
MARKETING AND USE AGREEMENT
regarding
PITTSBURGH PIRATES SPRING TRAINING FACILITY PROJECT
(MCKECHNIE FIELD)

MANATEE COUNTY, FLORIDA
PITTSBURGH ASSOCIATES, L.P.

This Agreement ("Agreement") is made and entered into as of the 23rd day of January, 2013, by and between **Manatee County**, a political subdivision of the State of Florida, hereinafter referred to as the "County", and **Pittsburgh Associates**, a Pennsylvania general partnership, hereinafter referred to as the "Franchise". FXC

RECITALS

WHEREAS, pursuant to and in accordance with Section 125.0104, *Florida Statutes* (the "Act") and Article II of Chapter 2-29 of the Manatee County Code of Ordinances (the "Code") the County levies and collects a five percent (5%) tourist development tax, a portion of the proceeds of which are legally authorized to be used to pay the cost of debt service on bonds issued to finance the acquisition, construction, reconstruction or renovation of a retained spring training franchise facility within the meaning of the Act; and

WHEREAS, the City of Bradenton (the "City") intends to fund the acquisition, construction, reconstruction or renovation of McKechnie Field, a spring training facility for the Franchise and a retained spring training franchise facility within the meaning of the Act (the "Project"); and

WHEREAS, the County and the City have entered an Interlocal Agreement, dated as of February 7, 2012, to establish their mutual rights and obligations with respect to joint participation in the funding of the Project (the "Interlocal Agreement"), and the Interlocal Agreement includes the requirement that City shall condition its funding of the Project, and shall include in its agreements with the Franchise, the requirement that the Franchise enter into an agreement with the County that obligates the Franchise to provide to the County, in its capacity as the Bradenton Area Convention and Visitors Bureau, with (1) in-kind promotions in the Pittsburgh, PA, market, in a value equal to four hundred thousand dollars (\$400,000); (2) copies of schedules of the Pittsburgh Pirates and the Marauders and a schedule of dates on which no event has yet been scheduled for McKechnie Field

during the next calendar year; and (3) the right to exercise the City's rights under Section 4.4 of the Lease and Operating Agreement By and Between Pittsburgh Associates and the City of Bradenton dated December 28, 2006 ("McKechnie Field Lease") to hold Events at McKechnie Field; and

WHEREAS, in order to satisfy the requirements for funding of the Project by the City and the County through the performance of the obligations set forth in the Interlocal Agreement, the County and the Franchise wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the Franchise agree as follows:

Article I
COVENANTS AND OBLIGATIONS

1.1 Obligations of Franchise. The Franchise shall provide to the County, in its capacity as the Bradenton Area Convention and Visitors Bureau, with:

- A. In each County fiscal year, in-kind promotions in the Pittsburgh, PA, market, in a value equal to four hundred thousand dollars (\$400,000);
- B. A copy of the Pirates' final spring training schedule and a copy of the Marauders' final regular season schedule within one week of the issuance of such final schedule for that season by Major League Baseball and the Florida State League, respectively, and, by December 15 of each year, a schedule of dates on which no event has yet been scheduled for McKechnie Field during the next calendar year and, upon request by the County, updated schedules of open dates at McKechnie Field during that calendar year; and
- C. The right to exercise the City's rights under Section 4.4 of the McKechnie Field Lease to hold Events at McKechnie Field under the same terms and conditions applicable to the City, as set out in Section 4.4 of the McKechnie Field Lease, at no charge to the County (other than those charges expressly authorized pursuant to Section 4.4(b) of the McKechnie Field Lease). The Franchise will, in exercising its sole discretion under Section 4.4 of the McKechnie Field Lease, approve not fewer than seven (7) dates per calendar year in which the County or the City may hold an Event at McKechnie Field.

1.2 Obligations of County. The County hereby acknowledges and agrees that City's obligations under Section 4.3 of the Interlocal Agreement shall be deemed to have been fully performed by virtue of the Franchise entering into this Agreement.

Article II
TERM AND TERMINATION.

2.1 Effective Date. This Agreement shall take effect as of its date set forth above.

2.2 Termination. Unless terminated for cause in accordance with applicable law, this Agreement shall terminate on September 30, 2032.

Article III
AMENDMENTS; ENFORCEMENT

3.1 Amendments Generally. This Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the County by the Board of County Commissioners and for the Franchise by its President, and only if properly executed by all the parties hereto.

3.2 Enforcement. The parties to this Agreement shall have all legal and equitable remedies provided by Florida law for enforcement hereof.

Article IV
MISCELLANEOUS PROVISIONS

4.1 Validity. After consultation with their respective legal counsel, the County and the Franchise each represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Interlocal Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The Franchise and the County each hereby represents, warrants and covenants to and with the other (i) that this Agreement has been validly approved by its respective governing body, and (ii) that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).

4.2 No General Obligation. Notwithstanding any other provisions of this Agreement, the obligations undertaken by the parties hereto shall not be construed to be or constitute general obligations, debts or liabilities of the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, but shall be payable solely in the manner and to the extent provided in or contemplated by the respective authorizing instruments and the Interlocal Agreement.

4.3 Indemnification. To the extent permitted by law, and from legally available funds, each of the parties hereto (in such context, an "indemnifying party") shall defend, indemnify and save harmless the other, its officers, agents, employees and assigns, from and against any and all liabilities, claims, damages, losses and expenses, including costs and attorneys fees, arising out of or resulting from the negligent or wrongful acts or omissions of such indemnifying party, its officers,

agents or employees, made in connection with the performance of the acts, duties, covenants and obligations contemplated in, or imposed pursuant to, this Agreement.

4.4 Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

4.5 Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

4.6 Headings. The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Interlocal Agreement.

4.7 Severability. The provisions of this Agreement are declared by the parties to be severable.

4.8 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with laws of the State of Florida.

4.9 Full Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties, with respect to such matters are null and void and of no effect.

4.10 Notices. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County: Manatee County Administrator
 Manatee County Administration Center
 1112 Manatee Avenue, Suite 920
 Bradenton, Florida 34205
 Facsimile: (941)745-3790

With copies to: Manatee County Clerk of the Circuit Court
R.B. Shore, Clerk
1115 Manatee Avenue West
Bradenton, Florida 34205
Facsimile: (941)741-4082

And

Manatee County Attorney's Office
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205
Attention: County Attorney
Facsimile: (941)749-3089

If to Franchise: Francis X. Coonelly
President
Pittsburgh Pirates
PNC Park at North Shore
115 Federal Street
Pittsburgh, PA 15212
(412)325-4701

With copies to: Bryan Stroh
Vice President & General Counsel
Pittsburgh Pirates
PNC Park at North Shore
115 Federal Street
Pittsburgh, PA 15212
(412)325-4709

Bradenton City Clerk's Office
Carl A. Callahan, City Clerk
101 Old Main Street
Bradenton, Florida 34205
Facsimile: (941)932-9547

City Attorney's Office
519 13th Street West
Bradenton, Florida 34205
Attention: City Attorney
Facsimile: (941)747-6658

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified.

[signature page to follow]

WHEREFORE, the County and the Franchise have executed this Agreement as of the date and year first above written.

MANATEE COUNTY, FLORIDA

By: Board of County Commissioners

By: 

County Administrator

Date: February 12, 2013

PITTSBURGH ASSOCIATES, a

Pennsylvania general partnership

By: 

Francis X. Coonelly

February 12, 2013, Regular Meeting
Agenda Item #17

APPROVED in Open Session
Manatee County Board of County Commissioners

Subject

Agreement with Pittsburgh Pirates

Briefings

None

Contact and/or Presenter Information

Elliott Falcione, Executive Director, CVB

Action Requested

Authorization for Ed Hunzeker, County Administrator, to execute agreement with Pittsburgh Associates for the Pittsburgh Pirates Spring Training Facility Project (McKechnie Field).

Enabling/Regulating Authority

Manatee Code of Laws 2-29-25 Tourist Development Plan

Background Discussion

- On February 7, 2012, the County and the City of Bradenton entered an Interlocal Agreement for funding of the McKechnie Field Project by the City. That Interlocal Agreement required the County to also enter into an Agreement with the Pittsburgh Pirates franchise obligating the franchise to provide the County with in-kind advertising/promotions.
- This Agreement is consistent with and implements the conditions spelled out in the Interlocal Agreement with the City of Bradenton.
- The Agreement specifies that the Pittsburgh Pirates franchise will provide to the County:
 1. In-kind promotions in the Pittsburgh, PA market, in a value equal to \$400,000 each fiscal year;
 2. Copies of the Pirates' final spring training schedule and Marauders schedule, as well as a schedule of dates on which no event has yet been scheduled at McKechnie Field for the year, no later than December 15 of each year;
 3. The use of McKechnie Field no fewer than 7 dates per calendar year.
- This Agreement shall terminate September 30, 2032.

County Attorney Review

Other (Requires explanation in field below)

Explanation of Other

Agreement prepared by CAO.

Comments available from WEC upon request.

Reviewing Attorney

N/A

Instructions to Board Records

One original signed Agreement to CVB (Monica Luff); CVB will forward to the Pittsburgh Pirates franchise.

[Sent via inneroffice mail to Monica Luff 2/14/13 vj](#)

Cost and Funds Source Account Number and Name

n/a

Amount and Frequency of Recurring Costs

n/a

Attachment: [Pirates-Executed Agreement-2013.pdf](#)



PITTSBURGH PIRATES BASEBALL CLUB

PNC Park at North Shore
115 Federal Street
Pittsburgh, PA 15212

p. 412-323-5000

January 23, 2013

Ms. Monica Luff
Bradenton Area CVB
P.O. Box 1000
Bradenton, FL 34206

Dear Monica:

Please find two executed original Marketing and Use Agreements between the County and the Pirates. Please have the documents executed by the County Administrator and return one fully executed original to my attention.

Please give Ed my best and let him know that I look forward to seeing him at the celebration of the renovated McKechnie Field, if not earlier.

Sincerely,


Frank Coonelly
President

Enclosures

cc: Carl Callahan w/Enclosure





Manatee County

R.B. "Chips" Shore

Clerk of the Circuit Court and Comptroller

P.O. Box 25400 • Bradenton, Florida 34206 • (941) 749-1800 • FAX (941) 741-4082 • www.manateeclerk.com

DATE: February 14, 2013

TO: Elliott Falcione, Convention and Visitors Bureau
[Monica Luff](#)

FROM: Clerk of Circuit Court
Board Records Department
Vicki Jarratt
P. O. Box 25400
Bradenton, FL 34206

RE: **Agreement - Pittsburgh Pirates Spring Training Facility Project**

ACCEPTED: In open session by the Board of County Commissioners, Manatee County, Florida, on February 12, 2013.

RBS:vj

Attachment

cc: Board Records

"Pride in Service with a Vision to the Future"

Clerk of Circuit and County Court - Clerk of Board of County Commissioners - County Comptroller, Auditor and Recorder