

RESOLUTION NO. 2013 - 64

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A CONTRACT PROVIDING FOR AN ECONOMIC IMPACT STUDY OF THE ST. AUGUSTINE AMPHITHEATRE

RECITALS

WHEREAS, the County desires to enter into a contract with the University of Florida to conduct an Economic Impact Study of the St. Augustine Amphitheatre; and

WHEREAS, the project is being funded by the General Fund; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the contract (attached hereto and incorporated herein) and finds that entering into this contract serves a public purpose.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to execute the contract with University of Florida described herein, providing for an economic impact study of the St. Augustine Amphitheatre.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 19th day of March, 2013.

ATTEST: Cheryl Strickland, Clerk

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: *Pam Halterman*
Deputy Clerk

By: *[Signature]*
John H. Morris, Chair

RENDITION DATE 3/21/13





**CONTRACT AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Contract Agreement (“Agreement”) made and entered this _____ day of _____ 2013, shall be the complete and binding agreement by and between St. Johns County (“County”), a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida, 32084, and the University of Florida Board of Trustees, a public body corporate of the State of Florida (“University”), with offices at is the Division of Sponsored Research, 219 Grinter Hall, Gainesville, Florida 32611.

WITNESSETH

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to the County and to the University, will further the instructional and research objectives of the University in a manner consistent with its status as a non-profit, tax-exempt, educational institution, and may derive benefits for both the County and the University through inventions, improvements and/or discoveries;

NOW, THEREFORE, in consideration of the mutual promises and mutual covenants set forth herein, the County and the University agree as follows.

Article 1. Definitions.

As used herein, the following terms shall have the following meanings:

- 1.1. “Fiscal Year” shall mean the County financial year, and shall include the period of time from the first day of October of any calendar year to the thirtieth day of September of the next calendar year, both dates inclusive (October 1-September 30).
- 1.2. “Project” shall mean, collectively, the description of the projects described in Appendix A hereof, under the direction of Alan W. Hodges (“Project Director”) as principal investigator.
- 1.3. “University Intellectual Property” shall mean individually and collectively all inventions, improvements and/or discoveries which are conceived and/or made by one or more employees of the University in performance of the Project, but specifically excludes all deliverables noted in the Scope of Work.

Article 2. Background.

2.1 Rationale for Project:

- a. The St. Augustine Amphitheatre first opened in 1965 and was operated by Cross & Sword Foundation, Inc. until 1998. A short time later, the St. Johns County Board of County Commissioners accepted the assets from the Foundation and took over the ownership and operation of the venue (the land the Amphitheatre is built on is owned by the State of Florida). Following the transfer of ownership, St. Johns County has invested approximately \$9 million in

the design and major renovation of the venue. Since the renovation was completed in 2007 and programming resumed the number of events and attendance has steadily increased. Dating back to the facility's original construction and its hosting of Florida's official state play for more than 35 years, there has been a strong emotional attachment in the community.

- b. The venue currently has an annual operating budget of about \$5 million with a dedicated full-time County staff of five full-time equivalents. Additionally, there are approximately 150-200 temporary employees and vendors employed for major events, and the facility utilizes a large number of volunteers to assist with events.
- c. The debt service for the new facility is paid for from tourist development tax revenues generated by overnight visitors. In the most recent fiscal year (2012) operational expenses exceeded operations revenue by \$165,348 – roughly a 70% decrease in operating deficit since its first full year of operations since reopening. The facility has required general revenue subsidies to offset the operating deficit and for capital improvements/maintenance. An improved economy and positive changes in venue operations seem likely to make Fiscal Year 2013 the first break-even or better financial performance year.
- d. The majority of the programming at the Amphitheatre is achieved as co-promotions with proceeds from event-related revenue streams shared with out-of- county concert promoters. Approximately 15% of the programs offered in Fiscal Year 2012 were considered self-promotes were risk, revenues, and expenses are the responsibility of the venue.
- e. The St. Johns County Board of County Commissioners would like to know the impact their investment has on the County's economy including direct and induced employment across all industry categories affected, generation of sales, gasoline and the portion of ad valorem taxes paid as a result of the economic activity and other econometric measurements to illustrate the true value of their investment.
- f. As a management tools, the resulting collection and interpretation of data should also illustrate any relationship between future investments and related economic impact that might be expected; differentiate between economic impact value of self-promoted events verses co-promoted events, distinguish between St. Johns County resident and non-resident stimulated economic activity and an illustration of the venue programming as a demand generator for attracting overnight visitors.

Article 3. Scope of Work.

3.1 The University shall provide the following work:

- a. Develop a personal interview survey instrument to collect information from venue patrons to include frequency of visitation, geographic origin, demographics, and expenditures and activities within the local area associated with St. Augustine Amphitheatre visits for lodging, food/beverage, transportation, other entertainment, and shopping.
- b. Design procedure for obtaining a representative sample of patrons of the St. Augustine Amphitheatre. Survey protocol shall be approved by the University of Florida Institutional Review Board, for compliance with ethical standards for human subjects research.
- c. Conduct personal interviews for a random sample representative set of no less than seven hundred fifty (750) patrons during St. Augustine Amphitheatre events throughout the 2013 calendar year. Intercept survey sampling will be conducted near the entrances to the facility by trained volunteers under the supervision of the Project Investigator and facility staff in a manner that does not detract from a quality visitor experience.
- d. Analyze historic data on ticket sales, sponsorships, and on-site vendor sales for the facility.

- e. Analyze historic Florida Department of Revenue Monthly Validated Sales Tax Statistics by Business by County (Forms 9 & 10) for months that are considered the “season” for Amphitheatre programming to determine the correlation –if any – reflected in food and beverage sales and Amphitheatre activity.
 - f. Clearly delineate between impact produced by Amphitheatre spending and patron spending.
 - g. Enter and analyze survey data to estimate average patron spending in each expenditure category, and share of spending representing new final demand to the region by nonresidents; extrapolate to estimate total spending for all visitors based on annual ticket sales.
 - h. Construct a regional economic model for the County using the *Impact Analysis for Planning (IMPLAN) Professional* input-output and social accounting software (version 3) and associated County dataset for 2011 (Minnesota Implan Group, Inc.).
 - i. Estimate total economic impacts of local spending on employment (full-time and part-time jobs), output (revenue), value added, labor income, property income, and indirect business taxes.
 - j. Analyze share of overall County economic activity (Gross Domestic Product, total workforce employment) attributed to St. Augustine Amphitheatre related activity within the geographical boundaries of St. Johns County.
 - k. Provide a Final Report to the County that includes the findings and analysis resulting from completion of the Work described herein, and summarizes study methodology, literature and information sources, survey research findings, economic contributions, and recommendations, including an executive summary.
- 3.2 The University shall commence performance of the Scope of Work promptly after the Effective Date of this Agreement, and shall use reasonable efforts to perform such Work in accordance with the terms and conditions of this Agreement. Anything in this Agreement to the contrary notwithstanding, the County and the University may at any time amend the Scope of Work by mutual written agreement.
- 3.3 In the event that the Principal Investigator becomes unable or unwilling to perform the Scope of Work, and a mutually acceptable substitute is not available, the County and the University shall have the option to terminate this Agreement.
- 3.4 The County will provide historic data on ticket sales, sponsorship revenues, proceeds from on-site sales, and a list of local businesses to be surveyed and assist in recruiting volunteers to aid in the administration of visitor surveys.

Article 4. Term and Termination.

- 4.1 This Agreement shall commence on April 1, 2013 (“Effective Date”), and shall expire on May 1, 2014 (“Expiration Date”). This Agreement will be effective and expire as of the dates set forth above unless sooner terminated in accordance with the provisions contained herein. The parties hereto may however extend the term of this Agreement for additional periods as desired under mutually agreeable terms and conditions which the parties shall reduce to writing and execute.
- 4.2 Either party hereto may terminate this Agreement without cause upon thirty (30) calendar days prior written notice to the other.
- 4.3 In the event that either party hereto shall commit any breach of or default in any of the terms or conditions of this Agreement, and shall also fail to remedy such default or breach within thirty (30)

calendar days after receipt of written notice thereof, the party giving notice may, at its option and in addition to any other available remedies in law or in equity, terminate this Agreement by sending written notice of termination to the party in breach or default, and termination of this Agreement shall be effective upon receipt by the breaching/defaulting party of such notice.

- 4.4 Upon the effective date of any termination or the expiration of this Agreement, the University shall immediately discontinue all Work under this Agreement, unless the County expressly consents in writing to a continuation of such work. Upon termination of this Agreement, the University shall return all copies of County data, records, equipment, supplies or other materials or property belonging to the County.

Article 5. Reports and Conferences.

- 5.1 The University shall prepare and present a Final Report by no later than April 1, 2014, containing the findings and analysis resulting from completion of the Work described herein. The Final Report will also summarize study methodology, literature and information sources, survey research findings, economic contributions, and recommendations, including an executive summary.
- 5.2 During the Term of this Agreement, representative of the County shall meet with representatives of the University at mutually agreed upon times and places to discuss the progress and results, as well as ongoing plans and/or changes to the Scope of Work performed hereunder.

Article 6. Compensation, Billing and Invoices.

- 6.1 Subject to the availability of funds lawfully appropriated for such purpose, and satisfactory performance of the Work described herein, the County hereby agrees to pay to the University as compensation a total sum not to exceed sixty three thousand eight hundred U.S. dollars (\$63,800).
- 6.2 Such compensation shall be paid to the University in four (4) equal payments of fifteen thousand nine hundred fifty U.S. dollars (\$15,950). In accordance with this Agreement, the first installment is due March 1, 2013, the second installment is due on July 1, 2013 and the third installment is due on December 1, 2013. The final installment will be due upon receipt of the Final Report and following the University submitting an invoice for the amount to the County.
- 6.3 Although there is no invoice form or format pre-approved by either the County or the University, invoices submitted by the University shall include a detailed written report of the Work completed in connection with the Scope of Work. The County may return an invoice from the University, and request additional documentation/information. Under such circumstances, the timeframe for payment will be extended only by the time necessary to receive a verified invoice. In accordance with applicable provisions of the Florida Prompt Payment Act, the County shall process all invoices, and forward payment to the University within forty five (45) days of verification.
- 6.4 Unless otherwise notified, invoices should be delivered to:

Glenn Hastings
St. Johns County Tourist Development Council
500 San Sebastian View
St. Augustine, FL 32084

Article 7. Publicity.

- 7.1 The County shall not use the name of the University, its seal, logo, and/or any other identifying trademarks, or the names of the University's Project staff in any publicity, advertising or news release without prior written approval by an authorized representative of the University.
- 7.2 The University shall not use the name of the St. Augustine Amphitheatre or the County, its seal, logo, and/or any other identifying trademarks, or the names of any County officers, agents or staff in any publicity, advertising or news release without prior written approval by an authorized representative of the County.

Article 8. Publications.

- 8.1 The County recognizes that under University policy, the results of the Project must be publishable and hereby agrees that researchers engaged in the Project shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that the County shall have been furnished copies of any proposed publication or presentation at least one (1) month in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. The County shall have one (1) month, after receipt of said copies, to object to such proposed presentation or proposed publication based upon the use of unprotected patentable subject matter.
- 8.2 In the event that the County makes such objection, the University shall refrain from making such publication or presentation for a maximum of three (3) months from the date of receipt of such objection in order to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the unprotected patentable subject matter contained in the proposed publication or presentation.

Article 9. Intellectual Property.

- 9.1 All rights and title to University Intellectual Property under the Project shall belong to University and shall be subject to the terms and conditions of this Agreement.
- 9.2 Rights to inventions, improvements and/or discoveries, whether patentable or copyrightable or not, relating to the Project made solely by employees of the County shall belong to the County. Such inventions, improvements, and/or discoveries shall not be subject to the terms and conditions of this Agreement.
- 9.3 The University shall promptly notify the County of any University Intellectual Property conceived and/or made during the Term of this Agreement.
- 9.4 The University hereby grants to the County the first option, for consideration, a non-exclusive license or an exclusive license with a right to sublicense, on terms and conditions to be mutually agreed upon. The option shall extend for a time period of ninety (90) days after the date notice is provided to the County.

Article 10. Status of the Parties.

- 10.1 The University is an independent contractor and not an employee of the County for any purpose including, but not limited to, application of the Fair Labor Standards Act minimum wage and overtime payment requirements, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, and/or provisions of the Internal Revenue Code. The University is not an agent, representative or joint venture partner of the County.
- 10.2 Neither party hereto may enter into any contract or commitment on behalf of the other party. Neither party hereto has power to obligate or bind the other in any manner whatsoever. Neither party hereto shall be liable for any debts nor other liabilities whatsoever associated with the other party.

Article 11. Warranties.

The University warrants and represents to the County that it has the experience and abilities necessary to perform the Scope of Work with a high standard of quality and that: (i) the Work will conform in all material respects with the specifications set forth in this Agreement; and (ii) the Work will be provided to the County on a best efforts basis in a timely and professional and workmanlike manner.

Article 12. Obligations.

The University will exercise good judgment and reasonable care in performing its obligations under this Agreement. The University will comply with the provisions of all applicable executive, federal, state, county and local laws, ordinances, regulations and codes (as adopted or amended from time to time) applicable to the University's performance of the Scope of Work under this Agreement. The University will be readily accessible to address and resolve any inquiries, concerns and/or complaints the County may have regarding the Work be provided hereunder. The University will direct all of its inquiries about the Scope of Work to the County representative named and is not entitled to rely upon any oral or written statements that may be offered by any other person.

Article 13. Indemnity.

- 13.1 To the extent permissible by law, the University shall indemnify and hold the County, its officers, agents and employees harmless from all claims (including tort-based, contractual, injunctive, and/or equitable), losses (including property (personal and/or real), and bodily injury), costs (including attorneys' fees), suits, administrative actions, arbitration, or mediation originating from, connected with, or associated with, or growing out of (directly and/or indirectly), the University's performance under this Agreement.
- 13.2 To the extent permissible by law, the County shall indemnify and hold the University harmless from all claims (including tort-based, contractual, injunctive, and/or equitable), losses (including property (personal and/or real), and bodily injury), costs (including attorneys' fees), suits, administrative actions, arbitration, or mediation originating from, connected with, or associated with, or growing out of (directly and/or indirectly), the County's performance under this Agreement.
- 13.3 Nothing contained in this Agreement shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent

of the County, the University or the State of Florida or their agencies, agents or public bodies corporate to be sued; or (3) a waiver of the sovereign immunity of the County, the University, the State of Florida, or their agencies, agents and public bodies corporate beyond the waiver provided in section 768.28, Florida Statutes.

Article 14. Insurance.

The parties hereto acknowledge that the University participates in the State Risk Management Program administered by the Department of Financial Services, Division of Risk Management of the State of Florida, for worker's compensation, general liability and fleet automobile liability insurance. For the duration of this Agreement, the University shall, at its sole expense, maintain adequate insurance coverage in the following types and amounts: Comprehensive General Liability insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate; Comprehensive Automobile Liability insurance with minimum limits of \$300,000; and Worker's Compensation insurance if and as required by Chapter 440, Florida Statutes. The University shall provide to the County proof of such coverage upon execution of this Agreement. Failure to comply with this section shall constitute cause for immediate termination of this Agreement by the County without prior notice to the University.

Article 15. Notices.

Notices, invoices, communications, and payments hereunder shall be deemed made if given by electronic mail, or registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing:

If to the County: Glenn Hastings
St. Johns County Tourist Development Council
500 San Sebastian View
St. Augustine, FL 32084

If to University: Stephanie Gray, Director
Sponsored Research
University of Florida
219 Grinter Hall
Gainesville, FL 32611-2037
ufawards@ufl.edu

If Technical Matter: Dr. Alan W. Hodges
P.O. Box 110240
Gainesville, FL 32611
awhodges@ufl.edu

Article 16. Miscellaneous.

- a. Neither party may assign this Agreement nor delegate or subcontract the performance of the Scope of Work as specified in this Agreement without the prior written consent of the other.

- b. This Agreement shall not be amended or modified in any manner except by written instrument properly executed by each party.
 - c. This Agreement is governed by the laws of the State of Florida and any provisions contained in this Agreement in conflict therewith shall be void and of no effect. Any suit, action or proceeding arising in connection with this Agreement shall be brought in St. Johns County, Florida.
 - d. The failure of either party to perform any obligation due to delay, illness, catastrophe, war, civil commotion or other event beyond its reasonable control shall be excused, provided that the University shall not be entitled to payment for work it has not performed regardless of the cause of such event.
 - e. No delay or failure by either party to exercise or enforce any right or provision of this Agreement will be considered a waiver thereof.
 - f. If any provision of this Agreement is determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remainder of this Agreement.
 - g. The obligations under this Agreement which by their nature would continue beyond the expiration of the term of this Agreement shall survive termination or expiration of this Agreement.
 - h. This Agreement contains the entire understanding between the parties with respect to the subject matter of this Agreement.
 - i. The headings of any sections, articles or paragraphs of this Agreement are for convenience or reference only and are not intended to affect the meaning of this Agreement.
 - j. This Agreement may be executed in one or more counterparts all of which when taken together shall be considered one and the same agreement. A complete, executed copy of this Agreement shall be enforceable as an original.
 - k. The parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.
 - l. The University represents (1) that it has established equal opportunity practices which conform to both the spirit and the letter of all laws against discrimination and prohibits discrimination based on race, creed, color, sex, age, national origin, marital status or religion; (2) it has not been placed on the convicted vendor list by the Department of Management Services, State of Florida, and (3) neither it nor any subcontractor or other person, firm or business entity with whom it is engaged in a combined effort to perform this Agreement has hired any person who is an officer or employee of the County.
 - m. Each party covenants to the other party that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.
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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed on the day and year written above.

ST. JOHNS COUNTY

**THE UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES**

By: _____

By: _____

Print
Name/Title: _____

Print
Name/Title: _____

Date of Execution

Date of Execution

Legal Review:

Assistant County Attorney

Cheryl Strickland, Clerk of Courts

By: _____ Seal
Deputy Clerk

Date of Execution