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APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: September 13, 2016

Consent Agenda Item

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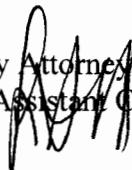
Legal Administrative Supervisor
Anna M. Caban

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Paralegals
Melessia Lofgren
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MEMORANDUM

TO: Mayor Teresa Jacobs
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney
Lila I. McHenry, Senior Assistant County Attorney
Contact: (407) 836-7320 

DATE: August 31, 2016

RE: **Consent Agenda Item for Board Meeting on September 13, 2016**
Approval of Florida Classic Football Game Grant Agreement between
Orange County, Florida and Florida Classic Consortium Corporation

I. EXPLANATION & SUMMARY:

On June 28, 2016, the Board approved an amendment to the Tourist Development Plan which provides funding for the Florida Classic for an additional five years (FY16/17 – FY20/21) in the annual amount of one hundred thirty-seven thousand five hundred dollars (\$137,500). This grant agreement implements the funding authorized on June 28.

II. ACTION REQUESTED: **Approval and execution of Orange County, Florida and Florida Classic Consortium Corporation Florida Classic Football Game Grant Agreement.**

LIM/eh

c: Ajit Lalchandani, County Administrator
Jeffrey J. Newton, County Attorney
Eric Gassman, Deputy County Administrator
Fred Winterkamp, Manager, Fiscal and Business Services Division

**ORANGE COUNTY, FLORIDA
AND
FLORIDA CLASSIC CONSORTIUM CORPORATION**

**FLORIDA CLASSIC FOOTBALL GAME
GRANT AGREEMENT**

THIS AGREEMENT, made and entered into as of the date of last execution by the parties below, by and between Orange County, a charter county and political subdivision existing under the laws and Constitution of the State of Florida, hereinafter referred to as the "County" and Florida Classic Consortium Corporation, a Florida non-profit corporation located in Tallahassee, Florida, hereinafter referred to as the "Consortium," whose members are Bethune-Cookman University, Inc., a Florida non-profit corporation (formerly known as Bethune-Cookman College) and Florida A & M University Board of Trustees, hereinafter collectively referred to as the "Schools".

PREMISES

1. The Consortium has applied to the County for a donation of Tourist Development Tax funds to be used to cover expenditures associated with the Florida Classic football game (hereinafter, the "Florida Classic") hosted by the Consortium. The Florida Classic is staged annually at the Camping World stadium, formerly known as the "Citrus Bowl". The revenues generated from the Florida Classic allow the Schools to provide scholarships to deserving students, many of whom reside in Orange County.
2. The County has determined that staging the Florida Classic promotes tourism, and, to that end, the County has, since 1999, allocated tourist development tax funds for such purpose; and
3. On June 28, 2016, the Orange County Board of County Commissioners approved an amendment to the Tourist Development Plan which provides funding for the Florida Classic for an additional five years (fiscal years 2016/17 through 2020/21); and
4. The County desires to enter into this agreement with the Consortium, , in order to provide funding for the Florida Classic.

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

Section 1. Funding of the Florida Classic. Pursuant to the provisions of Orange County Ordinance 2016-12 approved by the Board of County Commissioners on June 28, 2016, the County will provide funding from available tourist development tax revenues in the annual amount of one hundred thirty-seven thousand five hundred dollars (\$137,500.00) for the promotion of tourism through the

staging of the 2016 Florida Classic in Fiscal Year 2016/17, the 2017 Florida Classic in Fiscal Year 2017/18, the 2018 Florida Classic in Fiscal Year 2018/19, the 2019 Florida Classic in Fiscal Year 2019/20 and the 2020 Florida Classic in Fiscal Year 2020/21.

Annual payments of \$137,500.00 shall be made in accordance with County Office of Management and Budget procedures. The recipient of such payments shall be the Consortium. Payments will be mailed to Florida Classic Consortium Corporation, c/o Florida Citrus Sports Association, 1 Citrus Bowl Place, Orlando, FL 32805, Attn: Joey Walters.

Section 2. Payment Subject to Availability and Annual Appropriation of Funds. This Agreement, and any payments provided for in this Agreement, is subject to and contingent upon:

- a. the availability in each fiscal year of revenues derived from tourist development taxes levied under section 25-136 of the Orange County Code (hereafter “tourist development taxes”) to make the payments hereunder; and
- b. appropriation by the Board of County Commissioners in each applicable fiscal year of tourist development tax revenues for the payments hereunder.

If the Board of County Commissioners does not appropriate tourist development tax revenues in any fiscal year during the term of this Agreement for the payments hereunder, the County shall not be obligated to pay the Consortium any sum from any revenue source for such fiscal year and the Consortium shall not have any obligations to the County under this Agreement for such fiscal year.

Section 3. Obligations of the County.

- a. The County is obligated to make such payments only if and to the extent sufficient revenue from the tourist development tax are available, both legally and financially, for such payments in accordance with and after taking into account all pertinent provisions of (i) Florida law, (ii) the Orange County Code (including especially, the County’s Tourist Development Plan set forth in Section 25-140), (iii) that certain Second Amended and Restated Indenture of Trust between the County and Wachovia Bank, National Association, formerly known as First Union National Bank of Florida (and n/k/a “Wells Fargo Bank, N.A.”), as Trustee, as amended and supplemented from time to time, and (iv) any terms, conditions, covenants, restrictions obligation, 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 the Tax.
- b. 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.
- c. The County’s contribution will be made to the Consortium during the months of November or December of each year during the term of this Agreement, upon receipt of an invoice from the Consortium requesting payment. Invoices are to be mailed to:

Orange County Convention Center

Attention Business Manager
P.O. Box 691509
Orlando, FL 32869-1509

Section 4. Obligations of the Consortium and Schools.

a. The Consortium and Bethune-Cookman University shall maintain their corporate, non-profit status in the State of Florida throughout the term of this Agreement. If the Consortium or Bethune-Cookman should, during the term of this Agreement, lose their non-profit corporate status, the County shall immediately be notified in writing, and the County reserves the right to terminate this Agreement immediately and discontinue payments to the Consortium.

b. The Consortium shall stage and conduct its annual Florida Classic football game in Orange County, Florida and shall use its best efforts to advertise, promote and market each game in a manner that promotes and increases tourism within Orange County, Florida.

c. The Consortium agrees to provide said activities/programs 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 or regulations, whether presently existing or hereafter promulgated.

d. The Consortium will maintain adequate bookkeeping records to account for the expenditure of the funds paid by the County hereunder and will utilize generally accepted accounting principles in the maintenance of the records of receipts and disbursements of the funds contributed by the County. All such records of the Consortium and the Schools relating to the expenditure of such funds shall be open to inspection by the County Comptroller during normal business hours during the term hereof, and for a period of five (5) years after the term of the Agreement. Any cost incurred by the Consortium or the Schools as a result of a County audit shall be the sole responsibility of and shall be borne by the Consortium or the Schools. In addition, should the Consortium or the Schools provide any or all of the County's funds to sub-recipients, then and in that event the Consortium or Schools, as the case may be, 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 Comptroller for the term of the contract and for a period of three (3) years after the term of the contract. If any litigation, claim or audit is commenced prior to the expiration of the five (5) year period and extends beyond this period, the records shall be maintained until all litigation, claims or audit findings involving the records have been resolved.

e. As a condition of payment of TDT funds, the Consortium shall provide to the County Administrator, with copies to the County Comptroller and the Convention Center, in addition to all other information required by existing contracts with the County, program reports, to include at a minimum, the number of room nights, average daily rate, attendance and economic impact of the Florida Classic within 90 days following the Florida Classic. The Consortium shall provide such presentations to the Board of County Commissioners or Tourist Development Council ("TDC") regarding the Florida Classic football games as may be requested by the County or the TDC.

f. The Consortium 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 and the staging of the Florida Classic.

g. The Consortium 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 5. Repayment. The Consortium shall be liable for repayment of any funds disbursed under the terms of this Agreement which may be deemed by the County Comptroller to have been disbursed in error.

Section 6. Termination.

a. In the event funds to finance all or part of this Agreement are not available to the County, then the obligations of each party hereunder may be terminated upon the twenty-four (24) hours written notice to the other party. The County shall be the sole authority as to the availability of funds.

b. This Agreement can be terminated by the County upon no less than thirty (30) days' notice in writing to the Consortium if: i) the Consortium or the Schools shall have failed to comply with any of their obligations herein provided it shall have notified the Consortium of a default in writing and such default has not been cured within ten (10) days or ii) the County Office of Management and Budget shall have determined that insufficient tourist development tax revenues are available to fulfill the County's obligations hereunder. Such notice shall be delivered by certified mail or in person to the business address of the party upon whom such notice is served at the addresses set forth in Section 7 below, or at such other place as such party may from time to time designate in writing.

Section 7. Notices. All notices, consents, approvals, waivers, and deletions which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficient only when mailed by certified mail, first class postage affixed, addressed as follows:

If to the County:

Orange County Office of Management and Budget
201 South Rosalind Avenue, 3rd Floor
Orlando, Florida 32801-4328
Attention: Manager, Office of Management and Budget

And a copy to:

Orange County Convention Center
P.O. Box 691509
Orlando, Florida 32869-1509
Attention: Business Manager

And a copy to:

Florida Citrus Sports Association
1 Citrus Bowl Place
Orlando, Florida 32805
Attn: Director of Florida Classic/FCSports Camp

If to the Consortium:

Florida Classic Consortium Corporation
c/o Florida A & M University
400 Lee Hall
Tallahassee, Florida 32307
Attention: Legal

And a copy to:

Orange County Office of Management and Budget
201 South Rosalind Avenue, 3rd Floor
Orlando, Florida 32801-4328
Attention: Manager, Office of Management and Budget

And a copy to:

Orange County Convention Center
P.O. Box 691509
Orlando, FL 32869-1509
Attention Business Manager

And a copy to:

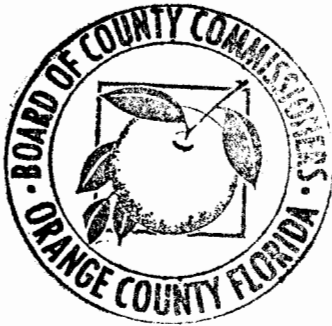
Florida Citrus Sports Association
1 Citrus Bowl Place
Orlando, Florida 32805
Attn: Director of Florida Classic/FCSports Camp

Section 8. Controlling Laws. This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed by and between the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained. Any litigation occurring as a result of this Agreement shall be held in the courts of Orange County, Florida, and shall be governed by the laws of the State of Florida.

Section 9. No Third Party Beneficiaries. This Agreement is by and between the County, and the Consortium and does not create any rights in any third parties and no such rights shall be implied.

Section 10. 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.

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



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

BY: *Teresa Jacobs*
Teresa Jacobs
County Mayor

DATE: 9.13.16

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

BY: *Katell Smith*
Deputy Clerk

**FLORIDA CLASSIC CONSORTIUM
CORPORATION**

A Florida Non-profit Corporation

By: *Amira Mangum*
Title: President
Florida A & M University Board of Trustees

Date: 8/22/2016

By: *Chris Jarboe*
Title: President
Bethune-Cookman University, Inc.

Date: 9/29/16