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Consent Agenda Item

MEMORANDUM

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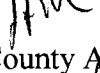
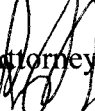
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TO: Mayor Teresa Jacobs
and
County Commissioners

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

DATE: July 17, 2017

RE: **Consent Agenda Item for Board Meeting on August 1, 2017**
Approval of Sixth Addendum to 2007 Tourism Promotion Agreement
between Orange County, Florida and Orlando/Orange County
Convention & Visitors Bureau, Inc.

I. EXPLANATION & SUMMARY:

Since 1983, the County has promoted tourism in Central Florida through a contract with the Orlando/Orange County Convention & Visitors Bureau, Inc., currently known as "Visit Orlando." Visit Orlando is a not-for-profit corporation organized for the purpose of advertising and marketing Central Florida and its convention facilities and is funded through the County's Tourist Development Plan and a portion of the Sixth Cent Tourist Development Tax (collectively, "TDT"). In 2007, the Board approved an updated tourism promotion agreement ("Agreement") which provided for greater reporting and accountability for the use of TDT funds than previous tourism promotion agreements. In 2009, the Agreement was amended to provide for additional accountability. Additional amendments added temporary funding and extended the term until September 30, 2017.

In contrast to previous long-term tourism promotion agreements, this addendum extends the Agreement for only one year, with provision for one additional one-year term. The Agreement continues the existing reporting and accountability requirements and adds the Sports Incentive Funding which the Board approved on November 1, 2016.

July 17, 2017

Re: Consent Agenda Item (August 1, 2017)

6th Addendum to 2007 Tourism Promotion Agreement

Page 2

The Agreement incorporates the Sports Bid Fund Framework guidelines that were provided in the Mayor's June 26 memo.

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

II. ACTION REQUESTED:

Approval and execution of Sixth Addendum to 2007 Tourism Promotion Agreement between Orange County, Florida and Orlando/Orange County Convention & Visitors Bureau, Inc.

Attachment

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

BCC Mtg. Date: Aug. 1, 2017

**SIXTH ADDENDUM
TO
2007 TOURISM PROMOTION AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
ORLANDO/ORANGE COUNTY CONVENTION
& VISITORS BUREAU, INC.**

This **SIXTH ADDENDUM TO 2007 TOURISM PROMOTION AGREEMENT** (this "Addendum") amends and modifies that certain "Orange County, Florida and Orlando/Orange County Convention & Visitors Bureau, Inc. 2007 Tourism Promotion Agreement," dated September 11, 2007, as amended on May 28, 2009, July 31, 2012 and October 22, 2013, February 10, 2015 and June 28, 2016 (collectively, the "Agreement") 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 Addendum will be effective as of the date of last execution below.

PREMISES:

- A. The County and Visit Orlando have heretofore entered into the Agreement in order to provide funding to enable Visit Orlando to promote and market tourism in Orange County; and
- B. On November 1, 2016, the Orange County Board of County Commissioners (the "Board") enacted Ordinance 2016-23 which authorized consolidated sports funding under the Tourist Development Plan for incentivizing sporting events in Orange County venues in an initial amount not to exceed five million dollars and up to two million dollars annually thereafter ("Sports Incentive Funds"); and
- C. The parties now wish to amend this Agreement to provide a process for approval of Sports Incentive Funding and to extend the term of the Agreement for an additional one year term through September 30, 2018.
- D. Pursuant to Section 4.4 of the Agreement, amendments thereto may be made by written instrument expressly approved by the Board and duly executed by both the County and Visit Orlando.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

Section 2. Premises Incorporated by Reference; Form of Amendments. The premises hereof are incorporated in this Addendum by reference as if they were made a part hereof.

Section 3. Amendment to Section 1. Orange County Obligations. Section 1 of the Agreement is hereby amended by the addition of paragraph 1.4

1.4 Sports Incentive Fund Payment. Within thirty days of the effective date of this Addendum, the County shall pay five million dollars (\$5,000,000) to Visit Orlando with such Sports Incentive Fund payment 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 and balances provided to the County Comptroller on a monthly basis. Such Sports Incentive Funds shall be expended solely for payments authorized pursuant to funding agreements which have been approved by the Board of County Commissioners pursuant to the guidelines set forth herein. Visit Orlando shall not charge, collect nor retain any compensation for its administration of Sports Incentive Funds. In the event the Agreement is terminated or expires, Visit Orlando shall, upon written request of the County, return all unexpended Sports Incentive Funds, together with related interest earnings thereon, to the County.

Section 4. Amendment to Section 2. Visit Orlando Obligations. Section 2 of the Agreement is hereby amended by the addition of the following subsection:

2.13 Sports Incentive Funds; Sports Incentive Committee; Guidelines:

- 2.13.1*** Visit Orlando shall develop applications and evaluate proposals for Sports Incentive Funds authorized by the November 1, 2016 amendment to the Tourist Development Plan (County Ordinance 2016-23) for consolidated sport funding pursuant to the guidelines set forth in this subsection. The County and Visit Orlando agree that 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. To that end, 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:

- Allowable expenses include:
 - Promotion, marketing, programming,
 - Paid advertising and media buys,

- 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.

2.13.3 Visit Orlando shall evaluate proposals and validate metrics for Sports Incentive Fund applications utilizing the professional expertise of its staff and provide staffing support for an advisory board established by the Board of County Commissioners (the “Sports Incentive Committee”) comprised of seven members, including:

1. A chairperson selected by the County Mayor;
2. A certified public accountant;
3. A citizen representative;
4. A representative of Central Florida theme parks;
5. A Visit Orlando representative;
6. A representative of the Central Florida Hotel and Lodging Association; and
7. A representative of the Board of the International Drive Chamber of Commerce.

The Sports Incentive Committee shall, with the professional assistance of Visit Orlando, review applications for Sports Incentive Funds and shall submit recommendations to the Board of County Commissioners for final determination on funding requests. Expenditure of Sports Incentive Funds

shall be made solely in amounts and pursuant to the terms and conditions set forth in written funding commitments or agreements approved by the Board of County Commissioners. Such funding agreements shall be between the County and the applicant entity and contain directions to Visit Orlando for disbursement of Sport Incentive Funds. Accountability for use of Sports Incentive Funds shall be achieved through audits by the County and/or the County Comptroller. Each funding agreement shall contain record-keeping, audit, inspection, event attendance and post-event reporting requirements. Such requirements shall be sufficient to enable Visit Orlando and the County to evaluate the success and performance of funded events and to enable the County and County Comptroller to perform audits to determine that Sports Incentive Fund expenditures were in compliance with eligibility guidelines, contract provisions and Florida law.

2.13.4 Notwithstanding the requirements set forth in paragraph 2.13.3, Visit Orlando is authorized to expend Sports Incentive Funds for the 2019 Major League Soccer All Star Game pursuant to the terms of a funding commitment with the CFSC if approved by the Board of County Commissioners.

Section 4. Extension of Contract Term. Notwithstanding the provisions of Section 3 with respect to the term of the Agreement, the Agreement shall remain in effect for an additional one year term commencing October 1, 2017 and ending September 30, 2018, and may be renewed by the parties for an additional one year term ending September 30, 2019.

Section 5. Agreement. All other terms, conditions and obligations of the County and Visit Orlando arising from the Agreement not hereby modified or amended shall remain unaltered and in full force and effect.

Section 6. No Waiver. Nothing contained in this Addendum, waives any covenant or other default or any event that would become a default with the passage of time or the giving of notice, under the Agreement.

Section 7. Severability. The provisions of this Addendum are declared by the parties to be severable. However, the material provisions of the Agreement, as amended hereby, are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Addendum. Therefore, should any material term, provision, covenant or condition of this Addendum or the Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or

condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from the litigation.

Section 8. Governing Law; Venue. This Addendum shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any action arising out of or related to this Addendum shall be in Orange County, Florida.

Section 9. Headings. The headings or captions of sections or paragraphs used in this Addendum 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 Addendum.

[Signatures Appear on Following Pages]

WHEREFORE, this Addendum is entered into as of the latest date and year of execution below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

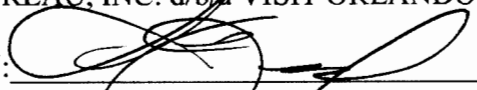
By: *Teresa Jacobs*
Teresa Jacobs
County Mayor

Date: 8.1.17

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

By: *Katie Smith*
Deputy Clerk

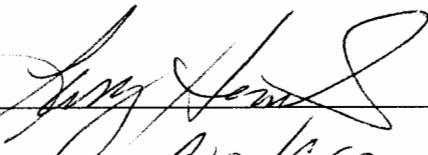
ORLANDO/ORANGE COUNTY
CONVENTION & VISITORS
BUREAU, INC. d/b/a VISIT ORLANDO

BY: 

NAME: GEORGE AGUILAR

TITLE: PRESIDENT/CEO

DATE: 7/17/2017

ATTEST: 
TITLE: COO/CFO

s:\lmchenry\tdt\visit orlando\2017sixthaddndm7172017.doc