue Code and hereby represents that it is in material compliance with the terms of such determination. Science Center shall (i) maintain its 501(c)(3) status during the term of this Agreement; (ii) diligently proceed with the design and construction of the *Life* Exhibit in a financially responsible and commercially reasonable manner; (iii) use the *Life* Exhibit as described in the Grant Application; and (iv) shall comply with all federal, state, and local laws, ordinances, rules and regulations relating to the design, construction, funding, operation and maintenance of the *Life* Exhibit.

7. Science Center Audit. The County and the Comptroller (or designee) shall have the right to audit from time to time for compliance with the terms, conditions, obligations, limitations, restrictions and requirements of this Agreement, the use of the County Contribution

for the design and construction of the *Life* Exhibit. Such right shall extend for a period of five (5) years after completion of the *Life* Exhibit. Science Center agrees to provide reasonable assistance in providing documents, materials, data, information and records to the County and the Comptroller or designee in the performance of these audits as requested by the Comptroller or County during the course of this contract and for a period of five (5) years after the final payment hereunder. In those situations where records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the Comptroller's representatives shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats. Such activity shall be conducted during normal business hours.

8. Notices. Any notices required or allowed hereunder shall be in writing and given by certified mail with return receipt requested, to the addresses below, or in person with proof of delivery to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:

County:	Orange County Administrator 201 S. Rosalind Avenue, 5 th Floor Orlando, Florida 32801
Science Center:	Orlando Science Center, Inc. 777 E. Princeton Street Orlando, FL 32803 Attention: JoAnn Newman, President/CEO
Comptroller:	Orange County Comptroller Director of Finance & Accounting 201 S. Rosalind Avenue, 4 th Floor Orlando, Florida 32801

9. Indemnification. Science Center agrees to defend, indemnify, and hold harmless the County, its officials and employees from all claims, actions, losses, suits and judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions or those of its officials and employees acting within their scope of their employment or connected in any way or arising from performance under this Agreement. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party. This provision shall survive termination of this Agreement.

10. Budget and Reporting Requirements. During the term of this Agreement, as a condition of receiving funds pursuant to this Agreement, Science Center acknowledges and agrees to comply with its reporting obligations and to timely provide the following to the Comptroller and County Administrator, at their respective notice addresses listed in Section 8 hereof:

- (i) audited financial statements of Science Center within 60 days of completion of its audit, and such audit shall be completed within 180 days of the close of Science Center's fiscal year;

- (ii) Science Center's IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS; and
- (iii) after completion of the *Life* Exhibit, periodic program reports regarding the attendance at the *Life* Exhibit, the economic impact generated by the *Life* Exhibit, and the source of that information.

At the County's or Tourist Development Council's discretion, Science Center shall provide a presentation or presentations regarding the *Life* Exhibit as may be requested by the Tourist Development Council or the County.

11. Recordkeeping; Accounting. Science Center will utilize accounting procedures and practices in the maintenance of the records of receipts and disbursements of the funds contributed by the County, as well as all its receipts and disbursement of funds, and such procedures and practices shall be in accordance with generally accepted accounting principles. All such records shall be open to inspection and auditing by the County, the County's designee, or the County Comptroller during normal business hours during the term hereof, and for a period of five (5) years after completion of the *Life* Exhibit or the termination of this Agreement whichever shall occur later. Any cost incurred by Science Center as a result of a County audit shall be the sole responsibility of and shall be borne by Science Center. In addition, should Science Center provide any or all of the County's funds to sub-recipients, then and in that event Science Center shall include in written agreements with such sub-recipients a requirement that records of the sub-recipient be open to inspection and audit by the County or the County's designee for the term of the contract and for a period of five (5) years after the term of such contract. This provision shall survive termination of this Agreement.

12. Term; Termination. This Agreement shall become effective upon execution by both parties hereto and shall continue for a period of five years following completion of the *Life* Exhibit. This Agreement may be amended, modified or terminated at any time during the term of this Agreement by the mutual written agreement of the Parties.

13. Default by Science Center. The occurrence of any of the following constitutes an Event of Default by Science Center:

- (a) Science Center's failure to complete construction of the *Life* Exhibit within three years from the date of this Agreement;
- (b) Any material representation made by Science Center in any communication submitted to the County in an effort to induce the disbursement of Excess TDT Revenues is determined by the County to be materially false, misleading, or incorrect;
- (c) Science Center's default in the performance of any material term or covenant of this Agreement not otherwise provided for in this section for a period of more than 30 days after its receipt of a notice of default provided however that if the nature of the default is such that it cannot reasonably be cured within such 30-day period then Science Center shall have a reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure;
- (d) The dissolution of Science Center;

(e) If (i) a petition is filed by Science Center seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (ii) a petition is filed against Science Center, which is not dismissed within 60 days after filing, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (iii) Science Center seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all of the rent, revenues, issues, earnings, profits or income of any part of the *Life* Exhibit, or (iv) Science Center makes any general assignment for the benefit of creditors, or (v) Science Center is Insolvent (as defined herein); or (vi) any trustee, receiver or liquidator of Science Center is appointed who is not discharged within 60 days after its appointment. For purposes of this paragraph, a person or entity shall be deemed to be “Insolvent” if they are unable to pay their debts as they become due and/or if the fair market value of their assets does not exceed their aggregate liabilities;

(f) The loss of Science Center’s status under Section 501(c)(3) of the Internal Revenue Code for a period of more than 30 days after its receipt of a notice of default provided that if it is not commercially reasonable to reinstate such status within such 30-day period then Science Center shall have a commercially reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure;

(g) Science Center’s vacating or abandoning the *Life* Exhibit.

In the event of a default by Science Center, the County, may, at its option, exercise any one or more of the following remedies: (i) declare this Agreement terminated or (ii) exercise any and all remedies available at law and in equity.

14. Default by the County. The following shall constitute a default by the County: the County’s continued default in the performance of a material term of this Agreement including but not limited to its obligations for disbursement of the County Contribution in accordance with the requirements of this Agreement for a period of more than 30 days from its receipt of written notice of such default from Science Center. In the event of a default by the County, then Science Center, at its option, may exercise any one or more of the following remedies: (i) declare this Agreement terminated; or exercise the remedy of mandamus to require the County’s performance under the terms and conditions of this Agreement and/or an action for specific performance. Science Center hereby acknowledges and agrees that the only remedies available to Science Center other than termination are those of mandamus and specific performance and the County shall bear no liability for direct, indirect or consequential damages.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein. No other agreement whether verbal or written, with regard to the subject matter hereof shall be deemed to exist.

16. No Assignment. Science Center may not assign its rights hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

17. No waiver. Continued performance by either party hereto, pursuant to the terms of this Agreement, after a default of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

18. Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

19. Governing Law; Venue. Any litigation occurring as a result of this Agreement shall be held in the courts of Orange County, Florida. This Agreement shall be governed by the laws of the State of Florida.

20. Headings. The headings or captions of sections or 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 to be taken into consideration in interpreting this Agreement.

21. Counterparts. This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

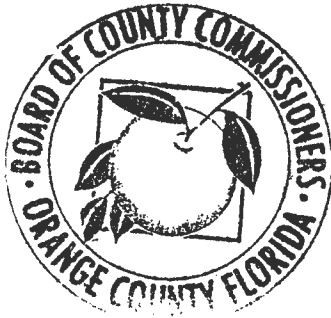
Date: *18 June 2019*

ATTEST:

Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Kate Smith*
Deputy Clerk

(SEAL)



ORLANDO SCIENCE CENTER, INC.

By:

JoAnn Newman

JoAnn Newman, President & CEO

Date:

5/23/19

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY, that on this 23rd day of May, 2019, before me personally appeared JoAnn Newman, CEO of Orlando Science Center, Inc., to me known to be or who has produced _____ as identification, and did (did not) take an oath, the individual and officer described in and who executed the foregoing conveyance and acknowledged the execution thereof to be his/her free act and deed as such officer thereunto duly authorized, and that the official seal of said corporation is duly affixed thereto, and the said conveyance is the act and deed of said corporation.

Witness my hand and official seal this 23rd day of May, 2019.

(Notary Seal)

Barb A Grim
Notary Signature

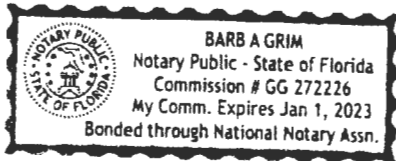


EXHIBIT "A"

**FORM DESIGN AND CONSTRUCTION COST REQUISITION
LIFE EXHIBIT AT THE ORLANDO SCIENCE CENTER**

Date: _____

TO: Orange County Administrator
Orange County Comptroller

Orlando Science Center, Inc. hereby requests, pursuant to the Agreement between Orange County, Florida and Orlando Science Center, Inc. regarding the construction and design of the *Life Exhibit* at the Orlando Science Center dated _____, 2019 (the "Agreement"), disbursement of the following amounts:

Name of Vendor	Nature of Disbursement	Vendor Invoice No.	Amount
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The undersigned does hereby certify to the County that as of the date hereof: 1) there is no existing breach of the Agreement; 2) the above listed items are properly included as authorized design and construction costs of the *Life Exhibit* as set forth in the Agreement; 3) attached hereto are invoices for the costs requested hereby 4) that the inspecting architect or engineer has made an inspection of and approved the work completed as represented in this requisition; 5) all work being designed and constructed is in accordance with land use restriction agreements, covenants, restrictions, codes or ordinances affecting the site of the *Life Exhibit*; 6) the work for which payment is being requested above has been performed and there has been no previous request and disbursement from TDT Revenues for payment of the work.

By: _____
Orlando Science Center, Inc.
Authorized Representative