



**Interoffice Memorandum**

**APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS**

October 16, 2015

**NOV 09 2015 NP/BS**

To: Mayor Teresa Jacobs  
and  
Board of County Commissioners

From: Lex Veech, Guest and Community Relations Manager  
Orange County Convention Center (OCCC)  
(407) 685-5505

Subject: BCC Consent Agenda Item for November 3, 2015: Funding for Central Florida Sports Commission for the American Conference Men's Basketball Tournament

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**BACKGROUND:**

In October, 2013, the Board amended the Tourist Development Plan to allocate up to \$137,500 per event for attracting the staging of multi-day college conference athletic championships and ancillary events to facilities located in Orange County and expected to have attendance in excess of 40,000 people. The Central Florida Sports Commission has requested Tourist Development Tax funding associated with incentivizing the location of the 2016 American Athletic Conference Men's Basketball Tournament (the Tournament") in Orlando. At its October 9, 2015 meeting, the Tourist Development Council (TDC) recommended approval of funding in the amount of \$137,500 for the Tournament.

If you have any questions, please contact me at (407) 685-5505.

**ACTION REQUESTED:**

Approval of Agreement between Orange County, Florida and the Central Florida Sports Commission, Inc. relating to the 2016 American Men's Basketball Championship in the amount of \$137,500.

LV/lmh/jgg

Attachment

- c: Ajit Lalchandani, County Administrator
- Eric Gassman, Deputy County Administrator
- Jeffrey J. Newton, County Attorney
- Lila I. McHenry, Senior Assistant County Attorney
- Kathie Canning, Executive Director, OCCC
- Jan Addison, Deputy Director, OCCC
- Kristopher Shoemaker, CFO, OCCC

NOV 03 2015 NPL/ES

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

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**2016 AMERICAN MEN'S BASKETBALL CHAMPIONSHIP**

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THIS AGREEMENT, made and entered into this \_\_\_\_ day of November, 2015, 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 mitigate losses associated with incentivizing the location of the 2016 American Athletic Conference Men's Basketball Tournament 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 conference 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 2016 American Athletic Conference Men's basketball Tournament provided such games are to be located at the Amway Center in Orlando; and

**WHEREAS**, the County has determined that attracting collegiate athletic championships is 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. **TDT Appropriation.** 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) to mitigate any event loss directly relating to the staging of the 2016 American Athletic Conference Men’s Basketball Tournament (“Tournament”) in the Amway Arena 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. **Sports Commission.** The Sports Commission will promote and host such Tournament and has entered into a contract with the rights holder of the Tournament to guarantee gate revenue. The Sports Commission will promote the Orlando area through the staging of the Tournament and will utilize the funds provided for herein solely to offset the expenses associated with the Tournament as are consistent with this Agreement, pertinent provisions of Florida Law regarding expenditure of Tax revenues and the County’s Tourist Development Plan.
3. **County Disbursement of Funds.** Subject to budget appropriation in the fiscal year 2015-16 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 a budget and an invoice. Such invoice shall request payment only for expenses directly related with the Tournament identified in the budget described in Section 7 hereof which must be submitted simultaneously with such invoice. No payments shall be made if the Amway Arena has not been selected as the location for the Tournament. Payment for the Tournament may be made only during the 2015-16 fiscal year and is anticipated to be made in December, 2015, but only after receipt of: (i) the above-referenced invoice and (ii) the budget information required by Section 7(i) hereof.

4. **Payment Contingency.** 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. **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.** 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. **Budget and Reporting Requirements.** As a condition of receiving funds pursuant to this Agreement the Sports Commission acknowledges and agrees to comply with its reporting obligations and to timely provide the following to the Comptroller, unless otherwise specified below:
  - (i) a detailed line item revenue and expense budget of the Sports Commission for the Tournament, to be submitted simultaneously with the submission of the invoice to the County;
  - (ii) a comparison of budget to actual revenues and expenses relating to the Tournament within 90 days after the staging of the Tournament;
  - (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; and
  - (vi) at the County's or Tourist Development Council's request, a presentation to the Tourist Development Council or Board of County Commissioners, following the Tournament which will include financial and program summaries of its activities and the Tournament. The Sports Commission shall provide such additional

presentations regarding the Tournament as may be requested by the Tourist Development Council or the County.

8. **Recordkeeping and Accounting.** 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. **Defaults and Remedies.** The following events shall constitute an event of default under this Agreement: (a) if the Sport Commission 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 County; or (b) if at any time any material representation is made by the Sports Commission in any communication submitted to the County in an effort to induce the expenditure of Tax funds is determined by the County to be false, misleading, or incorrect in a material manner. Failure of the County to declare a default shall not constitute a waiver of any rights by the County. Furthermore, the waiver of any default by the County 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 County 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 County 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 the Sports Commission to remit all, or a portion, of any Tax 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.

10. **Termination.** 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.
11. **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.
12. **Notices.** 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, 5<sup>th</sup> Floor  
Orlando, Florida 32801

Sports Commission: Central Florida Sports Commission  
400 W. Church Street #205  
Orlando, Florida 32801

Convention Center: Orange County Convention Center  
9800 International Drive  
Orlando, Florida 32819-8199  
Attention: Business Manager

Comptroller: Orange County Comptroller  
Director of Finance & Accounting  
201 S. Rosalind Avenue, 4<sup>th</sup> Floor  
Orlando, Florida 32801

13. **Indemnification.** 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.
14. **No Assignment.** 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.
15. **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.

16. **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.
17. **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.
18. **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.
19. **Counterparts.** This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

**SIGNATURES ON FOLLOWING PAGES**

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

ATTEST:

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

By: *Kate Smith*  
Deputy Clerk

(SEAL)



**CENTRAL FLORIDA SPORTS COMMISSION, INC.**

By: *John A. Bisignano Jr*  
Its: President / CEO  
Date: 10/20/2015  
John A. Bisignano Jr

**STATE OF FLORIDA  
COUNTY OF ORANGE**

I HEREBY CERTIFY, that on this 22<sup>nd</sup> day of October, 2015, before me personally appeared John D. Bisignano, Jr, President/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 22<sup>nd</sup> day of October, 2015.

(Notary Seal)

*Roberta C. Scott*  
Notary Signature

