



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, *County Attorney*

SEE MINUTES
FOR MOTION

201 South Rosalind Avenue ■ 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
407-836-7320 ■ Fax 407-836-5888
<http://www.ocfl.net>

BCC Mtg. Date: Apr. 5, 2016

Consent Agenda Item

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Paralegals
Cathy Saravanja, CP
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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: March 21, 2016

RE: **Consent Agenda Item for Board Meeting on April 5, 2016**
Approval of Copa America Centenario 2016 Funding Assurance
Agreement between Orange County, Florida and Central Florida Sports
Commission, Inc.

I. EXPLANATION & SUMMARY:

The United States Soccer Federation recently secured the right to host Copa America Centenario soccer games among South, Central and North American teams, in the United States for the summer of 2016. Orlando was selected to host at least two games. On December 10, 2015, the Orange County Tourist Development Council approved a request by the Central Florida Sports Commission ("CFSC") for Tourist Development Tax funding to provide an assurance of funding for up to three Copa America Centenario 2016 soccer matches to be held in the Citrus Bowl in June, 2016 (collectively, the "Copa Games").

The proposed funding assurance agreement will offset operating deficits associated with the hosting of three Copa America Centenario 2016 soccer games in an amount not to exceed four hundred seventy five thousand dollars (\$475,000.00). The agreement requires detailed financial reporting and in the event that the actual financial loss associated with hosting the games is less than the amount of TDT Funds paid by the County then CFSC will be required to repay the County the difference.

This item should be pulled to be considered after the public hearing on the ordinance authorizing tourist development tax funding to offset operating deficits associated with the hosting of the Copa Games.

March 21, 2016
Re: Consent Agenda Item (April 5, 2016)
Copa America Centenario 2016 Funding Assurance Agreement
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II. ACTION REQUESTED: **Approval and execution of Orange County,
Florida and Central Florida Sports
Commission, Inc. COPA America Centenario
2016 Funding Assurance Agreement.**

Attachments (2 originals of the Agreement)

c: Ajit Lalchandani, County Administrator
Jeffrey J. Newton, County Attorney
Eric Gassman, Deputy County Administrator
Fred Winterkamp, Manager, Fiscal and Business Services Division

s:\lmchenry\ordres\TDT/SportsCommission/CopaAmerica/MemtpMayor&BCC_CopaAmericaCentenario2016AgmtConsentItem

**ORANGE COUNTY, FLORIDA
AND
CENTRAL FLORIDA SPORTS COMMISSION, INC.**

**COPA AMERICA CENTENARIO 2016
FUNDING ASSURANCE AGREEMENT**

The Agreement is entered into this 8th day of April, 2016, between Orange County, Florida, a charter county and a political subdivision of the State of Florida (the "County"), and Central Florida Sports Commission, Inc., a not-for-profit corporation organized and existing under the laws of the State of Florida (the "CFSC"), for the limited purposes set forth below.

P R E M I S E S:

- A. The purpose of the CFSC 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
- B. The County is a charter county and a political subdivision organized and existing under and by virtue of the Constitution and the statutes of the State of Florida and the Orange County Charter.
- C. The United State Soccer Federation has secured the right to host Copa America soccer games, among South, Central and North American teams, in the United States in June of 2016 and Orlando has been selected to host at least two games.
- D. On December 10, 2015, the Orange County Tourist Development Council approved a request by the Central Florida Sports Commission for Tourist Development Tax ("TDT" or "Tax") funding ("TDT Funds") to provide an assurance of funding for three Copa America Centenario 2016 soccer matches to be held in the Orlando Citrus Bowl (the "Citrus Bowl") in June, 2016 (collectively, the "Copa Games").
- E. On April 5, 2016, the Orange County Board of County Commissioners approved an ordinance authorizing tourist development tax funding to offset operating deficits associated with the hosting of three Copa America Centenario 2016 soccer games in an amount not to exceed four hundred seventy five thousand dollars (\$475,000.00).
- F. Such tourist development tax funding is subject to the limitations set forth in this

Agreement.

G. The parties desire to enter into this Agreement to set forth the current understanding between the parties in relation to funding for the Copa Games and the respective duties of the parties hereunder.

ACCORDINGLY, in consideration of the mutual covenants and conditions contained herein, the County and the CFSC agree as follows:

Section 1. CFSC Obligations.

1.1 ***Copa America Centenario Promotion.*** CFSC shall stage and host at least two Copa America Centenario 2016 soccer matches in a manner that promotes and increases tourism within Orange County, Florida. CFSC shall use its best efforts to advertise, promote and market the Copa Games in order to maximize receipt of grants, the sale of tickets and maximize the number of attendees for each Copa match to be held in the Citrus Bowl. CFSC agrees to make its best efforts to sell tickets to each Copa Game, to maximize local event profitability and to incur only reasonable expenses. CFSC shall show Orange County as one of the sponsors of the Copa Games in programs and promotional media, web pages and other promotional materials for the Copa Games that are within CFSC's control and shall display such sponsorship with prominence commensurate with the level of County financial contribution. CFSC specifically agrees that Orange County's agreement to backstop operating deficits associated with the Copa Games shall not relieve CFSC of the obligation to make its best efforts to sell tickets to the Copa Games up to and including the date of each Copa Game, maximize revenues, minimize expenses and avoid financial losses associated with hosting such games.

1.2 ***CFSC Pre-Copa Games Request for Payment.*** On or before May 1, 2016, CFSC shall provide a written request for payment accompanied by the following:

- (i) a detailed line item budget identifying revenues and expenses directly associated with the Copa Games at the Citrus Bowl; and
- (ii) a business plan reflecting all planned actions by CFSC to make every effort to break even in the hosting of the Copa Games.

Such budget must establish the need for the amount requested and such amount shall not exceed four hundred seventy five thousand dollars (\$475,000.00). The request and budget shall include only those expenses to be incurred by CFSC for its activities within Orange County, Florida. The CFSC shall not request the County to, nor use TDT Funds to, offset expenses for activities or Copa Games to be located at venues located outside Orange County, Florida. Such budget shall be similar in form to the budget attached hereto as **Exhibit A**.

1.3 ***Post-Copa Games Reporting and Repayment Obligation.*** CFSC agrees that it shall, no later than thirty days after the staging of the Copa Games, and as a condition of the County's willingness to enter into this Agreement, deliver to the County, an affidavit signed by both the Chairman and the Executive Director of CFSC, certifying the following:

willingness to enter into this Agreement, deliver to the County, an affidavit signed by both the Chairman and the Executive Director of CFSC, certifying the following:

- (i) A statement of revenue and expenses for the Copa Games at the Citrus Bowl in substantially the same format as **Exhibit A**;
- (ii) Such statement shall include all revenue derived by CFSC from the Copa Games including sponsorships, parking, concession, merchandise and other revenue sources;
- (iii) The amount and nature of all in-kind contributions;
- (iv) The amount of actual expenses incurred by the CFSC directly related to the Copa Games. Such expenses shall not include any costs relating to venues located outside Orange County;
- (v) The actual amount of financial gain or loss incurred by CFSC directly related to hosting the Copa Games at the Citrus Bowl;
- (vi) The number of tickets available for sale for each match, the number of tickets actually sold for each match;
- (vii) The amount of revenue from such ticket sales; and
- (viii) The number of complimentary tickets distributed.

With respect to items (vii) and (viii) above, CFSC agrees in good faith to make its best efforts to obtain and report such information. In the event that the actual financial loss (excluding the County's contribution of TDT Funds) described in the above affidavit is less than the amount of TDT Funds paid by the County pursuant to this Agreement then CFSC shall repay the County the difference between the amount paid by the County and the amount of such loss. In no event shall such repayment amount exceed the amount of TDT Funds actually paid by the County and in no event shall any other Copa Game sponsor be repaid its contribution prior to repayment to the County.

1.4 ***CFSC to Act as Independent Contractors.*** The parties hereby acknowledge that CFSC is performing its services for the benefit of the Central Florida community. As such, CFSC shall perform its services as an independent contractor, not as an agent of the County. CFSC shall have no authority to obligate the County and shall not hold itself out or give any third party reason to believe otherwise. Any contracts for goods or services required in the course of CFSC's performance under this Agreement shall be entered into by CFSC for its own account, not the County's. CFSC 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 the County nor any of its officers or employees shall (i) directly or indirectly perform any CFSC services under this Agreement, (ii) manage, supervise, or materially assist any CFSC employee in the course of performing his or her employment duties for CFSC, (iii) be responsible either to CFSC or to the County for any failure of the CFSC's employees to fulfill CFSC's obligations hereunder, or (iv) be required to report to CFSC any negligence, unsatisfactory performance, misfeasance, malfeasance, or nonfeasance of any of CFSC's employees, agents or contractors.

1.5 ***Nondiscrimination.*** CFSC, in performing under this Agreement, shall not

discriminate against any worker, employee or applicant or any member of the public because of age, race, color, religion, national origin, disability, marital status, sex or sexual orientation nor otherwise commit an unfair employment practice on such basis.

1.6 ***Right to Audit and Inspect Accounts.*** During the term of this Agreement CFSC shall permit County staff and the Orange County Comptroller and her staff at any time during normal working hours to inspect CFSC's records, books and accounts for the Copa Games, all as may be necessary in good faith to ensure proper compliance by the parties with the provisions of this Agreement provided that at least 24 hour notice is given to CFSC prior to any such inspection. The foregoing shall be in addition to any other rights the Comptroller and her staff may have in this Agreement or any other agreement with respect to the inspection of CFSC's books and accounts.

1.7 ***Maintenance of Records.*** For a period ending five years after the expiration or termination of this Agreement, CFSC shall make all records and documents relating to this Agreement available for inspection by the County or any agent designated by the County and the Orange County Comptroller, and during such period the County may copy such records and documents as necessary to support its audit and the conclusions therefrom.

1.8 ***Additional Reporting.*** CFSC will provide to the County and the Comptroller : (i) comparison of budget to actual revenues and expenses relating to the Copa Games within 30 days of the staging of such Copa Games; (ii) audited financial statements of CFSC within 60 days of completion its audit, with such audit being completed within 180 days of the close of CFSC's fiscal year and which financial statements shall include a schedule of the actual revenues and expenditures relating to the Copa Games; (iii) CFSC's IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS; (iv) within 60 days after the Copa Games, a written program report that includes at a minimum the revenues and expenditures for the Copa Games, attendance for the Copa Games, TV ratings for the Copa Games (to the extent ratings information is available after good faith effort by CFSC to obtain such information) and the economic impact generated by the Copa Games , including the number of visitors, room nights and average daily rate generated by the Copa Games. The CFSC will in addition provide a presentation to the Tourist Development Council upon request following the Copa Games that will include financial and program summaries of its activities and the Copa Games.

Section 2. Orange County Obligations.

2.1 Subject to the conditions, limitations and exceptions set forth in this Agreement and the fulfillment by CFSC of its obligations hereunder, the County shall pay to CFSC up to a maximum amount of four hundred seventy five thousand dollars (\$475,000.00) in Fiscal Year 2015-2016. The actual final amount to be retained by CFSC may be adjusted so that it shall not exceed the actual financial loss, not considering the County's contribution of TDT Funds, incurred in connection with the staging of the Copa Games, as shall be verified in the signed affidavit provided for in section 1.3 hereof or as may be subsequently determined in a review by the County or Comptroller of CFSC records. The County's obligation to make such payment is conditioned upon:

(i) receipt by the County of the payment request from CFSC setting forth the information required by Section 1.2 of this Agreement, and (ii) CFSC's ongoing compliance with all requirements of this Agreement. Such payment shall be made within 30 days after receipt of the Request for Payment described in Section 1.2 of this Agreement.

2.2 The County is obligated to make funds available to CFSC up to the amounts set forth under subsection 2.1 only if and to the extent that sufficient revenues from the Tax are available, both legally and financially, for such payments in accordance with and after taking into account 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 of the Code, (iii) that certain Amended and Restated Indenture of Trust between the County and First Union National Bank of Florida, as trustee dated August 1, 1995, and as further amended and restated by a Second Amended and Restated Indenture of Trust dated as of July 15, 2000, as amended or supplemented from time to time, including the Second Supplemental Indenture of Trust to Second Amended and Restated Indenture of Trust, dated as of March 15, 2002 and the Fifth Supplemental Indenture of Trust dated as of May 1, 2005 between the County and Wachovia Bank, National Association, formerly known as First Union National Bank, successor by merger to First Union National Bank of Florida, as successor in interest to Southeast Bank, N.A, as Trustee and as such Indenture may be amended and supplemented from time to time in the future (collectively, the "Indenture"), 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 the Tax.

2.3 The County has no obligation whatsoever, express or implied, to make the payments under Subsection 2.1 from any source of revenues other than the Tax.

2.4 Nothing in this Agreement shall constitute or be deemed a pledge of or lien upon the Tax, any other source of County revenue, or any real or personal property of the County, or a waiver of or contract to exercise the County's sovereign governmental powers.

2.5 CFSC expressly acknowledges and agrees (i) that the County has issued and may issue from time to time in the future bonds, notes, and other obligations secured by a pledge of and payable from all or part of the revenues derived from the Tax, (ii) that the County from time to time in the future may enter into such terms, covenants, conditions, restrictions, limitations, obligations, duties, and other contractual provisions with the owners of such bonds, notes, or other obligations, as the County may see fit, in the County's sole discretion, (iii) that any such bonds, notes, or other obligations and any such contractual provisions issued or entered into by the County shall not constitute a breach of or default under this Agreement in any manner whatsoever, and (iv) that if and to the extent such bonds, notes, or other obligations and any such contractual provisions conflict with any part of this Agreement, such bonds, notes, or other obligations and any such contractual provisions shall prevail over this Agreement.

Section 3. Defaults and Remedies. The following events shall constitute an event of default under this Agreement: (a) if the CFSC 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 CFSC 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.

Section 4. Term. The term of this Agreement shall begin on April 5, 2016 and end on March 1, 2017. The County shall have the right to earlier terminate this Agreement by written notice of termination to CFSC at least 30 calendar days in advance of such termination if: (i) CFSC shall have failed to comply with any of its obligations herein; or (ii) the Board of County Commissioners shall have determined that insufficient TDT Funds will be available to fulfill the County's obligations hereunder.

Section 5. Miscellaneous.

5.1 **Entire Agreement.** This Agreement sets forth the entire understanding between the County and CFSC with respect to the subject matter of this Agreement.

5.2 **Conflict with Bond Covenants.** If at any time the County receives an opinion from nationally recognized bond counsel of the County's choice that any provision of this Agreement violates or is inconsistent or incompatible with either (i) any bond or other debt instrument issued or to be issued from time to time in the future by the County or (ii) any agreement or covenant entered into or to be entered into from time to time in the future by the County in connection with a bond or other debt instrument, the County may demand renegotiation of the offensive provision. If the parties fail or refuse to accomplish such renegotiations, the County at its option may declare either the offensive provision or this entire Agreement null and void. As of the date hereof, the County has

not been advised of, nor is it aware of any such inconsistency or incompatibility.

5.3 **CFSC Obligations as Conditions Precedent.** Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the obligations of CFSC hereunder shall be and are hereby deemed to be conditions precedent to the County=s obligation to pay any monies hereunder, and such obligations of CFSC shall not be deemed or construed as affirmative obligations beyond the scope of the funding hereunder.

5.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same agreement.

5.5 **Amendments and Waivers.** Notwithstanding anything to the contrary herein, this Agreement may be amended, and the material provisions hereof may be waived, only by a written instrument expressly approved by the County=s Board of County Commissioners and duly executed by the County and CFSC.

5.6 **No Third-Party Beneficiaries.** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any persons or entity other than the County and CFSC.

5.7 **Attorney=s Fees.** In any judicial proceeding arising out of this Agreement, each party shall bear its own attorney=s fees and costs, including fees and costs incurred on appeal.

5.8 **Notices.** Notices allowed or required under this Agreement shall be deemed received upon delivery by hand or overnight courier or by certified mail to the following:

County:	Orange County, Florida Orange County Administration Center 201 S. Rosalind Avenue Orlando, Florida 32801 Attn: County Administrator
Copy to:	Orange County Attorney's Office 201 S. Rosalind Avenue, 3 rd Floor Orlando, Florida 32801 Attn: County Attorney
Copy to:	Orange County Comptroller Orange County Administration Center ATTN: Finance and Accounting Division P.O. Box 38 Orlando, Florida 32802-0038

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

5.9 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

WHEREFORE, this Agreement is entered into as of the date and year first above written.



ORANGE COUNTY, FLORIDA
BY: Board of County Commissioners

BY: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

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

BY: *Martha O. Haynie*
Deputy Clerk

CENTRAL FLORIDA SPORTS COMMISSION,
INC.

BY: *Michael R. Stone*
Michael R. Stone
Interim President/CEO

ATTEST: *Chia D. Rowe*, CFSC
Chia D. Rowe

TITLE: Business Dev. Manager

Exhibit A:

COPA AMERICA CENTENARIO BUDGET

3 Matches

REVENUE by match	Match 1	Match 2	Match 3
Capacity per match	40,000	50,000	40,000
Gate	\$0	\$0	\$0
Concessions	\$240,000	\$300,000	\$240,000
Merchandise	\$6,000	\$7,500	\$6,000
Parking	\$30,000	\$30,000	\$30,000
TOTALS	\$276,000	\$337,500	\$276,000

EXPENSES by match			
Rent	\$50,000	\$50,000	\$50,000
Staffing	\$175,000	\$175,000	\$175,000
In-House Equipment	\$18,000	\$18,000	\$18,000
Utilities	\$25,000	\$25,000	\$25,000
In-Market Events	\$8,750	\$8,750	\$8,750
Transportation	\$22,000	\$22,000	\$22,000
Equipment	\$6,000	\$6,000	\$6,000
Volunteers	\$3,500	\$3,500	\$3,500
TOTALS	\$308,250	\$308,250	\$308,250

OVERALL REVENUE	
Match 1	\$276,000
Match 2	\$337,500
Match 3	\$276,000
GRANTS	
FSF	\$100,000
DDB	\$10,000
County	\$475,000
TOTAL REVENUE	\$1,474,500

OVERALL EXPENSE	
Match 1	\$308,250
Match 2	\$308,250
Match 3	\$308,250
Field Install	\$192,500
Sponsor Coverage	\$50,000
Insurance	\$25,000
Marketing	\$75,000
Misc.	\$22,000
Pre-Event Labor	\$30,000
Event Coordinator	\$15,000
Eco Impact Study	\$25,000
Training Sites	\$30,000
Staff Training	\$10,000
TOTAL EXPENSES	\$1,399,250

CONTINGENCY	\$69,963
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NET TO LOC	\$5,288
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