

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: June 16, 2009

Action Agenda

Item No. 4-ff

SUBJECT: Public Private Partnerships - West Ten Soccer Center

DEPARTMENT: Parks and Recreation

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):

Draft Agreement

INFORMATION CONTACT:

Lori Taft, 245-2660

PURPOSE: To provide the Board with the opportunity to consider partnerships with members of the business community in the development and operations of the West Ten Soccer Center.

BACKGROUND: At the October 9, 2007 meeting the Board authorized staff to continue to develop the potential partnership between Orange County and Sports Endeavors (Eurosport) as well as partnerships with other community entities. The Board may recall that Sports Endeavors' offer included a \$150,000 "challenge" to other community businesses. At the April 8, 2008 meeting the Board authorized the distribution of a marketing packet with the intent to solicit additional community partners to fulfill Sports Endeavors challenge grant. Staff distributed the packet and engaged in follow up discussion with several prospective partners. In January 2009, the board authorized a commission agreement with an independent contractor for the purpose of securing partners/sponsorships. This attempt was unsuccessful and the agreement has been terminated. Staff has been in contact with several entities who may be interested in the program, with no firm commitment yet. Discussions are continuing with these and additional possible partners.

In exchange for a five year commitment and fee, which varies depending on the facility selected, partner benefits would include the following: A sign including their name and logo on or adjacent to the field or facility, recognition at the opening ceremony, a recognition plaque for them to keep and inclusion in inaugural press materials.

The soccer center is substantially complete with a time line indication that signage will need to be ordered over the summer. A Grand Opening is proposed for late August 2009.

It is likely that some of the match for the \$150,000 will be raised in the next several months. Staff requests additional time to speak and meet with entities that have and may still come forward in that time. If an additional \$50,000 can be raised, this would increase the support from Sports Endeavors to a total of \$200,000 for the proposed five-year contract period. The

potential name "Eurosport Soccer Center" would in itself provide benefits to Orange County. Sports Endeavors and its subsidiary, Eurosport, enjoy international soccer recognition and this could be conveyed to the soccer center in added potential for attracting programs, teams and tournaments.

FINANCIAL IMPACT: Up to \$450,000 in revenue could potentially be raised in exchange for five-year naming rights for up to 11 entities.

RECOMMENDATION(S): The Manager recommends the Board approve the partnership with Sports Endeavors and the name Eurosport Soccer Center for the next five years. Further, the Manager recommends the Board authorize partnerships that may be established within the next few months for the naming rights of individual facilities within the Center and authorize the Chair to sign associated contracts or agreements pending review by the County Attorney.

**FACILITY NAMING
AND
SPONSORSHIP AGREEMENT**

This Facility Naming Agreement (“Agreement”) is entered into this day of July 1, 2009, between Sports Endeavors Inc., a North Carolina corporation with offices located at 431 US Highway 70A East, Hillsborough, NC 27278-9912 and Orange County, North Carolina hereinafter referred to as “Orange County,” pursuant to Gen. Statute 160A-460 et seq., and other applicable laws.

WHEREAS, Orange County is constructing the West Ten Soccer Center (“Facility”) located on West Ten Road in Efland North Carolina; and

WHEREAS, the Facility will be utilized by local, regional, state, national and international organizations, among other uses; and

WHEREAS, Sports Endeavors Inc. desires to sponsor the Facility in return for certain benefits as set forth below:

NOW, THEREFORE, in consideration of the mutual promises and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Orange County and Sports Endeavors Inc. hereby agree as follows:

1. **RECITALS.** The recitals set forth above are hereby incorporated into this Agreement.
2. **TERM AND TERMINATION.**
 - 2.1. The term of this Agreement shall commence as of the date first above written and, unless sooner terminated in accordance with the Agreement, shall continue until June 30, 2014.
 - 2.2. Provided Sports Endeavors Inc. is not in default hereunder, Sports Endeavors Inc. shall have the option to extend the term of the this Agreement for an additional five (5) years at a mutually agreed upon yearly investment. Sports Endeavors Inc. can exercise its option by providing written notice to Orange County of Sports Endeavors intent to renew no later than January 1, 2014.
 - 2.3. Sports Endeavors Inc. shall have the right to terminate this Agreement upon 30 days written notice to Orange County in the event of the occurrence of any of the following contingencies:
 - 2.3.1. If Orange County is not using its best efforts to utilize the Facility to its potential and Sports Endeavors Inc. is not receiving the desired brand exposure; or
 - 2.3.2. If Orange County is adjudicated as insolvent, declares bankruptcy or is otherwise unable to perform its management duties for the Facility; or
 - 2.3.3. Upon material breach of any provision of this Agreement by Orange County, if such breach is not cured within thirty (30) days after Orange County’s receipt of written notice from Sports Endeavors Inc.
 - 2.4. Orange County shall have the right to terminate this Agreement upon written notice to Sports Endeavors Inc. in the event of the occurrence of any of the following contingencies:
 - 2.4.1. If Sports Endeavors Inc. is adjudicated as insolvent, declares bankruptcy or is otherwise unable to pay its debts when due; or

- 2.4.2. Upon a material breach of any provision of this Agreement by Sports Endeavors Inc., if such breach is not cured within thirty (30) days after Sports Endeavors receipt of written notice from Orange County.
- 2.5. The provisions of Sections 8, 10, 16, 17, 18, 19, and 20 shall survive expiration or termination of this Agreement.

3. SPORTS ENDEAVORS RIGHTS AND BENEFITS

3.1. Naming Rights.

- 3.1.1. Sports Endeavors Inc. shall have the exclusive right to retain the Facility name "Eurosport Soccer Center" or such other Facility name containing "Eurosport" as may be agreed upon between Sports Endeavors Inc. and Orange County (the "Facility Name").
- 3.1.2. All references to the Facility, regardless of media, including any electronic forms of such media, made by Orange County will include Eurosport. Such references shall include, but not be limited to, all marketing materials, press releases, television and radio advertisements, promotions or announcements, tickets, ticket order forms, newspapers, magazines and any other print materials, and the Facility website ("Promotional Media").
- 3.1.3. Orange County agrees that no sponsorships or other forms of advertisements relating to the Facility, may be offered to third parties in the soccer or lacrosse catalog industry without prior approval from Sports Endeavors Inc, which approval shall not be unreasonably withheld. In addition, Orange County agrees that it will not offer sponsorships or sell advertising to persons or entities whose business reputation or ongoing business activities might reflect adversely upon the image and reputation of Sports Endeavors Inc.

3.2. Signage

- 3.2.1. Unless otherwise stated herein, Orange County will design, install and maintain signage in the Facility recognizing Sports Endeavors/Eurosport as the naming sponsor of the Facility. Appropriate lighting will be provided and maintained, at a minimum, for the main entrance sign. The main entrance sign will be a two sided high density urethane fabrication measuring 72" x 36". The designation "Eurosport Soccer Center will be the prominent feature. The sign will also identify Orange County Parks and Recreation and will include the County seal, the Parks and Recreation logo and the Eurosport logo. The design of artwork for this sign will be communicated to Sports Endeavors for their approval prior to construction.
- 3.2.2. Orange County shall use its best efforts to obtain approval from the North Carolina Department of Transportation and other governmental agencies for the placement of a minimum of two (2) directional highway signs that contain the Facility Name.
- 3.2.3. Orange County shall use best efforts to see that permanent signage is not modified, covered, or digitally manipulated in visual images without the prior written approval of Sports Endeavors Inc.

3.3. Admission, Parking Passes.

- 3.3.1. Orange County shall provide Sports Endeavors Inc. with ten (10) tickets and parking passes to any ticketed events held at the Facility for which Orange County controls the ticketing process. Passes may be used by Sports Endeavors, Inc. employees, vendors, clients, etc.
- 3.3.2. In any event for which Orange County does not control sale and/or distribution of the admission passes and parking passes, Orange County shall use reasonable efforts to obtain ten (10) admission passes and parking passes, but "reasonable efforts" shall not include having to purchase said passes.

3.4. Use of Facility.

3.4.1. Sports Endeavors Inc. shall have the right, subject to the provisions of this Section, to utilize the Facility for company events. Sports Endeavors Inc. shall provide Orange County with not less than thirty (30) days notice of any such request to utilize the Facility. Such usage shall be on the dates mutually agreed upon by the parties, based on Facility availability. Sports Endeavors Inc. shall reimburse Orange County for any related fees or costs typically charged or incurred by Orange County associated with the company events (i.e. set up, security, supervision, clean up, etc.).

3.5. Advisory Board.

3.5.1. In the event an Advisory Board is created with regard to use of the Facility by Orange County, Sports Endeavors Inc. shall have the option, at its sole discretion, to place at least one (1) member on such Advisory Board.

4. **PAYMENTS.** Sports Endeavors Inc shall, on or before thirty (30) days following the date of this Agreement, pay Orange County the amount of Thirty Thousand and No/100 Dollars (\$ 30,000.00) This amount shall also be paid by Sports Endeavors Inc. during the month of July in each of the following four years. In addition, Sports Endeavors shall pay Orange County up to \$30,000 and No/100 Dollars (\$30,000) per year for five years within 30 days from receipt of matching funds, as a matching contribution of the amount that Orange County is able to match this amount with funds provided by other businesses and/or donors to the Facility.

5. **INTELLECTUAL PROPERTY**

- 5.1. Sports Endeavors Inc. grants Orange County the right to use its trademarks, trade names and service marks, including the Sports Endeavors Inc. and Eurosport logos ("Sports Endeavors Marks") solely in connection with the identification of the Facility and related fields and use on the Promotional Media. Prior to use of the Sports Endeavors Marks in the Promotional Media or on signage, Orange County shall provide Sports Endeavors Inc. with examples of proposed uses prepared by or for Orange County for review and approval. Orange County acknowledges that its use of the Sports Endeavors Marks shall inure to the sole benefit of Sports Endeavors Inc. and shall not create any right, title or interest in same in favor of Orange County. Orange County agrees to comply with Sports Endeavors' guidelines as may be provided to Orange County from time to time concerning use of Sports Endeavors Marks. Sports Endeavors Inc. reserves the right to prohibit the use of Sports Endeavors Marks, or to modify any materials depicting Sports Endeavors Marks, if in its sole judgment such use may be illegal, misleading or inappropriate.
- 5.2. Orange County grants Sports Endeavors Inc. the right to use the Facility name and images for marketing purposes, in any media, subject to prior and timely review by Orange County. Such review is intended to help ensure accuracy and coordination of marketing and public relations efforts between Sports Endeavors Inc. and Orange County related to the Facility.
- 5.3. Orange County grants Sports Endeavors Inc. the right to use the Orange County seal (logo), which is a registered mark with the North Carolina Secretary of State's office, solely in connection with the identification of the Facility. Sports Endeavors Inc. acknowledges that its use of the Orange County seal (logo) shall inure to the sole benefit of Orange County and shall not create any right, title or interest in same in favor of Sports Endeavors. Sports Endeavors Inc. agrees to comply with Orange County's guidelines as may be provided to Sports Endeavors Inc. from time to time concerning use of its seal (logo), or to modify any materials depicting its seal, if in its sole judgment such use may be illegal, misleading or inappropriate.

5.4. Each party shall provide a single point of contact for any approvals required under the Agreement (“Approval Coordinator”), as named below:

For the County: Lori N. Taft, Director
Orange County Parks and Recreation Department
P.O. Box 8181, Hillsborough, NC 27278

For Sports Endeavors: Mike Moylan, President
Sports Endeavors, Inc.
431 US Highway 70A East
Hillsborough, NC 27278

Either party may change their Approval Coordinators upon written notice to the other party in accordance with this Agreement.

6. MAINTENANCE OF FACILITY, NON-DISCRIMINATION.

6.1. Orange County shall maintain the Facility in good and safe condition.

6.2. Orange County shall ensure that in no event shall usage of the Facility discriminate on the basis of race, sex, religion or national origin.

7. INSURANCE REQUIREMENTS, RELEASES REQUIRED.

7.1. Orange County agrees to secure and maintain in force and effect throughout the term of this Agreement insurance coverage for all facilities and equipment located at the Facility consistent with that maintained by Orange County at all other municipal locations. Such coverage should include, at a minimum the following:

7.1.1. Statutory workers’ compensation in accordance with the laws of the state where such compensation would be payable. Employers’ liability (Coverage B) with limits of not less than \$100,000 per accident.

7.1.2. Comprehensive General Liability Insurance, including products liability, completed operations liability, blanket contractual liability, broad form property damage and bodily injury liability insurance, with limits of at least \$2,000,000 for each occurrence and combined single limit.

7.1.3. Umbrella Liability Insurance for a limit of not less than \$5,000,000 per occurrence and policy aggregate limit.

7.1.4. Commercial Property Insurance on the Facility with a limit of no less than \$3,500,000.

7.2. Orange County shall deliver to Sports Endeavors Certificates of Insurance evidencing the existence of the insurance required above no later than thirty (30) days following the final execution of this Agreement. Such Certificates shall provide for the giving to Sports Endeavors of thirty (30) days prior written notice of cancellation.

7.3. Orange County agrees that it will use best efforts to require all credentials of any kind used for admission to events at the Facility to include the following or substantially similar language:
The holder of this ticket assumes all risk and danger and releases the Eurosport Soccer Center, its sponsors, and host organizations and all agents thereof from any and all liabilities resulting from your attendance at this event. You agree to abide by all rules and regulations established for Eurosport Soccer Center, and a violation of these rules and regulations can be cause for forfeiture of your ticket and removal from the premises.

7.4. Orange County further agrees to use best efforts to obtain signed releases from all organizations engaged in activities at the Facility, which release Sports Endeavors Inc., its parent, subsidiary

11. **WAIVER.** The failure of Sports Endeavors Inc. or Orange County at any time to demand strict performance by the other of any terms, covenants or conditions set forth herein, shall not be construed as a continuing waiver or relinquishment thereof, and either may at any time demand strict and complete performance by the other of said terms, covenants and conditions.
12. **ASSIGNMENT.** Neither Orange County nor Sports Endeavors Inc. shall have any right to assign or transfer any of its rights or obligations hereunder without the express written consent of the other party, except Sports Endeavors Inc. may assign any right or delegation any obligation hereunder to a wholly-owned subsidiary or to any party to whom Sports Endeavors Inc. sells substantially all of its assets. Any unauthorized attempt at assignment shall be void and unenforceable.
13. **FURTHER ASSURANCES.** Each party shall, upon the request of the other and without further consideration, execute and deliver to such other parties such documents as may be necessary and proper, and take such other action as may be required, to effectively carry out this Agreement.
14. **INDEPENDENT CONTRACTORS.** Both parties shall be independent contractors unto one another. Nothing herein contained shall be construed to constitute the parties hereto as partners or as joint venturers, or either as agent of the other, and neither shall have power to obligate or bind the other in any manner whatsoever.
15. **SIGNIFICANCE OF HEADINGS.** Paragraph headings contained hereunder are solely for the purpose of aiding in speedy location of subject matter and are not in any sense to be given weight in the construction of this Agreement. Accordingly, in case of any question with respect to the construction of this Agreement, it is to be construed as though such paragraph headings had been omitted.
16. **SEVERABILITY.** If this Agreement or any of its provisions is found to be illegal or unenforceable under the law now or hereafter in effect, then the parties shall be excused from the performance of such portions of this Agreement as shall be found to be illegal or unenforceable under the applicable laws or regulations, without affecting the validity of the remaining provisions of the Agreement.
17. **FORCE MAJEURE.** Neither party shall be liable for any delays, damages nor failure to act caused by Force Majeure Event. A Force Majeure Event means an act of God, failure of any governmental or other regulatory agency or national sport governing body to grant necessary permits or approvals, threat and/or acts of terrorism, or any similar contingency beyond its control, and any failure or delay in the performance of the respective obligations of the parties due to a Force Majeure Event shall not be deemed a breach of this Agreement.
18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between Sports Endeavors Inc. and Orange County relating to the subject matter hereof, and cannot be altered or modified except by an agreement in writing signed by both parties. Upon its execution, this Agreement shall supersede all prior negotiations, understandings and agreements regarding the Facility, whether oral or written, and such prior agreements shall thereupon be null and void without further legal effect. Any terms inconsistent with or additional to the terms and conditions set forth in this Agreement which may be included with a purchase order, acknowledgement, invoice or the like, of either party shall not be binding on the other party hereto. This Agreement may be executed in two (2) or more counterparts, each of which will be considered an original, but all of which will

constitute one and the same Agreement. The parties agree that faxed signature copies shall be legally binding.

19. **GOVERNING LAWS.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts entered into and wholly to be performed with the State of North Carolina.

20. **NO THIRD PARTY BENEFICIARIES.** Unless otherwise specifically provided herein, no person or entity that is not a party to this Agreement will have any equitable or other rights by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement as of the date first above written.

Sports Endeavors Inc.

Orange County

By: _____
Signature

By: _____
Signature

Mike Moylan, President

Valerie Foushee, Chair, Board of Commissioners

Attest:

Attest:

By: _____

By: _____

Title

Clerk to the Board