

Contract Number: CT KSC-144205
Effective Date: 11-19-13
Term Date: 1-1-15
Cost: 189000
Revenue: _____
Total: _____ NTE: _____
Renewal By: _____ Action: 11-1-14
Term: 1-1-15
Reviewed by: [Signature]

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: November 19, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Contract for FC Tucson, between, Stadium District, Visit Tucson to contract with a Mexican Team to play a game as part of the Desert Diamond Cup exhibition matches in Tucson, AZ beginning in January 2014.

CONTRACT NUMBER (If applicable): CTN 14*090

STAFF RECOMMENDATION(S):

CORPORATE HEADQUARTERS: _____

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Ver. - 1

Vendor - 1

Pgs. 7

To: CHH. 11-8-13 By Dept

COB - 11-13-13

Agenda 11-19-13 (1)

Procure Dept 11/13/13 PM 12:20

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$80,000 and/or REVENUE TO PIMA COUNTY: \$ _____

FUNDING SOURCE(S): _____

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

		YES	X	NO
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Board of Supervisors District:

1		2		3		4		5		All	x
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IMPACT:

IF APPROVED: Pima County and Pima County Stadium District will receive increased revenues from FC Tucson, LLC for their season throughout the year.

IF DENIED: Pima County and Pima County Stadium District will not receive increased revenues from FC Tucson, LLC for their season throughout the year.

DEPARTMENT NAME: Stadium District

CONTACT PERSON: Monica Banuelos TELEPHONE NO.: 520-434-1285

CONTRACT	
NO. <u>CT-KSC-14000000000000000000205</u>	
AMENDMENT NO. _____	
This number must appear on all correspondence and documents pertaining to this contract.	

Hospitality and Promotional Agreement

THIS HOSPITALITY AND PROMOTIONAL AGREEMENT (this "Agreement") is made and entered into this 19th day of November, 2013 (the "Effective Date"), by and between Metropolitan Tucson Convention and Visitors Bureau, an Arizona non-profit corporation, d/b/a Visit Tucson ("MTCVB"), F.C. Tucson Events, LLC, an Arizona limited liability company, ("FC Tucson") and the Pima County Stadium District ("Stadium District").

WITNESSETH

- A. FC Tucson is a promoter and organizer of professional soccer events and is working with Major League Soccer ("MLS") to develop and market a MLS Preseason Training Camp ("MLS PTC") and Desert Diamond Cup exhibition matches in Tucson, Arizona beginning in January 2014.
- B. MTCVB, under the trade name "Visit Tucson" assists individuals and organizations wishing to visit or to promote pleasure and business trips to Tucson, Arizona by recommending and/or securing hotel or resort facility accommodations rooms for such individuals and organizations during such pleasure and business trips.
- C. Stadium District owns and operates Kino Sports Complex in Tucson, Arizona, which is the site for the proposed MLS PTC. Stadium District has leased its Kino Sports Complex's soccer fields and facilities to FC Tucson for use by MLS teams in January, February and/or March 2014 for MLS PTC events and for the 2014 Desert Diamond Cup events.
- D. FC Tucson and MTCVB entered into a separate agreement dated July 2, 2013, where MTCVB paid a \$50,000 sponsorship fee to FC Tucson in return for sponsorship benefits related to the 2014 Desert Diamond Cup. Should any provisions of the July 2, 2013 contract conflict with provisions in this Agreement, the responsible parties of FC Tucson and MTCVB concur that this Agreement shall prevail.
- E. FC Tucson, MTCVB and Stadium District desire to contract with a professional soccer team from Mexico to participate in one or more matches in the 2014 Desert Diamond Cup.
- F. The term of this Agreement shall be from the Effective Date set forth above through January 1, 2015. This Agreement may be extended upon the mutual written agreement of the parties.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **RECITALS.** The foregoing recitals are incorporated herein as agreements between the parties.
2. **FC TUCSON OBLIGATIONS.** FC Tucson shall use its best efforts to contract with a professional team from Mexico to participate in one or more matches in the 2014 Desert Diamond Cup, which is an exhibition professional soccer tournament consisting of Major League Soccer teams and FC Tucson. FC Tucson shall focus its recruitment efforts on a professional team from Mexico that has a strong fan base to which the team's participation in the 2014 Desert Diamond Cup can be marketed.

FC Tucson shall work with the professional team from Mexico to house that team in a hotel or resort that remits bed-tax revenue to Stadium District for the duration of the team's stay in metro Tucson for the 2014 Desert Diamond Cup.

FC Tucson shall also employ best efforts to develop and market travel packages for out-of-town fans of the Mexican professional soccer team participating in the 2014 Desert Diamond Cup.

FC Tucson shall work with the professional team from Mexico participating in the 2014 Desert Diamond Cup to provide maintained practice and game fields, adequate training time on the practice fields and access to Kino Sports Complex's locker room and other facilities for the duration of the team's stay in Pima County.

FC Tucson shall cause the professional team from Mexico participating in the 2014 Desert Diamond Cup to provide Visit Tucson no later than March 15, 2014 with a hotel or resort master account bill regarding the team's stay in a hotel and/or resort that remits bed tax to Stadium District. The team may redact individual charges on the master account bill with just a total amount spent being shown.

3. **MTCVB OBLIGATIONS.** MTCVB shall collect from FC Tucson and the professional team from Mexico that participates in the 2014 Desert Diamond Cup hotel/resort expenses and all other expenditure data available related to this event and insert that data into MTCVB's economic impact calculator to determine the event's economic impact.

MTCVB shall pay the professional team from Mexico an appearance fee of up to, but not to exceed, \$80,000. In return, the professional team from Mexico must adhere to all of the following requirements: 1) plays one or more matches in the 2014 Desert Diamond Cup; 2) stays for the duration of its trip in a hotel or resort that remits bed-tax revenue to Stadium District; and 3) provides backup of Tucson expenses related to their participation in 2014 Desert Diamond Cup event to MTCVB by March 15, 2014. MTCVB, in consultation with Stadium District and FC Tucson, reserves the right to issue a partial payment if the team meets some, but not all, of the criteria listed in this section. MTCVB will pay the applicable fee to the professional team from Mexico by April 15, 2014.

MTCVB shall market the 2014 MLS PTC and Desert Diamond Cup events in Mexico with a focus on the city from which the professional soccer team from Mexico is based.

MTCVB shall use its best efforts to aid FC Tucson, upon FC Tucson's request, with securing a professional soccer team from Mexico to participate in the 2014 Desert Diamond Cup.

4. **STADIUM DISTRICT OBLIGATIONS.** Stadium District shall review data supplied by MTCVB related to the criteria listed in section 3 of this Agreement to determine the applicable payment amount to the professional team from Mexico.

Stadium District shall reimburse MTCVB for the entire payment amount to the professional team from Mexico related to this Agreement up to a maximum of \$80,000.

Stadium District shall lease the soccer fields and facilities at Kino Sports Complex to FC Tucson, which, in turn, will allow the use of those facilities by the professional team from Mexico participating in the 2014 Desert Diamond Cup.

Stadium District shall provide and maintain the soccer fields and facilities at Kino Sports Complex in conditions acceptable to the professional soccer team from Mexico participating in the 2014 Desert Diamond Cup.

5. **INSURANCE AND LIABILITY.** FC Tucson shall obtain and maintain liability insurance coverage with coverage amounts as Stadium District may determine during the 2014 Desert Diamond Cup and MLS PTC events and shall cause such insurance policies to name MTCVB and Stadium District as additional insureds. Each party to this Agreement shall be responsible for its own negligence.
6. **EVENT NON-OCCURRENCE.** If either the Desert Diamond Cup or the MLS PTC Training fail to occur in Tucson, Arizona in January, February and/or March, 2014, this Agreement and all obligations of the parties hereunder shall become null and void.
7. **FORCE MAJEURE EVENT.** If, by reason of one or more Force Majeure Event(s), either the Desert Diamond Cup or the MLS PTC Training fail to occur in Tucson, Arizona in January, February and/or March, 2014, FC Tucson shall give written notice and full particulars of such Force Majeure Event in writing to MTCVB and Stadium District within a reasonable time after occurrence of the event or cause relied on, including the estimated period of continuance thereof. Upon such Force Majeure Event, the obligations of FC Tucson, MTCVB and Stadium District hereunder, to the extent affected by such Force Majeure Event, shall be suspended for all purposes of this Agreement and the Agreement shall be and remain in full force and effect.

If either the Desert Diamond Cup or the MLS PTC Training is cancelled due to one or more Force Majeure Event(s) that have occurred and/or are continuing, FC Tucson shall employ best efforts to reschedule the Desert Diamond Cup or the MLS PTC Training, as the case

may be. All parties to this Agreement agree that if the Desert Diamond Cup or the MLS PTC Training, as the case may be, cannot reschedule, then any of the parties to this Agreement shall be entitled to terminate the Agreement and, in such event: (a) all licenses provided by any of the parties hereunder shall immediately be cancelled and all parties shall cease using in any manner any intellectual property (trademark or trade name) of any party to which it was granted the right of use hereunder.

The term "Force Majeure Event" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, casualty, ash clouds, damage, or destruction of the venue for the Desert Diamond Cup or the MLS PTC Training, acts of the public enemy, orders or enactment of any kind of the Government of the United States or of the State of Arizona or of any county or municipality in which the venue for the Desert Diamond Cup or the MLS PTC Training is situated or of any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, cancellation of the Desert Diamond Cup or the MLS PTC Training based upon a reasonable concern for the safety of the players and/or the spectators or other participants involved or any similar or different cause not reasonably within the control of the party claiming such inability.

8. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.
9. **ARIZONA LAW.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona. Any action relating to this Agreement shall be brought in a court of the State of Arizona in Pima County.
10. **MODIFICATIONS.** Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only after signed by each party.
11. **ASSIGNMENT.** No party hereto may assign or sublet its rights or obligations, in whole or in part, under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.
12. **SUCCESSORS AND ASSIGNS.** This Agreement shall not be binding on MTCVB or Stadium District if FC Tucson Events, LLC, is sold to any successors or assigns, including any individual, company, partnership, or other entity with or into which FC Tucson shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which FC Tucson shall sell its assets.
13. **COSTS AND EXPENSES.** Except as otherwise provided herein, each party shall bear its own costs and expenses incurred in the performance of its obligations hereunder.

14. **INDEPENDENT CONTRACTOR.** The relationship among FC Tucson, MTCVB, Stadium District is that of independent contractors for purposes including tax law purposes and engagement law purposes and not that of employer-employee, principal-agent, partners, joint ventures, or otherwise.
15. **NON-DISCRIMINATION.** The parties to this Agreement agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.** Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this contract, the parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
16. **NOTICES.** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other parties in writing, delivered by hand or U.S. Certified mail at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed by this paragraph.

In the case of FC Tucson:

Greg Foster, Member/Manager
F.C. Tucson Events, LLC
3661 N. Campbell Avenue, Suite 343
Tucson, AZ 85713

In the case of Stadium District:

Hank Atha, Deputy County Administrator
Stadium District
130 W. Congress, 10th Floor
Tucson, AZ 85701

In the case of MTCVB:

Brent DeRaad, President & CEO
MTCVB
100 S. Church Avenue
Tucson, AZ 85701

Receipt of any such notice shall be on the date of personal delivery or on the third business day after posting of the written notice by U.S. Certified Mail.

17. **SEVERABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

18. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
19. **COUNTERPARTS.** This Agreement may be executed and delivered in counterparts. Signature pages delivered by facsimile or other electronic means shall have the same effect of an original thereof.
20. **TERMINATION. This Agreement may be cancelled for conflict of interest, pursuant to A.R.S. § 38-511, the pertinent portions of which are incorporated into this Agreement.** Stadium District reserves the right to terminate this Agreement at any time and without cause by serving upon each party 30 days advance written notice of such intent to terminate. In the event of such termination, Stadium District's only obligation to the parties to this Agreement shall be payment for services rendered prior to the date of termination, as applicable under the terms of this Agreement.
21. **LEGAL ARIZONA WORKERS COMPLIANCE.** Each party hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to the party's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Each party shall further ensure that each subcontractor who performs any work for that party under this Agreement likewise complies with the State and Federal Immigration Laws.

Each party shall have the right at any time to inspect the books and records of any other party and any subcontractor of that party in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of a party's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting the party to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the party shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

Each party shall advise each subcontractor of the other parties' rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:


"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with

the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that any party may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of the breaching party.

IN WITNESS WHEREOF, FC TUCSON, STADIUM DISTRICT and MTCVB have hereunto subscribed their names as of the Effective Date stated above.

F.C. TUCSON EVENTS, LLC

By:  10/31/13
Greg Foster, Member/Manager

PIMA COUNTY STADIUM DISTRICT

By: _____
Chair, Board of Directors


MARC NATELSKY
County Attorney


MARC NATELSKY

ATTEST

Clerk of Board

Date

MTCVB

By: 
Brent DeRaad, President & CEO