

**THIRD AMENDMENT TO AGREEMENT BETWEEN THE CITY OF TALLAHASSEE,
LEON COUNTY, FLORIDA, TALLAHASSEE-LEON COUNTY CIVIC CENTER
AUTHORITY, THE FLORIDA STATE UNIVERSITY AND
FLORIDA BOARD OF EDUCATION**

THIS THIRD AMENDMENT TO AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2012, by and among the CITY OF TALLAHASSEE, a Florida municipal corporation (the “City”); LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida (the “County”); TALLAHASSEE-LEON COUNTY CIVIC CENTER AUTHORITY (the “Authority”); the FLORIDA STATE UNIVERSITY (the “FSU”); and FLORIDA BOARD OF GOVERNORS (the “FBOG”) as the successor to the Florida Board of Regents.

RECITALS

WHEREAS, the Authority currently owns and operates the Tallahassee-Leon County Civic Center (the “Civic Center”); and,

WHEREAS, the Parties and the Board of Regents for the State of Florida entered into a certain Agreement dated March 9, 1976 relating to the construction, financing, operation, and use of the Civic Center, and subsequently entered into that certain Amendment and Affirmance of Agreement for Financing the construction of the Civic Center; and,

WHEREAS, the Parties entered into the Second Amendment to Agreement on March 20, 2003 in order to clarify the agreement by the City and the County to pay the Authority certain expenses whenever the Authority ran an annual deficit; and,

WHEREAS, the Parties now wish to conclude the Agreement and all preceding amendments thereto, and to help further resolve the matter of *Tallahassee Hotel Associates, Ltd. v. Tallahassee-Leon County Civic Center Authority*, Second Judicial Circuit for Leon County, Florida, Case No. 2010-CA-004369; and,

WHEREAS, the Parties desire to establish a means for the continued and viable operation of the Civic Center as a viable, long term community asset providing a comprehensive civic, governmental, educational, recreational, convention, and entertainment facility for the use and enjoyment of the Tallahassee and Leon County community at large, and for FSU; and,

WHEREAS, the Parties wish to enter into this Third Amendment to Agreement to set forth the terms and conditions under which the City and the County, and the FBOG, and FSU would agree to modify or terminate the Agreement, and amended by the First Amendment and the Second Amendment, respectively (collectively “Center Agreements”). (Exhibits A-C attached)

NOW, THEREFORE, in consideration of the following mutual promises, covenants and representations set forth herein, the sufficiency of which being acknowledged, the Parties do hereby agree as follows:

1. INTENT OF AGREEMENT

This Agreement constitutes a recession of the more significant terms of agreement between the Parties in order to release the City and the County from any obligations under the Center Agreements.

2. CONDITIONS PRECEDENT

Except for paragraphs 3 B and D, 4 A and B, and 7, no provision of this Agreement shall be effective until after a transfer of the Civic Center to FSU from the Authority is finalized and closed (the "Transfer"), the closing of which shall be referred to as the "Transfer Date." Should the Transfer not occur, all provisions of this Agreement are null and void and the Center Agreements remain unchanged; any funds transferred to the Civic Center Authority under the provisions of paragraph 3 B and D of this agreement shall be returned within 15 days.

3. OBLIGATIONS OF THE CITY AND COUNTY

A. At FSU's option, the City will continue to provide \$60,000 annually toward the Center's utility costs.

B. The City agrees to pay to the Authority by June 30, 2012, \$60,000 owed toward the Center's 2011-2012 utilities.

C. The City and the County release the Authority from any further requirements under the Center Agreements;

D. While the City and the County assert that neither has any obligation or legal liability, as a public expenditure and in order to assure continued viability of the Civic Center, the City and the County further agree to each contribute \$250,000.00, on or before June 15, 2012, towards the termination of the Center Agreements and for the use by the Authority towards the settlement of the lawsuit entitled *Tallahassee Hotel Associates, Ltd. v. Tallahassee-Leon County Civic Center Authority*, Second Judicial Circuit for Leon County, Florida, Case No. 2010-CA-004369, on the express conditions:

- i. All preceding Center Agreements are rescinded or modified to fully release the City and County of any further responsibility or liability as defined in the Center Agreements, and to pay potential annual deficits of the Civic Center incurred after the date of this Third Amended Agreement.
- ii. The Agreement of FSU for the Civic Center's continued operation and maintenance as a comprehensive civic, governmental, educational, recreational, convention, and entertainment facility at substantially the same level of use and enjoyment of the Tallahassee-Leon County

community at large as a community asset, as well as for the use by FSU.

- iii. FSU's agreement to simultaneously enter into a Lease Agreement with the Authority on the Transfer Date upon terms and conditions to be agreed upon by FSU and the Authority; and,
- iv. FSU's cooperation with the City, the County, and the Authority regarding any necessary agreements to release the City and the County from further liability arising from the annual deficit of the Civic Center pursuant to the preceding Center Agreements.

4. OBLIGATIONS OF FSU

A. FSU agrees to obtain the approval of the Florida Legislature for the use of operating funds for the Civic Center pursuant to §1013.78(1), Florida Statutes, and an opinion from the FSU General Counsel indicating that an approval has been obtained.

B. An opinion from the FSU General Counsel indicating that FSU has obtained the authority from the Board of Governors to receive ownership of the Civic Center, including the assumption of the Civic Center's assets and liabilities.

C. FSU agrees to the appointment of a Civic Center Advisory Board for the purpose of advising FSU with respect to the continued use and availability of the Civic Center to individuals and community groups outside of FSU. The Advisory Board shall meet at the call of the Chair, at least three times per year, and shall be made up of three members appointed by the City of Tallahassee, three members appointed by Leon County, one member appointed by FAMU, and eight members appointed by FSU. All appointments shall be made within thirty (30) days of the effective date of legislation referenced in paragraph 6.

D. FSU and the Authority agree to continue the current practice for priority use of the Civic Center by Leon County Schools for local high school graduation ceremonies.

5. TRANSFER OF TITLE

If the above conditions precedent have been satisfied, FSU will enter into an Agreement with the Authority for the Transfer of the Civic Center, including the assumption of the Civic Center's assets and liabilities, making the existing preceding Center Agreements null and void, and releasing the City and County from any further liabilities other than those stated herein.

6. MODIFICATION OF CHAPTER 2004-435, LAWS OF FLORIDA AND CREATION OF CITIZEN ADVISORY BOARD

The City, the County, the Authority and FSU agree to jointly support a local bill modifying Chapter 2004-435, Laws of Florida, during the 2013 legislative session. If a local bill is not passed during the 2013 legislative session, the Parties agree to jointly support passage in subsequent sessions.

7. RELEASE OF DEED RESTRICTIONS AND REVERTER CLAUSES

The City and the County agree to release any deed restrictions or reverter clauses running with the land contained in any deeds conveying the Civic Center to the Authority.

8. AMENDMENTS

The Parties hereby acknowledge that the terms hereof constitute the entire understanding and agreement of the Parties with respect to the subject matter hereof. No modification hereof shall be effective unless in writing, executed with the same formalities as this Agreement, in accordance with general law.

9. OBLIGATION TO CONFER

Prior to initiating proceedings alleging breach or seeking enforcement of any provision of this agreement, the Parties shall consult in an attempt to resolve any disputes that arise under this Agreement in good faith prior to initiating any formal proceedings seeking enforcement or alleging breach of the Center Agreements, including this Amendment.

10. SURVIVING PROVISIONS

The obligations of the City, County, the Authority and FSU under paragraphs 3, 4, 6, and 9 of this agreement shall survive the transfer of title to FSU.

11. RECORDATION

The County shall record this Agreement with the Leon County Clerk of the Court upon execution of the Parties and prior to the Commencement Date. Upon return of the recorded Agreement, the County shall deliver a recorded copy of this Agreement to all other Parties.

12. EFFECTIVE DATE

This Agreement shall be effective ("Effective Date") upon execution by all Parties.

IN WITNESS WHEREOF, the Parties cause this Agreement to be executed by their duly authorized representatives this _____ day of _____, 2012.

ATTEST:

CITY OF TALLAHASSEE, FLORIDA

By: _____
Gary Herndon, City Treasurer-Clerk

By: _____
John R. Marks, III, Mayor

APPROVED AS TO FORM:

By: _____
James R. English, City Attorney

ATTEST:

LEON COUNTY, FLORIDA

By: _____
Bob Inzer, Clerk of the Court
Leon County, Florida

By: _____
Akin Akinyemi, Chairman
Board of County Commissioners

APPROVED AS TO FORM:

By: _____
Herbert W. A. Thiele
County Attorney

**TALLAHASSEE-LEON COUNTY
CIVIC CENTER AUTHORITY**

Witness as to the Authority

By: _____
Russ Morcom, Chair

Witness as to the Authority

APPROVED AS TO FORM:

By: _____
General Counsel

FLORIDA BOARD OF GOVERNORS

Witness as to the FBOG

By: _____

Witness as to the FBOG

APPROVED AS TO FORM:

By: _____
FBOG General Counsel

FLORIDA STATE UNIVERSITY

Witness as to the FSU

By: _____

Witness as to the FSU

APPROVED AS TO FORM:

By: _____
FSU General Counsel