

Meeting Date
March 7, 2017



AGENDA	
Section	New Business
Item No.	VI.D.2.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Amendments to USSSA Stadium Complex Lease
DEPT/OFFICE:	County Attorney/County Manager

Requested Action:

It is requested that the Board approve amendments to USSSA Stadium Complex Lease, Exhibit D 1) to correct two scrivener's errors and 2) to allow for direct purchases of lighting and turf for installation in an amount not to exceed \$10 million for installation on the County owned Stadium Complex property and abutting property under the County's long-term ground lease with Viera Development Corporation. The approval of the direct purchase must also:

- A) include the County's affirmation that if the Department determines that tangible personal property sold by a vendor tax-exempt pursuant to a Certificate of Entitlement does not qualify for the exemption under **Section 212.08(6), F.S.**, and Rule 12A-1.094, F.A.C., the governmental entity will be liable for any tax, penalty, and interest determined to be due;
- B) a waiver of County purchasing policies requiring quotes or bids;
- C) authorize the Chairman to sign a written lease amendment consistent with this action as approved by the County Attorney; and
- D) the transfer of two million dollars of Tourism Development funds from the Stadium Reserve Fund to the Stadium Fund for operating expenditures pertaining to Capital Renovations and Stadium Improvements. It is also requested that the Board approve any and all budget change requests necessary to complete the transfer of funds from the Stadium Reserve Fund Capital Outlay Reserves to the Stadium Fund Operating Expenditures Accounts to insure timely payment of invoices received for the County's portion of the necessary Capital Renovations and Stadium Improvements for USSSA's move to the Space Coast Stadium per the County's agreement with USSSA.

Summary Explanation & Background:

USSSA has asked the County to engage in direct purchases of lighting and artificial turf for athletic fields that will be installed on County owned property and property under a lease to the County by the Viera Development Corporation with an expiration date of December 31, 2053. by USSSA's contractor. These direct purchases will take advantage of an exemption from the sales tax available under section 212.08(6), F.S. for tangible personal property (equipment and improvements) that are affixed to government owned property.

Such a purchase will require the amendment of Exhibit D to the existing 20 year lease between the County and USSSA relating to the payment for improvements to the Stadium Complex and abutting athletic fields to be located on the Viera owned property now under a long-term lease to the County.

In addition to the direct purchase amendment, Exhibit D to the lease should be corrected to eliminate two scrivener's errors. Paragraph 2 to Exhibit D of the lease refers to ¶5, however, there is no paragraph 5 in that Exhibit. The subject matter of paragraph 2 relates to maintenance responsibilities of the Tenant including any capital maintenance agreed upon by the parties in paragraph 5. In actuality, it is paragraph 4 that refers agreed upon capital maintenance responsibilities. So the paragraph 2 reference to Paragraph 5 is a scrivener's error since the reference should be to paragraph 4, not 5.

In paragraph 6 there is another reference to paragraph 5, however, as mentioned, there is no paragraph 5 in Exhibit D. However, below paragraph 4 of Exhibit D there is an unnumbered paragraph relating to guaranteed room nights, which is the subject of paragraph 6's reference to paragraph 5. Proximate in time prior drafts of Exhibit D show this now unnumbered paragraph as paragraph number 5. Accordingly, the amendment should number the currently unnumbered paragraph as paragraph 5.

Fiscal Impact FY2016-17; Current TDO Stadium Fund has \$8,000,000 budgeted for Capital Renovations and Stadium Improvements for USSSA and Current TDO Stadium Reserve Fund has \$2,000,000 in Capital Outlay Reserves. Once budget change requests and transfer is complete, TDO Stadium Fund will have the full \$10,000,000 budgeted for Capital Renovations and Stadium Improvements and the TDO Stadium Reserve Fund will have \$0 in Capital Outlay Reserves. The full \$10,000,000 will be spent for Capital Renovations and Stadium Improvements needed for USSSA's move to the Space Coast Stadium in FY2016-17

Clerk to the Board Instructions:							
Exhibits Attached:							
Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager			Department Director / Extension County Attorney, Scott Knox		
Stockton Whitten							



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

March 8, 2017

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item VI.D.2., Amendments to USSSA Stadium Complex Lease

The Board of County Commissioners, in regular session on March 7, 2017, approved amendments to USSSA Stadium Complex Lease, Exhibit D, to correct two scrivener's errors, and to allow for direct purchases of lighting and turf for installation in the amount not to exceed \$10 million for installation on the County-owned Stadium Complex property and abutting property under the County's long-term ground lease with Viera Development Corporation. The approval of the direct purchase must also:

- A) Include the County's affirmation that if the Department determines that tangible personal property sold by a vendor tax-exempt pursuant to a Certificate of Entitlement does not qualify for the exemption under Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., the governmental entity will be liable for any tax, penalty, and interest determined to be due.
- B) A waiver of County Purchasing Policies requiring quotes or bids.
- C) Authorize the Chairman to sign a written lease amendment consistent with this action as approved by the County Attorney.
- D) The transfer of two million dollars of Tourism Development funds from the Stadium Reserve Fund to the Stadium Fund for operating expenditures pertaining to Capital Renovations and Stadium Improvements; and approved any and all budget change requests necessary to complete the transfer of funds from the Stadium Reserve Fund Capital Outlay Reserves to the Stadium Fund Operation Expenditures Accounts to insure timely payment of invoices received for the County's portion of the necessary Capital Renovations and Stadium Improvements for USSSA's move to the Space Coast Stadium per the County's agreement with USSSA.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: County Manager
Finance
Budget

AMENDMENT TO AUGUST 3, 2015 STADIUM COMPLEX LEASE

This Amendment to lease is made between Brevard County (Landlord) and USSSA LLC through UNITED STATES SPECIALTY SPORTS ASSOCIATION INC. (Tenant) on this 24 day of March, 2017.

WHEREAS, the Washington Nationals, after filing written notice, relinquished possession of the Stadium Complex as of December 31, 2016; and

WHEREAS, the Tenant took possession of the Stadium Complex on January 1, 2017; and

WHEREAS, the Landlord and the Tenant wish to amend Exhibit D of the lease to correct scrivener's errors and to provide for direct purchases of lighting and artificial turf by the Landlord; and

WHEREAS, the Landlord and Tenant also desire to change section 3.1 of Article 3 on page 4 of the lease to reflect a lease commencement date of January 1, 2017;

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

Section 1. Article 3, section 3.1, as set forth on page 4 of the executed Stadium Complex Lease executed by the parties and bearing a date of August 3, 2015, is amended to read as follows:

Section 3.1 Lease Term. The term of this Stadium Complex Lease (the "Lease Term") shall be twenty (20) years commencing at 12:01 a.m. on January 1, 2017, for the commencement of the Primary Term (the "Commencement Date") and shall end, unless sooner terminated in accordance with the provisions of this Stadium Complex Lease, at 11 :59 p.m. on ~~March~~ December 31, 2036 (the Lease Expiration Date). Unless sooner terminated, the Lease Term shall consist of the Primary Term and the Renewal Terms, which shall run sequentially. Prior to the Commencement Date, Tenant shall not have the right to use or occupy the Stadium Complex other than pursuant to the terms and conditions of the Nationals Agreement, which use or occupancy shall not be deemed to be acceptance of the Project Improvements Work or commencement of the Lease Term.

Section 2. Exhibit D to the Stadium Complex Lease as set forth at pages 43-48 of that lease, is hereby amended and the paragraphs renumbered to read as follows:

EXHIBIT D TO STADIUM COMPLEX LEASE

The following agreements, terms, and conditions are deemed additional consideration for the Landlord and Tenant's agreement to enter into the Stadium Complex Lease:

THE TENANT'S OBLIGATIONS

1. The Tenant agrees to move its national corporate headquarters and at least nineteen full-time employees and their families to Brevard County, Florida.
2. Throughout the term of the lease, at its own expense without contribution from the Landlord or from Landlord tourist development tax revenues, the Tenant will be responsible for undertaking the operation and routine maintenance of all buildings, fields, facilities and other improved and unimproved areas located on or within the Stadium Complex as shown and described in Exhibit C, provided that this maintenance obligation shall include 1] any future synthetic turf replacement after the Landlord installs synthetic turf in accordance with paragraph 10, below, and 2] any capital improvement costing under \$250,000, excluding any capital maintenance agreed upon by the Parties, as provided for in paragraph 4 below.
3. With the exception of those improvements listed under LANDLORD OBLIGATIONS in this agreement, the Tenant, at its own expense, will provide whatever improvements to the Stadium Complex facilities that may be required by the Tenant for the operation, administration or enhancement of its amateur sports business, which improvements may include administrative offices and a Hall of Fame Sports Museum. Those improvements may include, but are not limited to, the retrofitting of Space Coast Stadium for office space, at the Tenant's own expense.
4. The Tenant will contribute the base amount of \$250,000 each year during the term of the lease. The funds will be used for capital improvements and capital maintenance to the Stadium Complex that are agreed upon by both parties.
5. The Tenant will guarantee that (i) in the first two full years after taking possession of the Stadium Complex, events scheduled, sponsored, booked or arranged in the Stadium Complex by the Tenant, whether directly or indirectly, guarantees at least 75,000 room nights in Brevard County, Florida hotels and (ii) within three (3) years after taking possession of the Stadium Complex, the Tenant guarantees 100,000 total room nights each year (hereafter called the "room night guaranty") in Brevard County, Florida hotels. Tenant agrees to provide the information specified on Schedule 1 to this Exhibit D for the purposes of calculating room nights relating to

each participant in a Tenant hosted or Tenant sponsored event in Brevard County during the Lease Term.

6. In any year during the term of the lease that the room nights guaranteed by the Tenant does not meet the thresholds set forth in paragraph 5, above, the base amount of \$250,000 payable by the Tenant each year in accordance with paragraph 4 above, shall increase by a percentage equal to the shortfall in the number of room nights divided by the guaranteed number of room nights for that year.

7. The Tenant agrees to program a minimum of one hundred seventy-five (175) tournament days each year in Brevard County, Florida.

8. The Tenant agrees to replace the existing Stadium Complex scoreboards at its own expense.

LANDLORD OBLIGATIONS

9. The Landlord will make direct purchases, in the maximum amount of up to ten million dollars (\$10,000,000), of artificial turf, field lighting equipment and other equipment (hereafter sometimes referred to as “the purchased equipment”) required for the Tenant’s improvement of the Stadium Complex in order to make the complex amateur sports friendly. The Tenant shall have the obligation to install the purchased equipment at its expense as follows:

- a. Tenant will, at its expense, cause to be installed synthetic turf on four new baseball/softball fields to be constructed by the Tenant with 225 foot foul lines in the approximate location shown on Exhibit C. So long as the County owns the portion of the Stadium Complex owned by it in fee simple, no real estate taxes will be assessed on or due for such property as described on Exhibit C.
- b. Tenant will, at its expense, cause to be installed synthetic turf on four new baseball fields with 330 foot foul lines, to be constructed in the approximate location shown as Quad #2 on Exhibit C.
- c. Tenant may elect to refurbish or reconfigure Space Coast Stadium at its expense, unless there is residual funding available under Landlord’s ten million dollar maximum direct purchase obligation after the Landlord acquires the purchased equipment, to provide seating and facilities adequate to serve the Tenant’s Permitted Uses for the Stadium.

- d. Tenant will cause to be erected lights for night baseball at field #1 and the fields located at Quad #1, Quad #2 and Quad #3, as shown on Exhibit C.
- e. Tenant will acquire and cause to be constructed portable seating to the four (4) fields located at Quad #3, as shown on Exhibit C.
- f. The Landlord and Tenant agree to use their best efforts to work with Viera Company to allow parking for Landlord and Tenant events on the 5.42 acre parcel located at the corner of Veterans Way and Breslay Drive, southwest of the stadium.
- g. The Tenant's obligation to construct new fields and seating will include the cost of design, site work and permitting.
- h. The design, quality of work and specifications for the improvements to be constructed by the Tenant shall be submitted to the county for review and approval before work is commenced.
- i. In the event that Tenant fails to install the purchased equipment or causes damage to the equipment before installation, whether directly or indirectly through its installation contractor, the Landlord will be entitled to replace the equipment, and/or complete installation of the purchased equipment. Landlord shall thereafter be entitled to reimbursement from the Tenant of any installation or equipment replacement costs incurred by the Landlord.

10. The total expenditures for the obligations to be incurred by the Landlord, as specified in this Exhibit shall not exceed ten million dollars (\$10,000,000). The Tenant shall cooperate with the Landlord in the preparation and presentation of documents required to make a direct purchase of the purchased equipment, together with proof that the installation work is complete; any required certificates of occupancy or completion; and other governmental approvals relating to the installation of the purchased equipment.

11. After January 1, 2017, the Landlord shall apply for and be responsible for paying the costs of changing directional signage to the Stadium Complex to reflect the change in tenancy from the Nationals to USSSA. The Landlord shall also assume the costs of changing all signs upon the Stadium Complex referring to the Nationals to signs referring to "USSSA at Space Coast Stadium".

12. The Landlord agrees to waive all county imposed permitting fees, impact fee studies and impact fees that may be due or payable to the Landlord as a result of the installation or construction of improvements or infrastructure upon or serving the Leased Premises.

13. The Landlord and Tenant acknowledge that they have provided for the creation of an ARR fund for asset renewal, replacement and capital improvements associated with the Stadium Complex, as well as property and flood insurance covering damage to the Stadium complex. In the event that either the ARR fund or insurance proceeds are insufficient to cover the repair, replacement or capital improvements necessary to cure significant damages to the Stadium Complex due to a force majeure, an uninsured or other unanticipated critical failure of structures or equipment that was not caused by the Landlord or Tenant, and those damages have rendered the Tenant unable to reasonably operate the Stadium Complex in the manner in which it was being operated prior to the damage, the Landlord and the Tenant shall appoint representatives who, in good faith based upon the years remaining on the Lease Term and reasonable physical, financial, logistical and operational factors relating to the reasonable commercial viability of renewing the former use of the Stadium Complex by the Tenant, shall determine:

- a. Whether or not to terminate the Stadium Complex lease;
- b. Revise the Stadium Complex Lease; or
- c. Agree upon:
 - i. the nature and scope of repairs, replacements or capital improvements reasonably required to restore the Tenant's use of the Stadium Complex in the manner in which it was being operated prior to the damage; and
 - ii. which Party will undertake financial responsibility for specific required repairs, replacements and capital improvements.
- d. If the Parties are unable to agree which Party will undertake financial responsibility for specific required repairs, Tenant shall have the option to discontinue use and operation of the portion of the Stadium Complex in need of repairs. The Parties agree to utilize the dispute resolution process set forth in Article 17 in the event of any dispute over the nature of repairs, replacements or capital improvements; the responsibility for the cost of such repairs, replacements

or capital improvements; or reasonable commercial viability of renewing the former use of the Stadium Complex by the Tenant.

- e. Notwithstanding the foregoing provisions in this paragraph 13, the cost for repairing, replacing or installing worn artificial turf shall be the sole responsibility of the Tenant in all circumstances.

14. The Landlord agrees to provide the following reimbursement incentive to the Tenant with the goal of promoting tourism in Brevard County by increasing the number of room nights resulting from Tenant's operation of the Stadium Complex by at least 75,000 in the first year of the Lease Term and 50,000 in each year of the Lease term thereafter above and beyond the 75,000 first year room nights guaranteed by the Tenant and the 100,000 annual room nights guaranteed by the Tenant during the remaining Lease Term in accordance with paragraph 5 of this Exhibit D.

1. The Landlord shall reimburse, on a pro-rata basis, any ad valorem taxes that are required to be paid by the Tenant relating to the Stadium Complex property being leased or subleased by the Tenant.
2. The pro-rata ad valorem tax reimbursement for years one (1) and two (2) of the Lease will be determined by multiplying the ad valorem taxes paid by the Tenant in each of the first two years by a percentage derived by dividing the number of additional room nights above and beyond the 75,000 room nights guaranteed by the Tenant in each of those first two years of the Lease Term by 75,000.
3. The pro-rata ad valorem tax reimbursement for each subsequent year during the Lease Term will be determined by multiplying the ad valorem taxes paid by the Tenant by a percentage derived by dividing the number of additional room nights above and beyond the 100,000 room nights guaranteed by the Tenant during each year after year one (1) of the Lease Term by 50,000.
4. The pro rata calculation shall give the Tenant credit for additional room nights toward the calculation of the pro rata reimbursement percentage in the event the Tenant can demonstrate that it could have provided the claimed number of such additional room nights in Brevard County but were unable to do so due to the unavailability, in Brevard County, of a sufficient number of actual hotel rooms, motel rooms, vacation rental rooms and other rental rooms in establishments whose owners are required to pay the Tourist Development Tax.

Schedule 1

Room Night Accountability Procedure for USSSA (TENANT):

TENANT will provide to the LANDLORD, through its Brevard County Tourism Development Office (TDO) in electronic form an accounting of all lodging room nights directly related to each event produced by TENANT at the Space Coast Stadium Complex. Lodging room night information must include:

- the name of the lodging establishment,
- the city in which it is located,
- the street address (if lodging establishment is not a major hotel brand),
- confirmation number (if available),
- number of units rented,
- number of bedrooms per unit (if more than one in a rental house or condominium)
- dates of stay (check-in date and check-out dates)
- the guest name(s) registered to each unit,
- the team affiliation of the guest name registered to each unit,
- room rate
- number of guests

This information must be provided within 30 days after each event. The TDO will be responsible for verifying the validity of each claimed room night. Claimed room nights not verified will be identified and sent back to TENANT for additional information or to remove from room night reporting.

A room night will be defined as a single hotel room or each bedroom in a multi-bedroom rental house or condominium multiplied by each night it was rented.

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, plus a running total of room nights generated year-to-date. The TDO will be responsible for reconciling each quarterly report with submitted lodging room night reports and identifying inconsistencies.

An annual lodging room night report will be submitted by TENANT for each fiscal year ending September 30th which will summarize lodging room nights generated by USSSA events, sub-totaled by quarter. The TDO will be responsible for verifying the annual report, identifying discrepancies and preparing a final review for Tourist Development Council (TDC) approval.

As the Lease Term progresses, if additional information is 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.

WHEREFORE, the Parties have set their hands and seals this 24 day of March, 2017.

USSSA, LLC

BREVARD COUNTY

BY: [Signature]
CEO of UNITED STATES SPECIALTY
SPORTS ASSOCIATION INC., its Manager

BY: [Signature]
Chairman
(as approved by the Board on March 7, 2017)

DATE: 3/24/17, 2017

DATE: 3/9, 2017

ATTEST: [Signature], Scott Ellis, Clerk to the Board