



Interoffice Memorandum

TO: Mayor Jerry L. Demings
and
Board of County Commissioners

THROUGH: Jessie J. Allen, Interim Executive Director, Convention Center

FROM: Ray Walls, Acting Chief Financial Officer, Convention Center
(407) 685-5684

DATE: April 9, 2019

SUBJECT: Consent Agenda Item for April 23, 2019 BCC Meeting
Sports Incentive Committee Funding Request

On November 1, 2016, the Board authorized consolidated sports funding under the tourist development plan for incentivizing sporting events in Orange County venues. Subsequently, on August 1, 2017, the Board approved an addendum to the tourism promotion agreement between the County and Visit Orlando to provide for the professional assistance of Visit Orlando in evaluating sports incentive funding proposals and the deposit of sports incentive funds with Visit Orlando. On October 31, 2017, the Board adopted Resolution No. 2017-M-43, establishing the Tourist Development Tax Sports Incentive Committee ("Sports Incentive Committee") to serve in an advisory capacity to the Board with the professional assistance of Visit Orlando.

At its February 11 meeting, the Sports Incentive Committee recommended approval of two funding requests after hearing presentations from the Central Florida Sports Commission, Inc., currently doing business as the Greater Orlando Sports Commission ("GOSC"). Visit Orlando staff provided an evaluation of both proposals.

The first request is for up to \$50,000 over two events (up to \$25,000 per event) to pay allowable expenses associated with the May 16-25, 2019, and May 20-29, 2021, NCAA Men's & Women's Tennis Championships at the USTA National Campus in Orlando (the "Events"). The intended use of the funds is for allowable event losses associated with staging the Events and will only be payable after the staging of each Event.

The second request is for up to \$1,000,000 to pay certain costs associated with pursuit of selection of Orlando as a host city for the 2026 FIFA World Cup Soccer Games and will be separately considered by the Board on the discussion agenda.

If you have any questions, please contact me or Lila McHenry.

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ACTION REQUESTED: Approval and execution of Agreement between Orange County, Florida and Central Florida Sports Commission, Inc. 2019 & 2021 NCAA Men's & Women's Tennis Championships.

c: Byron W. Brooks, AICP, County Administrator
Randy Singh, Deputy County Administrator
Lila McHenry, Senior Assistant County Attorney
Fred Winterkamp, Manager, Fiscal and Business Services Division

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

2019 & 2021 NCAA MEN'S & WOMEN'S TENNIS CHAMPIONSHIPS

THIS AGREEMENT, made and entered into as of the date of last execution below, by and between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, ("County"), and the CENTRAL FLORIDA SPORTS COMMISSION, INC. a not-for-profit corporation organized and existing under the laws of the State of Florida currently doing business as the Greater Orlando Sports Commission ("GOSC").

WITNESSETH:

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, on November 1, 2016, the Orange County Board of County Commissioners ("Board") enacted Ordinance 2016-23 which authorized consolidated sports funding under the Tourist Development Plan for incentivizing sporting events in venues located in Orange County ("Sports Incentive Funds"); and

WHEREAS, on August 1, 2017, the Board approved that certain Sixth Addendum to the Tourism Promotion Agreement between the County and Visit Orlando which provided for the professional assistance of Visit Orlando in evaluating sports incentive funding proposals and provided for the deposit of such Sports Incentive Funds with Visit Orlando ("VO Agreement"); and

WHEREAS, on October 31, 2017, the Board adopted Resolution No. 2017-M-43 which established the Tourist Development Tax Sports Incentive Committee to serve in an advisory capacity to the Board with the professional assistance of Visit Orlando; and

WHEREAS, on February 11, 2019, the County's Tourist Development Tax Sports Incentive Committee recommended approval of twenty five thousand dollars (\$25,000) in Sports Incentive Funds to reimburse certain allowable expenses associated with the May 16-25, 2019 and May 20-29, 2021 NCAA Men's & Women's Tennis Championship at the USTA National Campus in Orlando ("Events"); and

WHEREAS, the Board now desires to approve an award of Sports Incentive Funds to GOSC for the purpose of paying certain allowable Event expenses in accordance with such terms and conditions set forth herein; and

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

1. **Authorized Sports Incentive Fund Payments.** Subject to the below terms and conditions, the County authorizes Visit Orlando to disburse two payments of up to twenty five thousand dollars (\$25,000) each to GOSC for a total aggregate amount not to exceed fifty thousand dollars (\$50,000) from available Sports Incentive Funds to reimburse GOSC for Allowable Expenses for the Events. "Allowable Expenses" are set forth on the attached Schedule "A." Non-allowable expenses include general and administrative expenses, capital costs including venue enhancements, equipment, debt, hospitality/social functions including food and beverages, banquets and admission tickets, travel, transportation and lodging. Sports Incentive Funds shall not be expended for non-allowable expenses.

Each request for payment shall be submitted to the County Administrator and Visit Orlando with a copy to the County Comptroller after the staging of the Event at the notice addresses set forth in Section 13 below. Payment in an amount not to exceed twenty five thousand dollars (\$25,000) per Event may only be authorized after GOSC shall have submitted a signed request for payment, together with:

- (i) evidence that the Event was staged at the USTA National Campus; and
- (ii) the items described in Section 7 (i) and (ii) hereof relating to the Event.

After review and approval of each such request, the County Administrator shall by written direction instruct Visit Orlando to make payment in an amount not to exceed \$25,000 within 10 days thereafter to reimburse GOSC for Allowable Expenses associated with each such Event. Only after receipt of such written direction, which may be delivered via email may Visit Orlando disburse such payments.

2. **GOSC.** GOSC covenants and agrees that it will promote and host such Event if the Orlando area is selected as the site of the Event. GOSC will promote the Orlando area through the staging of the Event and will utilize the funds provided for herein solely for Allowable Expenses, pertinent provisions of Florida Law regarding expenditure of Tourist Development Tax revenues and the County's Tourist Development Plan.

GOSC specifically acknowledges that Sports Incentive Funds shall not be expended for non-allowable expenses. Non-allowable expenses include general and administrative expenses, capital costs including venue enhancements, equipment, debt, hospitality/social functions including food and beverages,

banquets and admission tickets, travel, transportation and lodging. GOSC will submit requests for payment only for Allowable Expenses as set forth above with documentation of such Allowable Expenses sufficient to allow the County and the County Comptroller to verify such expenses to their sole satisfaction. GOSC shall for the year of the staging of the Event cause audited financial statements of GOSC to be prepared and shall timely submit such financial statements to the County and County Comptroller at the notice addresses below.

3. **Disbursement of Funds.** No payments shall be made if the Orlando area has not been selected as the location for the Event. In the event that the VO Agreement shall expire during the term of this Agreement, any Sports Incentive Funds awarded but not yet disbursed hereunder shall remain on deposit with Visit Orlando for disbursement for Allowable Expenses as set forth above for a period not to extend beyond the date that is six months after the date scheduled for the staging of the Event after which time any awarded but not disbursed Sports Incentive Funds shall revert to the general use and purpose of Sports Incentive Funds in general.
4. **Payment Contingency.** This Agreement and any payments provided for in this Agreement are contingent upon the availability of Sports Incentive Funds derived from the tax levied under Section 25-136 of the Orange County Code to make the payments hereunder. The County shall not cause Sports Incentive Funds to be unavailable as a result of dilution of the Sports Incentive Fund through funding other sports events.
5. **No Pledge of Tax Revenues.** 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. **Nondiscrimination.** GOSC hereby certifies that it will provide the activities and programs associated with attracting and promoting the Event 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. **Budget and Reporting Requirements.** As a condition of receiving funds pursuant to this Agreement, GOSC acknowledges and agrees to comply with its reporting obligations and to timely provide the following to the Comptroller and County Administrator, at their respective notice addresses listed in Section 13 hereof:
 - (i) a detailed line item revenue and expense budget for each Event in sufficient detail to demonstrate the need for Sports Incentive Funds;

- (ii) a detailed comparison of budget to actual revenues and expenses relating to each Event within 90 days after the staging of each Event which comparison shall be reported to the County and County Comptroller in a form capable of being audited;
- (iii) audited financial statements of GOSC for the fiscal year in which the Event is staged within 60 days of completion of its audit, and such audit shall be completed within 180 days of the close of GOSC's fiscal;
- (iv) GOSC's IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS; and
- (v) a program report within 90 days of the staging of the Event that includes at a minimum the number of room nights, average daily rate, attendance and economic impact generated by the Event and the source of that information.

At the County's or Tourist Development Council's or Sports Incentive Committee's request, GOSC shall provide a presentation to such boards, following the Event which will include financial and program summaries of its activities and the Event. GOSC shall provide such additional presentations regarding the Event as may be requested by the Sports Incentive Committee, Tourist Development Council or the County.

8. **Recordkeeping; Accounting; Audit.** GOSC will utilize accounting procedures and practices in the maintenance of the records of receipts and disbursements of the funds contributed by the County, through Visit Orlando, as well as all its receipts and disbursement of funds in connection with the pursuit of and hosting of the Event, and such procedures and practices shall be in accordance with generally accepted accounting principles. All such records shall be open to inspection and auditing by the County, the County's designee, or the County Comptroller during normal business hours during the term hereof, and for a period of five (5) years after the term of this Agreement. Any cost incurred by GOSC as a result of a County audit shall be the sole responsibility of and shall be borne by GOSC. In addition, should GOSC provide any or all of the County's funds to sub-recipients, then and in that event GOSC 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 five (5) years after the term of this contract. This provision shall survive termination of this Agreement.
9. **Public Records.** To the extent required by Florida law, GOSC shall keep and maintain public records consistent with the provisions of Chapter 119.0701, Florida Statutes.
10. **Defaults and Remedies.** The following events shall constitute an event of default under this Agreement: (a) if either party fails to comply with the terms contained in this Agreement and such failure is not corrected within the period of time allotted for cure in a written notice from the non-breaching party; or (b) if at any time any material representation is made by GOSC in any communication

submitted to the County in an effort to induce the expenditure of Sports Incentive Funds is determined by the County to be false, misleading, or incorrect in a material manner. Failure of either party to declare a default shall not constitute a waiver of any rights by the non-breaching party. Furthermore, the waiver of any default by the non-breaching 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-breaching party shall be free to terminate this Agreement; withhold all funding; demand repayment for amounts disbursed; and/or 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 the non-breaching party may have available to it.

In the event the County elects to terminate this Agreement in the event of a default, the County may require GOSC to remit all, or a portion, of any Sports Incentive Funds disbursed pursuant to this Agreement. The remittance amount, if any, shall be determined by the County, in its sole discretion, and shall be received by the County within ninety (90) calendar days from the date of such termination for default.

11. **Term; Termination.** This Agreement shall become effective upon execution by both parties hereto and shall continue for a period of one (1) year after the staging of the 2021 Event. This Agreement may be earlier terminated pursuant to Section 10 hereof entitled "Default and Remedies." Sections 7, 8 and 9 hereof shall survive termination.
12. **Entire Agreement.** 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.
13. **Notices.** Any notices required or allowed hereunder shall be: in writing and given by certified mail with return receipt requested, email or in person with proof of delivery to the addresses below, or at 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, 5 th Floor Orlando, Florida 32801 Email: Byron.Brooks@ocfl.net Email: Randy.Singh@ocfl.net
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GOSC:	Greater Orlando Sports Commission. 433 N. Mills Avenue
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Orlando, FL 32803
Attention: Jason Siegel
Email: jsiegel@greaterorlandosports.com

Visit Orlando: Visit Orlando
6277 Sea Harbor Drive #400
Orlando, Florida 32801
Attention: COO/CFO
Email: larry.hendrichs@visitorlando.com

Comptroller: Orange County Comptroller
Director of Finance & Accounting
201 S. Rosalind Avenue, 4th Floor
Orlando, Florida 32801
Email: phil.diamond@occompt.com
Email: eric.gassman@occompt.com

14. **Indemnification.** GOSC agrees to indemnify and save harmless the County and Visit Orlando 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. This provision shall survive termination of this Agreement.
15. **No Assignment.** GOSC 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.
16. **No waiver.** 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.
17. **Severability.** The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant or condition of this 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 holding.

18. **Governing Law; Venue.** 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.
19. **Headings.** 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.
20. **Counterparts.** This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.
21. **Third Party Beneficiary.** The parties acknowledge and agree that Visit Orlando is a third party beneficiary of this Agreement and as such shall have the right to rely upon, and to receive the rights and benefits provided in this Agreement but shall not otherwise be deemed to be a party hereto nor shall Visit Orlando have any obligation or liability hereunder and is and will at all times hereunder be acting solely at the direction of the County.

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



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
Jerry L. Demings
Orange County Mayor

ATTEST:

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

By: *Katie Smith*
Deputy Clerk

(SEAL)

CENTRAL FLORIDA SPORTS
COMMISSION, INC.

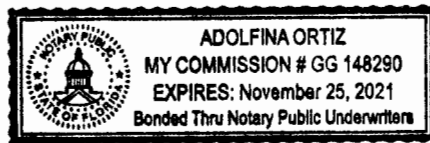
By: [Signature]
Its: [Signature]
Date: April 7, 2019

STATE OF FLORIDA
COUNTY OF ORANGE

I HEREBY CERTIFY, that on this 2nd day of April, 2019, before me personally appeared Jason Siegel, CEO of the GOSC of Central Florida, to me known to be, or who has produced N/A 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 2nd day of April, 2019.

(Notary Seal)



[Signature]
Notary Signature

**Schedule “A” to
Agreement
between
ORANGE COUNTY, FLORIDA
and
GREATER ORLANDO SPORTS COMMISSION**

- Allowable expenses include:
 - “Event losses” related to site fees, venue rentals, event staffing costs etc.; provided however that any grant for 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 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.