



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, County Attorney

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
407-836-7320 ■ Fax 407-836-5888
<http://www.ocfl.net>

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: November 1, 2016

Consent Agenda Item

MEMORANDUM

TO: Mayor Teresa Jacobs
and
County Commissioners

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

DATE: October 17, 2016

RE: **Consent Agenda Item for Board Meeting on November 1, 2016**
Approval of Atlantic Coast Conference Championship Agreement
between Orange County, Florida and Florida Citrus Sports Events, Inc.

I. EXPLANATION & SUMMARY:

Florida Citrus Sports Events, Inc. ("FCSE") has requested Tourist Development Tax funding, under the twenty-third priority of the Tourist Development Plan, for college conference athletic championships. The fund will provide the Atlantic Coast Conference ("ACC") a "Host Fee" payment for the staging of the 2016 ACC championship football game to be played in the Camping World Stadium in Orlando, Florida. In late September, the ACC announced that the 2016 ACC championship football game would be moved from Charlotte, North Carolina to Orlando.

The attached funding agreement awards \$137,500 to FCSE for a host fee payment to the ACC, and falls within the existing Tourist Development Plan priority for collegiate athletic championships. No Tourist Development Plan amendment is necessary. If you have any questions please contact either me or Lila McHenry.

II. ACTION REQUESTED: **Approval and execution of Orange County, Florida and Florida Citrus Sports Events, Inc. Atlantic Coast Conference Championship Game Agreement.**

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County Attorneys
Elaine Asad
Lila McHenry

Assistant County Attorneys
Andrea Adibe
Roberta Alfonso
Anthony Cotter
Whitney E. Evers
Wanzo Galloway, Jr.
Erin E. Hartigan
Georgiana Holmes
Katherine W. Latorre
Scott McHenry
Sawsan Mohiuddin
Scott Shevenell
William Turner

Legal Administrative Supervisor
Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Melessia Lofgren
Maria Vargas, ACP

October 17, 2016
Re: Consent Agenda Item (Nov. 1, 2016)
Atlantic Coast Conference Championship Agmt
Page 2

LIM/eh
Attachment

c: Ajit Lalchandani, County Administrator
Eric Gassman, Deputy County Administrator
Fred Winterkamp, Manager, Fiscal and Business Services Division

**ORANGE COUNTY, FLORIDA
AND
FLORIDA CITRUS SPORTS EVENTS, INC.**

**ATLANTIC COAST CONFERENCE CHAMPIONSHIP GAME
AGREEMENT**

The Agreement is entered into as of the date of last execution below, between Orange County, Florida, a charter county and a political subdivision of the State of Florida (the "County"), and Florida Citrus Sports Events, Inc., a not-for-profit corporation organized and existing under the laws of the State of Florida (the "FCSE"), for the limited purposes set forth below.

P R E M I S E S:

- A. FCSE has applied to the County for a donation of Tourist Development Tax funds to be used to support a "host fee" for the Atlantic Coast Conference Championship Game (hereinafter the "ACC Championship Game"). The ACC Championship Game will be held on December 3, 2016 at the Camping World stadium, formerly known as the "Citrus Bowl".
- B. The County has determined that staging the ACC Championship Game promotes tourism; and
- C. The County desires to enter into this agreement with FCSE in order to provide funding for the ACC Championship game.

Section 1. Funding of ACC Championship Game. The County will provide funding from available tourist development tax revenues in the amount of one hundred thirty-seven thousand five hundred dollars (\$137,500.00) (herein sometimes referred to as the "County Donation") for the promotion of tourism through the staging of the ACC Championship Game.

Such payment of \$137,500.00 shall be made in accordance with County Office of Management and Budget procedures. The recipient of such payments shall be FCSE. Payment will be mailed to FCSE, 1 Citrus Bowl Place, Orlando, FL 32805, Attn: Steve Hogan. FCSE shall in turn deliver the County Donation to the ACC.

Section 2. FCSE Obligations.

2.1 ACC Championship Game Promotion. FCSE shall host the ACC Championship Game in a manner intended to promote and increase tourism within Orange County, Florida. FCSE shall advertise, promote and market the ACC Championship Game in conjunction with the ACC and other funding and event partners. To the extent possible, FCSE shall, subject to restrictions and limitations imposed by the ACC, endeavor to show the County as one of the

sponsors of the ACC Championship Game in programs and promotional media, web pages and other promotional materials for the ACC Championship Game and shall display such sponsorship with prominence commensurate with the level of County financial contribution.

2.2 FCSE Request for Payment. On or before November 15, 2016, FCSE shall provide a written request for payment of the County Donation which shall be paid by the County in one installment which request shall contain a confirmation that the upcoming ACC Championship Game is expected to be staged in the Camping World Stadium and that such payment shall be used solely in support of a “host fee” for the ACC Championship Game.

2.3 FCSE Role and Post-ACC Championship Game Reporting. The parties hereby acknowledge that FCSE is performing its services for the benefit of the ACC in connection with the staging of the ACC Championship Game and will incur expenses and allocate resources on behalf of the ACC Championship Game. However, none of the County Donation shall inure to the benefit of FCSE. FCSE agrees that it shall, no later than sixty (60) days after the staging of the ACC Championship Game, deliver to the County, the following:

- (i) The number of tickets available for sale for such ACC Championship Game and the number of tickets actually sold for such ACC Championship Game;
- (ii) The estimated attendance for such ACC Championship Game;
- (iii) The estimated TV ratings for such ACC Championship Game; and
- (iv) The estimated economic impact of such ACC Championship Game including the estimated number of visitors to Central Florida, room nights generated and average daily rate (it is acknowledged that a formal economic impact study shall not be required).

2.4 FCSE Board Presentation. The FCSE will in addition provide a presentation to the Tourist Development Council and Board of County Commissioners upon request following the ACC Championship Game that will include the information contemplated in Section 2.3 above and program summaries of the ACC Championship Game.

2.5 FCSE to Act as Independent Contractors. FCSE shall perform its obligations hereunder as an independent contractor, not as an agent of the County. FCSE shall have no authority to obligate the County and shall not hold itself out or give any third party reason to believe otherwise. Similarly the County shall have no authority to act or direct FCSE with respect to the ACC Championship Game and related activities. Any contracts for goods or services required in the course of FCSE’s performance under this Agreement shall be entered into by FCSE for its own account, not the County’s. FCSE 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 or direct the performance of any FCSE services under this Agreement, (ii) manage, supervise, or assist or direct the performance of any FCSE employee in the course of performing his or her employment duties for FCSE, (iii) be responsible either to FCSE or to the County for any failure of the FCSE’s employees to fulfill FCSE’s obligations hereunder, or (iv) be required

to report to FCSE any negligence, unsatisfactory performance, misfeasance, malfeasance, or nonfeasance of any of FCSE's employees, agents or contractors.

2.6 Nondiscrimination. FCSE, in connection with and in the course of performing under this Agreement, shall not discriminate against any employee or any member of the public because of age, race, color, religion, national origin, disability, marital status, sex or sexual orientation nor otherwise commit an unfair employment practice on such basis.

2.7 Right to Audit and Inspect Accounts: During the term of this Agreement, FCSE shall permit County staff and the Orange County Comptroller and her staff at any time during normal working hours the limited right to inspect FCSE's records and accounts specifically and directly maintained for the ACC Championship Game (the "ACC Championship Game Records"), insofar as they relate to this Agreement and only to the extent necessary in good faith to ensure proper compliance by the parties with the provisions of this Agreement provided that at last three (3) days advance notice is given to FCSE prior to any such inspection. The foregoing shall be in addition to any other rights the Comptroller and her staff may have in this Agreement.

2.8 Maintenance of Records. For a period ending three (3) years after the expiration or termination of this Agreement, FCSE shall make all ACC Championship Game Records relating to this Agreement available for inspection by the County or any agent designated by the County and the Orange County Comptroller.

Section 3. County Obligations.

3.1 Subject to the conditions, limitations and exceptions set forth in this Agreement, the County shall pay to FCSE the County Donation solely from TDT Funds in Fiscal Year 2016-2017 payable in one installment in such fiscal year preceding the date of such ACC Championship Game. The County's obligation to make such payment is conditioned upon receipt by the County of the payment request from FCSE in Section 2.2 above.

3.2 The County is obligated to make funds available to FCSE in the amounts set forth under subsection 3.1 only if and to the extent that sufficient revenues from the Tax 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, especially, the County's Tourist Development Plan set forth in Section 25-140 of the Code, (iii) that certain Amended and Restated Indenture of Trust between the County and First Union National Bank of Florida, as trustee dated August 1, 1995, and as further amended and restated by a Second Amended and Restated Indenture of Trust dated as of July 15, 2000, as amended or supplemented from time to time, including the Second Supplemental Indenture of Trust to Second Amended and Restated Indenture of Trust, dated as of March 15, 2002 and the Fifth Supplemental Indenture of Trust dated as of May 1, 2005 between the County and Wachovia Bank, National Association, formerly known as First Union National Bank, successor by merger to First Union National Bank of Florida, as successor in interest to Southeast Bank, N.A., as Trustee and as such Indenture may be amended and supplemented from time to time in the future (collectively, the "Indenture"), and (iv) 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.

3.3 The County has no obligation whatsoever, express or implied, to make the payments under Subsection 3.1 from any source of revenues other than the Tax.

3.4 Nothing in this Agreement shall constitute or be deemed a pledge of or lien upon the TDT, any other source of County revenue, or any real or personal property of the County, or a waiver of or contract to exercise the County's sovereign governmental powers.

3.5 FCSE 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; provided that the County's funding obligation hereunder shall not be invalidated or restricted.

Section 4. Defaults and Remedies. The following events shall constitute an event of default under this Agreement: (a) if FCSE fails to comply with the terms contained in this Agreement and such failure is not corrected within the greater of thirty (30) days or the period of time allotted for cure in a written notice from the County or (b) if the County fails to comply with the terms contained in this Agreement and such failure is not corrected within the greater of thirty (30) days or the period of time allotted for cure in a written notice from FCSE. A determination by the Board of County Commissioners that insufficient funds from the Tourist Development Tax above are available, consistent with Section 3 above, shall not constitute an event of default. Failure of the County or FCSE to declare a default shall not constitute a waiver of any rights by said party. Furthermore, the waiver of any default by either party shall in no event be construed as a waiver of rights with respect to any other default, past or present.

Upon the occurrence of any event of default, or any other breach of this Agreement, the non-defaulting party shall be free to exercise all rights and remedies available to it under this Agreement, statutory law, equity, or common law. All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy such party may have available to it.

Section 5. Term. The term of this Agreement shall begin on October, 2016 and end on December, 2016.

Section 6. Miscellaneous.

6.1 **Entire Agreement.** This Agreement sets forth the entire understanding between the County and FCSE with respect to the subject matter of this Agreement.

6.2 ***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 of this Agreement null and void. As of the date hereof, the County has not been advised of, nor is it aware of any such inconsistency or incompatibility.

6.3 ***FCSE Obligations as Conditions Precedent.*** Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the obligations of FCSE hereunder shall be and are hereby deemed to be conditions precedent to the County's obligation to pay any monies hereunder, and such obligations of FCSE shall not be deemed or construed as affirmative obligations beyond the scope of the funding hereunder.

6.4 ***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.

6.5 ***Amendments and Waivers.*** Notwithstanding anything to the contrary herein, this Agreement may be amended, and the material provisions hereof may be waived, only by a written instrument expressly approved by the County's Board of County Commissioners and duly executed by the County and FCSE.

6.6 ***No Third-Party Beneficiaries.*** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any persons or entity other than the County and FCSE.

6.7 ***Attorney's Fees.*** In any judicial proceeding arising out of this Agreement, each party shall bear its own attorney's fees and costs, including fees and costs incurred on appeal.

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

County:	Orange County, Florida Orange County Administration Center 201 S. Rosalind Avenue Orlando, Florida 32801 Attn: County Administrator
---------	---

Copy to:	Orange County Attorney's Office 201 S. Rosalind Avenue, 3 rd Floor Orlando, Florida 32801 Attn: County Attorney
----------	---

Copy to: Orange County Comptroller
Orange County Administration Center
ATTN: Finance and Accounting Division
P.O. Box 38
Orlando, Florida 32802-0038

FCSE: Florida Citrus Sports Events, Inc.
One Citrus Bowl Place
Orlando, Florida 32805

Copy to: Richard J. Fildes, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed,
P.A.
215 N. Eola Drive
Orlando, FL 32801

6.9 ***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 of last execution below.



ORANGE COUNTY, FLORIDA
BY: Board of County Commissioners

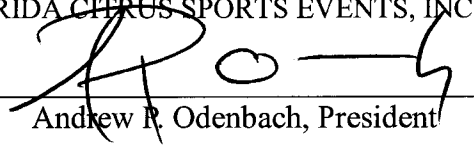
BY: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor
Date: 11.1.16

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

BY: *Martha O. Haynie*
Deputy Clerk

FLORIDA CITRUS SPORTS EVENTS, INC.

BY:

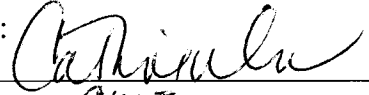

Andrew R. Odenbach, President

Date:

10 / 21 / 16

ATTEST:

TITLE:


CMO