

Board Meeting Agenda Item Executive Summary

Supt.'s Office Use Only	
Board Meeting	<u>4-21-09</u>
Agenda	<u>Consent</u>
Item No.	<u>F. 13.</u>

Board Meeting Date:	April 21, 2009
Submitted By:	Sandi Anusavice
Item Description:	Agreement with UF for use of The O'Connell Center

Purpose and Explanation:

Use of The O'Connell Center June 4-June 6, 2009 for rehearsal and graduation for Buchholz High School, Eastside High School, Gainesville High School, Newberry High School, and Santa Fe High School. Fees not to exceed \$31,911.00.

BUDGETARY IMPACT

Funding Source (Description): **Amount: \$31,911.00**

Staff Attorney Review & Approval <i>(For Contracts Only)</i>	Date: _____ Initial: _____	ADDITIONAL INFORMATION Yes: _____ No: _____
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AGREEMENT

THIS AGREEMENT, made and entered into by and between the University of Florida Board of Trustees ("UNIVERSITY" herein), and SCHOOL BOARD OF ALACHUA COUNTY ("USER" herein);

WITNESSETH:

WHEREAS, UNIVERSITY is in possession and control of the facility known as the Stephen C. O'Connell Center ("CENTER" herein); WHEREAS, USER desires to use CENTER for the period of the ENGAGEMENT hereinafter set out for the purposes hereinafter set forth; and, WHEREAS, UNIVERSITY desires to make CENTER available to USER for such purposes; NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties mutually agree as follows:

1. PREMISES: UNIVERSITY hereby gives and grants unto USER the right to:
 - a.) Exclusive occupancy and use of the CENTER's arena and those areas of the CENTER as may be reasonably necessary for ingress and egress for personnel and equipment, as well as those areas outside the CENTER and adjacent thereto as required for USER's parking and unloading of vehicles.
 - b.) USER shall not be entitled to the use or occupancy of any other portion of the CENTER or adjacent areas.
2. PERIOD OF ENGAGEMENT: USER hereby engages the premises and shall have the right to occupy and use the areas set forth in Paragraph 1, herein, for the following periods:

TIMES OF ENGAGEMENT

DATE: JUNE 4-6, 2009
 DAY: THURSDAY- SATURDAY
 FROM: 7:00 AM (THURSDAY); 8:00 AM (FRIDAY); 6:45 AM (SATURDAY)
 TO: 11:30 PM

which periods shall hereinafter be called the "ENGAGEMENT".

3. PURPOSE: The premises shall be used for the sole purpose of ALACHUA COUNTY HIGH SCHOOL GRADUATION.
4. SEATING: UNIVERSITY shall provide seating capacity for at least N/A patrons.
5. CONSIDERATION:
 - a.) In consideration for the use and occupancy of the CENTER and the performance by UNIVERSITY of all its obligations hereunder, USER agrees to pay to UNIVERSITY \$2100 FOR THE FIRST FOUR HOURS, PLUS \$200 FOR EACH ADDITIONAL HOUR.
 - b.) USER agrees that NO admission will be charged for the engagement. USER further agrees that if this status changes, this lease agreement will be renegotiated at the discretion of the Center Director.
 - c.) In accordance with the Department of Revenue's Florida Administrative Code and as modified on January 1, 2009 as stated in the Tax Information Publication issued on January 1, 2009, if the ENGAGEMENT is determined to be a taxable event, 6.75% Sales Tax will be deducted and paid by UNIVERSITY at the time of each deposit of ticket revenues. In addition, 6.75% sales tax will be assessed on the rental of real property and other items as clarified by the January 1, 2009 tax law. Tax exempt organizations must provide a valid Florida Sales tax exempt certificate upon signing of the contract.
 - d.) Organizations which qualify as a not-for-profit entity under the provisions of s.501(c)3 of the United States Internal Revenue code are tax-exempt. ~~Qualifying USER must provide a 501(c)3 tax-exempt certificate upon signing of contract.~~
 - e.) UNIVERSITY applies and retains a one dollar administrative fee to the base price of each ticket sold where the price of any ticket for that event is greater than five dollars (\$5.00). The University of Florida agrees to pay the Florida State Sales tax on the one dollar administrative fee.
 - f.) "Gross Receipts", as used herein, shall mean all proceeds from the sale of tickets for the ENGAGEMENT, after deducting therefrom the University Administrative Fee, all Federal, State, County admissions and sales taxes. "Gross Receipts" shall not include the price of complimentary tickets, tickets given in exchange for radio and television advertising, any sums added to the cost of the tickets for any service charges for sales pursuant to mail or telephone ticket orders; nor the cost of printing the tickets.
6. DEPOSIT: USER agrees to pay to UNIVERSITY, contemporaneously with delivery by USER to UNIVERSITY of an executed counter part of this Agreement, a deposit in the amount of N/A. This deposit shall be made payable to the University of Florida and shall be in the form of cash, certified check or Cashier's Check. This deposit shall be non-refundable except in the event of a cancellation of this Agreement pursuant to the provisions of Paragraph 23. The deposit paid hereunder shall be credited to, and deducted from, the amount of money due the UNIVERSITY, pursuant to the provisions of Paragraph 5 hereof.
7. SUITABILITY: USER has inspected, or caused to be inspected, the CENTER and found same to be adequate, satisfactory, and in proper condition for the proposed use or uses as stated herein. UNIVERSITY agrees that the

CENTER shall be in substantially the same condition at the beginning of the ENGAGEMENT as on the date inspected by the USER.

8. COOPERATION WITH OTHER USERS: USER understands that the UNIVERSITY will make available, for use by others, such portions, areas, and facilities that are not subject to this Agreement, and USER agrees to cooperate in good faith, with the management and personnel of the CENTER and with those persons using the other portions and areas of the CENTER, especially during those periods of moving in and out, in order to make the mutual use of the facilities harmonious and agreeable.

9. INSURANCE:

a.) The USER shall obtain, maintain, and pay for insurance in the categories listed in the insurance schedule below with an insurance company licensed to do business in the State of Florida. The insurance coverage in each category shall meet or exceed the minimum limits set forth in the insurance schedule below. **University of Florida, State of Florida, Florida Board of Governors and University of Florida Board of Trustees shall be included as additional insureds on each policy.** The insurance shall cover all of the USER's operations under this Agreement and shall be effective throughout the effective period of this Agreement. It is not the intent of this Schedule to limit the types of insurance otherwise required by this Agreement or that the USER may desire to obtain.

INSURANCE SCHEDULE

<u>POLICY</u>	<u>MINIMUM LIMIT</u>
Comprehensive General Liability Insurance Combined Single Limit (CSL)	<u>\$1,000,000.00.</u>

b.) The USER shall deliver a certified copy of each of the policies that USER is required to have showing the required coverage and containing the **University of Florida, State of Florida, Florida State Board of Education, Florida Board of Governors, and University of Florida Board of Trustees** as additional insureds, to the UNIVERSITY's representative fifteen (15) working days prior to the beginning of the USER's planned occupancy of the Stephen C. O'Connell CENTER. In the event the certified copies of the policies are not provided within the time specified, the UNIVERSITY may, as its sole option and without any liability for damages immediately terminate this Agreement.

c.) Each policy shall contain a valid provision or endorsement that the policy shall not be canceled, terminated, changed, or modified in any way without the USER giving fourteen (14) days advance written notice thereof to the UNIVERSITY's representative. If at any time any of the policies provided by the USER shall be or become unsatisfactory to the UNIVERSITY or if any of the carriers issuing any of the policies shall be or become unsatisfactory to the UNIVERSITY, the UNIVERSITY shall immediately notify the USER in writing and the USER shall obtain and provide to the UNIVERSITY as required above, a new and satisfactory replacement policy prior to the beginning of the USER's planned occupancy of the Stephen C. O'Connell CENTER. In the event the USER fails to provide certified copies of the replacement policies required above, the UNIVERSITY may, at its sole option and without any liability for damages, immediately terminate this Agreement.

10. PROPERTY DAMAGE:

a.) If any portion of the UNIVERSITY or CENTER, its facilities and equipment (including any portion of CENTER, its facilities and equipment which USER has not been given the right to occupy or use pursuant to the terms of this Agreement) is damaged by any act, omission, default or negligence of USER, its agents, subcontractors, employees, patrons, guests, or any other person admitted to CENTER by or for the benefit of USER, USER shall pay to UNIVERSITY upon demand, in cash or its equivalent, a sum equal to the cost of repairing the damages and restoring the CENTER to the condition existing at the beginning of the ENGAGEMENT. USER shall not injure, mar, nor in any manner deface CENTER, its facilities, or any equipment contained therein, and shall not make nor allow to be made, any alterations to CENTER or its facilities except as provided herein, without the written consent of the CENTER's Director.

b.) USER shall not hang any additional cables running north-south, in the CENTER, nor shall USER attach anything to existing cables, nor hang any cables in the CENTER in such a manner as to damage or affect existing cables in the CENTER.

11. RESPONSIBILITY FOR PERSONAL PROPERTY:

a.) UNIVERSITY, its agents, or employees shall not be responsible for any loss or damage to personal property placed in or about the CENTER belonging to USER, its servants, agents, subcontractors, guests, patrons, or invitees, and USER shall hold UNIVERSITY, its agents, or employees harmless from all claims arising out of loss or damage to such property.

b.) USER shall remove from the CENTER, immediately upon termination of the ENGAGEMENT, for any reason, all property belonging to USER and all property brought in or about the CENTER by USER or persons associated with USER in the use and occupancy of the CENTER. If USER fails to remove all such property, UNIVERSITY, its agents, or employees shall have the right to remove and store such property at USER's expense. UNIVERSITY, its agents, or employees shall not be liable for any damage or loss to said property regardless of how and where same shall occur or by whom caused.

12. SIGNS: USER shall not post or erect any signs, advertisements or posters of any kind or description in or about the CENTER without written consent of CENTER's Director or Director's duly authorized representative.

13. FOOD BEVERAGE AND NOVELTIES:

a.) Concessions: The rights to all concessions and sale of novelties of every kind or nature are reserved by UNIVERSITY except as may be specifically provide by separate agreement.

- b.) Alcoholic Beverages: No alcoholic beverages will be served in the CENTER at anytime without the express written permission of the Vice President of Business Affairs. Such request should be submitted prior to signing this agreement.
- c.) Catering: Provided UNIVERSITY consents to the use of caterers or other food service personnel engaged by USER, USER agrees to ensure that all caterers for the ENGAGEMENT shall possess all required licenses and meet all health and safety standards as required by the Division of Environmental Health and Safety.
14. CONTRACTS WITH PERFORMERS: USER certifies and attests that it has a valid, properly executed, and compatible contract with the performers whose services form the basis for its desire to use the CENTER.
15. COPYRIGHTS: USER agrees to assume all costs arising from the use of patented, licensed, trademarked, franchised, or copyrighted music, materials, devices, processes, or dramatic rights that may be incurred as a result of any performances presented during the ENGAGEMENT. USER agrees to indemnify, defend and hold harmless UNIVERSITY from any claims or costs, including legal fees, that might arise because of the use or claimed use of such material.
16. OBSERVANCE OF LAW:
- a.) USER agrees to obey and observe, with respect to its use of CENTER, all laws of the United States and the State of Florida, all applicable ordinances and rules of the County of Alachua and City of Gainesville, and their respective administrative departments and agencies, all rules and regulations adopted by UNIVERSITY for the governing, management and regulation of CENTER, and to require the same from its employees, contractors, guests, and all other persons for whose conduct it is responsible or over whom it exercises or has authority to exercise control.
- b.) A prime concern of the UNIVERSITY is the observance of fire regulations and the maintenance of adequate aisle space. Any solicitation by USER's agents, employees, contractors and any other persons for whose conduct USER is responsible or over whom USER exercises, or has authority to exercise control, to the audience to leave their seats to come up to the front of the hall will be regarded as non-compliance with UNIVERSITY regulations and a breach of this Agreement. Any suggestion by USER, USER's agents, or employees that the audience light matches or other combustible material in unison will also be regarded as a breach of this Agreement. The discussion of particular prohibited activities herein shall not be construed as an exclusive list of those activities which may constitute a breach of applicable rules or regulations or this Agreement. USER shall be responsible for knowledge of all such rules and regulations.
- c.) USER shall obtain at USER's own cost, licenses and permits as required by law and pay all federal, state and local taxes, fees, and charges prescribed by law.
17. CONTROL OF CENTER: It is understood and agreed that UNIVERSITY hereby reserves the right to control and manage the CENTER and to enforce all necessary and proper rules for its management and operation. The CENTER Director and his employees shall have free access at all times to all spaces occupied by USER, for the purposes stated herein. The entrances and exits shall be locked and unlocked at such times as may be reasonably required by USER for its use of the CENTER; but the CENTER Director or designee shall have final determination as to when entrances and exits shall be unlocked and locked.
18. TICKETS:
- a.) Printing: UNIVERSITY agrees to provide printed tickets for the seating requirements of the CENTER at scaled admission prices set by USER. USER agrees to utilize the University Box Office and all TicketMaster outlets for the sale of tickets. No additional outlets shall be utilized without written permission of the CENTER Director. USER further agrees that all tickets will be put on sale at the University Box Office and all TicketMaster outlets at the same time.
- b.) Sales: All ticket sales shall be under UNIVERSITY's control. UNIVERSITY shall at all times maintain control and direction of the ticket office, ticket personnel, and ticket sales revenue until final settlement with USER. All tickets must be sold at the price printed on the ticket and any deviations must be approved by both the UNIVERSITY and USER.
- c.) Revenue: All ticket revenues shall be deposited in a Stephen C. O'Connell Center, University of Florida account. UNIVERSITY agrees to collect all monies from the sale of all tickets sold through its own ticket office and its regular area ticket outlets, and maintain regular books and records pertaining to each performance of the ENGAGEMENT including a true and accurate account of all monies collected.
- d.) Settlement: At the conclusion of the ENGAGEMENT, a final settlement showing the number of tickets sold, gross amounts of money received, total amount deducted for any taxes, total number of complimentary tickets and passes issued, and any other charges which may be deducted from gross revenue pursuant to the Agreement, shall be delivered by UNIVERSITY to USER. All tickets remaining unsold at the close of the ticket office sales for the ENGAGEMENT shall be presented to USER for inspection and the final settlement of the ticket sales shall be based on the number of tickets remaining and available for inspection at the close of all sales. USER, by representative designated in writing in advance, shall have the right to inspect ticket racks and ticket office and other records with respect to admission receipts, including unsold tickets and stubs of tickets sold and will be admitted to the ticket office at all reasonable times when accompanied by the CENTER Director or Director's duly designated representative. All monies that are due USER will be paid by UNIVERSITY check approximately four (4) business days following the completion of the ENGAGEMENT.

- e.) By signing this agreement, USER agrees to allow UNIVERSITY to act on USER's behalf to wire (if desired) all monies that are due USER to a commercial bank account in USER's name. USER agrees to hold UNIVERSITY harmless for any delays in wiring said monies or in the event that the bank wire is unsuccessful.
- f.) User shall not prohibit attendance of the Event by any person in violation of the laws of the United States, the State of Florida, or of any rule, regulation, or policy of University. In the event the use of proceeds from ticket sales to any person is restricted by law, User shall provide written notice of such restricted use to University's Vice President for Business Affairs prior to signing of the agreement and tickets going on sale. University reserves the right to cancel the Engagement by giving written notice to User within three working days of receipt of the restricted use. If University does not exercise its right to cancel the Engagement, sales of such tickets shall be made in a manner that enables the restricted proceeds to be disbursed to a charitable organization mutually agreed upon by User and University so that those ticket purchases will not be in violation of law.
19. NO TICKETS SOLD IN EXCESS OF SEATING CAPACITY: USER will not permit to be sold or distributed, tickets or passes in excess of the seating capacity as set forth in Paragraph 4 hereof. UNIVERSITY will have the right to withhold and subtract from salable capacity, the number of tickets equal to 1% of the ticket manifest capacity as a reserve for problem seat locations as needed. USER agrees that any tickets for seats with limited or impaired visibility or any backstage seats will be sold clearly marked accordingly.
20. COMPLIMENTARY TICKETS: Complimentary tickets shall be limited to an amount consistent with good business practice. In addition, UNIVERSITY reserves the right to utilize up to fifty (50) complimentary tickets for the ENGAGEMENT when deemed appropriate and in the best interest of the CENTER. UNIVERSITY will maintain accurate records as to the distribution of said complimentary tickets.
21. ADVERTISING, PROMOTION, AND SPONSORSHIP: USER agrees that no advertisement or promotion shall commence until such time as the UNIVERSITY is in receipt of a signed copy of this Agreement and deposit as specified in Paragraph 6. USER agrees that all advertising for the event will be honest and true and will include accurate information of show times and ticket prices and services charges. USER will coordinate with UNIVERSITY information on show times, ticket prices, and advertising schedule. USER shall have the right to engage in special promotions only as provided herein. USER agrees that advertising for the event will not include any alcohol, drink or other sponsorship information that conflicts with current CENTER sponsorship agreements without express written permission from CENTER Director or Director's duly authorized representative. USER agrees to include in all advertisement and promotion for the ENGAGEMENT the following statements: "Tickets are available at University Box Office and at all TicketMaster outlets".
22. MOTION PICTURE, RADIO, TELEVISION RIGHTS: USER shall have the right to renegotiate and enter into agreements for the granting of motion picture, radio, or television rights in connection with the ENGAGEMENT under the terms of this Agreement, providing that any and all revenue from said motion picture, radio, television or other rights so granted shall be included in the gross receipts for the ENGAGEMENT in the same manner as the receipts from ticket sales, and UNIVERSITY shall be entitled to an additional payment in an amount to be determined as set forth in Paragraph 5a).
23. CANCELLATION:
- a.) UNIVERSITY shall retain the right to cancel or interrupt the ENGAGEMENT or portion thereof when in the sole judgment of CENTER Director or Director's duly authorized representative, such act is necessary in the interest of public safety. Should it become necessary, in the judgment of CENTER Director or Director's duly authorized representative, to evacuate the CENTER because of a bomb threat or for other reasons of public safety, USER, will retain possession of the CENTER for sufficient time to complete the ENGAGEMENT without additional charges, providing such time does not interfere with another previously scheduled use of the CENTER, and USER hereby waives any claim for damages or compensation due to such occurrence.
- b.) ~~UNIVERSITY shall retain the right to cancel or interrupt the ENGAGEMENT or portion thereof when in the sole judgment of CENTER Director, such act is necessary in the interest of the UNIVERSITY and USER hereby waives any claim for damages or compensation due to such occurrence.~~
- c.) Neither party shall be liable to the other party for the failure to perform any of the terms and conditions of the Agreement when such failure to perform is attributable to and caused by an "Act of God"; by the government taking possession of the CENTER, or other government intervention by rule regulation, or action: by circumstances not under the control of such party, including, but not limited to, circumstances limiting the ability of the performers or other personnel to travel, war, strikes, riots, civil disorder, sabotage, lack of adequate fuel, power failure, injunction and fire. If such event shall cause delay but shall not be an independent reason for cancellation of the entire ENGAGEMENT, the remaining portion of the ENGAGEMENT shall be fulfilled in accordance with the terms and conditions of this Agreement.
- d.) The CENTER is to be used only for the purposes stated herein, and any misrepresentation in obtaining the Agreement, or use of premises for other purposes shall be sufficient grounds for immediate cancellation of the ENGAGEMENT by UNIVERSITY, without liability of UNIVERSITY, without obligation of UNIVERSITY to refund any deposit, and without any loss of any right or claim of UNIVERSITY against USER.
24. REFUND OF ADMISSIONS: If for any reason the ENGAGEMENT is canceled prior to commencement, or a portion of ENGAGEMENT is canceled after its commencement, UNIVERSITY shall have the right to make refunds to ticket purchasers of the full purchase price of the tickets (less any service charge made by or owed for any tickets ordered by mail or telephone or purchased through outside ticket outlets) out of the proceeds either in the exclusive possession of UNIVERSITY or held jointly by the UNIVERSITY and USER. Further, if USER has possession of such proceeds, it shall promptly turn over to UNIVERSITY such amount of such proceeds as are necessary to make

such refunds. USER shall be responsible for the cost of any refund or admission, including but not limited to, box office charges.

25. STAFFING, COSTS, AND OTHER EXPENSES RELATED TO ENGAGEMENT:
- a.) UNIVERSITY shall provide, and USER shall pay to UNIVERSITY, at the rates on UNIVERSITY's cost sheet, the cost of necessary staffing. UNIVERSITY retains the right to determine the appropriate number of security personnel and staff to properly serve and protect the public. Additional staffing or equipment needs of the USER may be arranged for under a separate agreement.
 - b.) UNIVERSITY, at its own cost and without reimbursement from USER, shall provide air conditioning and heating with Federal recommended limits.
 - c.) Any and all other costs associated with matters and things desired or required by USER in connection with the ENGAGEMENT shall be paid by USER at no cost to UNIVERSITY.
26. RIGHT TO WITHHOLD FUNDS: USER hereby authorizes UNIVERSITY to withhold from any funds that may be due USER, such sums as may be due UNIVERSITY pursuant to this Agreement, including damages for which USER may be liable.
27. ASSIGNMENT: Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.
28. WAIVERS: Waiver of one or more terms or conditions of this Agreement shall not be deemed a modification or waiver of any other provisions of this Agreement. No assent, express or implied, by either party, to any breach of any of the covenants or agreements contained in this Agreement shall be deemed or taken to be a waiver of any succeeding breach of the same or any other covenant or agreement. The delay or failure of either party to assert or exercise any right, remedy, or privilege hereunder shall not constitute a waiver of that or any other such right, remedy or privilege. No waiver shall be effective unless in writing.
29. AVAILABILITY OF FUNDS: The obligations of UNIVERSITY under this Agreement are subject to the availability of funds lawfully appropriated annually for its purposes by the Legislature of the State of Florida.
30. INDEMNIFICATION: ~~USER shall protect, maintain, save and hold harmless UNIVERSITY, its officers, agents, servants and employees from and against any and all claims, demands, expense and liabilities arising out of injury or death to any person, or the damage, loss or destruction of any property which may occur in or about the CENTER (including any portion thereof which USER has not been given the right to occupy or use pursuant to the terms of this Agreement) or which may arise or in any way grow out of any act or omission of USER, its agents, subcontractors, servants, employees, invitees and patrons' use and occupancy of CENTER.~~
31. INVALIDITY OR ILLEGALITY: The invalidity or illegality of any part of this Agreement shall not affect the validity or force of any other hereof.
32. APPLICABLE LAW: The construction and interpretation of this Agreement shall be pursuant to the laws of the State of Florida. Venue, for any actions arising out of this agreement shall be in Alachua County, Florida.
33. STATUS OF PARTIES: The parties hereto are acting as independent contractors and independent employers. This Agreement is not intended to create, nor shall it be construed as creating, a joint venture or partnership.
34. NOTICE: Unless otherwise provided in writing, all notices, consent or approval shall be provided in writing by Certified or Registered mail, postage prepaid, to the following addresses:

TO USER: SCHOOL BOARD OF ALACHUA COUNTY
MAUREEN MOORE
620 EAST UNIVERSITY AVENUE
GAINESVILLE, FL 32601

TO UNIVERSITY: Attention: Director
Stephen C. O'Connell Center
University of Florida
Suite 1232 SCOC
PO Box 115850
Gainesville, Florida 32611-5850
(352) 392-5500
(352) 392-7106 - fax

35. CAPTIONS: The captions at the beginning of each paragraph are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement, nor the intent or content of any provision contained herein.
36. ENTIRE AGREEMENT: This Agreement includes all the terms and conditions agreed upon by the parties and no oral agreements or representation shall be valid or binding upon the parties hereto, and this Agreement may not be modified in any manner except by written agreement signed by both parties hereto.

37. PARTIES: All words herein referring to "UNIVERSITY" or "USER" shall be considered of number and gender required; the word "UNIVERSITY" shall include its successors and assigns; and the word "USER" shall include its successors, assigns, heirs and personal representatives whenever required.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in duplicate, each of which shall be deemed an original, on the date set forth above their respective signatures.

Executed this _____ day of _____, 20_____

UNIVERSITY OF FLORIDA, for and on behalf of the University of Florida Board of Trustees

By _____

Executed this _____ day of _____, 20_____

By _____
USER

Federal Employer Identification Number _____

revised 3/11/04