



Contract Number: CT KSC-14*204
Effective Date: 11-19-13
Term Date: 3-31-14
Cost: 4209,000
Revenue: _____
Total: _____ NTE: _____
Action
Renewal By: 1-1-14
Term: 3-31-14
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 MLS Soccer, Stadium District, Visit Tucson for MLS Preseason Training Camp ("MLS PTC") and Desert Diamond Cup exhibition matches in Tucson, AZ beginning in January 2014.

[Handwritten mark]

CONTRACT NUMBER (If applicable): CTN 14*088

STAFF RECOMMENDATION(S):

Procure Dept 11/13/13 PM 12:19

CORPORATE HEADQUARTERS: _____

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Ver-1

Vendor-1

Pgs. 10

To: CHH - 11-8-13 By Dp
COB - 11-13-13
Agenda 11-19-13
(1)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: \$200,000 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

NO. CT KSC-1400000 00000 00000 204
AMENDMENT NO. _____
This number must appear on all
invoices, correspondence and
contracts relating 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") the Pima County Stadium District ("Stadium District") and Major League Soccer, LLC ("MLS").

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. MLS is a men's professional soccer league representing the sport's highest level in both the United State and Canada, with headquarters in New York City. MLS is a single entity where each team is owned and controlled by MLS investors. MLS is working with FC Tucson to place a MLS PTC at Kino Veterans Memorial Sports Complex in Tucson, Arizona, beginning in January, 2014
- D. Stadium District owns and operates Kino Veterans Memorial Sports Complex in Tucson, Arizona, which is the site for the proposed MLS PTC. Pursuant to that certain License Agreement between the County and FCT dated as of September 27, 2011 as amended and extended by that certain Contract Amendment dated as of March 4, 2012 (the "County-FCT Contract"), the Stadium District has leased North Fields 1-5, New North Field 6, the Stadium, the North Stadium and the North Clubhouse located at or within the Kino Veteran Memorial Sports Complex to FC Tucson (collectively the "Kino Facilities") for use by MLS teams in January, February and/or March 2014 for MLS PTC events and for the 2014 Desert Diamond Cup events.
- E. 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, FC Tucson and MTCVB concur that the provisions of this Agreement shall prevail.

- F. The term of this Agreement shall be from the Effective Date set forth above through March 31, 2014. (the "Term"). Unless sooner terminated pursuant to the provisions hereof, the Term of this Agreement shall automatically renew for successive one (1) year periods ending March 31, 2015 and March 31, 2016, respectively, provided that the County Contract has been renewed by FC Tucson and the Stadium District and that certain MLS – FC Tucson Preseason Training Camp Agreement dated as of October 18, 2013, has either been renewed in accordance with its terms or remains in full force and effect.

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 work with MLS to bring a MLS PTC to Tucson, Arizona in January, February and/or March, 2014, as well as in 2015 and 2016, upon dates to be determined upon written mutual agreement between MLS and FC Tucson, which MLS PTC is currently planned to include: (a) multiple MLS soccer teams training for the regular MLS season ("MLS PTC"); and (b) competition among five (5) or more MLS soccer teams (the "MLS Teams") and participation in the 2014 Desert Diamond Cup ("Desert Diamond Cup"). or any such similar event in 2015 and/or 2016 whether sponsored by Desert Diamond Casinos ("DDC") or a future named sponsor (the "Desert Cup"), which is an exhibition professional soccer tournament consisting of MSL Teams and FC Tucson.

FC Tucson shall employ best efforts to secure a professional soccer team from Mexico (the "Mexico Club") to compete in the Desert Diamond Cup and/ or the 2015 and/or 2016 Desert Cup.

FC Tucson shall solicit hotel or resort facility accommodation package rates from the hotels and/or resorts which are either located in unincorporated Pima County or remits bed-tax revenue to Stadium District for the duration of the MSL Teams stay in Tucson, Arizona

FC Tucson and MCTVB shall employ best efforts to develop and market travel packages for out-of-town fans of the MLS Teams and the Mexico Club, if any, participating in the 2014 Desert Diamond Cup and/or the 2015 or 2016 Desert Cup.

FC Tucson shall work with the MLS Teams participating in the 2014 MLS PTC and 2014 Desert Diamond Cup and/or the MLS PTC for 2015 and/or 2016 and/or the 2015 or 2016 Desert Cup to provide access to the Kino Facilities as necessary and appropriate for such participation by the MSL Teams.

3. **MLS OBLIGATIONS.** MLS shall employ its best efforts to direct a minimum of five (5) and maximum of ten (10) MLS Teams to participate in 2014 MLS PTC and the 2014 Desert Diamond Cup and/or the MLS PTC for 2015 and/or 2016 and/or the 2015 or 2016 Desert Cup.

MLS will distribute the hotel and resort package rates collected by FC Tucson to the MLS Teams participating in the 2014 MLS PTC and the 2014 Desert Diamond Cup and/or the 2015 or 2016 Desert Cup and MLS PTC for 2015 and/or 2016. Each MLS Teams will be responsible for booking at hotels and/or resorts which are either located in unincorporated Pima County or remits bed-tax revenue to Stadium District for the duration of the MLS Teams stay in Tucson, Arizona. MLS acknowledges, however, that it has no authority to require any MLS Team to select a hotel and/or resort which are either located in unincorporated Pima County or remits bed-tax revenue to Stadium District for the duration of the MLS Teams stay in Tucson, Arizona.

MLS shall cause all MLS Teams participating in participating in the 2014 MSL PTC and the 2014 Desert Diamond Cup and/or the MLS PTC for 2015 and/or 2016 and/or the 2015 or 2016 Desert Cup to provide Visit Tucson no later than March 15, 2014 (or March 15, 2015 and/or March 15, 2016, as the case may be) with a hotel or resort master account bill regarding the team's stay in a hotel and/or resort that either is located in unincorporated Pima County or remits bed tax to Stadium District ("Hotel Data") and such information regarding all other expenditures of the team ("Non-Hotel Data") regarding the team's participation in the 2014 Desert Diamond Cup and the 2014 MSL PTC and/or the 2015 and/or 2016 Desert Cup. Each MLS Team may redact individual charges on the Hotel Data and the Non-Hotel Data with just a total amount spent being shown.

MLS shall cause each MLS Teams participating in the 2014 Desert Diamond Cup and the 2014 MSL PTC and/or the MLS PTC for 2015 and/or 2016 and/or the 2015 or 2016 Desert Cup engage in a marketing campaign to their customer databases encouraging travel to Pima County for those events in 2014, 2015 and/or 2016 as the case may be. MLS shall also cause all of those teams to provide Visit Tucson and to FC Tucson no later than March 15, 2014 (or March 15, 2015 and/or March 15, 2016, as the case may be), with a summary of those marketing activities, including how many people were reached with those messages.

MLS shall also engage in a marketing campaign to their customer databases encouraging travel to Pima County for the 2014 MSL PTC and the 2014 Desert Diamond Cup and/or the MLS PTC for 2015 and/or 2016 and/or the 2015 or 2016 Desert Cup, as the case may be, and shall provide a summary of all marketing conducted on behalf of MLS to FC Tucson, Visit Tucson and the Stadium District.

4. **MTCVB OBLIGATIONS.** MTCVB shall collect from MLS or each MLS Team participating in the 2014 Desert Diamond Cup and the 2014 and the 2014 MSL PTC and/or the 2015 or 2016 Desert Cup and MLS PTC for 2015 and/or 2016, the Hotel and Non-Hotel Data and insert that data into MTCVB's economic impact calculator to determine the economic impact of

2014 Desert Diamond Cup and the 2014 and the 2014 MSL PTC and/or the 2015 or 2016 Desert Cup and MLS PTC for 2015 and/or 2016.

MTCVB shall pay MLS \$20,000, a sponsorship fee, up to, but not to exceed, \$200,000, for each MLS Team, (i.e., up to \$20,000 per each MLS Team) of its participation in the 2014 MLS PTC and the 2014 Desert Diamond Cup and/or thereafter in the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016, as the case may be, that adheres to all of the following requirements: 1) participates in the 2014 MLS PTC and/or Desert Diamond Cup and/or thereafter in the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016, as the case may be; 2) stays for a minimum of twelve (12) overnights with a hotel or resort that either is located in unincorporated Pima County or remits bed tax to Stadium District; 3) engages in a marketing plan that encourages the MLS Team's fans to travel to Tucson, Arizona, to experience the 2014 MSL PTC and the 2014 Desert Diamond Cup and/or thereafter in the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016, as the case may be, ; and 4) provides the Hotel Data and the Non-Hotel Data together with a summary of its marketing plan and the reach thereof related to their participation in the 2014 MSL PTC and the 2014 Desert Diamond Cup and/or thereafter in the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016 by March 15, 2014 (or March 31, 2015 or March 31, 2016 as the case may be). MTCVB, in consultation with Stadium District and FC Tucson, reserves the right to issue partial payments for teams that meet some, but not all, of the criteria listed in this section. MTCVB will pay the applicable fee to MLS by April 15, 2014 (or April 15, 2015 or April 15, 2016, as the case may be), including a pro-rata share of such sponsorship money if an MLS Team stays less than the minimum twelve (12) overnight stays, i.e., \$1,667 per night stayed.

MTCVB shall use its best efforts to promote the 2014 MSL PTC and the 2014 Desert Diamond Cup and/or thereafter the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016 on visittucson.org, via social media, to local and national media, and to customers in MTCVB's database.

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 and/or the 2015 or 2016 Desert Cup.

5. **STADIUM DISTRICT OBLIGATIONS.** Stadium District shall review the Hotel Data and the Non-Hotel Data supplied by MTCVB on or before April 15, 2014 (or April 15, 2015 or April 15, 2016, as the case may be) to confirm the appropriate amount paid or to be paid to MLS by MTCVB and, within thirty (30) days after the receipt of such Hotel Data and Non-Hotel Data, Stadium District shall reimburse MTCVB for the entire amount paid by MTCVB to MLS pursuant to this Agreement, up to a maximum of \$200,000.

Stadium District shall abide by the County-FCT Contract which requires the Stadium District, among other obligations, to lease the Kino Facilities to FC Tucson as necessary for the use of the MLS Teams to participate in the 2014 MLS PTC and the 2014 Desert Diamond Cup

and/or thereafter in the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016, as the case may be.

Stadium District shall abide by the County-FCT Contract which requires the Stadium District, among other obligations, to provide and maintain the Kino Facilities in conditions acceptable for the MLS Teams to participate in the 2014 MLS PTC and the 2014 Desert Diamond Cup and/or thereafter in the 2015 or 2016 MLS PTC and/or the Desert Cup for 2015 and/or 2016, as the case may be.

6. **INSURANCE AND LIABILITY.** FC Tucson shall obtain and maintain such insurance coverage as required by the Stadium District in the County Contract and shall name MTCVB and MLS as additional insureds thereunder for purposes of this Agreement. Each party to this Agreement shall be responsible for its own negligence.
7. **EVENT NON-OCCURRENCE.** If either the 2014 Desert Diamond Cup or the 2014 MLS PTC Training fails 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. Likewise, if the Desert Cup or the MLS PTC Training fails to occur in Tucson, Arizona in 2015 and/or 2016, this Agreement and all obligations of the parties hereunder shall become null and void.
8. **FORCE MAJEURE EVENT.** If, by reason of one or more Force Majeure Event(s), either the 2014 Desert Diamond Cup or 2014 the MLS PTC Training fail to occur in Tucson, Arizona in 2014 and, likewise, if the Desert Cup or the MLS PTC Training fails to occur in Tucson, Arizona in 2015 and/or 2016, as the result of a Force Majeure Event effecting any party to this Agreement, the party so effected shall give written notice and full particulars of such Force Majeure Event in writing to the other parties 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 2014 Desert Diamond Cup or the 2014 MLS PTC Training is cancelled due to one or more Force Majeure Event(s) that have occurred and/or are continuing, or, likewise if the Desert Cup or the MLS PTC Training is/are cancelled in 2015 and/or 2016, as the case may be, FC Tucson shall employ best efforts to reschedule the Desert Diamond Cup, the Desert Cup and/or the MLS PTC Training, as the case may be. All parties to this Agreement agree that if the 2014 Desert Diamond Cup or the 2014 MLS PTC Training or, likewise if the Desert Cup or the MLS PTC Training in 2015 and/or 2016, 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 2014 Desert Diamond Cup or the 2014 MLS PTC Training or, likewise for the Desert Cup or the MLS PTC Training in 2015 and/or 2016, 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 or, likewise if the Desert Cup or the MLS PTC Training in 2015 and/or 2016 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 or, likewise if the Desert Cup or the MLS PTC Training in 2015 and/or 2016 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.

9. **ENTIRE AGREEMENT.** This Agreement (including the Recitals set forth and any Exhibits attached hereto) 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.
10. **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.
11. **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.
12. **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.
13. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the parties' successors and assigns. Notwithstanding the foregoing, however, the 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.
14. **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.

15. **DISPUTE RESOLUTION.** Should any party or parties believe any breach or default has occurred, it shall notify the other party or parties in writing as to the nature of the dispute. The defaulting party or parties shall have a 30-day period, upon receipt of notice, to remedy the breach or default. An independent mediator or arbitrator, as agreed upon and paid by the applicable parties, shall be used, prior to any party taking legal action, to settle any such disputes.
16. **INDEPENDENT CONTRACTOR.** The relationship among FC Tucson, MTCVB and Stadium District and MLS 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.
17. **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 Agreement, 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.
18. **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 MSL

Major League Soccer, LLC
420 Fifth Avenue, 7th Floor
New York, NY 10018

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.

19. **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.
20. **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.
21. **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.
22. **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.
23. **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 Agreement 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: 
Greg Foster, Member/Manager


THE PIMA COUNTY STADIUM DISTRICT

By: 
Chair, Board of Directors

APPROVED AS TO FORM
Civil Deputy
County Attorney


MARC NATELSKY

ATTEST



Clerk of Board

Date

METROPOLITAN TUCSON CONVENTION AND VISITORS BUREAU

By: 
Brent DeRaad, President & CEO

MAJOR LEAGUE SOCCER, LLC.

By: 
Name and Title