
First Amendment to
Operating Agreement

West Florida Historic
Preservation, Inc. and
University of West Florida
Board of Trustees

Execution Copy

December 12, 2008

FIRST AMENDMENT TO OPERATING AGREEMENT

This First Amendment To Operating Agreement (this “Amendment”) amends the Operating Agreement between the University of West Florida Board of Trustees, a public body corporate (the “University”), and West Florida Historic Preservation, Inc., a Florida corporation not-for-profit (the “Corporation”) dated July 1, 2001, as amended and renewed by a Renewal Document agreement dated June 27, 2006 (the “Original Agreement”). The University and the Corporation are herein referred to from time to time as the “Parties”.

Whereas, the Legislature of the State of Florida in its 2008 session, enacted House Bill 337, amending Section 267.173, Florida Statutes (the “Authorizing Statute”); and

WHEREAS, University and Corporation desire to enter into this Amendment to acknowledge certain responsibilities of both parties and to clarify and modify certain terms and provisions of the Original Agreement and Exhibits;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the Parties agree as follows:

1. **References to BOT Lease.** Pursuant to the provisions of House Bill 337, the Properties will be leased to UWF by the State of Florida, and references to the BOT Lease in the Original Agreement will be deemed to refer to the Lease Agreement between the University and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida dated as of December 12, 2008.

2. **Amendment to Section 2.** Paragraphs C and D of Section 2 of the Original Agreement are hereby amended to read as follows:

- (C) The limited selling of merchandise relating to Florida history and archaeology.
- (D) Adopt and enforce reasonable policies to govern the conduct of the visiting public.

3. **Alternative Method of Finance.** Section 6 of the Original Agreement is hereby amended to read as follows:

Section 6. Alternative Method of Financing New Facilities. The Corporation may, with the prior approval of UWF, issue indebtedness in compliance with Section 1010.62, Florida Statutes, and other applicable law. The Corporation may also, with the prior approval of UWF enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of UWF, provided that any required approval of the particular project by the Legislature is first obtained. Such agreements are subject to the provisions of Section 1010.62 and 1013.171, Florida Statutes, and other applicable law.

4. **Employees.** Section 9 of the Original Agreement is hereby amended to contemplate that the list of employees provided to the Corporation by UWF will change from time to time to reflect the names of the UWF employees filling the positions.

5. **Leases of the Properties.** Section 11 of the Original Agreement is amended to read as follows:

Section 11. Leases of the Properties.

The parties hereto acknowledge that title to the Properties is held by the Board of Trustees of the Internal Improvement Trust Fund, subject to a lease to the University (the "BOT Lease"). The Corporation will comply in all respects with the requirements of the BOT Lease in any actions taken under this Agreement. The Corporation is hereby authorized, on behalf of UWF, to enter into leases, easements and agreements with regard to the Properties as contemplated in Sections 2 and 4 hereof.

6. Public Records Policy. Section 19 of the Original Agreement is hereby amended to provide that the Corporation will comply with the University's Public Records Policy as it may be amended from time to time and as the requirements of Florida law may change from time to time.

7. Materials and Services. Exhibit H to the Original Agreement is hereby amended to read as set forth on Exhibit H hereto.

8. Continuation of Original Agreement. Except as herein amended, the Original Agreement shall remain in full force and effect.

9. Effective Date. This Agreement shall take effect upon execution by both parties.

IN WITNESS WHEREOF, the representatives of UWF and Corporation, being duly authorized to do so, and being fully advised in the premises, have hereunto affixed their signatures on the date(s) written below:

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| University of West Florida Board of Trustees By: _____ President of UWF Date | West Florida Historic Preservation, Inc. By: _____ President, Board of Directors Date |
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Exhibit H

Contracting for Materials and Services for the Properties

1. The Corporation is hereby authorized to execute contracts, agreements, and purchase orders on behalf of the University of West Florida Board of Trustees for the acquisition of equipment, materials and services used in the operation, maintenance and preservation of the Properties in the manner and subject to the limitations set forth herein.
2. For each fiscal year, the University will advise the Corporation of the amount and type of funding that will be made available by the University for the operation and maintenance of the Properties. Such funding will include at a minimum an amount equal to the amount received by the University for Plant Operation and Maintenance Expense of the Properties (the “formula funding” for the applicable year multiplied by the gross square footage of those Properties with legislative authorization for PO&ME funding, less holdbacks and budget cuts affecting such funding). The Corporation will comply with funding restrictions applicable to the specific funding sources, as set forth on the Schedules hereto.
3. The Corporation shall apply sound business practices when obtaining equipment, materials & services and shall follow the requirements of the University’s purchasing regulations and applicable state law in so doing; provided that the Corporation may give effect to any exemptions available under state law and such regulations.

4. The Corporation and University agree to the following process for the expenditure of funds for certain equipment, materials & services:
 - a. Corporation shall submit its list of proposed construction or renovation projects (the "Project List") to the office of the Associate Vice President, Facilities Services (or such person as may be designated by the President of the University) for review and comment prior to inclusion in the Corporation's expenditure plans for each year. Such Project List will be updated quarterly and included in the information presented to the President of UWF or her designee pursuant to the provisions of Section 4 of the Original Agreement.
 - b. Upon receipt of all equipment and materials or successful completion of services, the Corporation shall review the appropriate invoice and shall approve same for payment by the Controller as demonstrated by signature approval of the Corporation Executive Director, Business Manager or other Corporation personnel delegated authority in writing by the Corporation Executive Director.
 - c. Both parties agree that any and all business decisions, written support, justification, records and documentation of the procurement activities (including support for best value and waivers of competitive bidding), invoice and subsequent payment shall be the sole responsibility of the Corporation and will be subject to audit by all interested parties. The Corporation will furnish information as required to the University's financial personnel and internal or external auditors.

- d. Notwithstanding the fact that, pursuant to the provisions of Section 553.80, Florida Statutes, the University is the building code compliance entity for the Properties, the University agrees that Corporation may use one or more local governmental entities as the building code compliance entity for its projects so long as an appropriate agreement between the University and the applicable local government is in effect, and agrees that Corporation may agree to pay applicable fees for permits and inspections to the extent allowed by Section 553.80(6)(b), Florida Statutes. Corporation agrees that building code compliance, inspections and proper use of the appropriate local government as the building code compliance entity will be the sole responsibility of the Corporation, and understands that this activity may be subject to compliance review by applicable governmental authorities.

Schedules to Exhibit H

The main sources of University funding for the Properties are the following:

- **Plant Operations Maintenance Expense** (P.O.M.E.) General Revenue Funds to Operate and Maintain. This annual recurring funding requires Legislative authorization for accepted/approved specific buildings and gross square feet.
- **Public Education Capital Outlay (P.E.C.O.) Utilities/Infrastructure/Capital Renewal/Roofs** funding based upon the University of West Florida Main Campus Legislative authorization and internally allocated to the Corporation
- **Operational Expense (E&G)** General Revenue Funds for operational expenses budgeted for University employees allocated to Corporation.

a) Plant Operations Maintenance Expense – General Revenue

P.O.M.E. monies fund the systematic day-to-day processes to operate and maintain plant facilities. This annual recurring operating budget is intended to sustain usable and reliable facilities; e.g., structures, systems, equipment (fixed or moveable), pavement, grounds, and furnishings. It includes such things as scheduled repetitive/routine work, such as custodial/housekeeping activities, grounds-keeping, building and mechanical maintenance, applicable maintenance service contracts, and facility planning; scheduled preventative/periodic maintenance that has been planned to provide adjustments, cleaning, minor repair, and routine inspections of components, systems, and equipment to provide service reliability and reduce service interruptions.

b) P.E.C.O. - Utilities/Infrastructure/Capital Renewal/Roofs

Florida Statute Chapter 1013 provides guidance for use of the fixed capital outlay appropriations for educational facilities. These funds are requested annually as part of the University Fixed Capital Outlay Plan that is submitted to the Board of Governors, for Legislative appropriation. Further, the International Higher Education Facilities Organization provides guidance for major maintenance to permanent improvements referred to as “capital renewal and deferred maintenance.”

These funds are intended to address this capital renewal and deferred maintenance backlog of major maintenance projects unfunded in operating budgets and deferred to a future budget cycle. Underfunding of preventive and routine maintenance is one

cause of the neglect that allows minor repair work to evolve into more serious conditions.

This funding pertains to existing Education and General (E & G) building and infrastructure components (non-architectural elements) and systems that have failed or have reached unacceptable levels of service within an identified life expectancy (e.g., roofs – 20 years; exterior envelopes – 30 years, HVAC systems – 30 years, etc.).

The correction of deferred maintenance is intended to return building, fixed equipment, infrastructure, grounds, and road infrastructure to good appearance and usable condition, and prevent further deterioration. Typically, these projects are eligible for inclusion as a “fixed capital asset” within the Governmental Accounting Standards Board (GASB) Form 34/35. These components and/or systems “cyclic/predictable” life expectancy may be due to extended use, exposure to weather, corrosive agents, vandalism, the malfunctioning of other components, or other actions/events relate to use, age, location, or interconnection of components, which has been postponed or underperformed maintenance, not funded through annual operating and maintenance budgets, and where further postponement of corrections will impair operations reliability.

- Use of funds is limited to facilities owned, or having a minimum lease period of forty (40) years.
- Moveable equipment and furnishings are not eligible expenditures.
- Representative projects include the following:

Roof replacement and repairs, environmental impact/mitigation, demolition, roadway improvements, parking, masonry cleaning, masonry tuck-pointing, window replacements, structural inhibitive component painting (water tower on main campus, or exterior structural steel), HVAC upgrades, Building Automation System upgrades, plumbing, sanitary sewer, potable water, electrical, telecommunications fiber, fire systems, and code compliance component and/or system upgrades.

c) Operational Expense–General Revenue

Operational Expense (E&G) General Revenue Funds to be used for the operation of the department and its employees, including salaries, travel, professional fees, office supplies and furnishings, as more particularly set forth in the following publication:

http://www.fldfs.com/aadir/reference_guide/reference_guide.htm

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