



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Unfinished Business

I.1.

12/22/2020

Subject:

Board Direction, Re: USSSA contract including lodging room rental nights formula; aligning calendar dates for payments and expenses; and clarification on approval procedures for capital improvements and maintenance items. **(Super Majority vote required)**

Fiscal Impact:

Agreement requires payment from the Asset Renewal and Replacement (ARR) escrowed funds to USSSA for approved expenditures above the required minimum (\$250,000 per year)

Current Agreement, 100% Room Night Verification

Year	Capital Maint. Required	Total USSSA Expenses	USSSA owed to ARR Fund	Room Night Penalty	Total Payment To ARR Fund
2018/2019	\$250,000	\$203,836	\$46,164	\$54,417	\$100,581
2019/2020	\$250,000	\$438,696	(\$188,696)	\$52,523	<u>(\$136,173)</u> (\$35,592)

Proposed Agreement, Room Night Formula

Year	Capital Maint. Required	Total USSSA Expenses	USSSA owed to ARR Fund	Room Night Penalty	Total Payment To ARR Fund
2018/2019	\$250,000	\$203,836	\$46,164	\$0	\$ 46,164
2019/2020	\$250,000	\$438,696	(\$188,696)	\$0	<u>(\$188,696)</u> (\$142,532)

Under the proposed formula, USSSA's payment from the ARR Fund for years 2018/2019 and 2019/2020 would be \$142,532. Under the current agreement, USSSA's payment from the ARR Fund for years 2018/2019 and 2019/2020 would be \$35,592

Dept/Office:

Tourism Development Office.

Requested Action:

It is requested that the Board of County Commissioners review and provide direction on the 3rd amendment to the USSSA contract to consider the following:

1. Use of a formula to calculate lodging room rental nights ("room nights") to replace the current method of validating every reservation by contacting hotels and vacation rentals listed on housing forms
2. Adjustment of the dates that capital improvements and maintenance expenses are analyzed and the ARR (Asset Renewal and Replacement) Fund payment from the current dates to align with the April 1 - March 31 room nights analysis year.

3. Clarification of the approval process for capital improvements and maintenance expenditures and definition of qualifying expenses
4. Agree to retroactively apply the formula to the 2018/2019 room night year, but without a financial impact to the Tourism Development Tax (i.e., having to reimburse Real Estate Taxes for 2019)

Summary Explanation and Background:

On July 9, 2019, the Board of County Commissioners directed the Tourism Development Office Director and the County Attorney's Office to "meet with USSSA to formalize a better method of verifying room nights..." To that end, meetings were held over many months with numerous discussions about the best way to calculate a room night formula.

No exact industry standard was found to assist the development of a formula, but certain data points are used in different forms. It was found that 75 miles, or greater, is the typical distance used to assume that people would stay overnight in a destination (Florida Sports Foundation). Also, using data from the travel company that handles bookings for USSSA (Anthony Travel) it was found that an average of 2.2 people occupy a hotel room when staying for a USSSA event. Much discussion was held regarding how many of those people may be parents versus actual players. A decision was reached that .5 parents may occupy any given room on average - thus the average number of participants per room was determined to be 1.7. This number was somewhat supported by the Amateur Athletic Union (direct feedback from their management) that uses between 1.8 and 2.2 total people per room.

The goal was to use data that can be audited to develop a formula. The two best pieces of data are: (1) the final roster of participants (and where they are from) and (2) the number of days each event takes place - this data shall be reported to the Tourism Development Office staff quarterly. In terms of the number of event nights, this is a number that can be audited, but some participants may come early, some participants may leave early, and some participants may stay beyond the event. It was compromised that using the number of event nights starting the night before the event begins and ending the night before the event ends would be fair as there was give and take from both sides.

Therefore, the proposed formula is:

Number of event nights × (participants living > 75 miles away)

1.7

When applied to the April, 2019 - March, 2020 time period it would change USSSA's reported room nights from 59,243 to 82,452 which would put USSSA above the 75,000 room night requirement for the year and thus negate an additional assessment for capital repair and improvement expenses. Under this proposal, the formula may be retroactively applied to the 2018/2019 year, but the TDO will not incur any expense as a result, because USSSA has waived any right and entitlement to such reimbursements (i.e. have to reimburse a portion of real estate taxes for 2018, or 2019).

Currently the contract has different dates for different activities such as measuring room nights (April 1 - March 31), tracking expenses (January - December), and when the ARR payment is due (September). It is proposed that all dates coincide with the April - March reporting year of measuring room nights and the ARR payment would be due, to the County, by the end of March of each year.

It is further proposed that in order to have a clear procedure for submitting capital improvement and maintenance expenses, as well as a definition of what constitutes such, be added to the amendment. The procedure will be for USSSA to seek prior approval, from the TDO Director, on any capital improvement and maintenance item \$25,000 or greater (amounts from \$1 to \$24,999 do not have to be preapproved, but all amounts require an invoice and cancelled check to be validated). In addition, projects \$25,000 or greater will require bids from three (3) different companies. Those capital improvements and maintenance expenses are defined in the contract amendment. The ultimate determination as to whether an expense meets the criteria would be made by the TDO Director. All capital improvement and maintenance expenses have been and will be subject to audit.

The contract proposals were brought before the Tourist Development Council on August 26, 2020 and the TDC voted 7-0 to approve (with 1 abstention and 1 absence) the formula and updated timing.

Clerk to the Board Instructions:

Please send Board memo to Director, Tourism Development Office and County Attorney's Office.





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December 23, 2020

MEMORANDUM

TO: Peter Cranis, Tourism Development Office Director

RE: Item I.1. Board Direction for United States Specialty Sports Association, Inc. (USSSA) Contract, Including Lodging Room Rental Nights Formula; Aligning Calendar Dates for Payments and Expenses; and Clarification on Approval Procedures for Capital Improvements and Maintenance Items

The Board of County Commissioners, in regular session on December 22, 2020, reviewed and provided direction on the 3rd Amendment to the USSSA Contract as follows:

- Approved using a formula to calculate lodging room rental nights (room nights) replacing the current method of validating every reservation by contacting hotels and vacation rentals listed on housing forms.
- Approved adjustment of the dates that capital improvements and maintenance expenses are analyzed and the Asset Renewal and Replacement (ARR) Fund payment from the current dates to align with the April 1 – March 31 room night's analysis year.
- Clarified the approval process for capital improvements and maintenance expenditures and definition of qualifying expenses.
- Agreed to retroactively apply the formula to the 2018-2019 room night year, but with a financial impact to the Tourism Development Tax.

Enclosed is the executed Contract.

Upon execution by USSSA, please return the fully-executed Contract to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

cc: Contracts Administration
County Attorney
Finance
Budget

**THIRD AMENDMENT TO THE STADIUM COMPLEX LEASE BETWEEN BREVARD COUNTY,
FLORIDA AND USSSA, LLC DATED AUGUST 3, 2015, FIRST AMENDED ON MARCH 24, 2017 AND
THE SECOND AMENDMENT DATED NOVEMBER 20, 2018**

WHEREAS, the parties recognize the Stadium Complex Lease as amended contains room rental night obligations for the Tenant, and

WHEREAS, the Tenant has been holding events as anticipated and room rentals have occurred based on information provided by the Tenant and verified by the Landlord, and

WHEREAS, the information and procedure required in Schedule 1 of Exhibit D of the Amendment to the August 3, 2015 Stadium Lease (first Amendment) was the same information contained in Schedule 1 of Exhibit D of the original Stadium Complex Lease (Schedule 1), and

WHEREAS, the Tenant has been unable to provide all the detailed information and documentation required by Schedule 1, yet has provided additional information regarding participant attendance and length of events indicating room rentals may have occurred but were not captured by the procedure required by Schedule 1, and

WHEREAS, during the same period, Landlord has been unable to verify all of the rooms submitted despite best efforts, and

WHEREAS, the Schedule 1 procedure as written is extremely time consuming for both parties, and

WHEREAS, the Board of County Commissioners directed staff to consider revisions to the agreement to address the issues described, and

WHEREAS, the parties have examined all the available information and procedures previously used and agreed upon a new procedure, or formula, for documenting the room rental night requirements as appropriate and does not alter the obligation of the Tenant to provide room rental nights, and

WHEREAS, for purposes of clarity and consistency expense calculations and due dates for deposits the parties wish to use the same year period as the room night guaranty, specifically April 1- March 31st each year, and

WHEREAS, the parties recognize the Tenant has made capital improvement and maintenance investments in the leased properties in excess of the required amount of \$250,000 per year, and

WHEREAS, depending on the room night counts, the required amount of capital improvement and maintenance expense obligation to the Tenant could increase, creating a "penalty" to the Tenant for failing to meet room night rental guarantees; in addition, if the room night guaranty is met the Lease provides an incentive to Tenant by the payment of real estate taxes by the Landlord, and

WHEREAS, due to the failure of the room night calculation schedule and verification procedure there are two different approaches to calculating the capital maintenance and repair obligations; specifically, with a penalty or without a penalty for the failure to meet the room night guaranty for the combined years of 2018, 2019 and January through March 31, 2020, and

WHEREAS, Tenant has agreed to waive any claim to payment for taxes for the tax years of 2018 and 2019, but requests payment for actual and eligible claims for capital improvement and maintenance expenses in excess of the base amount for 2018 and 2019 and the first quarter of 2020, provided application of the new formula shows the room night guaranty was met for the aforementioned years.

NOW, THEREFORE, for value received and in consideration of the covenants and terms that follow as well as those contained in the original Stadium Complex Lease as amended, the Landlord and Tenant agree as follows:

Section 1. Schedule 1 of Exhibit D to the Stadium Complex Lease is hereby amended to read as follows:

Schedule 1

Room Night Accountability and Verification Procedure for USSSA (TENANT):

TENANT will provide to the LANDLORD, through its Brevard County Tourism Development Office (TDO) the data and information required to present a calculation of the formula for lodging room rental nights using the formula provided herein. Room rental nights shall be calculated based on the number of participants (number of players, coaches, umpires, scouts and officials in attendance who reside more than 75 miles away from Space Coast Stadium Complex) and the number of event nights. Tenant shall provide to Landlord, in electronic form

a list of all participants in USSSA events at the Space Coast Stadium Complex who live more than 75 miles away from the Space Coast Stadium Complex. Participant information must include:

- the name of the participant/player/coach/umpire/scout/official
- the city where the participant/player/coach/umpire/ scout or officials' team is located or, if there is no team, the city where the player or participant lives
- Email and phone number of the team coach, or if there is no team, the participant, or for minor participants or players without teams or coaches, the email and phone number of the parent or guardian
- the team affiliation of the participant or player
- number of event nights.

The TDO will be responsible for verifying the validity of claimed room nights by checking a sample of up to 10%. In the event the sample tested cannot be verified, the formula calculated room nights will be reduced by the percentage of the sample which could not be verified.

An event night will be defined as a night during the event when a participant lives 75 miles away or more. (Example: a two-day event equals two event nights; a one-day event equals one event night.) However, each participant is not anticipated to produce a full room night, and the formula provided below shall be applied. To qualify as an event producing room nights, the event must be scheduled to exceed more than 4 hours in a single day.

Event nights shall be calculated based on a formula using event participants (players, coaches, umpires, scouts and officials in attendance) who live more than 75 miles from the Stadium Facility for events divided by 1.7. (It is assumed there will be 1.7 participants per hotel room). The calculation shall be as follows:

$$\frac{\text{Number of event nights} \times \text{participants living} > 75 \text{ miles away}}{1.7}$$

TENANT must provide to the TDO a room night report each quarter which compiles a total of all room nights per event held in the quarter, a list of all participants (and the information required above) living 75 miles or more away from the Space Coast Stadium Complex, plus a running total of room nights generated year-to-date. The TDO will be responsible for verifying participant and event night information provided per the formula in each quarterly report. Event nights shall be counted as the nights when participants are actively participating in the event. Quarterly reports shall be due July 31st for the April to June quarter; October 31st for the July to September quarter; January 31st for the October to December quarter and April 30th for the January to March quarter.

An annual lodging room night report will be submitted by TENANT the 30th of April each year which will summarize lodging room nights generated by USSSA events, sub-totaled by quarter. The Landlord will be responsible for verifying the annual report, identifying discrepancies, reducing claimed room nights that cannot be verified and preparing a final review by Landlord.

As the Lease Term progresses, if additional information is reasonably required to assist the Landlord in obtaining an accurate count of room nights generated by the TENANT, at the LANDLORD's request, that information shall be made available by the TENANT.

Section 2. All dates for payments of deposits in Section 7.3.1 and 7.3.2 of the Stadium Complex Lease dated August 3, 2015, shall be April 1st of each year of the lease term. All such deposits have been made as required through 2020. The ARR fund deposits for 2021 will be due on April 1, 2021 pursuant to this amendment.

Calculations of costs of capital improvement and maintenance to prepare claims for use of the ARR Fund contained in Article 7 of the Stadium Complex Lease dated August 3, 2015 as amended, shall be made using the April 1, to March 31st time frame.

The parties acknowledge that, pursuant to Exhibit D of the Lease as amended, Tenant is required to expend the base amount of \$250,000 on capital improvements and maintenance. (This expenditure of \$250,000 is separate from and in addition to, the payment of \$250,000 into the ARR fund annually) . In addition, if the room night guarantee is not met additional capital expenditures are mandated by the Tenant, stated differently, a penalty is imposed for the failure to meet the room night guarantee. From January 1, 2018 to March 31, 2020, Tenant has provided documentation of expenditures of \$642,532.00 on capital improvements and capital maintenance. To date these expenditures have not been audited. If all expenditures are eligible for reimbursement per the auditors, and it is assumed the Tenant met the room night guarantees, Tenant would be eligible for reimbursement of \$142,532.00 from the ARR fund. The parties agree the new formula shall be applied retroactively, and all documentation for room nights and costs shall be audited and thereafter the Tenant shall be eligible for a reimbursement of excess capital improvement and maintenance expenditures as provided in the lease as amended for the period of January 1, 2018 to March 31, 2020.

Section 3. Except for payments from the ARR fund provided in the lease, nothing in this amendment shall result in a payment from Landlord to Tenant for the lease years from 2015 through the end of 2019; except, however, the tax reimbursement provisions of Exhibit D of the Stadium Complex Lease dated August 3, 2015 and the Amendment to Stadium Facility Lease dated March 24, 2017 and the Second Amendment to the Stadium Complex Lease shall allow reimbursement for the 2020 tax year if the room night guaranty contained in paragraph 5 is met by Tenant from the period of April 1, 2019 to March 31, 2020. Henceforth, the tax

reimbursement guaranty analysis shall run from April to March and be applied to the taxes for the calendar year associated with the fourth quarter of room night guaranties.

Section 4. Pursuant to Article 6 of the Stadium Complex Lease, the Tenant is obligated to perform maintenance and non-capital repairs. Capital improvements and capital maintenance may be reimbursed to Tenant using the ARR fund. Capital improvement and maintenance projects costing up to \$24,999.00 do not require preapproval by Landlord; however, an invoice and a cancelled check shall be provided to Landlord to document those expenses. To avoid confusion and disputes the following procedures shall be followed and Article 7.2(a) and (b) of the Stadium Complex lease shall be amended to read as follows:

~~(a) exceeds \$250,000 and are agreed upon by Landlord and Tenant, or
(b) are less than \$250,000.~~

1. The Tourist Development Office Director or County Manager has approved a capital improvement and maintenance item that is \$25,000 or greater. Items over \$25,000 shall obtain bids from three different companies and copies of the bids provided to Landlord.
2. The work identified as the type of repair deemed to be capital maintenance items are as follows: major repairs to elevators, scoreboards, plumbing, electrical, air conditioning, or other such systems; painting of entire buildings or major sections of the stadium; major repair of sections of the astro turf fields; repair to other parts of the fields such as netting and field walls; other major repairs to buildings including replacing doors, windows, alarm systems, etc.; repaving parking lots; repair/replacement of lighting structures, poles, etc. (not light bulb replacement) and major batting cage repairs and upgrades.
3. If not listed in subsection (2) above, all capital maintenance and improvement items will be subject to review and approval by the Landlord; expenses not approved by the Landlord as eligible expenses shall not be subject to reimbursement unless the repair is less than \$25,000.00 and clearly falls into the one of the capital improvement or maintenance categories listed above in subsection (2).
4. The parties recognize Tenant may hire a contractor or entity (maintenance contractor) to perform routine maintenance duties on a flat rate basis. However, the maintenance contractor may conduct some repairs which are capital repairs as defined by this agreement. Such repairs must meet and follow the requirements set forth above but shall not be denied as capital repairs by the County merely because the work was done by the maintenance contractor.
5. In the event Tenant rents equipment to conduct capital repairs the rental expense may be included as an eligible expense under this agreement so long as the cost of the rental is prorated or adjusted to reflect only the rental cost for the time the equipment was used for approved or authorized capital improvements.

Section 5. All terms and conditions of the 2015 Stadium Complex Lease and Amendment to the August 3, 2015 Stadium Complex Lease dated March 24, 2017 and the Second Amendment to

the Space Coast Stadium Complex Lease shall remain in full force and effect and are hereby ratified except as provided in this amendment which is the third amendment to the 2015 Stadium Complex Lease Agreement. In the event of a conflict between the original lease, the 2017 amendment, the 2018 amendment and this amendment, this third amendment shall prevail.

WHEREFORE, the parties have set their hands and seals this 22 day of Dec . , 2020.

USSSA, LLC

BREVARD COUNTY, FLORIDA

By: CEO of United States



By: Rita Pritchett, Chair

Specialty Sports Association, Inc,

Manager of USSSA, LLC

ATTEST:



SCOTT ELLIS, CLERK

As approved by Board 12/22/2020.