


Consent Agenda Item

MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Randy Singh, Deputy County Administrator 
Contact: (407) 836-7370
for BS

DATE: October 7, 2019

RE: **Consent Agenda Item for Board Meeting on October 22, 2019**
2019 Tourism Promotion Agreement and United Arts TDT Agreement
(Related to Ordinance Pertaining to Taxation Tourist Development Plan)

2019 Visit Orlando Tourist Promotion Agreement

Since 1983, Orange County has promoted tourism in Central Florida through a contract with Visit Orlando. On September 30, 2019, the County's 2007 Visit Orlando Tourism Promotion Agreement expired. Following a months-long negotiation between the County and Visit Orlando, the 2019 Tourism Promotion Agreement has been completed and it is funded through the County's Tourist Development Plan ("TDT Plan") and a portion of the Sixth Cent Tourist Development Tax (collectively, "TDT").

On September 20, 2019, the Tourist Development Council unanimously recommended that the County approve the 2019 Tourism Promotion Agreement. Major elements of the 2019 Tourism Promotion Agreement are:

- A nine-year term including a five-year initial term and four-year extension.
- Simplified funding formula with increased funding to reach 30% by 2023 and remain at that level throughout the contract term in order to support our leading tourism industry.
- Dedicated funding to promote the conventions and meeting industry to attract and retain events at the Orange County Convention Center and Orange County convention hotels that results in economic development which produces visitor spending and jobs that are important to the local economy.
- Increased funding for the TDT Sports Incentive Committee process from \$2 million to \$4 million annually to attract sports visitation.

- Increased emphasis on diversification for local cultural and eco-tourism opportunities.
- Public oversight and transparency with requirements for reporting, auditing, and Orange County membership on the Visit Orlando Board.

This 2019 Tourism Promotion Agreement requires an amendment to the TDT Plan, and a public hearing on an amendment to the TDT Plan has been scheduled for the afternoon of October 22, 2019. This item will be pulled from the consent agenda for consideration as part of the public hearing on the Plan amendment.

2019 United Arts TDT Agreement

The 2019 Contract between Orange County and United Arts of Central Florida, Inc. Management/Fiscal Agency Agreement for Orange County Arts & Cultural Affairs Tourist Development Tax Revenue – Approval of Arts & Cultural Affairs Grants Program, provide the terms under which United Arts receives TDT funding to provide grants to arts organizations in Orange County in connection with the Orange County Arts and Cultural Affairs Advisory Council. The contract for United Arts TDT funding from October 1, 2019 to May 31, 2022 will be based on the same formula used previously, with the addition of a new fixed annual amount of \$1.5 million and a matching amount of \$500,000 to match new donations to United Arts.

The new \$1.5 million fixed annual funding and the \$500,000 matching amounts in the 2019 United Arts Agreement for TDT require an amendment to the TDT Plan; accordingly, this item will also be pulled from the consent agenda for consideration as part of the public hearing on the Plan amendment.

If you have any questions, please contact Randy Singh at 407-836-7370.

ACTION REQUESTED:

Approval and execution of 1) Orange County, Florida and Orlando/Orange County Convention & Visitors Bureau, Inc. Tourism Promotion Agreement; and
2) Contract #Y20-155 Orange County, Florida and United Arts of Central Florida, Inc. Management/Fiscal Agency Agreement for Orange County Arts & Cultural Affairs Tourist Development Tax (TDT) Revenue – Arts & Cultural Affairs Grants Program

c: Byron W. Brooks, AICP, County Administrator
Lila McHenry, Senior Assistant County Attorney
Fred Winterkamp, Manager, Fiscal and Business Services Division

**ORANGE COUNTY, FLORIDA
AND
ORLANDO/ORANGE COUNTY CONVENTION
& VISITORS BUREAU, INC.**

TOURISM PROMOTION AGREEMENT

This Tourism Promotion Agreement (the "Agreement") is entered into by and between **Orange County, Florida**, a charter county and political subdivision existing under the laws and Constitution of the State of Florida (the "County") and the **Orlando/Orange County Convention & Visitors Bureau, Inc.**, a Florida not-for-profit corporation, currently doing business as **Visit Orlando** ("Visit Orlando"). This Agreement will be effective as of October 1, 2019 upon the last execution by the parties below.

PREMISES:

A. Visit Orlando is a full service destination management organization incorporated as a not-for-profit corporation organized under Chapter 617, Florida Statutes, (i) to solicit and collect membership dues, grants, and other funds from private and public members of the community and to expend such funds for the benefit of the community, (ii) to produce and disseminate advertising campaigns, media marketing, promotional materials and literature presenting the advantages of the Central Florida area and its convention facilities, (iii) to coordinate and integrate the activities of Visit Orlando with private and public organizations having common goals and objectives, (iv) to provide referral, reservation and information thereto, (v) to provide referral, reservation and information services to, and arrange transportation, equipment, entertainment and meeting services for conventions and visitors, and (vi) to perform all other purposes of Visit Orlando for the promotion and enhancement of the convention and tourism industry and for the benefit and welfare of the citizens and residents of Central Florida.

B. The County is a charter county and a political subdivision organized and existing under and by virtue of the Florida Constitution and the statutes of the State of Florida and the Orange County Charter.

C. Section 125.0104, Florida Statutes, commonly known as the Local Option Tourist Development Act (the "Act"), authorizes five separate tourist development taxes that county governments may levy, depending on eligibility. Under this Section, the County is eligible to levy a Tourist Development Tax (the "Tax") of up to six percent (6%) of the total consideration charged for renting accommodations in any hotel, motel, or other living quarters for a term of six months or less. The Orange County Board of County Commissioners (the "BCC") currently levies the Tax at the maximum rate of six percent (6%).

D. Section 125.0104(5)(a) of the Act provides that proceeds of the first four percent (4%) of the Tax may be used to promote tourism and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus.

E. Pursuant to Section 125.0104(3)(l) of the Act and Section 25-136.1 of the Orange County Code the County levies a “Fifth Cent” of the Tax (the “Fifth Cent Tax”) which is dedicated to payment of debt service on bonds issued to finance or refinance construction, reconstruction, renovation or expansion of the Orange County Convention Center.

F. Section 125.0104(3)(n) of the Act provides that the proceeds of the “Sixth Cent” of the Tax may be used to promote and advertise tourism in the State of Florida and nationally and internationally.

G. The County is committed to developing and maintaining a strong local economy and finds that the promotion and advertisement of Orange County as a convention, trade show, meeting and tourism destination will support the local economy, serve a public purpose and be consistent with the authorized uses of proceeds of the Tax under the Act.

H. The BCC has contracted with Visit Orlando since 1983 to provide tourism, convention, group meeting and trade show promotion services.

I. Pursuant to the Tourist Development Plan, codified at Chapter 25, Article IV, Section 25-140 of the Orange County Code (the “Plan”), the BCC has authorized funding for such contractual services from Visit Orlando for the promotion of tourism in various ongoing and temporary annual amounts.

J. In 2006, the BCC authorized payment to Visit Orlando of a portion of the Sixth Cent of the Tax pursuant to Orange County Ordinance No. 2006-15 (the “Sixth Cent Tax”), to be used for additional advertising and marketing efforts for tourism promotion.

K. On November 1, 2016, pursuant to Ordinance 2016-23, the BCC authorized permanent funding under the Plan to be deposited with Visit Orlando for incentivizing major athletic events to be staged in Orange County venues (“Sports Incentive Funds”).

L. On October 22, 2019, pursuant to Ordinance 2019-__ the BCC consolidated, and restructured various funding priorities under the Plan, including those for Visit Orlando.

M. This Agreement represents a continuation of the relationship between the County and Visit Orlando for one five year term, with one additional four year term. This contract replaces and supersedes that certain Tourism Promotion Agreement by and between Orange County, Florida and the Orlando/Orange County Convention & Visitors Bureau, Inc. dated September 11, 2007, as amended from time to time (as amended, the “2007 Agreement”) in all respects except as hereinafter set forth. The parties now wish to enter into this Agreement to set forth the terms, conditions and limitations for continued funding for Visit Orlando’s services.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

Section 1. Orange County Obligations.

1.1 Payments to Visit Orlando. Subject to the terms and limitations set forth in this Agreement, the County shall pay to Visit Orlando, unless specified otherwise, during the term of this Agreement, the following amounts:

- (a) for the County fiscal year commencing October 1, 2019, the amount of revenues equal to:
 - (1) 50% of the Sixth Cent Tax collected as authorized under Section 25-136.2 of the Orange County Code pursuant to Section 125.0104(3)(n), Florida Statutes.
 - (2) That percentage of tourist development taxes collected as authorized under Section 25-136 of the Orange County Code pursuant to Section 125.0104(3)(c), 125.0104(3)(d), and 125.0104(3)(m), Florida Statutes when added to the amount in (1) above will equal approximately 25.07% of total Tax collections. For purposes of clarity, this calculation in this subparagraph (2) does not include the Fifth Cent Tax or the Sixth Cent Tax.

- (b) for the County fiscal year commencing October 1, 2020, the amount of revenues equal to:
 - (1) 50% of the Sixth Cent Tax collected as authorized under Section 25-136.2 of the Orange County Code pursuant to Section 125.0104(3)(n), Florida Statutes.
 - (2) That percentage of tourist development taxes collected as authorized under Section 25-136 of the Orange County Code pursuant to Section 125.0104(3)(c), 125.0104(3)(d), and 125.0104(3)(m), Florida Statutes when added to the amount in (1) above will equal approximately 27.07% of total Tax collections. For purposes of clarity, this calculation in this subparagraph (2) does not include the Fifth Cent Tax or the Sixth Cent Tax.

- (c) for the County fiscal year commencing October 1, 2021, the amount of revenues equal to:
 - (1) 50% of the Sixth Cent Tax collected as authorized under Section 25-136.2 of the Orange County Code pursuant to Section 125.0104(3)(n), Florida Statutes.

- (2) That percentage of tourist development taxes collected as authorized under Section 25-136 of the Orange County Code pursuant to Section 125.0104(3)(c), 125.0104(3)(d), and 125.0104(3)(m), Florida Statutes when added to the amount in (1) above will equal approximately 28.57% of total Tax collections. For purposes of clarity, this calculation in this subparagraph (2) does not include the Fifth Cent Tax or the Sixth Cent Tax.
- (d) for the County fiscal year commencing October 1, 2022, and for each of the County fiscal years 2023/24 through 2027/28 the amount of revenues equal to:
- (1) 50% of the Sixth Cent Tax collected as authorized under Section 25-136.2 of the Orange County Code pursuant to Section 125.0104(3)(n), Florida Statutes.
 - (2) That percentage of tourist development taxes collected as authorized under Section 25-136 of the Orange County Code pursuant to Section 125.0104(3)(c), 125.0104(3)(d), and 125.0104(3)(m), Florida Statutes when added to the amount in (1) above will equal approximately 30% of total Tax collections. For purposes of clarity, this calculation in this subparagraph (2) does not include the Fifth Cent Tax or the Sixth Cent Tax.

The calculation of the above percentages is set forth in a spreadsheet attached hereto and incorporated herein as **Exhibit "A."** Orange County's obligations under this Subsection 1.1 shall be paid monthly by the Orange County Comptroller (the "Comptroller") to Visit Orlando by the tenth day of each month based on actual Tax receipts. For accounting purposes, amounts paid will be determined on an accrual basis and match the tax dealer collection month. Upon execution of this Agreement, the obligation to make payments to Visit Orlando will be effective October 1, 2019 with the first monthly payment beginning on or before December 10, 2019 to correspond to the actual October 2019 Tax collections. The County shall continue to make run out payments for those obligations incurred through September 30, 2019 under the 2007 Agreement that were paid on the accrual basis to match the tax dealer collection month. For reference these payments included amounts paid under Subsection 1.1(a) and (b) under the 2007 Agreement.

1.2 Meetings & Convention Sales and Marketing Funds.

For the calendar year commencing January 1, 2020, a minimum of \$12,800,000 shall be

allocated for meetings and convention sales and marketing and reflected in Visit Orlando's annual budget. For subsequent calendar years during the term of this Agreement, prior to September 30st of each year, Visit Orlando will consult with OCCC Executive Director or designee on all Convention Center Sales and Marketing plans and additionally consult with key hospitality industry partners. Visit Orlando shall submit to the OCCC Executive Director a comprehensive and fully integrated meetings and convention marketing plan and budget draft (collectively the "Work Plan," as an integral component of Visit Orlando's obligations pursuant to Subsections 2.2.1 and 2.3.3 of this Agreement) for the upcoming calendar year. If the OCCC Executive Director does not notify Visit Orlando of any concerns with the sales and marketing plan related to the OCCC by October 31st of each such year, approval shall be assumed by both parties. In the event the OCCC Executive Director provides Visit Orlando notification of disapproval of any portion of the Work Plan related to the OCCC (with specificity as to reason for disapproval) on or prior to October 31st, Visit Orlando shall work with the OCCC Executive Director to address and resolve those issues causing the disapproval. In the event that causes of disapproval shall not have been resolved by November 30th of any such year, then the Parties agree to meet with the County Administrator or Deputy County Administrator (for purposes of this Agreement, "County Administrator" shall hereinafter mean either the County Administrator or Deputy County Administrator) and the Visit Orlando Board of Directors Chair to resolve the concerns.

1.3 Business Development Funds.

A minimum of \$1,000,000.00 of the annual amounts paid under Subsection 1.1 hereof ("Business Development Funds") shall be set aside and separately accounted for by Visit Orlando to be used solely for the business development purposes set forth in Subsection 2.2.2 below.

1.4 Sports Incentive Funds.

Within thirty days of the effective date of this Agreement, and within the first 30 days of each ensuing fiscal year during the term of this Agreement, County shall pay four million dollars (\$4,000,000) to Visit Orlando with all such Sports Incentive Fund payments to be held by Visit Orlando in a separate interest-bearing bank account with interest accruing to the benefit of the Sports Incentive Fund and separately accounted for at all times with statements of activity, balances and future funding obligations provided to the County Comptroller on a monthly basis. Such Sports Incentive Funds shall be expended solely pursuant to Subsection 2.2.3 of this Agreement.

1.5 Limitations on the County's Payment Obligation.

1.5.1 The County is obligated to make funds available to the Visit Orlando up to the amounts set forth herein only if, and to the extent that, sufficient revenues from the Tax related to current collections are available, both legally and financially, for such payments in accordance with and after taking into account pertinent provisions of (i) Florida law, (ii) the Orange County Code, including specifically the Plan, as it may be amended from time to time, (iii) that certain

Second Amended and Restated Indenture of Trust dated as of July 15, 2000, as amended or supplemented from time to time, including the Fifteenth Supplemental Indenture of Trust to Second Amended and Restated Indenture of Trust, dated as of July 1, 2017 between the County and U.S. Bank National Association, successor in interest to certain other banking institutions, as Trustee (collectively, the "Indenture"), (iv) that certain Orlando/Orange County Interlocal Agreement between the County and the City of Orlando, Florida, dated August 6, 2007, as amended and restated on November 1, 2016, and (v) 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 the Tax.

1.5.2 The County's obligation to pay the amounts set forth in Subsection 1.1 and Subsection 1.5 hereof in any given County fiscal year is further expressly conditioned upon the County having a Debt Service Reserve balance on the June 30th of the year preceding the fiscal year in which payment is to be made equal to at least the sum of its Maximum Annual Debt Service, as such term is defined in the Indenture, plus four percent (4%) of the value of the plant, furniture fixtures and equipment comprising the Orange County Convention Center on deposit in its Renewal and Replacement Reserve and Bond Reserve Accounts, as such total amount is determined by the Comptroller.

1.5.3 The County has no obligation whatsoever, express or implied, to make the payments under this Agreement from any source of revenues other than the Tax and shall have no obligation to make payments hereunder from any reserve funds.

1.5.4 Nothing in this Agreement shall constitute or be deemed (i) a pledge of or lien upon the Tax, any other source of County revenue, or any real or personal property of the County, (ii) an amendment to the Plan, (iii) an amendment to the Sixth Cent Ordinance, or (iv) a waiver of or contract to exercise the County's sovereign governmental powers.

1.5.5 To the extent that the County must amend the Plan, the Indenture or exercise any other governmental powers (including without limitation, as a result of state or federal legislation, actions by the Internal Revenue Service, or court order) before it may legally perform all or any part of its obligations hereunder, the enforceability and validity of this Agreement or the specifically affected provisions hereof, as applicable, is expressly subject to such amendment or proper exercise of such governmental powers, and failure or refusal by the County to so perform shall not constitute breach of or default under this Agreement.

1.5.6 Visit Orlando expressly acknowledges and agrees (i) that the County has issued and may issue from time to time in the future bonds, notes, and other obligations secured by a pledge of and payable from all or part of the revenues derived from the Tax, (ii) that the County from time to time in the future may enter into such terms, covenants, conditions, restrictions, limitations, obligations, duties, and other contractual provisions with the owners of such bonds, notes, or other obligations, as the County may see fit, in the County's sole discretion, (iii) that any such bonds, notes, or other obligations and any such contractual provisions issued or entered into by the County shall not constitute a breach of or default under this Agreement in any manner

whatsoever, and (iv) that if and to the extent such bonds, notes, or other obligations and any such contractual provisions conflict with any part of this Agreement, such bonds, notes, or other obligations and any such contractual provisions shall prevail over this Agreement.

Section 2. Visit Orlando Obligations.

2.1 Compliance with Florida law and this Agreement. Visit Orlando expressly represents and warrants to the County that all funds received under Subsection 1.1 hereof shall only be expended in accordance with Section 125.0104(5)(a) Florida Statutes, the Tourist Development Plan and the provisions of this Agreement. That portion of funds attributable to the Sixth Cent Ordinance shall only be expended pursuant to Section 125.0104(3)(n)2, Florida Statutes, the Sixth Cent Ordinance and the provisions of this Agreement. In addition, Sports Incentive Funds shall only be expended pursuant to the provisions of Section 2.2.3 of this Agreement. In addition, Visit Orlando will treat reimbursements from advertising partners for cooperative marketing, promotional, and advertising opportunities (co-ops) or similar arrangements, where the Tax was used to cover the cost of the program as being subject to all restrictions and all requirements of this Agreement applicable to Tax funds and will provide reporting for these expenditures/reimbursements in a format acceptable to the County.

2.2 Use of Funds.

2.2.1 Meetings and Convention Sales and Marketing Expenditures.

In accordance with Subsection 1.2 hereof Visit Orlando will at all times separately account for all funds expended in accordance with such Subsection 1.2 for Meetings and Convention Sales and Marketing. Amounts allocated for this purpose shall be expended only for costs of attracting, promoting, selling, and marketing Orange County, with an appropriate emphasis on the Orange County Convention Center (the "OCCC"), as a convention, trade show and meeting destination. Allowable uses of Meetings and Convention Marketing funds include:

- i. expenditures directly related to convention, tradeshow, and meetings sales efforts, to include direct expenditures for sales staff, necessary travel for sales purposes, and other direct expenses required to perform adequate sales functions;
- ii. the design, production, creation and purchase of advertising and marketing campaigns in various media that specifically benefit Orange County as a convention, trade show and meeting destination. Such expenditures shall place appropriate and proportionate emphasis on non-peak periods including years and months projected to experience low bookings;
- iii. the direct, measurable costs associated with processing and responding to customer inquiries directly in response to such additional promotion and marketing activities;
- iv. the items and initiatives referred to in Subsection 2.3.3 hereof.

During the Term of this Agreement, unspent Meetings and Convention Sales and Marketing funds shall roll into the following fiscal year and retain the same usage restrictions unless the County Administrator shall have provided advance written approval for other uses authorized under this Agreement. In the event this Agreement is terminated or expires, any unexpended and uncommitted Meetings and Convention Sales and Marketing Funds shall be returned to the County within 60 days.

2.2.2 Business Development Fund.

In accordance with Subsection 1.3 hereof, Visit Orlando shall deposit all Business Development Funds in a separate interest-bearing bank account (the "BD Account") with interest accruing to the benefit of the BD Account and separately accounted for at all times with statements of activity, balances and future funding obligations provided to the County Comptroller on a monthly basis. All monies deposited in such BD Account shall be expended only as described in this subsection and solely for business development expenditures that secure large delegation tradeshows and conventions at the OCCC, with all such contemplated expenditures requiring advance consent of the OCCC Executive Director or designee after consultation with Visit Orlando's Chief Executive Officer, or designee, before being proposed or offered.

Business Development Funds shall not be used for administrative expenses for Visit Orlando. During the term of this Agreement, unspent Business Development Funds shall roll into the following fiscal year and retain the same usage restrictions. In the event this Agreement is terminated or expires, all unexpended Business Development Funds, together with interest earnings thereon, shall be returned to the County along with an assignment and assumption agreement by and between the County and Visit Orlando with respect to any contractual agreements wherein such funds have been committed.

Currently existing and outstanding business development commitments entered into prior to the execution date of this Agreement shall not be paid from Business Development Funds paid hereunder.

2.2.3 Sports Incentive Funds.

In accordance with Subsection 1.4 hereof, Sports Incentive Funds shall be expended only for payments authorized pursuant to funding recommendations which have been evaluated by the County's Sports Incentive Committee ("SIC"), established pursuant to County Resolution No. 2017-M-43, and approved by the Board of County Commissioners pursuant to the guidelines set forth as **Exhibit "B"** attached hereto and incorporated herein. In the event this Agreement is terminated or expires, Visit Orlando shall return all unexpended Sports Incentive Funds, together with related interest earnings thereon, to the County and in such event, the County shall administer the use of any obligated but unpaid Sports Incentive Funds.

Visit Orlando shall prepare sports incentive funding applications, evaluate applications for funding, schedule and attend meetings of and provide staff support to the SIC. Visit Orlando shall:

- (i) work with County staff to evaluate and develop an annual Sports Incentive Funding application cycle;
- (ii) periodically submit the form of application for discussion, review, revision and approval to the SIC;
- (iii) process completed applications from applicants to the SIC and provide its professional assistance in continuing to develop the SIC review process in evaluating such applications and making recommendations to the SIC regarding such applications;
- (iv) collaborate with County staff, in submitting funding recommendations from the SIC to the BCC for approval;
- (v) after receiving BCC approval, enter into funding agreements with applicants utilizing Sports Incentive Funds consistent with such approval, the Plan and this Agreement and using standardized funding agreements in substantially the form mutually approved for such use by the County Attorney's Office and Visit Orlando which agreements shall be commercially reasonable and shall contain such recordkeeping, reporting, audit and other provisions as may be required from time to time by the County, County regulations and Florida law;
- (vi) oversee expenditures of Sports Incentive Funds consistent with the guidelines in **Exhibit "B,"** and the Oversight and Accountability provisions set forth herein to ensure the responsible use of Sports Incentive Funds for the benefit of the Orange County community, the tourism industry and the Orange County economy and Visit Orlando shall report any such concerns regarding responsible use of Sports Incentive Funds to the County Comptroller with a copy to the County Administrator;
- (vii) provide information and reporting to the SIC, County Administration, OCCC administration as requested; and
- (vii) schedule and cause post-event reporting on funded applicants and events to be provided to the SIC on a regular basis and the BCC on at least an annual basis.

Notwithstanding the guidelines set forth in **Exhibit "B"** Visit Orlando shall enter into an agreement to fund administrative expenses of the Central Florida Sports Commission, Inc. d/b/a the Greater Orlando Sports Commission ("GOSC") from Sports Incentive Funds in an annual amount equal to three hundred thousand dollars (\$300,000) with annual adjustments of such funding amount in subsequent years equal to three percent or the Consumer Price Index- for All Urban Consumers: U.S. city average, by expenditure category, all items, non-seasonal, as published by the U.S. Department, Bureau of Labor Statistics and measured from June to May of each year prior to the fiscal year renewal date,- whichever is less, and further subject to the County Administrator's annual right to direct Visit Orlando in writing by August 1st of each year to reduce such amount or terminate such agreement with GOSC. Visit Orlando may, pursuant to such agreement with GOSC, advance Sport Incentive Funds, to the extent available, in quarterly installments to GOSC provided that Visit Orlando shall have first developed parameters in cooperation with GOSC which:

- (i) establish baseline historical performance of sports marketing efforts in Central Florida;
- (ii) set forth metrics to be used in evaluating marketing goals;

- (iii) include specific and regular identification of potential events and future business to be gained through strategic use of Sports Funds;
- (iv) require regularly scheduled communication and reporting to identify upcoming travel, proposals, planned marketing activities and updates on outcomes;
- (v) facilitate appropriate participation and joint use of resources between Visit Orlando and GOSC;
- (vi) provide for mutual cooperation in Visit Orlando's reporting and presentations to the SIC, Tourist Development Council and County regarding the proposed and actual expenditure of Sports Incentive Funds;
- vii. require detailed and separate accounting for all expenditures of Sports Incentive Funds; and
- viii. provide Visit Orlando with sufficient documentation of expenditures by GOSC to enable Visit Orlando, the County and County Comptroller to ensure use of Sports Incentive Funds is consistent with and as contemplated by the Plan and Florida law.

Sports Incentive Funds shall only be used for promotion and incentives relating to venues and sporting events located within Orange County, Florida except with the written consent of the County Administrator. Visit Orlando shall not charge, collect nor retain any compensation for its administration of Sports Incentive Funds. In the event of disputes, litigation, or threatened litigation, arising from Visit Orlando's administration of Sport Incentive Funds, Visit Orlando shall promptly notify the County Administrator and County Comptroller of all pertinent facts involving such disputes or litigation. In the event Visit Orlando is required to defend itself under any contracts entered into pursuant to the provisions of this Subsection 2.2.3, Visit Orlando shall obtain written approval from the County Administrator prior to any use of Sport Incentive Funds in connection with any such defense, dispute or litigation.

2.3 Performance Standards; Strategic Plan; Scope of Services.

Visit Orlando agrees that it shall use its best commercially reasonable efforts to advertise, sell, promote, and market the tourism attractions, accommodations and amenities in Orange County, including but not limited to the OCCC, the County's natural assets of interest to eco-tourists, and generally promote the assets beyond the local theme parks and attractions including without limitation the neighborhoods, markets, hotels, dining and cultural venues and history of communities within the County in order to maintain and increase the numbers and quality of visitors, conventions, trade shows and meetings in Orange County throughout the term of this Agreement. The services to be provided will cover a broad range of sales and marketing programs, including those that are standard for visitors' bureaus, and will consist of, at a minimum, the services below.

2.3.1 Visit Orlando will be recognized as the official marketing organization for Orange County encompassing all facets of the area including attractions, hotels, cultural tourism, local heritage and character, eco-tourism, special events, etc. Visit Orlando will represent the Orange County area in sales and marketing services for meetings and conventions.

- 2.3.2 By June 30, 2020, and every three years thereafter during the term of this Agreement, Visit Orlando shall develop and submit a “Strategic Plan” consistent with the terms of this Agreement. The Strategic Plan shall set forth numerical goals, measurable objectives and strategies to promote Orange County in the marketplace as a convention, trade show, meeting and leisure destination through means such as advertising, direct marketing, representation of the destination at trade shows, seminars and events, conducting sales missions, hosting familiarization tours and such other methods as are commercially reasonable in the tourism promotion industry. Visit Orlando agrees to use its best efforts to attain such objectives and strategies in connection with the performance of its services under this Agreement. Any marketing that involves the expenditure of Tax funds for travel, lodging, meals, and entertainment shall be conducted in a cost-effective and efficient manner consistent with the responsible use of public funds for such tourism promotion.
- 2.3.3 By September 30, 2020, and for each subsequent year during the term of this Agreement, Visit Orlando shall submit a Work Plan with defined, measurable deliverables consistent with Subsections 1.2, 2.2.1 and this subsection 2.3.3. Visit Orlando shall partner with the OCCC and coordinate with the OCCC sales and marketing staff in order to identify, attract and book conventions, trade shows and meetings that would need services of a convention center other than consumer-direct shows. Visit Orlando and the regional offices it operates shall work cooperatively with the OCCC in soliciting new business and in maintaining relationships with existing clients. Other requirements of this collaboration with the OCCC shall include:
- a. Visit Orlando, at its cost, shall provide guest services at various locations determined and provided by OCCC management in consultation with Visit Orlando throughout the OCCC. The cost of any structural changes to the facility at said locations shall be borne by the OCCC. The dates and times of these services will be mutually agreed upon by Visit Orlando and OCCC management. While providing these services, Visit Orlando will have the exclusive right to sell attraction tickets and advertising at these locations. Visit Orlando’s right to sell advertising at these locations shall not restrict the OCCC’s right to sell advertising elsewhere in the OCCC. Visit Orlando shall also have the right, though not exclusive, to sell sundry items at these locations. Certain portions of the OCCC campus may be subject to restrictive covenants that limit the imagery that may be displayed in advertising and Visit Orlando shall cooperate with the OCCC in maintaining compliance with any such covenants. Visit Orlando shall maintain these locations to modern and tasteful standards that are consistent with the décor and design standards in place at the OCCC.
 - b. Visit Orlando will execute the marketing and advertising strategy in accordance with the approved Work Plan and will, together with the OCCC, mutually agree on the use of OCCC images, trademarks, copyrighted material and other building or facility specific depictions in all materials dealing

exclusively with the OCCC before any such materials are developed and publicly distributed by Visit Orlando.

- c. Visit Orlando shall pay for up to four (4) registrations for County/OCCC staff at each sales mission or Trade Show coordinated or attended by Visit Orlando during the Term of this Agreement. Additionally, Visit Orlando shall be responsible for the costs of County/OCCC trade show booth fees, rentals, and/or setup associated with such events over and above the amounts contributed by other Visit Orlando Members. Such events may include, but are not limited to those hosted by the following organizations or their equivalents and/or successors: International Association of Exhibitions and Events (IAEE), Professional Convention Management Association (PCMA), Worldwide Exhibition for Incentive Travel, Meetings, and Events (IMEX), National Coalition of Black Meeting Planners (NCBMP), and Religious Conference Management Association (RCMA). The County/OCCC shall be responsible for paying for travel and ancillary expenses for their attendees not included in the registration cost paid by Visit Orlando.
- d. Visit Orlando shall extend invitations to County officials and Convention Center management to Visit Orlando events and functions and shall provide County tables at all local functions at which sponsored tables are provided and shall not charge the County or Convention Center any sponsorship or corporate table fees for the same.
- e. Visit Orlando and the OCCC shall mutually agree upon sponsorship of convention industry events each year during the Term of this Agreement, based on the reasonable expectation that sponsorship of such events may generate new convention business or may help to retain existing business. Such events may be held at the OCCC or other locations. The budget for sponsorship of such events shall be mutually agreed upon by Visit Orlando and the OCCC, and the costs shared evenly by Visit Orlando and the OCCC. Procedurally, Visit Orlando shall generally pay the full cost of any such sponsorship and submit a reimbursement request to the OCCC for its half of the payment, which shall be paid within timeframes consistent with the Florida Prompt Payment Act. Events eligible for sponsorship may include, but are not limited to the following events or their equivalents and/or successors: PCMA, IAEE, Society of Independent Show Organizers (SISO), American Society of Association Executives (ASAE).
- f. The Visit Orlando Sales staff shall work closely with the OCCC Sales staff to generate and qualify leads, and attract and retain business at the OCCC. To that end, Visit Orlando shall conduct regularly scheduled city-wide convention meetings between representatives of OCCC, Visit Orlando and key lodging industry representatives to provide details of the activities of Visit

Orlando Sales staff in relation to business at the OCCC which shall, at a minimum, include the following:

1. Targeted Accounts
2. Solicited Business
3. Lost Business
4. Tentative Business
5. Definite Business
6. Leads Generated

Visit Orlando shall also provide to OCCC in advance of all such meetings, the information to be discussed at such meetings.

- g. Visit Orlando and the OCCC shall, when appropriate, collaborate with one another and share data, tools, and research related to economic impact, room nights, and numbers of attendees associated with events held at the OCCC.
- 2.3.4 Visit Orlando shall generate, through direct selling efforts, business leads for Orange County hotels for meetings and conventions.
 - 2.3.5 Visit Orlando shall act as an intermediary between multiple businesses in Orange County, and the Convention Center when appropriate, and meeting planners to facilitate the selection of Orange County as a meeting destination.
 - 2.3.6 Visit Orlando shall encourage, plan, and coordinate the visit of meeting planners to Orange County, and host their tour of various sites for prospective meetings and related services. Any expenditure of Tax funds for travel, lodging, meals and entertainment relating to such visits shall be made in a cost-effective and efficient manner consistent with the responsible use of public funds for such purposes.
 - 2.3.7 Visit Orlando shall as appropriate provide services to facilitate the location of appropriate service providers to complete the meeting planner's needs whether the meeting was booked through the Visit Orlando or not.
 - 2.3.8 Visit Orlando shall provide fully integrated, multi-faceted marketing campaigns to draw leisure travelers to the Orange County area. These will be the primary programs to market the Orange County area. These services shall include without limitation advertising including television, digital and print media, direct marketing, promotions and publicity to raise consumers' awareness of the Orange County area as a leisure travel, or convention, trade show and meeting destination and positively influence their intent to travel here.
 - 2.3.9 Visit Orlando shall maintain an extensive Visit Orlando Website that is the official source of travel and destination information on the Orange County area.
 - 2.3.10 Visit Orlando shall handle inquiries and questions from consumers.

- 2.3.11 Visit Orlando shall provide services to the travel trade, both domestically and internationally, including the provision of online information and printed materials as appropriate for travel agents to assist them in their sale of the Orange County area to leisure travelers. Visit Orlando shall identify and market to key tour operators and receptive operators to encourage them to bring tour groups to the Orange County area. In addition, Visit Orlando shall assist its members and businesses to market themselves to travel agents and tour operators.
- 2.3.12 Visit Orlando shall provide public relations and communications services for the Orange County area as follows:
- Work with journalists around the world to help maximize the amount of positive coverage for the Orange County area.
 - In times of crisis or negative news affecting the tourism industry, Visit Orlando will take the lead in developing a communications strategy to effectively communicate with the media and key audiences worldwide.
 - Visit Orlando will track media coverage of the Orange County area worldwide.
- 2.3.13 Visit Orlando shall conduct, or cause to be conducted, market research related to the promotion of the Orange County area, including but not limited to, surveys regarding consumer perceptions of the Orange County area, visitor counts, consumer awareness, focus groups and other methods.
- 2.3.14 Visit Orlando shall operate as the official “visitor center” for the Orange County geographic area in whatever form best and most cost-effectively provides visitor information, whether or not Visit Orlando continues to maintain a physical “visitor center” facility.
- 2.3.15 Visit Orlando will also promote “eco-tourism” and “local-tourism” amenities and locations within the County. Visit Orlando will devote resources and provide professional assistance in developing marketing and promotional strategies addressing eco-tourism and local tourism. The parties contemplate and agree that the County will from time to time refer local organizations to Visit Orlando for its professional services as the Orange County area’s lead organization for eco-tourism and local tourism. In providing its tourism promotion assistance, Visit Orlando shall include local organizations in Orange County promoting the diverse cultural heritage, natural assets, character and local history in the County including those in communities situated outside major commercial tourism corridors.
- 2.3.16 Both parties agree that Visit Orlando services hereunder include professional and appropriate public relations response or responses to emergency events in Orange County or elsewhere which may negatively impact tourism in Orange County. Both parties have agreed that a formal designation of a portion of Tax funds payable hereunder as

“emergency response funds” is unnecessary and that Visit Orlando will allocate resources as appropriate in the event such emergencies should occur.

2.4 *Visit Orlando to Act as Independent Contractor.*

- 2.4.1 The parties expressly acknowledge that Visit Orlando is performing its services as an independent contractor for the County. Although the respective staffs of the County and Visit Orlando may have complementary functions to fulfill, Visit Orlando shall not be entitled to have and shall not permit any County employees to perform any tasks or services in the furtherance of Visit Orlando’s obligations under this Agreement. However, the foregoing shall not prevent Visit Orlando and County employees from extending commonly accepted courtesies and cooperation.
- 2.4.2 Visit Orlando shall have no authority to obligate the County and shall not hold itself out or give any third party reason to believe otherwise. Visit Orlando is not a subdivision or agency of the County. Any contracts for goods or services required in the course of Visit Orlando’s performance under this Agreement shall be entered into by Visit Orlando for its own account, not the County’s. Visit Orlando shall keep its own books and accounts, shall be custodian of its own funds, and shall be solely liable for and shall discharge its own debts. Neither the County nor any of its officers or employees shall (i) directly or indirectly perform any Visit Orlando services under this Agreement, (ii) manage, supervise, or materially assist any Visit Orlando employee in the course of performing his or her employment duties for Visit Orlando, (iii) be responsible either to Visit Orlando or to the County for any failure of Visit Orlando’s employees to fulfill Visit Orlando’s obligations hereunder, or (iv) be required to report to Visit Orlando any negligence, unsatisfactory performance, misfeasance, malfeasance, or nonfeasance of any of Visit Orlando’s employees, agents or contractors.
- 2.4.3 Visit Orlando represents that (i) it was established by private industry and is a not-for-profit trade organization under the laws of the State of Florida, (ii) it is independently governed and operated and (iii) it continues to serve and obtain funding from private industry partners and association members.

2.5 *Nondiscrimination.*

- 2.5.1 As required by Section 17-290 of the Orange County Code, Visit Orlando represents that it has adopted and shall maintain a policy of nondiscrimination throughout the term of this Agreement. Visit Orlando agrees that on written request it shall permit access to all business records of employment, employment advertisement, application forms and other pertinent data and records, by the County for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Agreement. Visit Orlando agrees that if any obligations of this Agreement are to be performed by subcontractors, the above provisions of this nondiscrimination section shall be incorporated into and become a part of such contracts. Visit Orlando shall not be required to produce such records regarding such compliance covering periods of time more than one year prior to

the date of this Agreement.

2.5.2 Consistent with Chapter 22 of the Orange County Code, Visit Orlando, in performing under this Agreement, shall not discriminate against any worker, employee or applicant or any member of the public because of age, race, color, religion, national origin, disability, sex, or sexual orientation, nor otherwise commit an unfair employment practice on such basis. Visit Orlando shall take affirmative steps to endeavor to ensure that its organizational profile, including but not limited to both its employees and its board of directors, is reflective of the diversity and composition of Orange County, Florida.

2.6 Right to Inspect and Audit Accounts. During the term of this Agreement, Visit Orlando shall permit County staff and the Orange County Comptroller staff to inspect and audit Visit Orlando's books and accounts at any time during normal working hours, provided that twenty-four (24) hours' notice is provided to Visit Orlando prior to any such inspection. The foregoing shall be in addition to any other rights the Comptroller may have in this Agreement with respect to the inspection of Visit Orlando's books and accounts.

2.7 Maintenance of Records. During the term of the Agreement and for a period ending five (5) years after the expiration or termination of this Agreement, Visit Orlando shall make all records and documents relating to this Agreement (including check registers of all disbursements made from Tax funds which shall include at a minimum the date, payment ID number, payee, and amount disbursed), available for inspection during normal working hours by the County or any agent designated by the County or the Comptroller, and during such period the County or Comptroller may copy such records and documents related to Tax funds as they may deem necessary, provided that notice is provided to Visit Orlando and Visit Orlando is provided a reasonable time, not to exceed thirty (30) days, to provide such records.

2.8 Relationship with Convention Center. The parties agree that Visit Orlando shall not be responsible for, nor shall it interfere with, the operation, management, or booking of the OCCC. However, Visit Orlando may include references to the OCCC in any generic destination brochures, exhibit booths, visitors' guides or other electronic, digital or online materials. The parties hereto expressly acknowledge that the County will continue to maintain staff to sell, market and advertise the Convention Center and will continue to be solely responsible for the operation, management, and booking of the Convention Center.

2.9 Fiscal Year, Accounting and Annual Financial Statement Audit Report. Visit Orlando's fiscal year is the calendar year. Visit Orlando shall keep its accounting transactions in accordance with accounting principles generally accepted in the United States (GAAP), and in detail sufficient to segregate and account separately for its revenues and expenditures in accordance with the provisions of this Agreement. Visit Orlando shall obtain an annual audit of its financial statements prepared by an independent certified public accountant by June 30th of each year following each fiscal year of the Visit Orlando.

2.10 Oversight and Accountability. Visit Orlando will have the

obligation to ensure extensive oversight of all of its marketing operations in order to ensure the responsible expenditure of Orange County's Tax funds for the benefit of the Orange County community, the tourism and convention industry and the Orange County economy. These efforts will include, but not be limited to, the following:

- 2.10.1 Visit Orlando shall maintain a Board of Directors made up of tourism industry and community leaders, including the Orange County mayor (or his/her designee), two non-elected representatives appointed by the BCC, the mayor of the City of Orlando (or his/her designee) and the Executive Director of the OCCC. The mayor or designee, two non-elected appointees and the representative from the OCCC shall be voting members of the Visit Orlando Board of Directors. Other than the County Mayor and the Mayor of Orlando, members of the Board of Directors shall not hold dual membership on the Orange County Tourist Development Council. The Board of Directors shall be responsible for the overall governance and its role will include providing strategic direction for the Visit Orlando's sales and marketing efforts, receive and review analyses of the results of Visit Orlando's sales and marketing efforts, review and approve the allocation of Visit Orlando resources in a detailed annual budget and provide financial oversight throughout the year. The Board of Directors shall also provide board approval for major decisions (including, but not limited to, review of senior executive compensation) and key policies (including, but not limited to, travel and entertainment and procurement policies). Visit Orlando shall in good faith strive to ensure that the composition of the Board of Directors is reflective of the diversity in the central Florida community.
- 2.10.2 Visit Orlando shall maintain an audit and oversight committee ("Audit Committee") and shall include on the committee at least one of the Orange County appointees and one outside member with financial expertise which will help the Board of Directors in the oversight of Visit Orlando's financial operations and the maintenance of its system of internal accounting controls. The Audit Committee will help ensure there is open and direct communications with outside auditors. The independent certified public accounting firm that prepares the annual audit report will report the results of its audit directly to the Audit Committee each year. By September 30, 2020 and by each July 31st thereafter during the term of this Agreement, the Audit Committee shall perform a detailed annual review of Visit Orlando's expenditures for compensation and related pay plan, transportation, lodging, meals, any entertainment or other items and services in order to ensure the responsible, cost-effective and efficient use of all Tax funds paid hereunder and shall annually submit to the Board of Directors a detailed report of such review. All travel and entertainment-related expenditures shall be substantiated by paid invoices with complete and detailed justification for such expenditures. Visit Orlando shall annually confirm in writing to the County that such annual review has been completed and shall share with the County the Audit Committee's detailed annual report, together with any findings and plan of action that may result from such review. Visit Orlando shall maintain complete records of all entertainment, travel, lodging and meal expenditures by Visit Orlando and

shall make records of all such expenditures, including those from funding sources other than Tax funds, available for inspection by the Comptroller as part of the Comptroller's audit process.

For key marketing and program areas, Visit Orlando shall maintain committees of industry personnel with particular expertise in those areas. These committees will provide input and feedback on Visit Orlando sales and marketing activities, ensuring that programs are appropriate and are executed in a cost effective and efficient manner.

2.10.3 All Visit Orlando programs and operations funded by the Tax shall be open to audit by the Comptroller as noted above. No funds paid under this Agreement shall be used for the marketing and promotion of tourist destinations outside Orange County, Florida unless expended as part of a joint marketing and promotion campaign which shall be funded on at least a reasonable pro-rata basis from financial sources other than Tax funds paid hereunder (which may include cash, in-kind contributions or services, provided that adequate records of all such in-kind contributions are maintained for accounting purposes). This limitation is not intended to limit or require financial contribution towards the costs of website content or other marketing tools which primarily promote Orange County, the "Orlando area", "Metro Orlando" or "Central Florida" (provided that the term "Central Florida" is specifically linked to the Orlando area) or that uses the phrases "Disney World" or "Disney" but also incidentally includes images of settings outside Orange County including images of theme parks, images of settings for the promotion of eco-tourism or images of beaches, oceanfront or Cape Canaveral intended to convey their proximity to Orange County. The County acknowledges that Visit Orlando may create programs or provide services in its effort to best perform its obligations under this Agreement which may take advantage of and utilize non-Orange County destinations provided that all such programs and services have as their main focus and purpose the promotion of the Orlando area. Tax funds may only be utilized to provide meeting and convention leads to Orange County hotels and accommodations; however, Visit Orlando may provide leads to hotels outside Orange County 1) for large conventions with estimated attendees of at least 50,000, 2) in response to specific requests from meeting planners to include a non-Orange County hotel when reviewing a number of meeting site alternatives in the County, or 3) with County Administrator consent.

2.10.4 The Board of Directors of Visit Orlando shall adopt travel and entertainment policies that shall prohibit the use of Tax funds for the purchase of first-class air travel for Visit Orlando staff, executives or Board members and shall be restrictive on the purchase of business travel. Any deviation from the air travel policy must be approved in advance by the Board of Directors and be reflected in the minutes of the Board of Directors' meeting at which such approval took place. Visit Orlando travel policies shall clearly delineate separate guidelines for staff-related travel and meals and business development travel and meal expenditures

which are necessary for actually marketing the Orange County destination to travel writers, travel professionals, event planners or other persons connected with the tourist industry. Upon approval by the Board of Directors, a copy of Visit Orlando's travel and entertainment policies shall be submitted to the Comptroller and the County Administrator. Any revisions to such policies shall also be promptly submitted.

- 2.10.5 No Tax funds of Visit Orlando shall be expended for executive benefit packages (including but not limited to severance benefits, retirement payments, life insurance policies and deferred compensation arrangements) that exceed those made available for all Visit Orlando employees, except that the employment agreement for the Visit Orlando president/CEO may provide for a one year severance clause for termination without cause and a local business club membership to conduct business. Any deviations from this policy must have prior approval of the Board of Directors of the Visit Orlando and immediate written disclosure to the County Administrator.
- 2.10.6 In consultation with the County's purchasing division, the Board of Directors of the Visit Orlando shall adopt and conform with procurement policies that encourage competitive bidding, requests for proposals and diversity, and where practicable, local businesses. In addition, Visit Orlando shall not enter into contracts with non-disclosure provisions or confidentiality covenants utilizing Tax funding without advance written approval of the County Administrator and after consultation with the Orange County Attorney's Office.
- 2.10.7 The Board of Directors shall hold an annual meeting that shall be noticed and open to the public. Such meetings may be held in the chambers of the BCC at 201 S. Rosalind Avenue, Orlando, Florida.
- 2.10.8 Visit Orlando shall fully acknowledge and recognize the County's funding to Visit Orlando in all Visit Orlando events and functions that are paid for with Tax funds. Such level of recognition shall be commensurate with the level of funding provided under this Agreement and shall be equal to that of any other sponsors. Visit Orlando shall extend invitations to County officials and Convention Center management to Visit Orlando events and functions, shall provide County tables at all local functions at which sponsored tables are provided and shall not charge the County or Convention Center any sponsorship or corporate table fees for the same.

2.11 Statutory Requirements. The inclusion of the statements and provisions below shall not be construed to imply that the parties have agreed that Visit Orlando has been delegated any governmental decision making authority, governmental responsibility or governmental function or is otherwise acting as an agent of or on behalf of the County, all as contemplated under Sections 119.0701 and 119.011(2), Florida Statutes. The parties have agreed that, if and to the extent Section 119.0701, as interpreted under Florida law, shall be determined to apply to Visit Orlando, Visit Orlando shall, with respect to funds provided hereunder:

- a. Keep and maintain public records required by the County to perform the services performed under this Agreement.
- b. Upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the amount set by the County.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of this Agreement if the Visit Orlando does not transfer the records to the County.
- d. Upon completion, or termination of this Agreement, transfer, at no cost, to the County all public records in possession of Visit Orlando or keep and maintain public records required by Visit Orlando to perform the services in accordance with Florida law.
- e. If Visit Orlando transfers all public records to the County upon completion of the Agreement, Visit Orlando shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Visit Orlando keeps and maintains public records upon completion of this Agreement, Visit Orlando shall meet all applicable requirements for retaining public records in accordance with applicable federal and Florida law.
- f. All records stored electronically shall be provided to the County, upon request from the County, in a format that is compatible with the information technology systems of the County.

IF VISIT ORLANDO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO VISIT ORLANDO'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS UNIT: PublicRecordUnit@ocfl.net, Office of Professional Standards, 450 E South Street, 3rd Floor, Orlando FL 32801. Phone (407) 836-5400.

2.12 Reporting Requirements. Visit Orlando shall have the obligation to ensure and increase responsible, transparent disclosure of its operations. Visit Orlando and the

County will work together on the format and content of these reporting requirements. Visit Orlando shall submit the following items to the County and the Comptroller:

- 2.12.1 A Strategic Plan, as described in Subsection 2.3.2 hereof. In preparing such Strategic Plan, Visit Orlando staff shall cooperate with, and seek review and comment from the Visit Orlando's Board of Directors, County and Convention Center staff on such Strategic Plan, at least 45 days prior to such submission on August 31st of each year.
- 2.12.2 A program-area based budget, in sufficient detail to separately identify the receipt and expenditure of all Tax funds for Visit Orlando's upcoming fiscal year, by August 1st of each year.
- 2.12.3 A copy of the IRS Form-990, filing with the Internal Revenue Service, to be submitted simultaneously with the submission to the Internal Revenue Service.
- 2.12.4 A copy of the fiscal year-end financial statements, together with the accompanying report from a certified public accounting firm, to be submitted by November 30th of each year.
- 2.12.5 Visit Orlando shall implement and maintain commercially reasonable methods for measuring and recording the results of its marketing, sales and promotion efforts, including commercially reasonable estimates of the number and duration of hotel, convention, trade show and meeting bookings that result from its marketing sales and promotion efforts, advertising campaigns and Website and call center inquiries. Visit Orlando shall generate quarterly progress reports in order to: (a) list and separately identify its year-to-date expenditures of all Tax funds paid hereunder; (b) track and numerically quantify the results of its marketing and promotion efforts; and (c) list the achievement of any objectives of the Strategic Plan. The form of, and specific content to be included in such quarterly report, to be entitled "Quarterly Visit Orlando Assessment", shall be submitted to the County and the Comptroller for review and approval within sixty (60) days of execution of this Agreement. After approval by the County Administrator of the form and content of such report, it shall be submitted no later than:
 - a. May 15th for the period January 1st thru March 31st
 - b. August 15th for the period April 1st thru June 30th
 - c. November 15th for the period July 1st thru September 30th.
 - d. February 28th for the period October 1st thru December 31st.
- 2.12.6 An annual, or if requested by either body, more frequent, presentation to the BCC and TDC of Visit Orlando's activities which presentation shall specifically include sufficient information addressing Visit Orlando's efforts relating to meetings and conventions marketing, leisure, and eco-tourism and local tourism.

Visit Orlando shall provide such additional reports and information related to the expenditure of Tax funds upon request, as may be deemed useful or convenient by the BCC, the Comptroller, the TDC or the County Administrator. Visit Orlando agrees that its performance shall be measured each year against the objectives and strategies of Visit Orlando as stated in such year's Strategic Plan, together with the information contained in the reporting required under this Agreement and such additional information as may be obtained by the County or the Comptroller pursuant to Subsection 2.6 or Subsection 2.7 of this Agreement.

- 2.12.7 A list detailing the names, salaries and benefit packages (as defined by the IRS for Form 990) to include all executive management and the 5 other most highly compensated employees of the Visit Orlando, which list shall be submitted separate and apart from the IRS Form 990 no later than July 31st of each year during the term of this Agreement.
- 2.12.8 Copies of all contracts using Tax funds paid hereunder, together with all invoices or insertion orders from media buying agencies, within 30 days of the end of each calendar year, to be posted to the Orange County Comptroller's website. Visit Orlando may request written approval by the County Administrator for an exception to this reporting requirement for transactions that would qualify for an exemption under Sections 255.047 or 288.075, Florida Statutes or other exemptions under Florida law.
- 2.12.9 Copies of the documents specified in Subsection 2.12.1, 2.12.4, 2.12.5 and 2.12.6 herein shall also be submitted to each member of the BCC by the stated submission dates. Copies of the documents specified in Subsections 2.12.3, 2.12.4, 2.12.5 and 2.12.6, shall also be made available to the public by the applicable submission dates stated above through links on the Visit Orlando's website. In addition, minutes of the meetings of the Board of Directors of Visit Orlando shall be approved within the earlier of 30 days or the next scheduled meeting and shall be posted on Visit Orlando's website within 5 days of such approval.
- 2.12.10 A monthly listing of all disbursements of Tax funds, including payee name, by the 25th day of the following month.
- 2.13 ***Lobbying; Other Prohibited Expenditures.*** Visit Orlando agrees that it shall not undertake, or cause to be undertaken, or participate in, any lobbying before the state legislature on matters dealing with the Tax, local governmental tax policies or opposing any stated legislative priorities of the BCC, without the prior consent of the BCC. No funds paid under this Agreement shall be used for political contributions, adult entertainment, gambling, or illegal or unethical purposes. No Tax funds paid under this Agreement shall be expended for any lobbyist to engage in any lobbying activities designed to influence decisions or other foreseeable actions of the BCC.

Section 3. Term; Termination.

The initial term of this Agreement shall begin October 1, 2019, and shall continue until September 30, 2024. This Agreement shall be automatically renewed for one additional four year term ending September 30, 2028, unless the County shall have notified Visit Orlando in writing at least one hundred eighty (180) days prior to the end of the term that the County Administrator shall have determined, with the approval of the BCC, that nonrenewal of this Agreement is in the best interests of the County or unless Visit Orlando shall have notified the County in writing at least one hundred eighty (180) days prior to the end of the term that nonrenewal is in the best interests of Visit Orlando.

In addition, the County shall have the right, after a vote by the BCC, to earlier terminate this Agreement, if Visit Orlando shall have failed, in the opinion of the County Administrator, to comply with the terms of any material provision of this Agreement, and, after written notice to Visit Orlando by the County Administrator of such failure to comply, Visit Orlando shall have failed to cure such noncompliance within thirty (30) days of notice of noncompliance. The County shall notify Visit Orlando of such termination in writing and such termination shall be effective sixty (60) days after such vote by the BCC. The County shall have no obligation to make any payments to Visit Orlando after termination of this Agreement and Visit Orlando shall return to the County any funds paid to Visit Orlando for services which would have been rendered after the date of termination. When necessary and appropriate to fulfill contractual obligations consistent with this Agreement and Florida law, the County may enter into an assignment agreement with Visit Orlando with respect to contractual agreements wherein Visit Orlando committed Tax funds.

Section 4. Miscellaneous.

4.1 Entire Agreement; Rescission of Previous Agreements. This Agreement sets forth the entire understanding between the County and Visit Orlando with respect to the subject matter of this Agreement.

4.2 Conflict with Bond Covenants. If at any time the County receives an opinion from nationally recognized bond counsel of the County's choice that any provision of this Agreement violates or is inconsistent or incompatible with either (i) any bond or other debt instrument issued or to be issued from time to time in the future by the County or (ii) any agreement or covenant entered into or to be entered into from time to time in the future by the County in connection with a bond or other debt instrument, the County may demand renegotiation of the offensive provision. If the parties fail or refuse to accomplish such renegotiations, the County at its option may declare either the offensive provision or this entire Agreement null and void.

4.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same agreement.

4.4 Amendments and Waivers. This Agreement may be amended, and material provisions hereof may be waived, only by a written instrument expressly approved by the BCC and duly executed by both the County and the Visit Orlando.

4.5 No Third Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity other than the County and the Visit Orlando.

4.6 Notices. Notices allowed or required under this Agreement shall be deemed received upon delivery by email, hand or overnight courier or by certified mail to the following:

- The County: Orange County, Florida
Orange County Administration Center
Attn: County Administrator
201 South Rosalind Avenue
Orlando, Florida 32801
Email: Byron.Brooks@ocfl.net
Randy.Singh@ocfl.net
- Copy to: Orange County Convention Center
Attn: Executive Offices
Room West 220
9860 Universal Boulevard
Orlando, Florida 32819-8706
Email: David.Ingram@occc.net
Ray.Walls@occc.net
- Copy to: Orange County Comptroller
Orange County Administration Center
Attn: Chief Deputy Comptroller
P.O. Box 38
Orlando, Florida 32802-0038
Email: Phil.Diamond@occompt.com
Eric.Gassman@occompt.com
- Visit Orlando: Orlando/Orange County Convention & Visitors
Visit Orlando, Inc.
Attn: President/CEO
6700 Forum Drive
Suite 100
Orlando, Florida 32821-8017
Email: George.Aguel@visitorlando.com
Larry.Henrichs@visitorlando.com

Copy to: William T. Dymond, Jr.
Lowndes
215 N. Eola Drive
Orlando, Florida 32801
Email: William.Dymond@Lowndes-law.com

4.7 Indemnification. Visit Orlando shall indemnify, defend and hold the County harmless from and against any and all liability, damages, actions, claims, costs and expenses, including reasonable attorneys' fees and costs, arising out of the performance by the Visit Orlando, its officers, agents, employees, consultants or subcontractors, of the Visit Orlando's obligations under this Agreement.

4.8 Insurance Requirements.

4.8.1 Visit Orlando shall at all times during the term of this Agreement maintain and shall file with the County current certificates of all required insurance on forms acceptable to the County, which shall include the following provisions:

- All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the County.
- The Certificates shall clearly indicate that Visit Orlando has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section.
- No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County.

4.8.2 Visit Orlando shall require and ensure that each of its subcontractors providing services hereunder in a contract amount, either individually or in the aggregate, equal to or exceeding five hundred thousand dollars (\$500,000) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein.

4.8.3 Required Coverage:

- Workers' Compensation - Visit Orlando shall provide coverage for its employees with statutory workers' compensation limits, and no less than \$100,000.00 for Employers' Liability. Such coverage shall include a waiver of subrogation in favor of the County and its agents, employees and officials.

- Commercial General Liability - Visit Orlando shall provide coverage for all operations including, but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$500,000.00, per occurrence, Combined Single Limits (CSL) or its equivalent. The General Aggregate limit shall either apply separately to this Agreement or shall be at least twice the required occurrence limit.
- Business Automobile Liability - Visit Orlando shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$500,000.00, per occurrence, Combined Single Limits (CSL) or its equivalent.
- Fidelity/Employee Dishonesty – with a limit no less than one million dollars (41,000,000)

The County shall be specifically included as an additional insured on the general liability policies.

- 4.8.4 All such insurance required of Visit Orlando shall be primary to, and not contribute with, any insurance or self-insurance maintained by the County.
- 4.8.5 Any exceptions to the insurance requirements in this section must be approved in writing by the County.
- 4.8.6 Compliance with these insurance requirements shall not relieve or limit Visit Orlando's liabilities and obligations under this Agreement. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of the Visit Orlando's obligation to maintain such insurance.

4.9 Remedies. The parties hereto shall be entitled to all remedies at law or in equity, including expressly but not limited to injunctive relief and specific performance, in the course of enforcing this Agreement.

4.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

WHEREFORE, this Agreement is entered into as of the date and year of last execution written below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: 23 Oct 19

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

BY: *Jennifer Keimetz*
for Deputy Clerk

ORLANDO/ORANGE COUNTY
CONVENTION & VISITORS BUREAU
INC. D/B/A
VISIT ORLANDO

BY: 

NAME: GEORGE AGUEL

TITLE: PRESIDENT & CEO

DATE: 10/4/2019

ATTEST: 

TITLE: CEO/CFO

EXHIBIT "A"
CALCULATION OF PERCENTAGES
OF
TOTAL TAX COLLECTIONS

Percentage of Tourist Development Tax Payments to Visit Orlando			
Fiscal Year	Sixth Cent Tax*	1-4 Cents Tax**	Percentage of Total Tax
2019/2020	50.00%	25.105%	25.07%
2020/2021	50.00%	28.105%	27.07%
2021/2022	50.00%	30.355%	28.57%
2022/2023	50.00%	32.500%	30.00%
2023/2024	50.00%	32.500%	30.00%
2024/2025	50.00%	32.500%	30.00%
2025/2026	50.00%	32.500%	30.00%
2026/2027	50.00%	32.500%	30.00%
2027/2028	50.00%	32.500%	30.00%

* Tax authorized under Orange County Code Section 25-136.2 and F.S.S 125.0104(3)(n)

** Tax authorized under Orange County Code Section 25-136 and F.S.S. 125.0104(3)(c),(d) and (m)

**EXHIBIT “B”
SPORTS INCENTIVE FUNDING GUIDELINES**

The goals for expenditure of Sports Incentive Funds are to: (i) foster economic development and visitor spending in Orange County Florida, (ii) achieve a return on investment of tourist development tax dollars, (iii) attract high quality athletic events to the County and (iv) support the County’s tourism industry while also bringing events for the benefit and enjoyment of the citizens of Orange County. Visit Orlando agrees to evaluate proposals for Sports Incentive Funds and validate metrics using the above criteria, the guidelines and limitations set forth below, and other considerations including local hotel capacity, historical occupancy rates during the times of such proposed events, ability to increase media exposure for Orange County, broadcast reach for the proposed athletic events, social media metrics and incentive for future events in the County.

2.13.2 The following guidelines shall apply to events applying for Sports Incentive Funds:

ELIGIBILITY GUIDELINES*

Event Size	Grant Amount	Multi-day Attendees	Room Nights	Economic Impact
<i>Small</i>	\$0 to \$25,000	Minimum 5,000	Under 5,000	Under \$10m
<i>Regular</i>	\$25,000 to \$137,500	5,000 to 50,000	5,000 to 35,000	\$10m to \$50m
<i>Signature</i>	Case by Case Determination	Minimum 50,000	Over 35,000	Over \$50m

*Deviations from these guidelines should be thoroughly justified and could be based on other considerations listed above, subject to final approval by the Board

The following additional limitations shall apply to Sports Incentive Fund expenditures:

- o Allowable expenses include:
 - o Promotion, marketing, programming,
 - o Paid advertising and media buys,
 - o Bid fees and direct incentive payments (However when events are staged in privately owned venues, any bid fees and incentive payments require a funding match for any such payments).

- “Events losses” related to site fees, venue rentals, staffing costs, etc.; provided however that any event losses may only be awarded in a not to exceed amount to be paid after an event has taken place following revenue/expense reconciliation and shall be payable only in the event an actual loss has taken place and only on the basis of venue and site fees or rental rates shall be calculated on the basis of the rates and fees offered to “most favored clients”.

- Non-allowable expenses include:
 - General and Administrative Expenses,
 - Capital costs including venue enhancements, equipment etc.
 - Debt
 - Hospitality/Social Functions including food and beverages, banquets and admission tickets
 - Travel, transportation, lodging and other local costs.

**CONTRACT
#Y20-155**

**ORANGE COUNTY, FLORIDA AND
UNITED ARTS OF CENTRAL FLORIDA, INC.**

**Management /Fiscal Agency Agreement for
Orange County Arts & Cultural Affairs
Tourist Development Tax (TDT) Revenue - Arts & Cultural Affairs Grants Program**

THIS CONTRACT is entered into as of the 1st day of October 2019 by and between Orange County, Florida, a charter county and political subdivision of the State of Florida, whose address is 201 S. Rosalind Avenue, Orlando, Florida 32801, hereinafter referred to as the "COUNTY," and **UNITED ARTS OF CENTRAL FLORIDA, INC.**, a nonprofit corporation under the laws of the State of Florida, 2450 Maitland Center Parkway, Suite 201, Maitland, Florida, 32751-4140, hereinafter referred to as the "AGENCY."

**ARTICLE I
SERVICES TO BE PERFORMED**

1. The AGENCY shall provide services as outlined in Attachment A, which is hereby incorporated by reference and made a part of this Contract.
2. The AGENCY shall notify the COUNTY, in writing, if sufficient staff, facilities, and equipment necessary to deliver the agreed upon services cannot be maintained. Failure to notify the COUNTY of any such deficiencies or to adequately provide the services described above, may be considered to be a breach of this Contract and may constitute grounds for termination under Article III.
3. The AGENCY shall use its best efforts to obtain all supplies and services for use in the performance of this Contract at the lowest practicable cost.

**ARTICLE II
PAYMENTS**

1. The COUNTY shall pay to the AGENCY an amount not-to-exceed three percent of the first four cents of the Tourist Development Tax revenues plus any funds remaining unobligated from previous collections and interest on any of those funds allocated for Cultural Tourism, which is funded by the Tourist Development Tax, hereinafter referred to as "TDT" as outlined in Attachment A, for the following services:
 - a) The AGENCY will provide for the distribution of funds for recipients of 2019/2020 Orange County Arts and Cultural Affairs Grants as approved by the Board of County Commissioners in the amount of FIVE MILLION SIX HUNDRED SEVENTY-TWO THOUSAND NINE HUNDRED FORTY-SEVEN DOLLARS (\$5,672,947); and

- b) Agency Fees for Management/Fiscal Services, as described in Attachment A hereto, shall be based on a fee for those programs funded by Arts and Cultural Affairs Grants, as identified in this subparagraph 1.a), above, and will be paid at the rate of eight percent (8%) of the first two million dollars (\$2,000,000) in TDT funds awarded and a fee of five percent (5%) of all funds awarded in excess of two million dollars (\$2,000,000), with the total aggregate amount of Agency Fees not to exceed TWO HUNDRED TEN THOUSAND DOLLARS (\$210,000).
 - c) The AGENCY will provide for the disbursement of ONE HUNDRED THOUSAND DOLLARS (\$100,000) for Community-wide Marketing.
2. The COUNTY will pay AGENCY a fixed amount of TDT funds in the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000); and, as a challenge grant, up to an additional FIVE HUNDRED THOUSAND DOLLARS (\$500,000) as a \$1:\$1 match on contributions to the AGENCY on new or increased funding. The COUNTY, in its sole discretion, will determine, whether the AGENCY has raised the requisite new or increased funds before matching funds will be dispersed in an amount not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000).
 3. The COUNTY will make payments to the AGENCY as described in Attachment A in accordance with the Florida Prompt Payment Act, codified at Sections 218.70 through 218.80, Florida Statutes. The first payment will be made after such time as this Contract has been duly executed.
 4. TRUTH IN NEGOTIATION CERTIFICATE ("Certificate"): Signature of this Contract by the AGENCY shall act as the execution of the truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the AGENCY'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its right under this "Certificate" within one (1) year following final payment.

**ARTICLE III
TERM OF CONTRACT, TERMINATION, NOTICE, MODIFICATION
AND SUSPENSION**

1. The term of this Contract shall be from October 1, 2019 through September 30, 2022, contingent upon appropriation of funds in subsequent budget years by the Board of County Commissioners.
2. Either party may terminate this Contract, for its convenience, thirty (30) days

after receipt by the other party of written notice of intent to terminate, except as set forth in paragraphs three (3) and four (4) herein. In the event of termination, the COUNTY shall pay for all services rendered per this Contract, prorated to the date of termination. If payments are made to the AGENCY before services are rendered, the AGENCY shall remit to the COUNTY all excess money paid, prorated to the date of termination.

3. It is further agreed that, in the event funds to finance all or part of this Contract do not become available, obligations of each party thereunder may be terminated upon no less than twenty-four (24) hours' notice in writing to the other party. Said written notice shall be delivered by either certified mail with return receipt requested, or by telegram, or by facsimile or in person with proof of delivery. The COUNTY shall be the sole and final authority as to the determination of the availability of funds and as to how any available funds will be allocated among its various service providers.
4. If the AGENCY breaches any term of this Contract, the COUNTY may, by written notice of breach to the AGENCY, terminate the whole or any part of this Contract in any, but not limited to, of the following circumstances:
 - a. If the AGENCY fails to provide services called for by this Contract within the time specified herein or any extension thereof; or,
 - b. If the AGENCY fails to properly monitor and timely report its services to the COUNTY in accordance with the provisions of this Contract.

Any such written notice of breach shall be delivered to the AGENCY no less than twenty-four (24) hours before termination, and shall be delivered by either certified mail with return receipt, or by telegram, or by facsimile, or in person with proof of delivery. Waiver by the COUNTY of breach of any provision of this Contract shall not be deemed to be a waiver of any other term provision and shall not be construed to be a modification of the terms of this Contract.

5. If the AGENCY materially breaches any term of this Contract, the COUNTY shall send a written notice of breach. If the AGENCY fails to correct the breach within seven (7) days, the COUNTY may terminate this Contract in whole or in part, upon written notice to the AGENCY.
6. After receipt of a notice of termination, except as otherwise directed, the AGENCY shall:
 - a. Stop working under this Contract on the date of receipt and to the extent specified in the notice of termination.
 - b. Place no further orders or subcontracts to the extent that they relate to the performance of the work, which was terminated.
 - c. Terminate all orders and subcontracts to the extent that they relate to the performance of the work, which was terminated.

- d. Handle all property as directed by the COUNTY.
 - e. Finalize all necessary up to date reports and documents required under the terms of this Contract up to the date of termination, up to and including the final expenditure report due at the end of the project, if any, without reimbursement beyond that due as of the date of termination for services rendered to the termination date.
 - f. Take any other actions as directed in writing by the COUNTY.
7. All written notices required herein shall be deemed delivered by either certified mail with return receipt requested or by telegram, or by facsimile, or in person with proof of delivery. Notices and remittance of payment to the AGENCY shall be submitted to the authorized official and lawful representative.
8. Except as provided herein, any alterations, variations, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by the legally authorized representatives of both parties and attached to the original of this Contract. The Parties agree to renegotiate this Contract if revisions of any applicable laws or regulations make changes in this Contract necessary.
9. The laws of the State of Florida shall govern this Contract. Any and all legal action necessary to enforce the provisions of this Contract will be held in Orange County, Florida. Venue for any litigation involving this Contract shall be the Circuit Court in and for Orange County, Florida.

**ARTICLE IV
ASSIGNMENT AND SUBCONTRACTS**

1. The parties deem the services to be rendered by the AGENCY to be personal in nature. The AGENCY shall not assign any rights or duties under this Contract to any other party without the prior written permission of the COUNTY. If the AGENCY attempts to assign any rights or duties without securing written permission, this Contract shall be declared void by the COUNTY, and the AGENCY thereupon agrees to remit to the COUNTY all payments made pursuant to this Contract for the entire term of this Contract.
2. The AGENCY shall not enter into any subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval of the COUNTY, which shall be attached to the original Contract and subject to such conditions and provisions as the COUNTY may deem necessary; provided, however, that notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for purchase by the AGENCY of such articles, supplies, equipment and services which are both necessary and incidental to the performance of the work required under this Contract; and provided further, however, that no provision of this clause and no such approval by the incurrence of any obligation of the COUNTY in addition to the total agreed upon price contained herein.

3. The AGENCY'S outsourced services must ensure compliance with this Contract and the AGENCY cannot make a profit from outsourcing obligations under this Contract.

ARTICLE V INDEMNITY, SAFETY AND INSURANCE

1. **Indemnity:** If there are any claims for damages attributed to the negligence, errors or omissions of the AGENCY, their agents or employees while providing the services called for herein, it is understood and agreed the AGENCY shall defend, indemnify and hold harmless the COUNTY from any and all losses, costs, liabilities, damages, and expenses arising out of such claims or litigation asserted as a result hereof. However, the AGENCY shall not be responsible for acts or omissions of the COUNTY, its agents, or employees, or of third parties, which result in bodily injury to persons or property. The COUNTY does not waive its right to sovereign immunity under Section 768.28, Florida Statutes. In the event the AGENCY is a state department or division, or a political subdivision of the State of Florida indemnification shall follow the provisions of Section 768.28, Florida Statutes.
2. **Insurance**
 - a. The AGENCY agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the COUNTY'S review or acceptance of insurance maintained by AGENCY is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the AGENCY under this Contract.
 - b. The AGENCY shall require all grantees receiving funds to procure and maintain insurance coverage that adequately protects the COUNTY and the AGENCY. This coverage may include but not be limited to workers' compensation, commercial general liability, and business auto liability. The COUNTY and the AGENCY shall be listed as an additional insured on all general liability policies.
 - c. The AGENCY shall have in force the following insurance coverage, and will provide Certificates of Insurance to the COUNTY prior to commencing operations under this Contract to verify such coverage:
 - 1) Commercial General Liability - The AGENCY shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$500,000 per occurrence. AGENCY further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation

of Insured's. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

- 2) Commercial Crime or Third-Party Fidelity Bond - The commercial crime policy basis with limits of not less than the full amount of this agreement as specified in Article II, Section 1 or as amended from time to time. The bond shall be endorsed to cover third-party liability and shall include a third-party beneficiary clause in favor of the COUNTY. The bond shall include a minimum twelve (12) month discovery period when written on a claims-made basis.
- d. If the AGENCY is an agency or political subdivision of the State of Florida then without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the AGENCY may self-insure its liability with coverage limits of \$100,000 per person and \$200,000 per occurrence or such other limited sovereign immunity as set forth by the Florida legislature. A statement of self-insurance shall be provided to the COUNTY.
 - e. The AGENCY agrees to endorse the COUNTY as an Additional Insured with a CG 20 26 Additional Insured – Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of Orange County Board of County Commissioners.
 - f. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII.
 - g. Any request for an exception to these insurance requirements must be submitted in writing to the COUNTY for approval.
 - h. The AGENCY shall provide to the COUNTY current certificates of insurance evidencing all required coverage prior to execution and commencement of any operations/services provided under this Contract. In addition to the certificate(s) of insurance the AGENCY shall also provide copies of the additional insured and the waiver of subrogation endorsements as required above. For continuing service contracts, renewal certificates shall be submitted upon request by either the COUNTY or its certificate management representative. The certificates shall clearly indicate that the AGENCY has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically reference the respective Contract number. The certificate holder shall read:

**Orange County Board of County
Commissioners Attention: Carrie Mathes**

**ARTICLE VI
RECORDS**

1. The official business of the COUNTY, including reports, specifications, drawings, maps, and tables, must be made available for inspection, and upon request and payment, copying, unless such public records falls within an exception or exemption to the Public Records Act and each page is clearly and conspicuously marked as such.
2. The AGENCY shall submit its audited financial statement to the COUNTY within one hundred and twenty (120) days of the close of the AGENCY'S fiscal year. Such reports shall be audited by an independent certified public accountant. The AGENCY shall also provide to the COUNTY a copy of its management letter, if issued, and the AGENCY'S response.
3. The AGENCY shall maintain financial and program(s) records and reports related to the services provided under this Contract throughout the term of this contract and for five (5) years after the date on which the Contract ends. If litigation or legal action is pending, maintenance of records shall be extended as necessary. AGENCY shall, if requested, submit reports to the COUNTY that indicate persons impacted or served by this Contract. Failure to submit reports or records within five (5) normal COUNTY working days may result in the termination of this Contract.
4. The AGENCY shall maintain necessary records of board members by date of appointment, race and sex. The AGENCY shall maintain records of employees by job classification, name, date of hire, race and sex, as it relates to this Contract.
5. If applicable, the COUNTY may request, and the AGENCY shall provide, its original records or records in the native format to the COUNTY.
6. If applicable, the COUNTY may request and the AGENCY shall provide an AGENCY staff member or AGENCY business record custodian, to be present during the time period while the COUNTY or its designee reviews the AGENCY'S records.

**ARTICLE VII
EVALUATION**

1. The AGENCY shall provide, upon request, data needed for the purpose of program(s) evaluation, monitoring and/or audit. This data shall include clients served, services provided, outcomes achieved, information on materials and services delivered, and any other data that may be required to adequately evaluate program(s) costs and effectiveness. Failure to provide the data may

result in termination of this Contract.

2. The COUNTY reserves the right to evaluate, monitor and/or audit any and all programmatic and fiscal documentation submitted by the AGENCY for services performed under this Contract.
3. The AGENCY agrees to permit persons duly authorized by the COUNTY to inspect for and/or former employees of the AGENCY to be assured the AGENCY'S satisfactory performance of the terms of this Contract. The AGENCY shall provide its business records custodian, have adequate and appropriate workspace for the COUNTY'S authorized representative to conduct evaluations, monitoring and/or audits to ensure compliance with this Contract. Following such evaluation, monitoring, and/or audit, the COUNTY will deliver a report of its findings and recommendations with regard to the AGENCY'S conformance with this Contract's terms and conditions to the AGENCY and/or the Board of Directors' President, and members, whenever applicable. If deficiencies are noted, a written notice of corrective action will be issued to the AGENCY, which will specify deficiencies and provide a timeline for correction of those deficiencies. Within the timeframe designated in the written notice of corrective action, the AGENCY will submit to the COUNTY'S or designee a corrective action plan to rectify all deficiencies identified by the COUNTY. The AGENCY'S failure to correct noted deficiencies, as outlined in the written notice of corrective action, may result in the AGENCY being deemed in breach of the Contract terms of Article III of this Contract.
4. The AGENCY agrees to cooperate with the COUNTY on all reviews to ensure compliance with all applicable COUNTY guidelines and requirements for recipients.

ARTICLE VIII AUDIT

1. The Orange County Comptroller (Comptroller or designee) shall have the right to audit all the AGENCY'S records to audit the funds disbursed under this Contract to ensure the AGENCY'S compliance with the terms, conditions and obligations of this Contract. The Comptroller shall have full access to all AGENCY records, documents and information, whether on paper or electronic media necessary to perform this audit.
2. The AGENCY shall establish and maintain a reasonable accounting system, which enables ready identification of AGENCY'S cost of goods and use of funds. Such accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after the date on which the Contract ends. The COUNTY or its designee shall have access to such books, records, subcontract(s), financial operations, and documents of the AGENCY or its sub-consultants as required to comply with this section for the purpose of inspection or audit anytime during normal business hours at the AGENCY'S place of business. This right to audit shall include the

AGENCY'S sub-consultants used to procure goods or services under the contract with the COUNTY. The AGENCY shall ensure the COUNTY has these same rights with sub-consultant(s) and suppliers.

3. The COUNTY shall have all legal and equitable remedies available to it including, but not limited to, injunctive relief, the right to terminate contribution payments; payment of restitution for any funds utilized by the AGENCY in a manner which is not in conformance with the terms of this Contract. 1. It is hereby declared that equal opportunity and nondiscrimination shall be the COUNTY'S policy intended to assure equal opportunities to every person, regardless of race, religion, sex, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-288 of the Orange County Code and the County Administrative Regulations.

Further, the AGENCY shall abide by the following provisions:

- (a) The AGENCY shall represent that the AGENCY has adopted and maintains a policy of nondiscrimination as defined by applicable County ordinances throughout the term of this contract.
 - (b) The AGENCY shall allow reasonable access to all business and employment records for the purpose of ascertaining compliance with the non-discrimination provision of the contract.
 - (c) The provisions of the prime contract shall be incorporated by the AGENCY into the contracts of any applicable subcontractors.
4. The AGENCY shall comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) in regard to persons served.
 5. The AGENCY shall comply with Title VII of the Civil Rights Act of 1964 (42 USC 2000e) in regard to employees or applicants for employment.
 6. The AGENCY shall comply with Section 504 of the Rehabilitation Act of 1973, in regard to employees or applicants for employment and clients served.
 7. It is expressly understood that, upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Contract.

ARTICLE X SAFEGUARDING INFORMATION

1. The AGENCY shall not use or disclose any information concerning a recipient of services under this Contract for any purpose not in conformity with all applicable Federal, State, and local laws, rules and regulations, except on written consent of the recipient, his or her attorney, or his/her responsible parent or guardian, and the COUNTY.
2. In the course and scope of performing services under this Contract, the

AGENCY may receive, be exposed to or acquire confidential information including, but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer database or computer readable form, as well as any information identified as confidential ("Confidential Information") of another Party. The AGENCY, including their employees, agents or representatives, shall: (A) not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Contract; and (B) only permit use of such Confidential Information by employees, agents and representatives that have a need to know in connection with performance of services under this Contract; and (C) advise each of their employees, agents and representatives of their obligations to keep such Confidential Information confidential. However, on a case by case basis, in accordance with Florida law, this provision may not be applicable to Confidential Information: (A) after such information becomes available to the public through no fault of any Party to this Contract; or (B) which may have been later lawfully publicly released by any Party in writing; or (C) which is lawfully obtained from third parties without restriction or (D) which can be shown to be previously known or developed by either AGENCY independently of any other AGENCY.

ARTICLE XI OTHER CONDITIONS

1. Any alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by parties and attached to the original of this Agreement. The Parties agree to re-negotiate this Agreement if revision of any applicable laws or regulations makes changes in this Agreement necessary.
2. This Agreement contains all of the terms and conditions agreed upon by the Parties. All items incorporated by reference are physically attached hereto. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the Parties hereto.
3. The AGENCY shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under Federal, State and local laws and shall comply with all fire, health and other applicable regulatory codes.
4. The name and address of the official payee to whom the COUNTY shall issue the checks shall be UNITED ARTS OF CENTRAL FLORIDA, INC. whose mailing address is: 2450 Maitland Center Parkway, Suite 201, Maitland, Florida, 32751-4140.
5. The AGENCY agrees to comply with all applicable requirements and guidelines prescribed by the COUNTY for recipients of funds.
6. The AGENCY agrees to cooperate with the COUNTY in an annual review to ensure that all applicable COUNTY guidelines and requirements for fund recipients are being complied with.

7. The AGENCY shall recognize Orange County in its printed promotional materials. This recognition shall include the logo of the COUNTY in those materials in which all other Trustees' logos are listed. Additionally, the AGENCY shall work with Orange County to create separate and unique opportunities for display of the COUNTY'S logo. The COUNTY shall be listed with all other Trustees in the AGENCY'S stationary. Documentation of this recognition is to be submitted to the COUNTY upon request. The COUNTY shall provide a camera-ready logo selection sheet or digital file of the appropriate logo(s).

8. Should the AGENCY provide any or all the COUNTY'S funds to sub-recipients, the AGENCY 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 to the same extent as those of the AGENCY.

9. All reasonable efforts should be made by the AGENCY to ensure the maximum allocation of grant funds is made to support arts organizations and shall ensure a minimum of these grant funds will be used for general administrative overhead costs of the AGENCY.

WITNESS WHEREOF, the Parties, attesting that they are duly authorized to enter into this Contract, have executed this Contract on the dates indicated below.




ORANGE COUNTY, FLORIDA
 By: Board of County Commissioners

By: *Jerry L. Demings*
 for Jerry L. Demings
 Orange County Mayor

23 Oct 19
 DATE

ATTEST: Phil Diamond, CPA, County Comptroller
 As Clerk of the Board of County Commissioners

By: *Jennifer Klimetz*
 for Deputy Clerk

By: 
Flora Maria Garcia, President & CEO
United Arts of Central Florida, Inc.

Oct 4/19
DATE

ATTACHMENT A
Y20-XXX
SCOPE OF SERVICES

The AGENCY will hold Tourist Development Tax (TDT) funds for COUNTY approved arts and cultural program recipients in a separate interest-bearing account, disburse TDT Arts and Cultural Affairs Grants funding in the amounts shown in Article II, Payments, and will be paid Agency Fees for Management/Fiscal Services thereon at the rate of eight percent (8%) for the first Two Million Dollars (\$2,000,000) of those funds and five percent (5%) for all funds in excess of Two Million Dollars (\$2,000,000) not to exceed TWO HUNDRED TEN THOUSAND DOLLARS (\$210,000) to:

- a. Contract arts and cultural organizations to execute Arts and Cultural Affairs Grants, for which they have applied and for which they have been approved by the Board of County Commissioners;
- b. Provide collaborative Community-wide Marketing programs, including OrlandoAtPlay.com;
- c. Contract with an eligible arts or cultural organization for grants to provide for operational support funding;
- d. Assure compliance with regard to the Orange County Arts and Cultural Affairs Advisory Council's awards for approved projects consistent with the guidelines of the Arts and Cultural Affairs Grants programs.
- e. Disburse funding for awarded projects on a schedule related to compliance and milestones of the projects;
- f. Attend meetings of the office of the Arts and Cultural Affairs Advisory Council Funding & Standards Committee and events related to the business of those offices and committees;
- g. Assist with program development, guidelines, application, panel review process, committee work, communication, workshops, and research related to Arts and Cultural Affairs Grants;
- h. Provide access to or data from the historical financial and service statistics of the United Arts-funded arts and cultural institutions;
- i. Disbursement schedule:

1) Program Funding Recipients.

- a. Arts and Cultural Affairs Grants:
 1. Funds required for recipients of 2019-20 Arts and Cultural Affairs Grants. Funding will be invoiced in advance by the AGENCY within five days of the Board of County Commissioners' approval of funding and in advance of the disbursements to CULTURAL PROVIDERS. Funding will be invoiced at 50% upon funding approval and the second 50% based on the anticipated

- disbursements during that funding cycle.
- b. Community-wide Marketing:
 - 1. One Hundred Thousand Dollars (\$100,000) for Community-wide Marketing for arts and cultural programming to be invoiced by the AGENCY within five days of the Board of County Commissioners' approval of funding and in advance of the disbursement of funds. Funding will be invoiced at 50% upon funding approval and the second 50% based on the anticipated disbursements during that funding cycle.
 - c. Arts and Cultural Funding:
 - 1. One Million Five Hundred Thousand Dollars (\$1,500,000) in support for arts and cultural nonprofits in Orange County. Funding will be invoiced at 50% upon funding approval and the second 50% based on the anticipated disbursements during that funding cycle.
- 2) AGENCY Service Fees. Eight percent (8%) on the first Two Million Dollars (\$2,000,000) of funding and Five Percent (5%) on funding in excess of Two Million Dollars (\$2,000,000) as fee for services, based on the total amount of Arts and Cultural Affairs Grants, not to exceed TWO HUNDRED TEN THOUSAND DOLLARS (\$210,000), shall be paid to the AGENCY at the following schedule:
- a. Fifty percent (50%) upon invoice and upon the approval of the respective program's funding;
 - b. Forty percent (40%) upon invoice and no sooner than four (4) months after the approval of the program's funding; and
 - c. Ten percent (10%) upon invoice and upon conclusion of all disbursements to the Cultural Providers for the program funding.
- 3) All reports and notices shall be given to Mr. Terry Olson, Arts & Cultural Affairs Administrator and the Office of Management and Budget (OMB). The mailing address for both Arts & Cultural Affairs Office and the Office of Management and Budget is P.O. Box 1393, Orlando, FL, 32802-1393. Additional communications may be made by phone (407) 836-5540, fax (407) 836-5554 and e-mail to Terry.Olson@ocfl.net.