

CONTRACT NO. 2009-399

BCC APPROVED 7/22/09

**SPRING TRAINING FACILITY**  
**MEMORANDUM OF UNDERSTANDING**

THIS SPRING TRAINING FACILITY MEMORANDUM OF UNDERSTANDING ("Agreement") is made and entered into effective as of the 22<sup>nd</sup> day of July, 2009 (the "Effective Date"), by and between SARASOTA COUNTY, a political subdivision of the State of Florida ("County") and the Baltimore Orioles Limited Partnership, a Maryland limited partnership ("Orioles"). The County and the Orioles each may be referred to herein as a "Party" and collectively as the "Parties."

BOARD RECORDS  
FILED FOR RECORD

JUL 22 PM 4:42  
KAREN E. RUSHING  
CLERK OF CIRCUIT COURT  
SARASOTA COUNTY, FL

**RECITALS**

WHEREAS the City of Sarasota (the "City") is the owner of: (1) the real property located at 12<sup>th</sup> Street and Tuttle which has historically been used as a Major League Spring Training facility and includes training facilities, practice fields, clubhouses, offices, the "Ed Smith Stadium" and other improvements and fixtures located thereon, as well as (2) the real property located North of 12<sup>th</sup> Street and South of 17<sup>th</sup> Street and the corner parcel North of 12<sup>th</sup> Street, which are both utilized for parking for the Major League Spring Training facility and as are more particularly set forth in Exhibit 1 attached hereto (collectively, the "City Land");

WHEREAS, the City adopted its Resolution No. 09R-2094 on May 4, 2009 indicating its willingness to make its Ed Smith Stadium complex available to the Baltimore Orioles for Spring Training and other Major League Baseball purposes and to transfer to the County the aforementioned City Land, along with ancillary parcels of real property (and improvements) in connection therewith for the full beneficial use by the Orioles, which parcels together consist of +/-53 acres of real property more particularly described on Exhibit 1 attached hereto (collectively, with all furniture, fixtures, equipment and improvements, the "Major League Site"), and the City and the County have entered into an interlocal agreement (the "Interlocal Agreement") which includes the foregoing and the purchase of the City Land, including the Major League Site, and other terms and conditions;

WHEREAS, the Orioles own and operate the Major League Baseball Team known as the Baltimore Orioles and currently conduct their Minor League spring training operations in the County at the County-owned Twin Lakes Park containing the Buck O'Neil Baseball Complex described on Exhibit 2, attached hereto, consisting of +/- 36 acres of real property which contains improvements and fixtures located thereon, including but not limited to fields, a clubhouse and other furniture, fixtures, equipment and improvements (collectively, the "Minor League Site");

WHEREAS, the Orioles desire to consolidate its Major League and Minor League spring training operations in the County, including Major League player preseason training, player rehabilitation, extended spring training operations and other year-round baseball-related activities (collectively, "Spring Training Operations") at the Major League Site and the Minor League Site (individually, a "Site" and collectively, the "Sites");

WHEREAS, the County has agreed to provide for the Orioles' use and occupancy of the Sites and to provide, upon the terms and conditions expressed in this Agreement, for certain funds and funding for the renovation and improvement of the Sites, including the Ed Smith

Stadium (the "Major League Stadium"), clubhouses, administration offices, fields, parking facilities, infrastructure, utilities and other usual and customary facilities, furniture, fixtures, and equipment at the Sites and as further described in this Agreement pursuant to the Orioles' Design Plan as more particularly set forth herein (the "Project");

WHEREAS, the County shall provide \$23.7 million to the Project (the "County's Guaranteed Project Funds") from sources identified by the County;

WHEREAS, in order to provide for the County's Guaranteed Project Funds, the County shall conduct the necessary public hearing required to amend its Tourist Development Ordinance to incorporate certain of the project funding into its Tourist Development Plan, thereby permitting it to dedicate up to one-half (1/2) of one percent (1%) of its Tourism Development Tax revenues to service certain County bonds, which it shall cause to be issued in a timely manner. The par amount of the County bonds shall be the maximum amount permitted to be issued without voter referendum as allowed under Section 5.2D of the Sarasota County Charter. The amount of the bonding limitation is currently \$20.715 million. The net proceeds of the County bonds will be made available as project funds and added to such other County funds as may be required to fulfill the County's Guaranteed Project Funds obligation;

WHEREAS, as a condition of the Interlocal Agreement and this Agreement, the City shall promptly issue bonds serviced by funds from the State of Florida Office of Tourism, Trade and Development ("OTTED") and promptly contribute all bond proceeds, net only of reasonable, usual and customary costs and expenses directly associated with issuance of such bonds, to the Project, as more particular set forth herein ("OTTED Funds"). The City may elect, in its sole discretion, to provide the funds from other sources. It is estimated that the net OTTED Funds available from the City will be approximately \$7.5 million;

WHEREAS, together the County's Guaranteed Project Funds and the OTTED Funds are the "Governmental Project Funds". The Governmental Project Funds' principal contribution shall be and not exceed \$31.2 million from all governmental sources. Upon availability in accordance with the schedule contained in this Agreement, the Governmental Project Funds shall be promptly deposited in a dedicated interest-bearing Construction Fund Account and all interest accrued thereon shall inure to the benefit of the Project (the "Maximum Governmental Project Funds");

WHEREAS, the County desires to lease the Sites to the Orioles and the Orioles desire to use and occupy the Sites on a year-round basis for the Orioles' Major League and Minor League Spring Training Operations, baseball-related events and other Orioles' beneficial uses of and to the Sites as provided herein;

WHEREAS, the Board of County Commissioners finds that the Orioles are the only entity capable of using the Sites as Major League Baseball facilities and, pursuant to the authority of Section 2-362(2) of the Sarasota County Code, the County has entered into direct negotiations with the Orioles for the lease of the Sites;

WHEREAS, the Parties recognize that the development of the Project and the lease of the Sites to the Orioles shall be subject to the terms of a definitive Project Development Agreement,

Lease and other relevant documents (collectively, the "Project Documents"), which may contain additional terms and conditions consistent with this Agreement. The Parties agree that the terms set forth herein will be incorporated into the Project Documents and that this Agreement reflects the basic business deal between the Parties and is intended to be binding on the Parties and their respective successors and assigns. The Parties shall use their best efforts, in good faith, to promptly negotiate and execute the Project Documents, unless the Parties deem the provisions of this Agreement are adequate for such purpose(s);

WHEREAS, the benefits and obligations expressed in this Agreement will further improve and promote gainful employment, economic development and tourism within the State of Florida, the County and the City and enhance the economic prosperity of the State of Florida, the County and the City and their residents;

WHEREAS, the benefits and obligations expressed in this Agreement are in the public interest and, among other things, will provide additional recreational facilities, generate significant economic development, tourism and promotional benefits, as more particularly set forth herein;

WHEREAS, the Sites have been used historically by both the City and the County for local youth sports, tournaments, and other community based events, and this community use has brought value to the community in the form of tourism and other benefits and the continuation and importance of which are recognized by the Parties;

WHEREAS, the County intends to utilize the Sites in preparing for and responding to natural disasters, provided that the Orioles and the County shall mutually determine the locations at the Sites for emergency response personnel and equipment and material during the term of the Lease, as more particularly set forth herein;

WHEREAS, the Orioles are a party to a Facility Use Agreement, dated December 28, 2006 with the City of Fort Lauderdale, Florida for the construction and lease of new Major League Baseball and Minor League Baseball facilities upon certain terms, conditions, and conditions precedent set forth therein (the "Ft. Lauderdale FUA"), the Orioles represent and warrant to the County that the conditions precedent to the effectiveness of the Ft. Lauderdale FUA have not been met, and that the Orioles have the right to enter into this Agreement; and

WHEREAS, the County represents and warrants that it has the authority to enter into this Agreement as provided by Chapter 125 F.S. and other relevant provisions of Florida law and provide the Orioles with the rights contained in this Agreement and in the Project Documents.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein, and the mutual covenants, promises, conditions and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto AGREE AS FOLLOWS:

**1. THE PROJECT.**

1.1 The Parties acknowledge that certain improvements are required to be made to the

Sites in order for the Orioles to enter into a lease with the County for the full and beneficial use of the Sites and to conduct its Major League and Minor League Spring Training Operations at the Sites. The Parties agree that the design, development and construction process shall be a cooperative mutual endeavor in which the County and the Orioles will work together and participate in all phases of such process. The County and the Orioles each acknowledge and agree that the Project will be financed, designed, developed and constructed in accordance with the terms, conditions and schedules expressed in this Agreement.

1.2 The Orioles will have primary responsibility for and will take the lead in developing the design plans, specifications and elevations for the Project, subject to all applicable County and City codes and ordinances, which Project Design Plan may be amended from time to time ("Project Design Plan") (for illustrative purposes only, attached as Exhibit 3 are preliminary Site sketches). The Project Design Plan shall also include the style, design and materials for all fixtures, furnishings, appointments and equipment. The County shall have the right to participate in all phases of the design process. The Orioles shall keep the County informed on a regular basis as to the development of the Project Design Plan and any material and substantial amendments thereto. The Orioles and the County shall schedule regular briefings to discuss and preliminarily review the Project Design Plan. The Orioles shall present the Project Design Plan, including site sketches and elevations under consideration by the Orioles, to the County within one hundred fifty (150) days after the execution of this Agreement. The County shall have the right to review, comment upon and approve the Project Design Plan and all decisions and documentation with respect thereto, including without limitation, all architectural programs, schematic designs, plans and specifications, and any material amendments thereto which the Orioles deem necessary or desirable after the County's initial approval for the Project Design Plan has been granted. The Orioles shall have the right to select, in its sole discretion, the furniture, fixtures, and equipment in the Orioles' exclusive use areas, including the Orioles' offices, coaches' offices, training rooms, player locker rooms, weight rooms and other exclusive areas such furniture, fixtures, and equipment which shall be comparable to other Major League Baseball spring training facilities. In all instances, the County's review and approval under this Section shall be promptly exercised and shall not be unreasonably withheld, conditioned or delayed. When completed by the Orioles and reviewed and approved by the County, the Project Design Plan shall be attached hereto and to the Project Development Agreement and incorporated herein and therein for all intents and purposes. The Project Design Plan shall include placement of the existing (or new) plaques honoring Ed Smith and Red Ermish presently affixed at the Sports Complex.

1.3 The Project Design Plan for the Project shall include, among other things, specifications for:

1.3.1 A state-of-the-art renovation (and possible expansion) of the Major League Stadium consistent with the quality and appointments of similar substantially renovated spring training facility projects in Florida (e.g., as generally compared against the most recent renovation of comparable cost) with an approximate seating capacity of between 8,500 and 9,000, including approximately 7,500, but not less than 6,500, fixed seat positions plus berm seating, picnic areas, standing room areas, party decks, luxury/corporate suites, sun shading, radio and television booths and broadcasting and telecasting production facilities and studios, press areas, communications and data systems, television monitors and equipment (including all conduit,

wiring, fiber, cable, head-end equipment, data switches and terminals as may be required), camera stations, state-of-the-art scoreboards, sound systems and control room, concession stands/equipment, food preparation areas and kitchens, retail and novelty stores, fan service and first aid areas, locker rooms, weight rooms, and other usual and customary stadium facilities, equipment, areas and amenities.

1.3.2 On the Major League Site: the Major League Stadium plus an additional three and a half (3.5) practice fields of Major League dimensions and quality; a renovated and expanded state-of-the-art clubhouse consisting of approximately 35,000 square feet of air conditioned space, including administration offices, locker rooms, training facilities, weight rooms, and other usual and customary clubhouse facilities, equipment and areas, player development areas, indoor and outdoor batting cages, pitching mounds, dedicated parking facilities, infrastructure, utilities (including wiring, cable, fiber and data equipment), and such other usual and customary improvements, fixtures, furnishings, equipment and amenities as may be necessary for the Orioles' full and beneficial use of and to the Site.

1.3.3 On the Minor League Site: five (5) practice fields of Major League dimensions and quality, a renovated and expanded Minor League clubhouse consisting of approximately 25,000 square feet of air conditioned space, including administration offices, locker rooms, training facilities, weight rooms, and other usual and customary Minor League clubhouse facilities, equipment and areas, player development areas, indoor and outdoor batting cages, pitching mounds, dedicated, but not exclusive, parking facilities, infrastructure, utilities (including wiring, cable, fiber and data equipment), and such other usual and customary improvements, fixtures, furnishings, equipment and amenities as may be necessary for the Orioles' full and beneficial use of and to the Site.

## **2. PROJECT FINANCING.**

2.1 The Governmental Project Funds shall consist of the following:

2.1.1 From the County:

2.1.1.A Net proceeds from the County's bond issue from the issuance of County's bonds in a par amount which shall not exceed the maximum amount permitted to be issued without voter referendum, expected to be approximately \$18.7 Million on or about October 1, 2009.

2.1.1.B Cash collections of one-half (1/2) of one percent (1%) of the County's Tourist Development Tax beginning as of March 1, 2008 estimated to be approximately \$2 million by the date of issuance of the County bonds.

2.1.1.C. County cash contributions from legally available non-ad valorem revenues in an amount not to exceed \$3 million.

2.1.1.D And/or such other County funds from legally available, non ad valorem revenues as may be required to fund the County's Guaranteed Project Funds obligation in the amount of \$23.7 million.

2.1.1.E Net proceeds from the City's bond issue from the City's OTTED grant funding or a cash equivalent from legally available, non-ad valorem revenues in an amount no less than \$7.5 million.

2.1.1.F Collectively, the Governmental Project Funds shall be and not exceed \$31.2 million for the Project.

2.2 All Governmental Project Funds shall be made available for the Project no later than thirty (30) days after the execution of the Project Documents (unless otherwise agreed by the Parties and as otherwise contemplated in Section 3.14) and shall immediately be placed in a construction fund account (the "Construction Fund Account") administered by the County for the sole and exclusive benefit of the Project. All interest accrued on the Governmental Project Funds (except for bond debt service reserve fund interest) shall be made available for the Project and together with the Governmental Project Funds shall constitute the Maximum Governmental Project Funds.

2.3 The Orioles shall provide the County, as part of the Project Design Plan, with a detailed cost estimate of the total Project costs, including the uses of the Maximum Governmental Project Funds and such other funds, goods or services as might be required from or arranged by the Orioles ("Project Costs").

2.4 Except as provided in, and subject to the terms of, this Agreement or the Project Documents, and further provided that the County fulfills its obligations in this Agreement and the Project Documents, the Orioles shall complete the Project and shall be responsible for the payment of any and all Project Costs in excess of the Maximum Governmental Project Funds (the "Orioles Project Contributions"). With regard to the funding of any Project Costs in excess of the Maximum Governmental Project Funds, the Orioles, at its discretion, shall either deposit the required funds directly in the Construction Fund Account prior to the incurrence of such excess Project Costs, or shall provide to the County any necessary assurances reasonably required by the County (e.g., letter of credit) that the Orioles Project Contributions shall be available in a timely manner, or discharge such payment obligations directly with vendors, concessionaires, contractors or project service providers, in which case the Orioles shall provide the County with written documentation of the payment discharge or in-kind transaction as more particularly set forth in Subsection 2.5. The Orioles also shall comply with any applicable County ordinance or Florida statute related to construction funding requirements for public projects.

2.5 The Orioles shall have the right to enter into any manner of agreements with its vendors, concessionaires or others to provide goods, materials and/or equipment to the Project, which shall be considered, for all intents and purposes, as part of the Orioles' Project Contributions. (For example, the Orioles' concessionaire for the Major League Stadium may be permitted to provide concessionaire equipment to the Sites.) The Orioles will inform the County, in writing, with a description of any Orioles' Project Contributions to the Sites made by any Orioles' vendors, contractors, concessionaires or other third parties and shall summarize relevant terms of such agreements and any other agreements that could impact the County's ownership interests in the Sites. The description shall be jointly submitted on behalf of the Orioles and the respective vendor, contractor, concessionaire or other such third party as may be

appropriate. Any such third party agreement shall be made in accordance and comply with applicable County ordinances and regulations.

2.6 In connection with the Orioles' Project Contributions, the County and the Orioles shall promptly meet after the execution of this Agreement and review the feasibility of issuing taxable or tax-exempt bonds at the request of the Orioles supported by Orioles' funds and/or rent, as the case may be, payment in lieu of taxes or such other funding mechanism as may be mutually agreeable to the Parties; however, the County shall be under no obligation to establish any such funding mechanism for the Orioles Project Contributions. To the extent that any such mutually agreeable funding mechanism requires the City to issue bonds, the County agrees to request that the City take reasonable steps to issue said bonds. To the extent that bonds are issued as part of the Orioles Project Contributions, the bond proceeds, net of all reasonable and customary expenses and costs, shall be deposited in the Construction Fund Account for the benefit of the Project.

### **3. DEVELOPMENT AND CONSTRUCTION OF THE PROJECT.**

3.1 The County and the Orioles will execute a definitive, long form project development agreement for the Project which shall incorporate the relevant terms and conditions contained in this Agreement, and such other terms and conditions as are customarily included in similar agreements and as may be mutually agreed, and will establish the framework for the design and construction of the Project, within one hundred fifty (150) days after the execution of this Agreement (the "Project Development Agreement"), unless the Parties, in their respective sole discretion, deem the provisions of this Section 3 are adequate for such purpose.

3.2 The Project Development Agreement shall include the Project Design Plan and a detailed schedule outlining the time and actions anticipated necessary with respect to the Project, including a project design schedule that will address the coordination necessary to prepare the project scope, selection criteria and timeline for the procurement process (the "Project Schedule").

3.3 Time being of the essence, the County shall take all such action as is necessary to expeditiously conduct all of its Project reviews and exercise its approval rights, which in all instances may not be unreasonably withheld, conditioned or delayed. The County shall support the issuance of all City permits and approvals necessary for the Project and shall use its best efforts to obtain a commitment from the City in the Interlocal Agreement to provide expedited review and priority scheduling for any permit or development approval submitted to the City for the Project.

3.4 After the Project Development Agreement is finalized and approved by the County, the County agrees to promptly proceed with authorizing and issuing any and all procurements necessary for the Project. To the fullest extent permitted by law, regulation or ordinance, the Orioles shall be permitted to participate with the County and approve the selection of the architects, contractors, subcontractors, vendors and other professionals for the Project. The Orioles shall also have, to the fullest extent permitted by law, primary responsibility for and will take the lead in developing and constructing the Project, the right to approve any agreements to be entered into by the County for the Project (and any phase, portion or work order thereof), and

