Agenda Item #:

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS



AGENDA ITEM SUMMARY

Meeting Date:	======== 10/7/2014	==== [r	-4	======================================	=== [X [_	======== Regular Public Hearing
Department		•	•	, company	•	•	
Submitted By:TOURIST DEVELOPMENT COUNCIL							
Submitted For: TOURIST DEVELOPMENT COUNCIL							

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Tri-Party Agreement between Palm Beach County ("County"), a political subdivision of the State of Florida, the City of Boca Raton ("City"), a municipal corporation, each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes and ESPN Regional Television, Inc. ("ESPN"), a Delaware corporation in an amount not to exceed \$140,000.00 annually from Tourist Development Tax (Bed Tax) for six (6) years.

Summary: Approval of this agreement establishes the expenditure of \$140,000 annually in tourist development tax revenues for six (6) years for an annual college football bowl game featuring teams from Conference USA, the Mid-America Conference ("MAC") and the American Athletic Conference ("AAC") at Florida Atlantic University ("FAU") in the City of Boca Raton, Palm Beach County, Florida beginning in December of 2014. A sum of Fifty thousand, (\$50,000) will be paid to ESPN on October 15th of each year, \$50,000 will be paid thirty (30) days after the occurrence of the Bowl Game and \$40,000.00 for Activity Costs as incurred for the Teams. The City of Boca Raton will match all of the County's funding requirements. ESPN will be responsible for all activities and services regarding the planning, organization, production, and operation of the Bowl Game and shall be responsible for the full cost of such activities and services. ESPN will market the County and City on all marketing materials associated with the Bowl Game including, but not limited to, TV ads, Program ads, website, etc. An estimated economic impact will yield at a minimum of \$2.5 Million as a result of this partnership. This event funding has been reviewed and approved by the TDC Board. (TDC) (Countywide DW) (Continued on Page 3)

Attachments: Tri-Party Agreement

	Pal	
Recommended by	7: Department Director	9/26/14 Date
Approved By:	Deputy County Administ	rator Date

D.

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of	Fiscal	Impact:			
Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs	140,00	00 140,000	140,000	140,000	140,000
External Revenues					
Program Income (County)_					
In-Kind Match (County) _ NET FISCAL IMPACT =	140,0	00140,000	140,000	140000	140.000
# ADDITIONAL FTE POSITIONS (Cumulative					
Is Item Included In Curr	ent Bud	lget? Yes_	X No.		
Reporting Category 1452-710-7310-3401 1454-710-7420-3401 B. Recommended Sources Funding from the 2 ⁿ bed tax. C. Department Fiscal F	100,000 40,000 s of Fur d, 3 rd a	n ds/Summa nd 5 th Cer	nt of the	local opt	ion
I	II. <u>RE</u>	VIEW COMM	ENTS		
A. OFMB Fiscal and/or HO AST OFMB 1269126	Contrac	ory. J	contract I	Jero 10	11114 Control Had he Yearse
B. Legal Sufficiency: Assistant County 1	D	<u>}</u>			
C. Other Department Re	eview:				
Department Di	rector	_			

(Continued from Page One)

Background and Justification: The County, through its Tourist Development Council ("TDC"), the Palm Beach County Sports Commission, ("Sports Commission") and Discover Palm Beach County, Inc. ("Discover"), desires to cooperate in the implementation of said Bowl Game and to provide funding for said Bowl Game. The annual funding provided by the County will be provided by the County TDC Agencies, including the TDC Special Projects Fund, Discover and the Sports Commission. The annual funding by the

County for the initial three years of the Bowl Game shall include \$50,000 from the Special Projects Fund of the TDC for Base Costs, \$50,000 being transferred from the contractual budget of the Sports Commission to the Special Projects Fund for Base Costs funding and \$40,000 from Discover in support of Activity Cost Funding. The annual funding by the County for years beyond the initial three years shall be funded through the Sports Commissions' annual budget in the amount of \$70,000 for the Base Cost funding and Discover will fund the amount of \$30,000 for Base Cost funding and \$40,000 for Activity Cost funding. The City will pay annually \$100,000 for Base Cost with \$50,000 of that amount being paid to ESPN on October 15th each year and the remaining \$50,000 shall be paid thirty (30) days after each occurrence of the Bowl Game. The City will provide Activity Cost payment of up The total annual amount of Activity Cost funding to \$40,000. shall not exceed \$80,000 inclusive and will be shared 50%/50% by the County through its TDC Agencies (Discover and the Sports Commission) and the City. ESPN shall provide all activities and services regarding the planning, organization, production, and operation of the Bowl Game and shall be responsible for the full cost of such activities and services. ESPN shall be responsible for televising the Bowl Game through a national television broadcast on ESPN or ESPN2.

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TRI-PARTY AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF BOCA RATON AND ESPN REGIONAL TELEVISION, INC. FOR

ESPN – BOCA RATON BOWL GAME AT FLORIDA ATLANTIC UNIVERSITY **STADIUM**

THIS TRI-PARTY AGREEMENT ("Agreement"), is made this 2014, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and the City of Boca Raton, a municipal (hereinafter "City"), each one constituting a public agency defined in Part I of Chapter 163, Florida Statutes and ESPN Regional Television, Inc., a North-Carolina corporation (hereinafter "ESPN"). Delaware



WHEREAS, ESPN desires to produce an annual college football bowl game (hereinafter "Bowl Game") featuring teams from Conference USA, the Mid-American Conference ("MAC"), and the American Athletic Conference ("AAC") at the Florida Atlantic University "Bowl Game") featuring teams from ("FAU") in the City of Boca Raton, Palm Beach County, Florida beginning in December of 2014; and

WHEREAS, the County, the City and ESPN have determined that the Bowl Game will provide benefits to tourists, residents and businesses in the City and the County; and

WHEREAS, the County, through its Tourist Development Council ("TDC"), the Palm Beach County Sports Commission ("Sports Commission") and Discover Palm Beach County, Inc. ("Discover"), desires to cooperate in the implementation of said Bowl Game and to provide funding for said Bowl Game; and

WHEREAS, the City desires to cooperate in the implementation of said Bowl Game and to provide funding for said Bowl Game; and

WHEREAS, the parties wish to establish the terms and conditions for the Bowl Game as set forth herein.

NOW, THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. Recitals. The above recitals are true and correct and are incorporated herein.
- 2. Authority. Each party represents to the other that it has the authority to enter into this Agreement.
- 3. Purpose. The purpose of this Agreement is to establish the terms and conditions, including funding for the Bowl Game.

- 4. <u>Term.</u> The Term of this Agreement will commence on the Effective Date as set forth herein, and continue for a period of six (6) years thereafter.
- 5. <u>Funding.</u> The total annual funding to be provided by the County and City under this Agreement shall not exceed \$280,000. Such total funding shall include two types of funding payments to ESPN ("Base Cost") of \$200,000, and costs of activities associated with the Bowl Game ("Activity Cost") as listed elsewhere in this Agreement of \$80,000. The total annual funding requirement shall be split equally between the City and County, and the funding provided by each shall not exceed \$140,000 annually. The total amount of funding provided by each party may be reduced in accordance with Sections 6.c. and 8.f. of this Agreement.

The annual funding provided by the County will be provided by the County TDC Agencies, including the TDC Special Projects Fund, Discover and Sports Commission. The annual funding by the County for the initial three years of the Bowl Game shall include \$50,000 being transferred from the contractual budget of the Sports Commission to the Special Projects Fund for Base Cost funding and \$40,000 from Discover in support of Activity Cost funding. The annual funding by the County for years beyond the initial three years shall be funded through the Sports Commission's annual budget in the amount of \$70,000 for the Base Cost funding and Discover will fund the amount of \$30,000 for Base Cost funding and \$40,000 for Activity Cost funding.

- 6. <u>County's/TDC Agency Obligations.</u> Although the County's funding and coordination of activities under this Agreement is anticipated to be at least partially completed by and through the County TDC Agencies, the County is ultimately responsible for the County's responsibilities and obligations under this Agreement. The County agrees to:
 - a. Provide Base Cost payments to ESPN totaling \$100,000 per year. \$50,000 of that amount shall be paid to ESPN on October 15th of each year and the remaining \$50,000 of that amount shall be paid thirty (30) days after the occurrence of the Bowl Game.
 - b. Provide Activity Cost payments of up to \$40,000 for Activity Cost activities as listed elsewhere in this Agreement, including but not limited to, luncheons, the golf tournament, beach events and the pep rally(s).
 - c. The County, through the Sports Commission and Discover will market and promote hotel packages and events for the Bowl Games in an effort to maximize the hotel room production. Discover will market hotel packages through PALMBEACHFL.com and develop hotel partner relations and marketing packages for ease of hotel bookings by visitors and alumni. A room block funding agreement potential is not guaranteed and 100% of any room block rebates up to \$100,000 will be payable to ESPN based upon hotel reporting through Discover. Any room block rebates in excess of \$100,000 will be shared 50% to ESPN, with 50% going toward the reduction of County's and the City's Base Cost in an equal share.
 - d. Provide advertising call to action logos for destination identity name: "Discover the Palm Beaches, Florida" supplied by Discover and shall be used for banners, billboards and media advertising.

- e. Provide partnering organization logos for sponsorship recognition, including Palm Beach County and Tourist Development Council.
- f. The TDC Agencies (Sports Commission and Discover) will arrange and provide for the management of all Activity Cost activities, including the luncheons, the golf tournament, beach events and the pep rally(s).
- g. The TDC Agencies (Sports Commission and Discover) will assist with the Activity Cost requests to maximize the value received at the lowest cost possible from partners for luncheons, the golf tournament, beach events and the pep rally(s).
- h. Provide VIP gift baskets or bags through Discover.
- i. Arrange bus transportation for the teams participating in the Bowl Game. Bus transportation costs will be negotiated to the lowest possible costs by Discover and the Sports Commission.
- 7. City's Obligations. The City agrees to:
- a. Provide Base Cost payments of \$100,000 per year. \$50,000 of that amount shall be paid to ESPN on October 15th each year and the remaining \$50,000 shall be paid thirty (30) days after each occurrence of the Bowl Game.
- b. Provide Activity Cost payments of up to \$40,000 for Activity Cost activities as listed in Section 8.d. of this Agreement, including but not limited to, luncheons, the golf tournament, beach events and the pep rally(s).
- c. Provide City of Boca Raton logo for sponsorship recognition.
- d. Assist with the Activity Cost requests to maximize the value received at the lowest cost possible from partners for luncheons, golf tournament and beach events and pep rally.

8. Activity Costs.

- a. The total annual amount for Activity Cost funding shall not exceed \$80,000 inclusive of all Activity Cost events and activities as identified in Sections 8.d. will be shared 50%/50% by the County through its TDC Agencies (Discover and the Sports Commission) and the City.
- b. The centralized point of financial approval for Activity Cost activities will reside with the TDC Executive Director.
- c. After the schedule of Activity Cost expenses is approved by the TDC Executive Director, the schedule will be provided to Discover by TDC, and Discover will invoice the City for 50% of the expenses, not to exceed \$40,000 (less any in-kind costs).

- d. The Activity Cost funding shall be used to fund the costs of the following events and activities:
 - 1. Kick-off Luncheon at PBC Convention Center.
 - 2. Golf Tournament.
 - 3. VIP Baskets or Gift Bags from Discover Destination Services
 - 4. Areas/Venues for "pep rally" event(s)
 - 5. Bus transportation for the use by the participating Bowl Game teams (4 buses)
 - 6. Beach Events and Activities
- e. Discover Palm Beach County will be the event hosting/processing agent for these events.
- f. Sponsors may be obtained for the events and activities. Such sponsors may provide cash or in-kind contributions. Such contributions shall be used to defray the costs of the events and activities, and shall be used to reduce the payment of the City and County towards the Activity Costs equally.
- g. It is agreed by all parties that the costs incurred by the City for Police Services, Fire Rescue Services as well as other City staff for the Bowl Game is not considered an Activity Cost. Instead, such costs shall be an expense of the Bowl Game, and paid by ESPN.
- 9. <u>Payments/Invoicing and Reimbursement</u>. The City will submit the statements of the costs of any Activity Cost expenses or in-kind expenses provided by the City for Activity Cost activities to the TDC Executive Director. Such costs shall be included as part of the total Activity Cost funding to be provided by the City and shall be used as credit against the Activity Cost invoices prepared by County in Section 8.c of this Agreement.
 - 10. ESPN Responsibilities and Deliverables to the Agreement.
 - a. ESPN shall provide all activities and services regarding the planning, organization, production, and operation of the Bowl Game and shall be responsible for the full cost of such activities and services and the provision of such responsibilities and deliverables.
 - b. ESPN shall be responsible for: (1) securing the use of the FAU Stadium for the Event; (2) completing any and all arrangements with FAU and others for the use of the FAU Stadium; (3) meeting all conditions of the arrangements with FAU for the use of the Stadium for the Event; and (4) for coordinating the Event.
 - c. ESPN shall be responsible for televising the Bowl Game. The Bowl Game shall be televised live through a national television broadcast on ESPN or ESPN2.
 - d. The ownership of the Bowl Game shall remain with ESPN.
 - e. The Bowl Game participants shall be teams from Conference USA, MAC, and/or AAC.

- f. ESPN will provide the following sponsorship elements annually:
 - 1. Marketing of City and County logos on all marketing material, all reference materials, programs, website pages and marketing brochures where the Bowl Game sponsors are defined and listed. County to provide two logos (Palm Beach County and TDC-Discover the Palm Beaches –Destination Logo for Palm Beach County) and the City to provide one logos.
 - 2. Two (2) 30-second TV units one for the County (Discover Consumer 30 second) and one for the City.
 - 3. Two (2) full-page, 4-color advertisements in the official souvenir game program one page for the County and one for the City.
 - 4. One (1) banner (header or rotational) with hyperlink for the City to be displayed on the official bowl website.
 - 5. One (1) promotional Discover the Palm Beaches video (not to exceed 30-seconds) to appear on the official bowl website.
 - 6. Two (2) tables for eight at the Bowl Kickoff Banquet (16 people total) one table for the County and one table for the City.
 - 7. Forty (40) game tickets in the VIP box to be split equally between the County and the City.
 - 8. One hundred (100) additional game tickets (not in the VIP box) to be split equally between the County and the City.
 - 9. Sixteen (16) ESPN VIP gift bags to be split equally between the County and the City.
 - 10. Twelve (12) Parking Passes to be split equally between the County and the City.
 - 11. A "Discover the Palm Beaches, Florida" banner and a City of Boca Raton banner to each be within a dedicated section of the stadium wrap displayed at the FAU stadium during the Bowl Game and which shall be readily visible during the televised coverage of the Bowl Game. Location and size to be approved by the Deputy County Administrator and the Boca Raton Assistant City Manager.
 - 12. Four 30-second video messages to be displayed on the FAU stadium. Two video messages one each from the County and City shall be displayed before the Bowl Game begins, but no earlier than 30 minutes before the Bowl Game begins, and two video messages one each from the County and City shall be displayed during the Bowl Game, but not until after the end of the first quarter and before the start of the fourth quarter of the Bowl Game.

- 11. Access and Audits. The City and the County shall maintain adequate records to justify all charges, expenses, costs and revenue (including sponsorships) regarding the Activity Costs for at least three (3) years after completion of the projects. The County and the City shall each have access to all books, records and documents of the other as required in this section for the purpose of inspection or audit during normal business hours.
- 12. Default, Opportunity to Cure, and Termination for Default. In the event that the County or City is in default of the obligations set forth in this Agreement, the party not in default or ESPN shall provide to the party in default thirty (30) days written notice to cure. If said default is not cured within the 30 day period, the party not in default may choose at it sole decision to take the full responsibility for the Base Costs and Activity Costs for the remainder of the duration of the Agreement. The party assuming the responsibilities of the defaulting party shall be entitled to the benefits provided to the defaulting party in this Agreement. Such assumption shall not include any liabilities from previous years. If such assumption of responsibilities does not occur, ESPN may terminate the Agreement against the defaulting party.

If ESPN is in default of the obligations set forth in this Agreement, the County and City, individually or collectively, shall provide ESPN thirty (30) days written notice to cure. If the default is not corrected within thirty (30) days, the County and City, individually or collectively, may terminate this Agreement. If the default occurs after the payment to ESPN for the first of the two Base Cost payments, and before the Bowl Game in any year, ESPN shall reimburse the County and City for all Base Costs and all Activity Costs paid to date for that year within 30 days from City and/or County's demand for reimbursement.

- 13. <u>Termination without Default</u>. ESPN may terminate this Agreement by providing written notice within 90 days of the Bowl Game having just occurred. The County or City may terminate this Agreement by written notice to the other (County or City) within 30 days of the Bowl Game having just occurred. The party (City or County) not terminating their involvement in the Bowl Game may choose, at their sole discretion, to 1) assume the role, obligations and responsibilities of the other in addition to its existing role, or 2) terminate this Agreement by providing written notice to ESPN within 90 days of the Bowl Game having just occurred.
- 14. <u>Authority to Execute This Agreement</u>. Any person executing this Agreement hereby warrants and represents that he or she has received all corporate, government, association, or entity authorization necessary to enter this Agreement.
- 15. <u>Notices.</u> All notices required under this Agreement shall be in writing and shall be personally delivered; sent certified mail, return receipt requested; or e-mail with verbal confirmation to:

As to the County:

BISCRETION

Glenn Jergensen, Executive Director Palm Beach County Tourist Development Council 1555 Palm Beach Lakes Boulevard, Suite 900 West Palm Beach, Florida 33401 561-233-3133 with a copy to:

Palm Beach County Attorney's Office 301 North Olive Avenue, Suite 601 West Palm Beach, Florida 33401 561-355-2225

Verdenia C. Baker Deputy County Administrator Palm Beach County 301 North Olive Avenue West Palm Beach, Fl 33401 561-355-6726

As to the City:

City of Boca Raton City Manager Leif Ahnell 201 West Palmetto Park Road Boca Raton, Florida 33432

With a copy to:

City of Boca Raton City Attorney's Office 201 West Palmetto Park Road Boca Raton, Florida 33432

As to ESPN Regional Television, Inc:

Pete Derzis, Sr. Vice President & General Manager ESPN Regional Television, Inc. 11001 Rushmore Drive Charlotte, NC 28277

These names and addresses can be modified at any time by written notice to the other parties.

- 16. <u>Annual Appropriation</u>. The County's and City's performance and obligation to pay under this Agreement is contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.
- 17. <u>Delegation of Duty</u>. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.
- 18. Filing. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

- 19. <u>Liability.</u> The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions, and negligence of the other parties. Further, nothing herein shall be construed as a waiver of sovereign immunity by either the County or City pursuant to Section 768.28, Florida Statutes.
- 20. <u>Indemnification</u>. ESPN shall protect, defend, reimburse, indemnify and hold the County and the City, their agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of ESPN, its agents, employees, officers, or licensees.
- 21. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the City.

- 22. <u>Inspector General</u>. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present, and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of ESPN, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. ESPN's failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- 23. <u>Equal Opportunity Provision</u>. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, sexual orientation, or gender identity or expression be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
- 24. <u>Captions</u>. The captions and section designations used in this Agreement are for convenience only and shall have no substantive meaning.
- 25. <u>Severability</u>. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or is otherwise unenforceable, then such provision shall be deemed null and void and shall be severable, but shall not invalidate any other provision of this Agreement.

- 26. Entirety of Agreement. The parties agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are not promises or understandings other than those stated herein. None of the provisions, terms, or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.
- 27. <u>Effective Date</u>. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, the City Council of the City of Boca Raton and ESPN Regional Television, Inc. and shall become effective on the date executed by the last party.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

ATTEST: SHARON R. BOCK, Clerk & Comptroller	PALM BEACH COUNTY, a political subdivision of the State of Florida
By: Deputy Clerk	By: Priscilla A. Taylor, Mayor
APPROVED AS TO FORM AND LEGAL SUFFICIENCY By: County Attorney	APPROVED AS TO TERMS AND CONDITIONS By: Glenn Jergensen, Executive Director Tourist Development Council
ATTEST: By: Susan S. Sayth City Clerk	CITY OF BOCA RATON, FLORIDA By: Susan Haynie, Mayor
APPROVED AS TO FORM AND LEGAL SUFFICIENCY By: City Attorney	
ATTEST: By: Horye Luly Witness	ESPN REGIONAL TELEVISION, INC. By: For Pete Derzis, Sr. Vice President & GM ESPN Regional Television, Inc.



11001 Rushmore Dr., Charlotte, NC 28277 Tel: 704. 973. 5000 Fex: 704. 973. 5090

September 29, 2014

RE: Tri-Party Agreement

Please let the purpose of this note confirm that Doug Mosely, Executive Director of the Boca Raton Bowl, is authorized to sign, on Pete Derzis' behalf, the agreement between the community of Boca Raton, Palm Beach County and ESPN. If you have any questions or comments, please do not hesitate to contact me directly at 704/973-5066.

Sincerely,

Clint Overby

Sr. Director of Events - ESPN



11001 Rushmore Dr., Charlotte, NC 28277 Tel: 704. 973. 5000 Fax: 704. 973. 5090

September 29, 2014

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Sincerely,

Clint Overby

Sr. Director of Events - ESPN