

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Central Florida Sports Commission Contract

DEPARTMENT: Tourism Development **DIVISION:** _____

AUTHORIZED BY: Suzan Bunn **CONTACT:** Suzan Bunn **EXT.** 2901

Agenda Date <u>02/28/06</u> Regular X Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute an agreement between Seminole County and Central Florida Sports Commission.

BACKGROUND:

Seminole County began its relationship with the Central Florida Sports Commission (CFSC) as its regional sports organization in 1994. The County paid CSFC \$82,500 in FY 99-00, \$86,625 in FY 00-01 and \$90,956 in FY 01-02. The County has paid CFSC \$95,500 annually from 2002 -2005. Three amendments are being requested for this new contract. First, the contract's timeframe will be adjusted from a calendar year to the County's fiscal year. Second, an increase in the amount of the contract from \$95,500 to \$105,050 for the first year with a 5% increase for the next two years has been requested. Finally, a new scope of services has been drafted. The scope of services, as well as monthly reports have been attached to this agenda memorandum for the Board's review.

At its February 14 meeting, the TDC's vote on this agenda item was a 3/3 tie, which negated the motion to approve this expenditure. Funds allotted for this contract in the Tourist Development Department's FY 05/06 budget are \$95,500. Therefore, if the higher amount is approved, monies will need to be transferred to fulfill this contract.

Reviewed by: Co Atty: _____ DFS: _____ Other: _____ DCM: <u>SS</u> CM: <u>[Signature]</u> File No. <u>RTD 33</u>

CENTRAL FLORIDA SPORTS COMMISSION, INC. AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called the "COUNTY" and **THE CENTRAL FLORIDA SPORTS COMMISSION, INC.**, duly authorized to conduct business in the State of Florida, whose address is 126 E. Lucerne Circle, Orlando, Florida 32801, hereinafter called the "COMMISSION".

W I T N E S S E T H

WHEREAS, the COUNTY desires to retain the services of the COMMISSION to furnish sports promotional services to Seminole County; and

WHEREAS, COMMISSION is competent and qualified to furnish sports promotional services to the COUNTY and desires to provide its professional services according to the terms and conditions stated herein,

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, COUNTY and COMMISSION agree as follows:

SECTION 1. SERVICES. COUNTY does hereby retain COMMISSION to furnish professional services and perform those tasks generally described as, but not limited to, assist in promoting sports activities in Seminole County and as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A".

SECTION 2. AUTHORIZATION FOR SERVICES. Authorization for performance of professional services by the COMMISSION under this Agreement shall be in the form of written notice to proceed issued and executed by the COUNTY.

SECTION 3. FIXED FEE COMPENSATION AND PAYMENT.

(a) The COUNTY agrees to compensate COMMISSION for the professional services called for under this Agreement a fee as follows:

(1) Year 1 (January 1, 2006-September 30, 2006), a fixed fee of SEVENTY-EIGHT THOUSAND SEVEN HUNDRED EIGHTY-SEVEN AND 50/100 DOLLARS (\$78,787.50), payable in two (2) payments (March and September) of THIRTY-NINE THOUSAND THREE HUNDRED NINETY-THREE AND 75/100 DOLLARS (\$39,393.75) each.

(2) Year 2 (October 1, 2006-September 30, 2007), a fixed fee of ONE HUNDRED TEN THOUSAND THREE HUNDRED TWO AND NO/100 DOLLARS (\$110,302.00), payable in two (2) semi-annual payments (March and September) of FIFTY-FIVE THOUSAND ONE HUNDRED FIFTY-ONE AND NO/100 DOLLARS (\$55,151.00) each.

(3) Year 3 (October 1, 2007-September 30, 2008), a fixed fee of ONE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$115,817.00), payable in two (2) semi-annual payments (March and September) of FIFTY-SEVEN THOUSAND NINE HUNDRED EIGHT AND 50/100 DOLLARS (\$57,908.50) each.

(b) The COMMISSION may, on an annual basis, apply to the COUNTY for additional fees based on the growth of hotel tax recovery due to events brought to the COUNTY by the COMMISSION.

(c) All professional services required by the Scope of Services shall be performed and, in no event, shall COMMISSION be paid more than the negotiated fixed fee stated above. For illustrative purposes and not for the purpose of limitation, professional services shall include: all staff time on projects, client meetings, staff travel time, staff office meetings and planning sessions; in-office teleconferences, attendance at trade conferences, meetings with suppliers, sports representatives and journalists, creative time, productivity

supervision, and all other professional services performed by COMMISSION in the interest of the project. Payment for part of any quarter shall be pro-rated.

SECTION 4. BILLING AND PAYMENT. COMMISSION shall render to COUNTY, twice each year, in February and in August, an itemized invoice properly dated and copies of the monthly reports for the previous six (6) months. The duplicate invoice shall be sent to:

Director of County Finance
Seminole County Board of County Commissioners
Post Office Box 8080
Sanford, Florida 32772-8080

An original copy of the invoice shall be sent to:

Tourism Development Director
1230 Douglas Avenue, Suite 116
Longwood, Florida 32779

SECTION 5. GENERAL TERMS OF PAYMENT AND BILLING.

(a) Upon satisfactory completion of work required hereunder and, upon acceptance of the work by COUNTY. COUNTY shall pay COMMISSION semiannually under the provisions as described in Section 3, above.

(b) COMMISSION shall perform or have performed an audit of the records of COMMISSION after final payment to support final payment hereunder. This audit shall be performed and be sent to the COUNTY no later than one hundred and eighty (180) days after the close of the COMMISSION fiscal year. Total compensation to COMMISSION may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to COMMISSION. Conduct of this audit shall not delay final payment as required by subsection (a) of this Section.

(c) The COMMISSION agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at

COMMISSION's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsection (b) of this Section.

(d) In the event any audit or inspection conducted after final payment, but within the period provided in subsection (c) of this Section reveals any overpayment by COUNTY under the terms of the Agreement, COMMISSION shall refund such overpayment to COUNTY within thirty (30) days of notice by the COUNTY.

SECTION 6. RESPONSIBILITY OF COMMISSION.

(a) COMMISSION shall be responsible for the professional quality, accuracy and the coordination of all projects, and other services furnished by COMMISSION under this Agreement. COMMISSION shall, without additional compensation, correct or revise any errors or deficiencies in his services.

(b) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the COMMISSION shall be and remain liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the COMMISSION'S performance of any of the services furnished under this Agreement.

SECTION 7. OWNERSHIP OF DOCUMENTS. All deliverable plans, reports and advertising materials that result from the COMMISSION'S services under this Agreement shall become the property of the COUNTY after final payment for the specific service provided is made to COMMISSION. No changes or revisions to the documents furnished by COMMISSION shall be made by COUNTY or its agents without the written approval of COMMISSION.

SECTION 8. TERM. This Agreement shall take effect on January 1, 2006, notwithstanding the date of its execution by the parties and should remain in effect until September 30, 2008.

SECTION 9. TERMINATION.

(a) The COUNTY may, by written notice to the COMMISSION, terminate this Agreement, in whole or in part, at any time, either for the COUNTY's convenience or because of the failure of the COMMISSION to fulfill COMMISSION's Agreement obligations. Upon receipt of such notice, the COMMISSION shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all data, reports, summaries, and such other information and materials as may have been accumulated by the COMMISSION in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the COMMISSION shall be paid compensation for services performed to the date of termination. COMMISSION shall be paid no more than a percentage of the fixed quarterly base fee amount equivalent to the percentage of the completion of work contemplated by the Agreement for the applicable month.

(c) If the termination is due to the failure of the COMMISSION to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the COMMISSION shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The COMMISSION shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the COMMISSION. Such causes may include, but are not

limited to, acts of God or of the public enemy, acts of the COUNTY in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without the fault or negligence of the COMMISSION.

(d) If, after notice of termination for failure to fulfill Agreement obligations, it is determined that the COMMISSION had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

SECTION 10. EQUAL OPPORTUNITY EMPLOYMENT. COMMISSION agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 11. NO CONTINGENT FEES. COMMISSION warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the COMMISSION, to solicit or secure this Agreement and that COMMISSION has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide

employee working solely for COMMISSION, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. CONFLICT OF INTEREST.

(a) The COMMISSION agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. See County Personnel Policy 4.10(F).

(b) The COMMISSION hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the COMMISSION to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, the COMMISSION hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

SECTION 13. ASSIGNMENT. This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith.

SECTION 14. SUBCONTRACTORS. In the event COMMISSION, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, COMMISSION must secure the prior written approval of the COUNTY.

SECTION 15. INDEMNIFICATION OF COUNTY.

(a) COMMISSION shall indemnify and save harmless and defend COUNTY, its officers, agents, and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of the performance of services under this Agreement by COMMISSION, its officers, agents or employees.

SECTION 16. INSURANCE.

(a) COMMISSION shall provide, pay for, and maintain in force at all times during the term of this Agreement, such insurance, including Worker's Compensation Insurance, General Liability Insurance, Property Damage Insurance and Professional Liability Insurance, as required by this Agreement.

(b) Policies other than Workers' Compensation shall be issued only by companies authorized by certificates of COMMISSION issued to the companies by the Department of Insurance of the State of Florida to conduct business in the State of Florida and which maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to the A.M. Best Company. All policies, except Professional Liability Insurance, required to be carried pursuant to this Section shall be occurrence policies which provide coverage for any and all claims based on action of the COMMISSION occurring during the policy period. The Professional Liability Insurance policy must either be on an occurrence basis, or, if on a claims-made basis, the coverage must respond to all claims reported within four (4) years following the

period for which coverage is required and which would have been covered had the coverage been on an occurrence basis. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by § 440.57, Florida Statutes.

(c) COMMISSION shall specifically protect COUNTY by naming COUNTY as a named insured under such policies. Such policies shall contain, as a minimum, the following provisions, coverages and policy limits of liability:

(1) Professional Liability Insurance. COMMISSION shall carry limits of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per claim.

(2) General Liability Insurance. COMMISSION shall carry limits of not less than THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) for injuries, including accidental or wrongful death to any one person, and, subject to the same limit for each person, in an amount not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) on account of any one occurrence.

(3) Property Damage Insurance. COMMISSION shall carry liability limits in an amount not less than THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) for property damage on account of any one claim and in an amount not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) for property damages on account of any one occurrence.

(d) Prior to the commencement of work hereunder, the COMMISSION shall furnish to the COUNTY a certificate of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the COUNTY in such insurance shall not be effective until thirty (30) days after written

notice thereof to the COUNTY. COUNTY reserves the right to require a certified copy of such policies upon request.

(e) The maintenance of the insurance coverage set forth herein shall not be construed to limit COMMISSION's liability under the provisions of the indemnification clause.

(f) The COMMISSION agrees to insert the substance of this clause, including this subsection (f) in all subcontracts hereunder.

SECTION 17. ALTERNATIVE DISPUTE RESOLUTION.

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) COMMISSION agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in the COUNTY protest procedures set forth in subsection (a) above of which the COMMISSION had knowledge and failed to present during the COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

SECTION 18. REPRESENTATIVE OF COUNTY AND COMMISSION.

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY, upon

request by COMMISSION, shall designate in writing and shall advise COMMISSION in writing of one (1) or more COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representative shall have the COMMISSION to transmit instructions, receive information and interpret and define the COUNTY's policy and decisions pertinent to the work covered by this Agreement.

(b) COMMISSION shall, at all times during the normal work week, designate or appoint one or more representatives of COMMISSION who are authorized to act on behalf of COMMISSION regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually advised of such designation.

SECTION 19. ALL PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are not commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

SECTION 20. MODIFICATIONS, AMENDMENTS OR ALTERATIONS. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

SECTION 21. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of copartners between the parties, or as constituting the COMMISSION including its officers,

employees, and agents, the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The COMMISSION is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

SECTION 22. EMPLOYEE STATUS. Persons employed by the COMMISSION in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the COUNTY's officers and employees either by operation of law or by the COUNTY.

SECTION 23. SERVICES NOT PROVIDED FOR. No claim for services furnished by the COMMISSION not specifically provided for herein shall be honored by the COUNTY.

SECTION 24. PUBLIC RECORDS LAW. COMMISSION acknowledges COUNTY's obligations under Chapter 119, Florida Statutes, to release public records to members of the public upon request. COMMISSION acknowledges that COUNTY is required to comply with Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

SECTION 25. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR SEMINOLE COUNTY:

Tourist Development Director
1230 Douglas Avenue, Suite 116
Longwood, Florida 32779

FOR COMMISSION:

Central Florida Sports Commission, Inc.
126 E. Lucerne Circle
Orlando, Florida 32801

SECTION 26. RIGHTS AT LAW RETAINED. The rights and remedies of the COUNTY, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

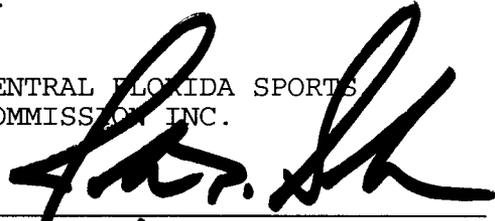
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:



(Corporate Seal)

CENTRAL FLORIDA SPORTS
COMMISSION INC.

By: 
JOHN SABOUR

Date: March 6, 2006

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

Approved as to form and
legal sufficiency.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

County Attorney
AC/lpk
1/12/06 1/31/06 3/3/06
central fl sports commission 2006

SCOPE OF SERVICES

1. Act as an authority and a clearinghouse for information related to sports events and conventions and relocation of sports related business.
2. Secure private funding, both corporate and individually, to support Seminole County sports events. The CFSC and the Seminole County Tourism Development Director shall annually establish written goals.
3. On an annual basis provide the County with an updated inventory of sports venues and facilities in Seminole County.
4. Prepare and submit bids to local, regional, state, national and international organizations to obtain a minimum of three (3) events per year for Seminole County.
5. Create one (1) signature event annually for Seminole County that generates tourist tax dollars.
6. Assist sports organizations who wish to hold events in Seminole County to obtain tourist development tax funding for promotion and advertising of the event.
7. Maintain memberships in local, regional, state and national organization to enhance Seminole County's presence in sports activities.
8. Provide counsel to Seminole County as necessary in its efforts related to upgrades and the construction of public sports venues and facilities.
9. Solicit regional, state, national and international sports-related businesses to relocate to Seminole County and assist such businesses in their relocation efforts.
10. Provide a written monthly report and an annual financial audit to the Seminole County Tourism Development Director reflecting the above activities.