
AGREEMENT
between
VISIT ORLANDO
and
Orlando Sports Foundation

Cure Bowl 2020, 2021, and 2022

SPORTS INCENTIVE FUND AGREEMENT

THIS AGREEMENT is made and entered into as of the date of last execution by the parties below, by and between the Orlando/Orange County Convention & Visitors Bureau, Inc., a not-for-profit corporation organized under the laws of the State of Florida, (“Visit Orlando”), and Orlando Sports Foundation, a 501(c)(3) non-profit membership organization organized under the laws of the State of Florida (“Recipient”).

WITNESSETH:

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

WHEREAS, the Board has entered into an agreement between the County and Visit Orlando (the “Visit Orlando Agreement”) which provides for (a) the professional assistance of Visit Orlando in evaluating sports incentive funding proposals, the deposit of such Sports Incentive Funds with Visit Orlando, and disbursement of such funds by Visit Orlando to approved recipients; and (b) Visit Orlando to enter into agreements with recipients in order to carry out the recommendations of the Sports Incentive Committee after the approval of the Board; and

WHEREAS, the Committee has recommended, and the Board has approved an award of Sports Incentive Funds to Recipient for the event described in Item 1 of Exhibit A, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Visit Orlando and Recipient agree as follows:

1. **Event.** Recipient will acquire, host, book, obtain, or otherwise cause the event described in Item 1 of Exhibit A (“Event”) to be hosted in Orlando in a manner intended to promote and increase tourism within Orange County. Where applicable, and specifically when Recipient is not the Event owner/organizer, Recipient shall use best efforts to ensure that its agreement with the Event owner/organizer imposes obligations on the Event owner/organizer consistent with the obligations imposed on Recipient hereunder.
2. **Award and Payment Schedule.** Visit Orlando will disburse a portion of the Sports Incentive Funds (such portion, the “Funds”) to the Recipient in the amount, and within the time frame, as defined in Item 2 of Exhibit A.
3. **Disbursement of Funds.** No payments shall be made to the Recipient if the Orlando area has not been selected as the location for the Event. Funds shall be payable only after receipt, review and approval of the request for payment from Recipient, together with supporting documentation as defined in Item 3 of Exhibit A.

In the event that the Visit Orlando Agreement shall expire during the term of this Agreement, any Funds awarded but not yet disbursed hereunder shall, unless otherwise required by the County, remain on deposit with Visit Orlando for disbursement for a period not to extend beyond the date that is scheduled for the staging of the Event after which time any awarded but not disbursed Funds shall revert to the general use and purpose of Sports Incentive Funds in general.

4. **Use of Funds.** Recipient will utilize the Funds provided for herein solely as defined in Item 4 of Exhibit A, and in conformance with pertinent provisions of Florida Law regarding expenditure of Tourist Development Tax revenues, the County’s Tourist Development Plan, and as specified by the County in Resolution No. 2017-M-43. Allowed and non-allowed expenses are as follows:

o Allowable expenses include:

- o Bid fees and direct incentive payments
- o Promotion, marketing, programming
- o Paid advertising and media buys
- o In limited circumstances, expenses related to site fees, venue rentals, and staffing

costs, provided that Event expenses exceed Event revenues

o Non-allowable expenses include:

- o General and administrative expenses
- o Capital costs including venue enhancements, equipment etc.
- o Debt
- o Hospitality/social functions including food and beverages, banquets and admission tickets

o Travel, transportation, lodging and other local costs.

5. **Post Event Reporting.** Following the conclusion of the Event, Recipient shall provide Visit Orlando with a summary of the Event and the related expenditures of Funds as specified in Item 5 of Exhibit A.
6. **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 as provided to and held by Visit Orlando. Additionally, any payments provided for under this Agreement are further subject to the modification, suspension, termination, or expiration of the Visit Orlando Agreement.
7. **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 Visit Orlando or County revenue, or any real or personal property of Visit Orlando or 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.
8. **Nondiscrimination.** Recipient 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. As required by Section 17-290 of the Orange County Code, Recipient represents that it has adopted and shall maintain a policy of nondiscrimination throughout the term of this Agreement. Recipient further agrees that upon written request it shall permit access to all business records of employment, employment advertisement, application forms and other pertinent data and records by the County for purposes of investigations to ascertain compliance with the nondiscrimination provisions of this Agreement.
9. **No Revenue Sharing.** The parties hereby acknowledge that Recipient will not share in revenues derived from ticket sales, sponsorships, parking concessions, merchandising and food and beverage sales in connection with the Event unless specifically disclosed in the application submitted by Recipient to Visit Orlando.
10. **Public Records.** If Section 119.0701, Florida Statutes, is deemed to govern this Agreement, then Recipient shall comply with the following provisions.
 - a. Keep and maintain public records required by the County to perform the services performed under this Agreement.
 - b. Upon request from the County, provide the County with a copy of the requested records, or allow the records to be inspected or copied, within a reasonable time at a cost that does not exceed the amount set by the County.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not

disclosed, except as authorized by law, for the duration of this Agreement's term and following completion of this Agreement, if the Recipient does not transfer the records to the County.

- d. Upon completion or termination of this Agreement, transfer, at no cost to the County, all public records in possession of the Recipient to the County, or keep and maintain such public records required by the Recipient to perform the services, in accordance with Florida law.
- e. If the Recipient transfers all public records to the County upon completion of the Agreement, the Recipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Recipient keeps and maintains public records upon completion of this Agreement, the Recipient shall meet all applicable requirements for retaining public records, in accordance with applicable federal and Florida law.
- f. All records stored electronically shall be provided to the County, upon request from the County, in a format that is compatible with the information technology systems of the County.

IF RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS UNIT: PublicRecordUnit@ocfl.net, Office of Professional Standards, 450 E South Street, 3rd Floor, Orlando FL 32801. Phone (407) 836-5400.

- 11. **Public Reporting.** If so requested by Visit Orlando, the County, the Tourist Development Council, or the Sports Incentive Committee, Recipient shall conduct a presentation to such requestor following the Event which will include, but not be limited to, financial and program summaries of its activities and the Event.
- 12. **Recipient to Act as Independent Contractor.** Recipient shall perform its obligations hereunder as an independent contractor, not as an agent of Visit Orlando or the County. Recipient shall have no authority to obligate Visit Orlando or the County and shall not hold itself out or give any third-party reason to believe otherwise. Similarly Visit Orlando or the County shall have no authority to act or direct Recipient with respect to the Event and related activities. Any contracts for goods or services required in the course of Recipient's performance under this Agreement shall be entered into by Recipient for its own account. Recipient 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 Visit Orlando or the County nor any of its officers or employees shall (i) directly or indirectly perform or direct the performance of any services under this Agreement, (ii) manage, supervise, or assist or direct

the performance of any Recipient employee in the course of performing his or her employment duties for Recipient, (iii) be responsible for any failure of Recipient's employees to fulfill Recipient's obligations hereunder, or (iv) be required to report to Recipient any negligence, unsatisfactory performance, misfeasance, malfeasance, or nonfeasance of any of Recipient's employees, agents or contractors.

13. **Maintenance of Records.** During the term of this Agreement and for a period ending five years after the expiration or termination of this Agreement, Recipient shall maintain all records, books, accounts, and documents relating to this Agreement and the Event, including sufficient documentation evidencing the use of the Funds in accordance with the provisions of this Agreement (the "Documentation").
14. **Right to Audit and Inspect Accounts.** During the term of this Agreement and for 5 years after its expiration or termination, Recipient shall permit either or both (i) Visit Orlando or (ii) County staff and/or the Orange County Comptroller ("Comptroller") and its staff (or their designated agents) at any time during normal working hours, with at least one week advance notice, the limited right to inspect Recipient's Documentation and other records, books and accounts maintained for the Event or pertaining to the Event, to ensure compliance with the provisions of this Agreement. In the event an inspection determines the Documentation is not sufficient, the Recipient will be allowed 30 days to obtain the needed Documentation. After 30 days, if sufficient Documentation is not received, the Recipient may be required (at Visit Orlando's discretion) to promptly return to Visit Orlando the amount of any Funds spent without sufficient Documentation and such returned Funds shall be reverted to the general use and purpose of Sports Incentive Funds in general.
15. **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 greater of thirty (30) days or the period of time allotted for cure in a written notice from the non-breaching party; (b) if at any time any material representation or warranty is made by Recipient in any communication submitted to Visit Orlando in an effort to induce the expenditure of Sports Incentive Funds, and is determined by Visit Orlando, in its sole discretion, to be materially false, misleading, or incorrect; (c) if there is a material change in the Event, including a change in its timing, location, content, purpose, or target audience which diminishes the value of the Event for the Central Florida community as determined by Visit Orlando in its sole discretion; or (d) if Recipient engages in conduct that is unlawful, unethical, or otherwise harmful to the reputation of the Recipient or the Event and Visit Orlando reasonably determines that its association with the Recipient or the Event may cause Visit Orlando harm to its reputation.

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.

16. **Term; Termination.** This Agreement shall become effective upon execution by both parties hereto and shall continue for a period of one year after the staging of the Event. This Agreement may be earlier terminated pursuant to Section 14 hereof entitled "Default and Remedies." The Sections of this Agreement which by their nature should survive the termination or expiration of this Agreement, shall survive and be binding on the parties.
17. **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. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each party.
18. **Notices.** Any notices required or allowed hereunder shall be in writing and given by certified mail with return receipt requested, by email to the addresses below, 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 with Exhibit A.
19. **Indemnification.** The Recipient agrees to indemnify, defend, pay, insure and save harmless Visit Orlando and Orange County, Florida, from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and cost of actions, arising out of or in any way connected with the Event, Recipient's acts or omissions, or Recipient's performance of this Agreement.
20. **No Assignment.** Recipient may not assign its rights hereunder without the prior written consent of Visit Orlando. Failure to comply with this section may result in immediate termination of this Agreement.
21. **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.
22. **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.

23. **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.
24. **Attorney's Fees.** In any judicial proceeding arising out of this Agreement, the substantially prevailing party shall be entitled to recover its attorney fees and costs, including fees and costs incurred on appeal, from the non-substantially prevailing party.
25. **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.
26. **Counterparts.** This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.
27. **Force Majeure.** If the Event is cancelled due to an unforeseeable event beyond Recipient's control, without Recipient's fault or negligence, Recipient shall use its best efforts to re-schedule the Event on a mutually agreeable date. If re-scheduling is not possible, Recipient shall within 30 days of cancellation return all Funds received under this Agreement (except those used in good faith in accordance with this Agreement prior to cancellation) to Visit Orlando.
28. **Third Party Beneficiary.** The parties acknowledge and agree that the County 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 the County have any obligation or liability hereunder. Additionally, Visit Orlando maintains the right to release this Agreement to the County, which may elect to disclose or otherwise publish the terms of this Agreement at its discretion.

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

VISIT ORLANDO

By: Randy Singh
B8ACED6DA89588D46E07E5E3B6E02498 contractworks.

Its: CFO

Date: 12/17/2020

RECIPIENT

By: Alan Gooch
A7ECDB306A7FD624711D79AAC5E602E6 contractworks.

Its: CEO

Date: 12/16/2020

Exhibit “A” to Agreement
between
VISIT ORLANDO
and
RECIPIENT
Event – Cure Bowl 2020, 2021, and 2022

1. Description of Event – The Orlando Sports Foundation (OSF) hosts several events throughout the year including their signature event, the Cure Bowl. Played the third Saturday in December each year in Orlando, this NCAA football bowl game has been televised nationally on CBS Sports Network in the past. Moving forward, the Cure Bowl will be televised through ESPN. The game features selected teams from the American Athletic Conference and the Sun Belt Conference. Funds raised from the Cure Bowl have directly benefited the Breast Cancer Research Foundation. BCRF is the largest private funder of breast cancer research worldwide and the highest-rated breast cancer organization in the US (stated by Charity Watch and Charity Navigator). Since the bowl game’s inception in 2015, over \$3.77 million have been raised for breast cancer research. Almost \$1.2 million of those funds have gone to Dr. Annette Khaled, professor at the UCF College of Medicine’s Burnett School of Biomedical Science and head of the medical school’s cancer research division here in Orlando, Florida/Lake Nona Medical City.
2. Amount of Funds to be awarded and payment schedule –
 - a. Total amount awarded: \$412,500
 - b. Amount to be paid to Recipient as follows:
 - i. 2020 Event - \$137,500 on or before Saturday, December 26th.
 - ii. 2021 Event - \$137,500 on or before October 1, 2021
 - iii. 2022 Event - \$137,500 on or before October 1, 2022
3. Pre-disbursement requirements –
 - a. Prior to each year’s disbursement, Recipient will provide to Visit Orlando a request for funding including the following:
 - i. Confirmation that the Event described in Section 1 above will be hosted in Orange County.
 - ii. Confirmation that information provided to the Committee, on which they relied upon in granting this award, has not materially changed.
 - b. Subsequent payments for 2021 and 2022 Events will be made after Recipient provides:
 - i. Confirmation that information provided to the Committee, on which they relied upon in granting this award, has not materially changed.
 - ii. Summary of how prior payments were spent.
 - iii. Audited financial statements.
 - iv. Event expenditures to date.
 - v. Post-event reporting for any previous Events as detailed in Section 5 below.
4. Use of Funds restrictions–
 - a. Recipient shall only use Funds received as follows: to market the Cure Bowl.

- b. Visit Orlando may require the return of any Funds expended by Recipient not in compliance with this Agreement.
5. Post event reporting –
- a. Within 90 days of the completion of each Event, Recipient will provide to Visit Orlando:
 - i. Report covering a summary of the Event with key successes and challenges. This should include explanation of any changes in Event execution from the original plans and budget provided to the Committee or Visit Orlando.
 - ii. Detailed report of receipts and disbursements relating to the Event and comparison to budget.
 - iii. Room night pickup report, detailed by hotel.
 - iv. Calculation of economic impact, with detail on methodology, sorted by purchaser zip code.
 - v. Ticketmaster (or other service provider) report on tickets sold, sorted by purchasers' zip code.
 - b. Within 180 days from the fiscal year end of each Event, the Recipient will provide to Visit Orlando:
 - i. If Recipient is a not-for-profit entity, copy of IRS Form 990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS.
 - ii. Audited financial statements.
6. Media plans –
- a. For the 2020 Event, recipient shall secure the following:
 - i. 3x :30 second TV units in a 2021 NCAA College Football game broadcast on ESPN with viewership similar to the 2020 Cure Bowl.
 - ii. 2x TV billboards with logo and :05 sec copy on ESPN during the 2020 Cure Bowl.
 - iii. 1x sponsored TV feature on ESPN (example – “Play of Game presented by...”) during the 2020 Cure Bowl.
 - b. For the 2021 and 2022 Events, a copy of the media plan shall be provided to Visit Orlando for its review and approval at least 30 days prior to funding.

7. Notices –

Visit Orlando

Attn: Keith Swider

6277 Sea Harbor Drive, Ste. 400

Orlando, FL 32821

Keith.swider@visitorlando.com

Cc: JulieAzar@visitorlando.com

Recipient

Attn: Alan Gooch

121 South Orange Ave. #1500

Orlando, FL 32801

AGooch@TheOSF.com