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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: January 10, 2017

RE: **Consent Agenda Item for Board Meeting on January 24, 2017**
Approval of Agreement between Orange County, Florida and Central
Florida Sports Commission, Inc. regarding NCAA Men's Basketball
Incentive

I. EXPLANATION & SUMMARY:

The Central Florida Sports Commission, Inc. (CFSC) has requested tourist development tax (TDT) funding in the amount of one hundred thirty seven thousand five hundred dollars (\$137,500) to incentivize the location of the 2017 NCAA first and second round Division I Men's basketball games in Orlando. TDT funding for incentives for attracting collegiate athletic championship games and ancillary events to facilities located in Orange County and expected to draw a large attendance is already an approved expenditure under the Tourist Development Plan. The Board recently authorized consolidation of TDT sports funding under Visit Orlando. However, since the agreement with Visit Orlando will not be finalized prior to the time funds are needed for the 2017 NCAA first and second round basketball games, staff is requesting approval of the 2017 funding agreement directly with the CFSC.

If you have any questions, please contact Lila McHenry at 407-836-7320.

II. ACTION REQUESTED: Approval and execution of Agreement between
Orange County, Florida and Central Florida Sports
Commission, Inc. NCAA Men's Basketball
Incentive

Attachment

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

Deputy County Attorney
Joel D. Prinsell

*Senior Assistant County
Attorneys*

Elaine Asad
Lila McHenry

*Assistant County
Attorneys*

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Scott McHenry
Sawsan Mohiuddin
Scott Shevenell
William Turner

*Legal Administrative
Supervisor*
Anna M. Caban

Senior Paralegal
Kimberly Cundiff

Paralegals
Melessia Lofgren
Maria Vargas, ACP

AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
CENTRAL FLORIDA SPORTS COMMISSION, INC.

NCAA MEN'S BASKETBALL INCENTIVE

THIS AGREEMENT, made and entered into as of the date of execution below, by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida, hereinafter referred to as the "County" and THE CENTRAL FLORIDA SPORTS COMMISSION, INC., hereinafter referred to as the "Sports Commission".

WITNESSETH:

WHEREAS, the Central Florida Sports Commission, Inc. has requested tourist development tax funding to incentivize the location of the 2017 NCAA first and second round Division I Men's basketball games in Orlando; and

WHEREAS, the County has previously found that encouraging and promoting the selection of the Orlando area as a venue for international, national, regional and local sports events, teams and sports-related businesses generates economic growth and enhances the overall quality of life of Orlando area residents; and

WHEREAS, the purpose of the Sports Commission is to perform such services as will encourage and promote the selection of the Orlando area as a venue for international, national, regional and local sports events, teams and sports-related businesses; and

WHEREAS, tourist development tax funding for incentives for attracting collegiate athletic championship games and ancillary events to facilities located in Orange County and expected to draw a large attendance was approved by the Tourist Development Council; and

WHEREAS, the Board of County Commissioners desires to allocate tourist development tax revenues to the Sports Commission for the purpose of attracting and promoting the 2017 NCAA second and third round Division I men's basketball games provided such games are to be located at the Amway Center in Orlando; and

WHEREAS, the County has determined that events such as the NCAA Division I Basketball Tournament are in the public interest and consistent with authorized uses for the tourist development tax as they promote tourism and enhance the general economy of Orange County and, to that end, the County has amended the Tourist Development Plan to allocate funds for attracting the staging of multi-day NCAA championship competitions or college conference

athletic championships and ancillary events related thereto in facilities located in Orange County and expected to have attendance in excess of forty thousand people; and

WHEREAS, the County desires to enter into an agreement with the Sports Commission whereby the Sports Commission will receive tourist development tax funds from the County in accordance with the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the Sports Commission agree as follows:

1. The County will appropriate from available tourist development tax ("Tax") revenues the amount of one hundred thirty-seven thousand five hundred dollars (\$137,500.00) for incentivizing the staging of the 2017 NCAA first and second round Division I Men's Basketball Tournament ("Tournament") in the Amway Center in Orlando, Florida only if and to the extent sufficient revenues from the Tax are available, both legally and financially, for such payment in accordance with and after taking into account all 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); (iii) that certain Second Amended and Restated Indenture of Trust between the County and U.S. Bank National Association, as trustee, as amended and supplemented from time to time; 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 tourist development taxes.
2. The Sports Commission will market and encourage the selection of the Amway Center and Orange County location for the Tournament, promote such Tournament and endeavor to provide for the promotion of the Orlando area through the staging of the Tournament.
3. Subject to budget appropriation in the fiscal year 2016-17 budget and to the provisions of this Agreement, the County will remit to the Sports Commission up to a maximum of \$137,500 within 30 days of submission of an invoice requesting payment for expenses directly related with the Tournament as set forth in the budget described in Section 7 hereof and submitted simultaneously with such invoice. No payments shall be made if the Amway Center has not been selected as the location for the Tournament. Payment for the Tournament will be made during the 2016-17 fiscal year and is anticipated to be made on or about February 1, 2017, but only after receipt of the invoice referenced above in this Section 3 and the budget information required by Section 7(i) hereof.
4. This Agreement and any payments provided for in this Agreement is contingent upon the availability of revenues derived from the Tax levied under Section 25-136 of the Orange County Code to make the payments hereunder.
5. Nothing in this Agreement shall constitute or be deemed (i) a pledge of or lien

upon tourist development taxes, any other source of County revenue, or any real or personal property of the County, (ii) an amendment to the County Tourist Development Plan, or (iii) a waiver of or contract to exercise the County's sovereign governmental powers.

6. The Sports Commission will certify in writing that it has provided the activities and programs associated with attracting and promoting the Tournament without regard to race, color, creed, sex, age, national origin, disability or marital status, and remain in compliance with Title VII of the 1964 Civil Rights Act as amended, and any and all other applicable federal, state or local laws, rules and regulations, whether presently existing or hereafter promulgated.
7. The Sports Commission will provide: (i) a detailed line item revenue and expense budget of the Sports Commission for the Tournament, to be submitted with the invoice for the Tournament; (ii) a comparison of budget to actual revenues and expenses relating to the Tournament within 90 days of the staging of such event; (iii) audited financial statements of the Sports Commission within 60 days of completion of its audit, with such audit being completed within 180 days of the close of the Sports Commission's fiscal year and which financial statements shall include a schedule of the actual revenues and expenditures relating to the Tournament; (iv) the Sports Commission's IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS; (v) program reports that include at a minimum the number of room nights, average daily rate, attendance and economic impact generated by the Tournament. The Sports Commission will in addition provide a presentation to the Tourist Development Council approximately 90 days following the Tournament which will include financial and program summaries of its activities and the Tournament. The Sports Commission shall provide such additional presentations for the Tournament as may be requested by the Tourist Development Council or the County.
8. The Sports Commission will utilize accounting procedures and practices in the maintenance of the records of receipts and disbursements of the funds contributed by the County in the pursuit of the Tournament, and such procedures and practices will be in accordance with generally accepted accounting principles. All such records shall be open to inspection and auditing by the County or by the County's designee during normal business hours during the term hereof, and for a period of three (3) years after the term of the contract. Any cost incurred by the Sports Commission as a result of a County audit shall be the sole responsibility of and shall be borne by the Sports Commission. In addition, should the Sports Commission provide any or all of the County's funds to sub-recipients, then and in that event the Sports Commission 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 or the County's designee for the term of the contract and for a period of three (3) years after the term of the contract.
9. This Agreement can be terminated by either party at any time, with or without cause, upon no less than fifteen (15) days' notice in writing to the other party.

10. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein. No other agreement whether verbal or written, with regard to the subject matter hereof shall be deemed to exist.
11. Any notices required or allowed hereunder shall be in writing and given by certified mail, return receipt requested, or in person with proof of delivery to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:
- County: Orange County Administrator
201 S. Rosalind Avenue, 5th floor
Orlando, Florida 32801
- Sports Commission: Central Florida Sports Commission
400 West Church Street, Suite 205
Orlando, Florida 32801
- Convention Center: Orange County Convention Center
9800 International Drive
Orlando, Florida 32819-8199
Attention: Business Manager
12. The Sports Commission agrees to indemnify and save harmless the County from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, including attorneys' fees, and attorneys on appeal of any kind and nature arising or growing out of or in any way connected with the performance of this Agreement itself.
13. The Sports Commission may not assign its rights hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.
14. Continued performance by either party hereto, pursuant to the terms of this Agreement, after a default of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.
15. This Agreement shall be construed in accordance with the laws of the State of Florida. It is agreed by and between the parties that if any covenant, condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenants, conditions or provisions herein contained.
16. Any litigation occurring as a result of this Agreement shall be held in the courts of Orange County, Florida. This Agreement shall be governed by the laws of the

State of Florida.

17. The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.
18. This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

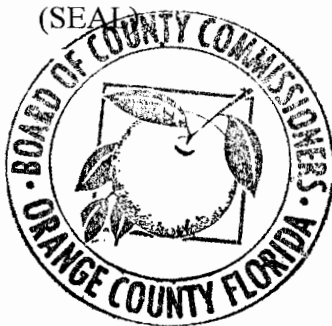
By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: 1.24.17

ATTEST:

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

By: *Katie Smith*
Deputy Clerk



SIGNATURE PAGE FOR

NCAA MEN'S BASKETBALL INCENTIVE AGREEMENT

CENTRAL FLORIDA SPORTS
COMMISSION, INC.

By: [Signature]
Its: CEO
Date: JAN 6, 2017

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY, that on this 6th day of January, 2017, before me personally appeared Jason Siegel, CEO of the Central Florida Sports Commission, Inc., to me known to be, or who has produced _____ as identification, and did (did not) take an oath, the individual and officer described in and who executed the foregoing conveyance and acknowledged the execution thereof to be his/her free act and deed as such officer thereunto duly authorized, and that the official seal of said corporation is duly affixed thereto, and the said conveyance is the act and deed of said corporation.

Witness my hand and official seal this 6th day of January, 2017.

(Notary Seal)

[Signature]
Notary Signature

