



Interoffice Memorandum

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
JAN 05 2016 *SLK/LC*

AGENDA ITEM

December 10, 2015

TO: Mayor Teresa Jacobs  
and  
Board of County Commissioners

THRU: Lonnie C. Bell, Jr., Director  
Family Services Department

FROM: Michael Perkins, Manager  
Regional History Center Division  
Contact: **Jessie Allen, (407) 836-8590**  
**Michael Perkins, (407) 836-8591**

SUBJECT: Funding Agreement between Orange County, Florida and Historical Society of Central Florida, Inc.  
BCC Meeting January 5, 2016 Consent Agenda/All Districts

The Regional History Center has a current operating agreement with the Historical Society of Central Florida, Inc., which assists with the operations of the Regional History Center and raises funds to support the Center's collecting of local historical artifacts and showcasing of exhibits about local and national historical topics.

As approved by the Board of County Commissioners for the current fiscal year, the Regional History Center received additional funding in the amount of \$629,000. This funding is scheduled to be utilized exclusively for the redesign and renovation of the Center's permanent exhibits. The funds will be provided through additional funding from the Tourist Development Tax and are a one-time addition to the Center's budget.

**ACTION REQUESTED:** Approval of Funding Agreement between Orange County, Florida and Historical Society of Central Florida, Inc., to provide funds as approved during the budget sessions to design and renovate the History Centers permanent exhibits.

MP/ptl

C: George A. Ralls, M.D., Deputy County Administrator  
Lila McHenry, Assistant County Attorney, County Attorney's Office  
Kurt Petersen, Manager, Office of Management and Budget  
Yolanda S. Brown, Manager, Fiscal Division, Family Services Department

JAN 05 2016 *JK/LC*

FUNDING AGREEMENT  
between  
ORANGE COUNTY, FLORIDA  
and

HISTORICAL SOCIETY of CENTRAL FLORIDA, INC.

THIS AGREEMENT is made and entered into this \_\_\_\_ day of 201\_\_, by and between Orange County, a political subdivision and charter county existing under the laws and Constitution of the State of Florida (the "County") and the Historical Society of Central Florida, Inc., a Florida not-for-profit corporation (the "Society").

WHEREAS, the Historical Society and the County have entered into an Amended and Restated Operating Agreement dated June 22, 2010 (the "Operating Agreement") to jointly operate the Orange County Regional History Center located at 65 East Central Boulevard, Orlando, Florida (the "OCRHC"), which is used to provide the citizens of Orange County a historical museum for housing exhibits, artifacts, and educational tools and programs about the history of Central Florida; and

WHEREAS, the County has authorized Tourist Development Tax funding under the sixteenth priority of the Orange County Tourist Development Plan, Section 25-140 of the Orange County Code (the "TDT Plan"), to provide annual funding for reimbursement of actual operation and maintenance expenses of the OCRHC in an amount up to two million five hundred thousand dollars with annual increases of three percent or the Consumer Price Index All Urban Consumer, whichever is less, with any such funding subject to annual budget approval by the Board of County Commissioners; and

WHEREAS, the Society and the County wish to make improvements to the permanent exhibits located in the Orange County Regional History Center; and

WHEREAS, the Society has artifacts in its ownership which are housed in the OCRHC; and

WHEREAS, the County desires to enter into this agreement in order to provide additional reimbursement for operating and maintenance expenses consistent with the TDT Plan in order to enable the Society to fund the design, renovation and modification of permanent exhibits within the OCRHC.

THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

**Section 1. County contribution.** The County has appropriated from available tourist development tax (“TDT Funds”) revenues the sum of six hundred twenty nine thousand dollars (\$629,000.00) only if and to the extent sufficient revenues from the Tax are available, both legally and financially, for such payment in accordance with and after taking into account all pertinent provisions of (i) Florida law; (ii) the Orange County Code (including especially, the TDT Plan); (iii) that certain Second Amended and Restated Indenture of Trust between the County and U.S. Bank National Association, as trustee, as amended and supplemented from time to time; and (iv) any terms, conditions, covenants, restrictions, obligations, or other contractual provisions existing now or entered into from time to time in the future by the County for the protection of the owners of bonds, notes or other obligations issued or to be issued from time to time in the future by the County, the payment of which is secured in whole or in part by a pledge of revenues derived from tourist development taxes.

- 1.1 TDT Funds will be made available in twelve (12) monthly installments based upon the dates and contingent upon the receipt of twelve (12) monthly invoices satisfactory to the Fiscal Manager, Family Services Department and County Comptroller detailing the Society’s actual expenditure of funds consistent with the sixteenth priority of the TDT Plan. Each monthly invoice is due to such Fiscal Manager and the County Comptroller within 15 days after the end of each month. The initial installment requested by the Society and paid by the County may include invoices for past months commencing with October, 2015 and up to and including the month in which this Agreement is executed by both parties.
- 1.2 TDT Funds paid under this Agreement shall only be expended consistent with provisions of this Agreement, pertinent provisions of Florida Law regarding expenditure of TDT Funds, the sixteenth priority of the County’s TDT Plan and the Budget attached at **Exhibit A** attached hereto and incorporated herein by reference.
- 1.3 No TDT Funds shall be expended with any lobbyist, as such term is defined in section 2-351 of the Orange County Code, to engage in any lobbying activities designed to influence decisions or other foreseeable actions of the Board of County Commissioners or the governing body of any other municipality located within Orange County. Furthermore, the Historical Society agrees that it shall not undertake, or cause to be undertaken, or participate in, any lobbying before the state legislature in order to advocate for or influence legislative decision making inconsistent with legislative priorities adopted by the Board of County Commissioners.

**Section 2. Society’s Obligations.**

- 2.1 The Society shall use TDT Funds solely for the purposes set forth herein consistent with the budget set forth in **Exhibit A**. Line item amendments within the budget may be requested by the Society with written approval from the Fiscal Manager.

- 2.2 In exchange for receiving TDT Funds, the Society shall expend an amount of the Society's funds equal to the amount of TDT Funds received hereby to secure professional services for the evaluation, design, renovation and fabrication of all permanent exhibit space, the Chapin Gallery and common areas located in the OCRHC premises. Such equal amount of Society funds shall be so expended, contractually committed or otherwise set aside to the reasonable satisfaction of the County and Comptroller, for renovation and fabrication of exhibits in the same fiscal year as TDT Funds are received. All such renovated exhibits shall be the property of the County. The parties agree that historical artifacts owned by the Society shall remain property of the Society whereas all renovations, including without limitation, exhibits designed to display artifacts, exhibits displaying information, lighting and fixtures installed in the OCRHC, shall be the property of the County. To the extent of any conflict with the provisions of the Operating Agreement, the provisions of this Agreement shall prevail.
- 2.3 The Society will use its best efforts to provide a historical museum for the conservation and display of exhibits and artifacts and the conducting of educational programs, public events and promotional activities at the museum premises and throughout the Central Florida Region in accordance with acceptable national museum standards.

**Section 3. Independent Contractor.** The parties expressly acknowledge that the Society is acting as an Independent Contractor, and nothing in this Agreement is intended or shall be construed to establish an agency, partnership or joint venture relationship between the parties.

**Section 4. Payment Contingency.** This Agreement and any payments provided for in this Agreement is contingent upon the availability of TDT revenues derived from the Tax levied under Section 25-136 of the Orange County Code to make the payments hereunder.

**Section 5. No Pledge of Tax Revenues.** Nothing in this Agreement shall constitute or be deemed (i) a pledge of or lien upon tourist development taxes, any other source of County revenue, or any real or personal property of the County, (ii) an amendment to the County Tourist Development Plan, or (iii) a waiver of or contract to exercise the County's sovereign governmental powers.

**Section 6. Nondiscrimination.** The Society will certify in writing that it has fulfilled its obligations hereunder and provided the activities and programs associated with the OCRHC without regard to race, color, creed, sex, age, national origin, disability or marital status, and remain in compliance with Title VII of the 1964 Civil Rights Act as amended, and any and all

other applicable federal, state or local laws, rules and regulations, whether presently existing or hereafter promulgated.

**Section 7. Budget and Reporting Requirements.** As a condition of receiving TDT Funds pursuant to this Agreement the Society acknowledges and agrees to comply with its reporting obligations and to timely provide the following to the Comptroller, unless otherwise specified below:

- (i) a detailed list of actual expenditures consistent with the sixteenth priority of the TDT Plan together with a progress report and list of actual monthly and year-to-date expenditures of Society funds associated with design services for, and renovations to, the OCRHC, to be submitted simultaneously with the submission of the monthly invoice to the County;
- (ii) audited financial statements of the Society within 60 days of completion of its audit, with such audit being completed within 180 days of the close of the Society's fiscal year and which financial statements;
- (iii) the Society's IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS;
- (iv) at the County's or Tourist Development Council's request, a presentation to the Tourist Development Council or Board of County Commissioners, which will include financial summaries of the OCRHC design and renovations. The Society shall provide such additional presentations as may be requested by the Tourist Development Council or the County.

**Section 8. Recordkeeping and Accounting.** The Society will utilize accounting procedures and practices in the maintenance of the records of receipts and disbursements of the funds contributed by the County, and such procedures and practices will be in accordance with generally accepted accounting principles. All such records shall be open to inspection and auditing by the County or by the County's designee during normal business hours during the term hereof, and for a period of three (3) years after the term of the contract. Any cost incurred by the Society as a result of a County audit shall be the sole responsibility of and shall be borne by the Society. In addition, should the Society provide any or all of the County's funds to sub-recipients, then and in that event the Society 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 three (3) years after the term of the contract.

**Section 9. Maintenance of Records; Audit.** In accordance with the public records laws of the state of Florida, the Society shall make all records and documents relating to this Agreement available for public inspection and copying. All records shall be retained for the prescribed period of time required for Local Government Agencies by the Florida Division of Library and Information Services Record Retention Schedule.

**Section 10. Non-Profit Status.** The Society shall maintain its corporate, non-profit status in the State of Florida and under Section 501(c)(3) of the Internal Revenue Code throughout the term of this Agreement. Should the Society, during the term of this Agreement, lose its Section 501(c) (3) status, it shall immediately notify the County in writing, and the County reserves the right to terminate this Agreement.

**Section 11. Defaults and Remedies.** The following events shall constitute an event of default under this Agreement: (a) if the Society fails to comply with the terms contained in this Agreement and such failure is not corrected within the period of time allotted for cure in a written notice from the County; or (b) if at any time any material representation is made by the Society in any communication submitted to the County in an effort to induce the expenditure of TDT funds is determined by the County to be false, misleading, or incorrect in a material manner. Failure of the County to declare a default shall not constitute a waiver of any rights by the County. Furthermore, the waiver of any default by the County shall in no event be construed as a waiver of rights with respect to any other default, past or present. Upon the occurrence of any event of default, or any other breach of this Agreement, the County shall be free to terminate this Agreement; withhold all funding; demand repayment for amounts disbursed; and/or exercise all rights and remedies available to it under this Agreement, statutory law, equity, or common law. All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the County may have available to it. In the event the County elects to terminate this Agreement in the event of a default, the County may require the Society to remit all, or a portion, of any TDT Funds disbursed pursuant to this Agreement. The remittance amount of TDT Funds, if any, shall be determined by the County, in its sole discretion, and shall be received by the County within ninety (90) calendar days from the date of such termination for default.

**Section 12. Term and Termination.** The initial term of this Agreement shall begin as of October 1, 2015 and shall continue until September 30, 2016. Thereafter, upon budgetary appropriation of additional TDT Funds by the Orange County Board of County Commissioners, this Agreement may be renewed annually for up to two additional one year terms. Contingent upon such budgetary appropriation, authority to execute up to two additional one year renewals of this Agreement, under substantially the same terms as set forth herein, is hereby delegated to the County Administrator. This Agreement can be terminated by either party at any time, with or without cause, upon no less than sixty (60) days' notice in writing to the notice address of the other party.

**Section 13. 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.

**Section 14. Notices.** Any notices required or allowed hereunder shall be in writing and given by certified mail, return receipt requested, 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: Yolanda Brown  
Fiscal Manager  
Orange County Family Services Department  
2100 East Michigan Street  
Orlando, FL 32806

Orange County Administrator  
201 S. Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, Florida 32801

With a copy to:

Comptroller: Orange County Comptroller  
Director of Finance & Accounting  
201 S. Rosalind Avenue, 4<sup>th</sup> Floor  
Orlando, Florida 32801

Society: Historical Society of Central Florida  
65 East Central Blvd.  
Orlando, Florida 32801

**Section 15. Indemnification.** The Society agrees to indemnify and save harmless the County from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees, and attorneys on appeal of any kind and nature arising or growing out of or in any way connected with the performance of this Agreement.

**Section 16. No Assignment.** The Society 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.

**Section 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.

**Section 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.

**Section 19. Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation occurring as a result of this Agreement shall be held in the Ninth Circuit Courts in and for Orange County, Florida, and shall be governed by the laws of the State of Florida.

**Section 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.

**Section 21. Counterparts.** This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set below.



**ORANGE COUNTY, FLORIDA**

**By: Board of County Commissioners**

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

Date: 1.5.16

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Kate Smith*  
Deputy Clerk  
Clerk/Deputy Clerk of the Board

Date: JAN 05 2016

**HISTORICAL SOCIETY OF CENTRAL FLORIDA, INC.,**  
a Florida not for profit corporation

By: *Donald J. Johnson*  
Title: Executive Director

Date: 12-15-15

## Exhibit A

### HISTORICAL SOCIETY OF CENTRAL FLORIDA, INC. ACTUAL BUDGET FOR FY2016

#### Personal Services

Salaries/Wages	\$ 323,859
Contract Labor	17,675
Contract Services	123,150
Benefits	39,040

#### Operating

Printing	17,000
Supplies and Materials	13,775
Dues, Fees and Membership	9,355
Software > #1,000	19,400
Parking Garage Fees	
Travel	4,450
Education and Training	14,800
Meetings	-
Exhibit Rental	5,250
Promotional Expenses	1,330
Advertising Expenses	2,699
Catering Services	4,000
Special Events Other	2,500
Postage	485
Audit Fees	14,000
Payroll Fees	8,782
Bank Service Charges	4,200
Laundry and Dry Cleaning	2,650
Office Supplies	600
Communications	-

**Total Budget** \$ 629,000