



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

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

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BCC Mtg. Date: Jun. 28, 2016

Consent Agenda Item

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: June 21, 2016

RE: **Consent Agenda Item for Board Meeting on June 28, 2016**
Approval of National Football League (NFL) Pro Bowl Agreement
between Orange County, Florida and Florida Citrus Sports Events, Inc.

I. EXPLANATION & SUMMARY:

On May 13, 2016, the Orange County Tourist Development Council approved a request by Florida Citrus Sports Events, Inc. ("FCSE") for Tourist Development Tax funding to provide National Football League ("NFL") incentive payments for the NFL Pro Bowl to be played in the Camping World Stadium in Orlando, Florida in the years 2017, 2018 and 2019 contingent on the award by the NFL of the Pro Bowl to Orlando, Florida. On June 1, 2016, the NFL announced that Orlando had secured the right to host the NFL Pro Bowl Game, in 2017, 2018 and 2019.

A public hearing on an ordinance amending the Tourist Development Plan to authorize TDT funding for incentive payments for the NFL Pro Bowl for the years 2017, 2018 and 2019 subject to the terms of the attached agreement with the FCSE is scheduled for the afternoon of June 28, 2016.

This agreement will be pulled from the consent agenda for consideration at the conclusion of the public hearing on the TDT Plan amendment ordinance.

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Re: Consent Agenda Item (June 28, 2016)
NFL Pro Bowl Agreement
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II. ACTION REQUESTED: **Approval and execution of Orange County,
Florida and Florida Citrus Sports Events, Inc.
National Football League (NFL) Pro Bowl
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

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**ORANGE COUNTY, FLORIDA
AND
FLORIDA CITRUS SPORTS EVENTS, INC.**

**NATIONAL FOOTBALL LEAGUE (NFL) PRO BOWL
AGREEMENT**

The Agreement is entered into as of the date of last execution below, between Orange County, Florida, a charter county and a political subdivision of the State of Florida (the "County"), and Florida Citrus Sports Events, Inc., a not-for-profit corporation organized and existing under the laws of the State of Florida (the "FCSE"), for the limited purposes set forth below.

P R E M I S E S:

- A. On May 13, 2016, the Orange County Tourist Development Council approved a request by the FCSE for Tourist Development Tax ("TDT" or "Tax") funding ("TDT Funds") to provide NFL incentive payments for the NFL Pro Bowl to be played in the Camping World Stadium in Orlando, Florida in the years 2017, 2018 and 2019 contingent on the award by the NFL of the Pro Bowl to Orlando, Florida.
- B. On June 1, 2016, the NFL announced that Orlando had secured the right to host the NFL Pro Bowl Game, in 2017, 2018 and 2019.
- C. On June 28, 2016, the Orange County Board of County Commissioners approved an ordinance authorizing TDT funding for incentive payments for the NFL Pro Bowl for the years 2017, 2018 and 2019 subject to the terms of this agreement with the FCSE.
- D. Such TDT funding is subject to the limitations set forth in this Agreement.
- E. The parties desire to enter into this Agreement to set forth the current understanding between the parties in relation to funding for the Pro Bowl Football Games ("Pro Bowl") and the respective duties of the parties hereunder.

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

Section 1. FCSE Obligations.

1.1 NFL Pro Bowl Promotion. FCSE shall host the Pro Bowl football games in a manner intended to promote and increase tourism within Orange County, Florida. FCSE shall advertise, promote and market the Pro Bowl in conjunction with the NFL and other funding and event partners including Visit Orlando, Visit Florida and Walt Disney World. To the extent possible, FCSE shall, subject to restrictions and limitations imposed by the NFL, endeavor to show the County as one of the sponsors of the Pro Bowl in programs and promotional media, web pages and other promotional materials for the Pro Bowl and shall display such sponsorship with prominence commensurate with the level of County financial contribution.

1.2 FCSE Pre-Pro Bowl Request for Payment. On or before October 1, 2016, and on or before October 1, in the years 2017 and 2018, respectively, FCSE shall provide a written request for payment of one million dollars (\$1,000,000) in TDT Funds which shall be paid by the County in two five hundred thousand dollar (\$500,000) installments which request shall contain a confirmation that the upcoming Pro Bowl is expected to be staged in the Camping World Stadium and that such payment shall be used solely for incentive payments to the NFL for the selection of the Camping World Stadium for the staging of such Pro Bowl.

1.3 FCSE Role and Post-Pro Bowl Reporting. The parties hereby acknowledge that FCSE is performing its services for the benefit of the Central Florida community, will incur expenses and allocate resources on behalf of this community project and will not share in revenues derived from ticket sales, sponsorships, parking concessions, merchandising and food and beverage sales in connection with the Pro Bowl game. FCSE agrees that it shall, no later than sixty (60) days after the staging of each Pro Bowl Game, and as a condition of the County's willingness to enter into this Agreement, deliver to the County, the following:

- (i) The number of tickets available for sale for such Pro Bowl and the number of tickets actually sold for such Pro Bowl;
- (ii) The estimated attendance for such Pro Bowl;
- (iii) The estimated TV ratings for such Pro Bowl; and
- (iv) The estimated economic impact of such Pro Bowl Game including the estimated number of visitors to Central Florida, room nights generated and average daily rate (it is acknowledged that a formal economic impact study shall not be required).

1.4 FCSE Board Presentation. The FCSE will in addition provide a presentation to the Tourist Development Council and Board of County Commissioners upon request following the Pro Bowl that will include the information contemplated in Section 1.3 above and program summaries of the Pro Bowl.

1.5 FCSE to Act as Independent Contractors. FCSE shall perform its obligations hereunder as an independent contractor, not as an agent of the County. FCSE shall have no authority to obligate the County and shall not hold itself out or give any third party reason to believe otherwise. Similarly the County shall have no authority to act or direct FCSE with respect to the Pro Bowl and related activities. Any contracts for goods or services required in the course of FCSE's performance under this Agreement shall be entered into by FCSE for its own

account, not the County's. FCSE 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 or direct the performance of any FCSE services under this Agreement, (ii) manage, supervise, or assist or direct the performance of any FCSE employee in the course of performing his or her employment duties for FCSE, (iii) be responsible either to FCSE or to the County for any failure of the FCSE's employees to fulfill FCSE's obligations hereunder, or (iv) be required to report to FCSE any negligence, unsatisfactory performance, misfeasance, malfeasance, or nonfeasance of any of FCSE's employees, agents or contractors.

1.6 Nondiscrimination. FCSE, in connection with and in the course of performing under this Agreement, shall not discriminate against any employee 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.

1.7 Right to Audit and Inspect Accounts. During the term of this Agreement, FCSE shall permit County staff and the Orange County Comptroller and her staff at any time during normal working hours the limited right to inspect FCSE's records and accounts specifically and directly maintained for the Pro Bowl (the "Pro Bowl Records"), insofar as they relate to this Agreement and only to the extent necessary in good faith to ensure proper compliance by the parties with the provisions of this Agreement provided that at least three (3) days advance notice is given to FCSE 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.

1.8 Maintenance of Records. For a period ending three (3) years after the expiration or termination of this Agreement, FCSE shall make all Pro Bowl Records relating to this Agreement available for inspection by the County or any agent designated by the County and the Orange County Comptroller.

1.9 Additional Reporting. FCSE will annually provide to the County and the Comptroller: (i) an examination report in accordance with American Institute of Certified Public Accountants attestation standards of the schedule of proceeds and disbursement of the NFL Pro Bowl processed by FCSE within 60 days of completion with such examination report being completed within 180 days of the close of FCSE's fiscal year; and (ii) FCSE's Public Disclosure Copy of IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS.

Section 2. County Obligations.

2.1 Subject to the conditions, limitations and exceptions set forth in this Agreement the County shall pay to FCSE one million dollars (\$1,000,000.00) solely from available TDT Funds in each of Fiscal Years 2016-2017, 2017-18 and 2018-19 payable in two installments in each such fiscal year in the amount of five hundred thousand dollars (\$500,000) on the November 1st preceding the date of such Pro Bowl and, subject to the staging of the NFL Pro Bowl having occurred at the Camping World Stadium, the ensuing February 15th. The County's obligation to make the November 1st payment in each such fiscal year is conditioned upon receipt by the County of the payment request from FCSE in Section 1.2 above. The County's

obligation to make the ensuing February 15th payment is conditioned upon the actual staging of the NFL Pro Bowl having occurred at the Camping World Stadium.

2.2 The County is obligated to make funds available to FCSE in 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 TDT, 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 FCSE 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 FCSE 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 County or (b) if the County 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 FCSE. A determination by the Board of County Commissioners that insufficient funds from the Tourist Development Tax above are available, consistent with Section 2 above, shall not constitute an event of default. Failure of the County or FCSE to declare a default shall not constitute a waiver of any rights by said party. Furthermore, the waiver of any default by either 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-defaulting party shall be free to 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 such party may have available to it.

Section 4. Term. The term of this Agreement shall begin on July 1, 2016 and end on July 1, 2019. The County shall have the right to earlier terminate this Agreement or any payment by written notice of such termination to FCSE party at least 90 calendar days in advance of such termination if: (i) FCSE shall have failed to comply with any of its obligations herein; or (ii) the Board of County Commissioners shall have determined, consistent with Section 2.2 of this Agreement, 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 FCSE 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 FCSE Obligations as Conditions Precedent. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the obligations of FCSE 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 FCSE 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 FCSE.

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 FCSE.

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, 3rd 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

FCSE Florida Citrus Sports Events, Inc.
One Citrus Bowl Place
Orlando, Florida 32805

Copy to: Richard J. Fildes, Esq.
Lowndes, Drosdick, Doster, Kantor &
Reed, P.A.
215 N. Eola Drive
Orlando, FL 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 of last execution below.

ORANGE COUNTY, FLORIDA

BY: Board of County Commissioners



BY: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

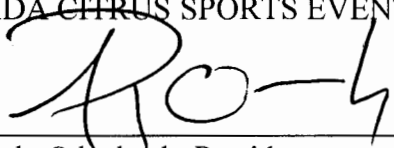
Date: 6.29.15

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

BY: *Martha O. Haynie*
Deputy Clerk

FLORIDA CITRUS SPORTS EVENTS, INC.

BY: _____


Andy Odenbach, President

Date: _____

6/23/16

ATTEST: Richard J. Fildes, General Counsel
to Florida Citrus Sports Events, Inc.



TITLE: G.C.