MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY BOARD OF ARLINGTON COUNTY AND ROSSLYN BUSINESS IMPROVEMENT CORPORATION

The following constitutes a Memorandum of Understanding ("MOU") entered into the __ day of _____, 2009, by and between the County Board of Arlington County, Virginia in its capacities as the governing body of Arlington County and the governing body of the Rosslyn Business Improvement District ("County Board") and the Rosslyn Business Improvement Corporation ("RBIC"), a not-for-profit Virginia corporation located at 1911 North Fort Myer Drive, Suite LL-10, Arlington, Virginia 22209. The purpose of this MOU is to set forth the terms under which County and the RBIC will provide financial and operational support for the establishment of a Cultural Center ("Cultural Center") at the former Newseum location, 1101 Wilson Boulevard, Arlington, Virginia.

WITNESSETH:

WHEREAS, pursuant to §§15.2-2400 *et seq.* of the Code of Virginia, as amended, the County Board established the Rosslyn Business Improvement District (the "District") by ordinance adopted December 7, 2002, and amended September 8, 2007, the governing body of which District is the County Board, and which District was established for the purpose of providing additional, more complete and more timely governmental facilities and services within the District; and

WHEREAS, the Rosslyn Business Improvement Corporation ("RBIC") is a private, non-profit Virginia corporation whose Board of Directors and committee membership includes owners and tenants of property located in the District and other interested parties; and

WHEREAS, the County Board, acting as the governing body of the District, adopts an annual budget for the District and sets a rate for an ad valorum real estate tax imposed on real property in the District, the revenue from which is used for District purposes; and

WHEREAS, the County Board and RBIC entered into an agreement originally dated June 23, 2003, and amended and restated on September 9, 2007, (the "RBIC Services Agreement") pursuant to which the County Board engaged RBIC as an independent contractor to furnish or perform various services and activities, and established an annual process in which RBIC proposes a work plan and budget for proposed services and activities in the District for the forthcoming fiscal year to be provided by or through RBIC and funded with District tax revenue as may be appropriated by the County Board, and the County Board, upon recommendation of

the County Manager, approves a final work plan and budget for the upcoming fiscal year and sets the annual tax rate to be levied in the District sufficient to fund the approved budget; and

WHEREAS, the County Board has leased a 53,826 square foot space in a portion of a building located at 1101 Wilson Boulevard, Arlington, Virginia ("Leased Facility") for an initial term of 15 years commencing May 1, 2008, with a 5 year renewal option, which Leased Facility the County Board intends to use for the purpose of developing a multi-disciplinary Arlington Cultural Center ("Cultural Center") with local and regional draw; and

WHEREAS, a November 2008 business plan for the Cultural Center was developed by the County staff and modified in response to an analysis provided by Webb Management, which business plan is intended to guide the start up and on-going management and operation of the Cultural Center (the "Business Plan"); and

WHEREAS, the management of the Cultural Center is proposed to be transitioned from County staff to a non-profit 501(c)(3) organization over the next three years to help generate private sector support for sustaining and developing the Cultural Center; and

WHEREAS, the County Board, with the cooperation and assistance of RBIC as hereafter set forth and as may be further detailed in RBIC's future annual work plans and budgets for the District, intends to fund the Cultural Center in part with District funds generated from District tax revenues it receives; and

WHEREAS, RBIC adopted a resolution, dated April 17, 2009, in support of the proposed Cultural Center and a framework plan for RBIC's participation in the financing of the ongoing operations of the Cultural Center; and

WHEREAS, the County Board and RBIC have agreed upon the terms under which they will each cooperate in establishing and thereafter operating and funding the Cultural Center, as such terms as hereafter set forth.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. County Consideration:

The County Board agrees as follows:

A. Subject to appropriation of funds, the County Board shall allocate funds from the County's general fund budget for the operation of the Cultural Center, starting with FY2010, in the amounts set forth in the Projected Operating Budget attached hereto and incorporated herein as Exhibit A, and such additional general funds as the County Board may deem necessary. The County Board agrees to provide this funding for the ongoing operation of the Cultural Center each year for the term of the Cultural Center lease, subject to annual appropriation of funds by the County Board.

B. Subject to appropriation of funds, the County Board shall provide six million, seven hundred thousand dollars ($6.7 million) in capital costs, and such additional general funds as the County Board may deem necessary, for the design and build-out of the Cultural Center in accordance with the Business Plan.

C. The County Board shall provide oversight for all aspects of the design, construction, opening and day-to-day operation and management of the Cultural Center, including coordination with RBIC and other partners/stakeholders, until such responsibilities are transferred to a 501(c)(3) organization. The County Board shall also provide financial oversight of the Cultural Center, including an annual audit of the Cultural Center operations, until the operation of the Cultural Center is transferred to a 501(c)(3) organization.

D. The County Board shall develop a contingency plan to manage any operating deficit that may arise while the Cultural Center is under the County Board's management. In developing the contingency plan, the County Board shall consult with RBIC to the extent such plan proposes a reduction of ten percent (10%) or more in the amount of space in the Leased Facility used for Cultural Center purposes or a reduction of ten percent (10%) or more in the number of hours each day or days each week contemplated in the Business Plan as being available in the Leased Facility for Cultural Center programming.

E. The County Board shall examine opportunities for RBIC's sponsorship of, recognition credits for, and participation in Cultural Center events and programs, and shall provide RBIC an opportunity for representation proportionate to

RBIC's responsibilities and funding on any Cultural Center advisory board established by the County Board and thereafter the board of directors of a 501(c)(3) organization responsible for the management of the Cultural Center. RBIC's representation shall be no less than (i) two (2) voting representatives on any such board, where that board has a membership of 15 or fewer members, and (ii) three (3) voting representatives on any such board, where that board has a membership of more than 15 members, and in each case, shall have at least one (1) voting member on an executive committee that may be established for any such board where that executive committee consists of up to seven (7) members, and two (2) voting members, where that executive committee consists of eight (8) or more members. RBIC shall also be afforded a high level of visibility with regard to the Cultural Center, including but not limited to placement of the District logo or other form of identification on a plaque placed in a prominent and readily visible location within the Leased Facility, and depiction of the District logo or other form of identification on all printed materials, advertising, and other media materials related to the Cultural Center, as well as depiction on any web site established for the Cultural Center. RBIC and Rosslyn Renaissance shall be afforded collectively, without rent charged to either organization, an opportunity to use any of the major spaces within the Cultural Center (i.e. the dance space, the art gallery, the outdoor terrace, etc.) a total of four (4) times per calendar year, and additionally the rights to use the dome within the Cultural Center for up to eight (8) times per calendar year, in each case for various events of either organization provided such use is consistent with the business plan for the Cultural Center and permitted by the lease for the Cultural Center.

F. The County Board shall maintain a parking program appropriate for the parking needs of the Cultural Center as such may change from time to time and consistent with the County's general parking policies. Under the terms of the Cultural Center lease, the following off-street parking will be available for the visitors of the Cultural Center in the garage of the Leased Facility: a minimum of 55 spaces at market rate on weekdays between 8:00 a.m. and 5:00 p.m. (excluding holidays); access to the all available spaces in the garage outside of those foregoing hours and during weekend hours of operation; and no parking between 2:00 a.m. to 6:00 a.m. (i.e., no overnight parking).

2. RBIC Consideration:

RBIC agrees as follows:

A. In accordance with the procedures of the RBIC Services Agreement, RBIC shall include in its proposed annual work plan and budget for the District, and its proposed District tax levy to support that budget, a request that the

County Board approve, for each of the fiscal years 2010 through 2012, the expenditure of carryover District funds only to fund the start up operating expenses of the Cultural Center as follows:

1. Pre-opening FY2010* $715,000.
2. Year 1 FY2011* $310,000.
3. Year 2 FY2012* $175,000.

*District funds appropriated to RBIC in prior fiscal years and carried over for application in FY2010 and several succeeding years.

B. In accordance with the procedures of the RBIC Services Agreement, and for only so long as the Leased Facility is operated for the ongoing operations of the Cultural Center during the term of the lease for the Leased Facility, RBIC shall include in its proposed work plan and the annual budget for the District, a request that the County Board approve for each of fiscal years 2010 through 2028, funding from District funds only for support of the ongoing operations of the Cultural Center in the following amounts by fiscal year:

1. For FY 2010 $300,000.
2. For FY 2011 and each subsequent year thereafter during the initial term of the 15 year lease and the five year extension period, the lesser of (a) $300,000, (b) ten (10) percent of RBIC's total annual operating budget for that fiscal year, or (c) 30% of the operating budget of the Cultural Center for the fiscal year in question.

C. In no event shall RBIC have any obligation to meet its obligations under subsections A. or B. of this Section 2 in any fiscal year with funds other than District funds. Additionally, District funds shall be used as described in subsections A. or B. of this Section 2 only if the County Board approves the RBIC work plan and budget (including the Cultural Center support funding) for the fiscal year in question, approves a tax rate to support the approved work plan and budget, collects sufficient revenue on current tax year assessments to cover the approved budget for the RBIC work plan for the fiscal year in question, and transfers to RBIC, in accordance with the procedures of the RBIC Services Agreement, sufficient District funds for performance of RBIC's obligations.

D. From time to time, the County Board may request RBIC to consider providing the County Board directly or indirectly services related to the management and operation of the Cultural Center where opportunities may exist to gain economies and other cost savings by using RBIC (the "Cultural Center Services"). Where such a request is made to RBIC to provide Cultural Center Services, RBIC agrees to give due consideration to any such request. If the County Board and RBIC agree that RBIC can be useful or helpful in providing the requested Cultural Center Services, the County Board and RBIC will provide for such pursuant to the RBIC Services Agreement or will enter into other appropriate agreements for the provision of the agreed upon Cultural Center Services. In both instances, such agreements shall provide for the prompt payment of sufficient District funds, or such other funds as the County may choose to provide, to RBIC for the Cultural Center Services provided. Where RBIC does provide any Cultural Center Services, RBIC shall not be deemed a partner or co-manager of the Cultural Center, and shall only be deemed an independent contractor to the County Board in providing those Cultural Center Services.

3. Schedule and Method of RBIC Contributions:

RBIC agrees to the following method of funding for the initial and the on-going operation of the Cultural Center:

The County Board shall transfer to RBIC in each fiscal year in accordance with the procedures of the RBIC Services Agreement the dollar amount for that fiscal year specified in Section 2.B. above for support of the Cultural Center. Upon the submission by the County Board of an invoice to RBIC making request for the transfer, RBIC shall transfer to the County in lump sum the amount of the RBIC's support obligations for the Cultural Center for that fiscal year, as provided for in Section 2.A. and B. on or before March 15 of each fiscal year or at another time as may be mutually agreed upon.

4. Termination of MOU:

A. This MOU shall terminate effective as of the date of expiration or termination of the County Board's lease for the Leased Facility. District funds identified in Section 2 above for Cultural Center use for the fiscal year in which the term of the lease expires or is earlier terminated shall cease to be used for Cultural Center support purposes as of the date of expiration or earlier termination of the lease, other than for services rendered and other obligations incurred prior to the expiration or termination, and provided that (a) RBIC shall be liable to fulfill on a prorata basis the support obligation under Section 2 above for the fiscal year in which the lease expires or is earlier terminated, and (b) where Cultural Center Services were

rendered by RBIC prior to the expiration or termination of the lease, then District funds appropriated to RBIC and identified in Section 2 above for use in that fiscal year for support of the Cultural Center may be used by the County to pay RBIC for Cultural Center Services rendered by RBIC. Remaining District funds designated in that fiscal year to support the operations of the Cultural Center and appropriated to RBIC may be used by RBIC for implementation of other elements of its approved work plan, subject to approval by the County Board in accordance with the applicable provisions of the RBIC Services Agreement.

B. Should the County Board elect to continue to lease the Leased Facility, but cease to operate the Leased Facility as the Cultural Center, then this MOU shall terminate effective as of the date that the County Board ceases to operate the Leased Facility as the Cultural Center.

C. If this MOU is terminated, then RBIC shall have no further obligations to provide support for the Cultural Center or its operations as otherwise provided in this MOU and RBIC shall have no obligation to provide in its work plan or budget monies for the operations of the Cultural Center.

5. **Miscellaneous:**

A. This MOU represents the entire agreement between RBIC and the County Board regarding the provision of financial support for the operations of the Cultural Center at the Leased Facility and supersedes all prior negotiations. representations or agreements, either written or oral. Notwithstanding the foregoing, this MOU shall not be deemed to modify the terms of the RBIC Services Agreement, as amended, and in the event of a conflict between the terms of the MOU and the RBIC Services Agreement, the terms of the RBIC Services Agreement shall govern.

B. This MOU is not intended to change, limit or alter the County Board's authority or responsibility with respect to the District or the Cultural Center.

C. This MOU is not intended to create a benefit for any person or entity not a party to the MOU.

D. This MOU is not intended to create any naming rights or other similar claims for RBIC in or at the Cultural Center.

E. At the County's sole option, the County may direct that any support payment due and owing the County by RBIC for the operations of the Cultural Center, as specified in Section 2 above, be paid directly to the Section 501(c)(3) organization established to operate and manage the Leased Facility as the Cultural Center.

F. This MOU may only be assigned to a third party by mutual agreement of the parties.

G. This MOU shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia and all disputes arising under it shall be brought in the Circuit Court of Arlington County.

In Witness Whereof, each of the persons signing below has been authorized by the appropriate authority to bind the respective party to the terms hereof:

COUNTY BOARD OF ARLINGTON
ARLINGTON COUNTY, VIRGINIA, as the governing body of Arlington, Virginia and the Rosslyn Business Improvement District

_____
Ron Carlee, County Manager

DATE: _____

ATTEST:

_____

Printed Name: _____

ROSSLYN BUSINESS IMPROVEMENT CORPORATION

_____
Stuart Miller, President

DATE: 7/13/09

ATTEST:

_____

Printed Name: CECILIA CASSIDY

EXHIBIT A

Projected Operating Budget Arlington Cultural Center						
	FY 2009*	**FY 2010**	**FY 2011*****	**FY 2012**	**FY 2013**	**FY 2014******
OPERATING EXPENSES	**$314,400**	**$1,291,629**	**$2,413,746**	**$3,185,195**	**$3,562,192**	**$3,701,556**
INCOME						
Earned:	-	-	1,050,105	1,770,220	2,224,599	2,431,755
Contributed:						
RBIC: Initial Support**	0	715,000	310,000	175,000	0	0
Ongoing Support******		300,000	300,000	300,000	300,000	300,000
The Rosslyn Fund	314,400	105,600	-	-	-	-
Sponsorships and Grants	-	-	50,000	200,000	350,000	360,500
Re-allocated County Funding	-	186,010	719,314	741,483	748,403	748,403
TOTAL INCOME	**$314,400**	**$1,306,610**	**$2,429,419**	**$3,186,703**	**$3,623,002**	**$3,840,658**
Result of Operations	-	**$14,981**	**$15,673**	**$1,508**	**$60,810**	**$139,102**

* Lease-related expenses for seven months.

** Budget for FY 2010 represents pre-opening expenses (staff, marketing, and lease-related expenses). These amounts reflect carryover funds of RBIC from budget years prior to FY 2010 to meet the $1,015,000 support noted.

*** FY 2011 budget assumes an opening in the fall of 2010.

**** Represents first full year of the Cultural Center's operation under the non-profit 501(c)(3) organization.

***** RBIC ongoing support in each fiscal year from FY 2010 through FY 2028 shall be the lesser of (1) $300,000, (2) 10% of the RBIC budget for that fiscal year, or (3) 30% of the operating budget of the Cultural Center for the fiscal year in question; provided however that if the lease for the Leased Facility should expire in FY 2023, when the lease for the Leased Facility does expire in FY 2028, or the MOU is terminated pursuant to Section 4, the amount of RBIC support for that fiscal year shall be prorated to the date of expiration of the lease in that fiscal year.