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City of Scottsdale  
One Stop Shop/Records  
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7447 E. Indian School Road, Suite 100  
Scottsdale, AZ 85251

This cover sheet is being added to the following intergovernmental agreement so that it may be associated for recording purposes with the address of the Scottsdale Stadium, 7408 E. Osborn, Scottsdale, Arizona 85251:

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF  
SCOTTSDALE AND THE ARIZONA TOURISM AND SPORTS  
AUTHORITY d/b/a THE ARIZONA SPORTS AND TOURISM  
AUTHORITY PERTAINING TO THE SCOTTSDALE MUNICIPAL  
SPRING TRAINING FACILITY RENOVATION PROJECT**

**CITY OF SCOTTSDALE AGREEMENT NO. 2005-032-COS**

FILED THIS 29<sup>th</sup> DAY OF March, 2005, IN THE OFFICE OF THE  
MARICOPA COUNTY RECORDER, PURSUANT TO A.R.S. §11-952(G).

When Recorded Return to:

Sarah A. Strunk, Esquire  
Fennemore Craig, P.C  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012

**INTERGOVERNMENTAL AGREEMENT**

**BETWEEN**

**THE CITY OF SCOTTSDALE**

**AND**

**THE ARIZONA TOURISM AND SPORTS AUTHORITY d/b/a THE ARIZONA SPORTS  
AND TOURISM AUTHORITY**

**PERTAINING TO**

**THE SCOTTSDALE MUNICIPAL SPRING TRAINING FACILITY RENOVATION  
PROJECT**

**\* \* \***

**CITY OF SCOTTSDALE AGREEMENT NO. 2005- 032- COS**

**Dated March 15, 2005**

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005, IN THE OFFICE OF THE MARICOPA  
COUNTY RECORDER, PURSUANT TO A.R.S. §11-952(G).

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## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into March \_\_, 2005 by and between the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation (the "City"), and THE ARIZONA TOURISM AND SPORTS AUTHORITY d/b/a THE ARIZONA SPORTS AND TOURISM AUTHORITY, a corporate and political body having all the rights, powers and immunities of a municipal corporation (the "Authority"). The City and the Authority may be referenced collectively below as the "Parties" and each individually as a "Party."

### Recitals:

1. Pursuant to Arizona Revised Statutes ("A.R.S.") Section 5-808, from monies in the Cactus League Promotion Account, the Authority is authorized to acquire land or construct, finance, furnish, improve, market or promote the use of existing or proposed Major League baseball spring training facilities that are located in Maricopa County and other structures, utilities, roads, parking areas or buildings necessary for the full use of the training facilities for sports and other purposes and to do all things necessary or convenient to accomplish those purposes.

2. The City is the owner of the Scottsdale Municipal Stadium, the professional baseball spring training stadium and practice facilities (the "Stadium") currently used by the Giants Major League Baseball franchise organization (the "Giants") pursuant to a Baseball Facilities Agreement dated as of March \_\_, 2005 between the City, the Scottsdale Charros and the Giants providing for a term of use of the Stadium by the Giants until December 31, 2025 (the "Baseball Facilities Agreement, attached hereto as Exhibit D"). The Stadium is located within the City of Scottsdale, in Maricopa County, Arizona.

3. Prior to 1992, the City expended \$9,000,000 of City funds to construct the Stadium.

4. The City has statutory authority to enter into agreements with other governmental entities and agencies, and the Mayor of the City, the Honorable Mary Manross, is authorized and empowered by law to execute such agreements.

5. Pursuant to A.R.S. Section 5-804, the Authority is authorized to enter into contracts, including intergovernmental agreements under A.R.S. Title 11, Chapter 7, Article 3, as necessary to carry out the purposes and requirements of the Authority.

6. Pursuant to A.R.S. Section 5-808, the Authority must require that any Cactus League project partially funded by the Authority include financial participation from the municipality in which the project is located that equals or exceeds one-half of the amount to be spent or distributed by the Authority.

7. The City has certain planned construction and associated renovations to the Stadium, as set forth in greater detail on Exhibits A and E, attached hereto and incorporated herein (the "Project"). The Project is estimated to cost approximately \$20,000,000.

8. The City has requested that the Authority provide up to \$13,333,000 for the Project, with part of the City's contribution in an amount up to \$6,667,000 being provided on behalf of the City from funds provided to the Authority from the Maricopa County Stadium District (the "MCSD") pursuant to an Intergovernmental Agreement between MCSD and the Authority dated October 22, 2003.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and consideration hereinafter contained, it is agreed by and between the City and the Authority as follows:

## ARTICLE I DEFINITIONS

Section 1.1 In this Agreement, unless otherwise defined elsewhere herein, the following terms shall have the following meanings:

(a) "Agreement" means this Intergovernmental Agreement, as amended or supplemented from time to time.

(b) "Authority" means the Tourism and Sports Authority, d/b/a The Arizona Sports and Tourism Authority, a corporate and political body having all the rights, powers and immunities of a municipal corporation.

(c) "Authority Contribution" means the Authority's contribution of the lesser of \$13,333,000 plus Project Financing Costs or two-thirds (2/3) of the total Project Costs.

(d) "Authorized Authority Representative" means the person or persons designated by the Authority's Board of Directors to act on behalf of the Authority with respect to the Project.

(e) "Authorized City Representative" means the City Mayor, or such other person or persons designated by the City Council to act on behalf of the City.

(f) "Baseball Facilities Agreement" means that certain Agreement dated as of March \_\_, 2005 between the Giants, the Scottsdale Charros and the City (concerning the Giants' use of the Stadium) with a primary term expiring no sooner than December 31, 2025, attached hereto as Exhibit D.

(g) "Business Day" means a day other than a Saturday, Sunday or day on which banks are not authorized by law to close in Scottsdale, Arizona.

(h) "Cactus League Promotion Account" means the Authority account authorized and established pursuant to A.R.S. Section 5-837.

(i) "City" means the City of Scottsdale, a municipal corporation.

(j) "City Contribution" means the Project Costs less the Authority Contribution and the District Contribution.

(k) “Construction Contract” means any agreement or agreements for the installation or construction of all or part of the Project by and between a Contractor and the City.

(l) “Contractor” means any person or entity entering into a Construction Contract.

(m) “District Contribution” means up to \$6,667,000, plus Project Financing Costs, from funds if and when received by the Authority from the MCSD, which will be transferred to the City to become part of the City’s Contribution and in recognition of the City’s previous investment in the Stadium, such sum, when added to the Authority Contribution shall not exceed \$20,000,000, plus Project Financing Costs.

(n) “Event of Default” means any of the events described in Sections 11.1 and 11.2 of this Agreement.

(o) “Plans” means the conceptual plans for the Project attached hereto as Exhibits A and E, together with such other construction plans relating to the Project that are hereafter prepared by the City and approved by the Authority pursuant to Section 4.3(a) of this Agreement.

(p) “Project” means the design, renovation and construction of major league baseball training facilities that may include practice fields, parking areas, a clubhouse and related facilities located with reasonable proximity to the City’s existing baseball stadium, which shall be substantially in conformance with the Plans.

(q) “Project Bonds” means the tax-exempt municipal bonds to be issued by the City or a municipal property corporation in the principal amount of \$20,000,000 to finance the Project, as provided in Section 3.4.

(r) “Project Financing Costs” means the actual interest rate for the Project Bonds but not to exceed 5.25%, all fees, charges, costs and reserves incurred by the City in order to issue, market, sell, make payment on and secure the Project Bonds, including, but not limited to, all reasonable and necessary financing costs, legal fees and costs and expenses incident thereto, provided, however, all such Project Financing Costs shall be subject to the prior reasonable approval of the Authority.

(s) “Project Costs” means the Project Financing Costs and the total costs for development, design, renovation, installation, construction, engineering, and expenses directly related to the construction of the Project, all as set forth in Exhibits A and E to this Agreement, together with such costs as may constitute a Project Cost pursuant to Sections 4.1(b) and (c) of this Agreement, *but excluding* any Project Financing Costs and any Project contingency funds budgeted but not actually spent.

(t) “Stadium” has the meaning set forth in Recital 2 of this Agreement.

(u) “Subcontractors” means persons who have actually supplied labor, materials or services in connection with or incidental to any Construction Contract.



## ARTICLE II PURPOSE

Section 2.1 The purpose of this Agreement is to provide for the following:

- (a) Partial financing of the Project; and
- (b) The respective rights and obligations of the Parties with respect to the Project.

## ARTICLE III AUTHORITY AND CITY OBLIGATIONS

Section 3.1 Contributions. This Agreement memorializes the terms under which the Authority will provide the Authority Contribution and the District Contribution, and the City will provide the City Contribution for the purpose of completing the Project.

Section 3.2 Payments; City's Priority.

(a) From funds lawfully deposited in the Cactus League Promotion Account, the Authority shall deliver the Authority Contribution in accordance with the projected schedule of payments set forth on Exhibit B attached hereto and incorporated herein by this reference, which amounts shall be finalized at the time the City issues the Project Bonds.

(b) The parties to this Agreement acknowledge that the exact amount of revenues accruing to MCSD or the Authority may vary from year to year. Recognizing this, if funds accruing to either the MCSD or the Authority are insufficient to cover the estimated finance costs listed on Exhibit B, as may be amended pursuant to this Agreement, then the Authority agrees to extend the repayment time as needed until the total amount listed on Exhibit B is paid to City. No penalty shall accrue to either the Authority or MCSD for extending the repayment schedule, but nothing in this Section 3.2(b) shall alter the funding priority of City as established in this Agreement.

(c) The City understands and acknowledges that the Authority has: (i) issued \$32,400,000 Subordinate Tax Revenue Bonds (Professional Baseball Training Facilities Project) Series 2003 (the "Cactus League Bonds") to fund the new Major League Baseball Spring Training Facility in the City of Surprise and has pledged all of the Authority's revenues and funds, including those in the Cactus League Promotion Account, to repayment of the senior bonds of the Authority related to the multipurpose stadium facility located in the City of Glendale and the Cactus League Bonds; (ii) committed to fund a bond reserve fund related to the Cactus League Bonds (the "Cactus League Reserve Fund"); and (iii) committed to repay the Operating Account of the Authority \$500,000 related to expenditures for the City of Tempe former stadium site (the "Reimbursement"). The Cactus League Bonds, the Cactus League Reserve Fund and the Reimbursement are hereafter referred to as the "Prior Authority Commitments." The Authority will pay the Authority Contribution to the City out of funds lawfully contributed to the Cactus League Promotion Account, but only after payment of all debt service or monthly payments in connection with the Prior Authority Commitments. The City acknowledges and agrees that, after the Authority's satisfaction of its obligations with respect to the Prior Authority Commitments, the Authority's Contribution to the City shall have equal

priority with all remaining funds in the Cactus League Promotion Account as that of the Authority's commitment to the City of Tempe pursuant to the terms and conditions of the Intergovernmental Agreement dated effective as of November 10, 2004. For example, if in any given fiscal year there is \$1,000,000 remaining in the Cactus League Promotion Account after payment by the Authority of the Prior Authority Commitments and the remaining obligations in that fiscal year to the City of Tempe and the City are equal to \$1,000,000 each, then the City of Tempe shall receive \$500,000 and the City shall receive \$500,000 out of the Cactus League Promotion Account. A copy of the Statutory Flow of Funds is attached hereto as Exhibit C and incorporated herein by this reference.

(d) The Authority shall disburse the projected schedule of payments for the Authority Contribution to the City within thirty (30) days after the end of the Authority's fiscal year. The Authority shall disburse the payments for the District Contribution to the City within thirty (30) days after receipt by the Authority of any sums from the MCSD.

Section 3.3 Project Plans. The Authority and the City have reviewed and acknowledged the Plans and the preliminary estimate of Project Costs attached hereto as Exhibit A and Site Plans as Exhibit E.

Section 3.4 City's Project Financing. The Parties acknowledge that the City will finance or cause to be financed all Project Costs and Project Financing Costs through the issuance of the Project Bonds. The Project Bonds shall include the City Contribution, the Authority Contribution and the District Contribution and all Project Financing Costs. Specifically, the City anticipates that the Project Bonds will be issued in an amount equal to \$20,000,000, which amount includes the amount to be received by the City for the Authority Contribution and the District Contribution. Notwithstanding the foregoing, the City is obligated to contribute the City Contribution. The City will evaluate the Project Bonds on an ongoing basis and, with the prior approval of the Authority, will seek a bond refunding at any point when a significant savings is estimated to be achievable (generally 3% net present value savings, as a minimum). The Authority will pay for any Project Financing Costs associated with the refunding and will receive the net bond refunding savings by adjustment to Exhibit B and corresponding reduced Project Finance Costs.

Section 3.5 Obligation of the City to Complete the Project. The City shall complete the construction of the Project in accordance with the Plans, and as otherwise set forth in this Agreement and, in addition to the obligations set forth in Section 3.4, shall be responsible for paying all Project Costs in excess of the Authority Contribution and the District Contribution.

Section 3.6 Books and Records Maintained by the City. The City shall at all times keep accurate and complete books, records and accounts with respect to all of the City's activities related to the Project, such books, records and accounts to be maintained at the City's principal place of business. The Authority, or any persons designated by it, shall have the right, without hindrance or delay, but only upon five (5) Business Days prior written notice and during normal business hours, to inspect, audit, check and make extracts or copies from the City's books, records and accounts, including, without limitation, all journals, orders, receipts and any correspondence and other data relating to the books, records and accounts related to the Project as may be maintained, generated or stored.

Section 3.7 No Changes in Use. Until December 31, 2025, the City shall be obligated to operate and maintain the Stadium as a Major League Baseball Spring Training Facility unless otherwise agreed to with the prior consent of the Authority.

Section 3.8 Enforcement of Baseball Facilities Agreement. The City, at its own cost and expense, shall enforce the terms and conditions of the Baseball Facilities Agreement and manage, operate, maintain and insure the Facility in a manner that is in compliance with the terms and conditions of the Baseball Facilities Agreement until the expiration of the full term of the Baseball Facilities Agreement. Furthermore, the City hereby agrees that it shall not, without the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole discretion, amend or waive the provisions of the Baseball Facilities Agreement to: (i) shorten the term of the Baseball Facilities Agreement; or (ii) make other changes that waive any requirement that the Giants use the Facility as a Major League Baseball Spring Training Facility during the term of the Baseball Facilities Agreement.

Section 3.9 Fire or Other Casualty. The City shall self-insure, procure and maintain, or cause other parties to procure and maintain, property insurance on the Stadium and Project for the full replacement cost of the Stadium. If the Project or Facility shall be damaged or destroyed by fire or other casualty and the Stadium is not to be restored for full use as a Major League Baseball Spring Training Facility following a fire or other casualty, then the City agrees that the Authority shall be entitled to its pro rata share of the insurance proceeds based on the value of the facility prior to the fire or other casualty and the amount of the Authority's Contribution and the District Contribution. This obligation terminates at the earlier of the following dates: (i) December 31, 2025; or (ii) such earlier date when the parties Agree that the Facility will no longer be used as a Major League Baseball Spring Training Facility.

#### ARTICLE IV PROJECT COSTS, FINANCIAL PARTICIPATION AND PLANS

##### Section 4.1 Project Costs.

(a) Nature of Project Costs. The City represents, warrants and covenants that the Project Costs: (i) are the best estimate by the City of all of the costs of the Project; and (ii) include only those costs necessary to complete the Project as defined by the Plans.

(b) Changes in Project Costs. The City shall not change or in any manner cause or seek a change in Project Costs except as follows:

(i) Any increase in the Project Costs, after execution of a Construction Contract, relating to one item that exceeds \$20,000 or, in the aggregate, any increases in Project Costs caused by two or more items that exceeds \$50,000, shall be considered for approval by the Authority or Authority Representative within five (5) Business Days and if not disapproved in writing by the end of such period shall be deemed as approved, and such approval shall not be unreasonably withheld. The Authority's approval of any increase in the Project Cost shall not increase the Authority's financial obligation to the Project beyond the Authority Contribution in any manner.

(ii) Any change in the Project Costs that receives the applicable approval or approvals required by Section 4.1(b) hereof shall constitute a Project Cost; provided, however, that any such change in the Project Costs shall not increase the amount of the Authority Contribution.

(c) Project Cost Savings. Any modification to the Project or Project budget savings, that cause the Project to be built for less than \$20,000,000, will be used to repay the Project Bonds. Any funds deposited in this account shall be used for the sole purpose of the Stadium's capital improvements so long as the Stadium is being used as a Major League Baseball Spring Training Facility. Any savings in Project Costs, plus any accrued interest that may have accrued between the time the Project is complete and the Project Bonds are repaid, shall be equally divided between the Authority and the City.

Section 4.2 Project Financing. The City will cause the Project Bonds to be issued to finance the Project. The Authority Contribution shall be fully funded by the Authority in accordance with the estimated schedule of payments set forth on Exhibit B. If the Authority has insufficient funds in the Cactus League Promotion Account at any time to make the payments to City in accordance with the schedule set forth on Exhibit B (after taking into consideration the Prior Authority Commitments and in accordance with the priority given to the City of Tempe), then Authority shall make up the payments owed to City as soon as funds become available.

#### Section 4.3 Plans.

(a) Changes to Plans. Any aspect or portion of the Plans that are not final or completed at the time of Execution of this Agreement, shall be submitted, upon their completion, to the Authority for review and written approval of the Authority Representative. Prior to completion of construction no changes to the Plans shall be made without the prior review and written approval of the Authority. The Authority Representative shall review such plans within five (5) Business Days of receipt and either approve or disapprove such Plans. Such Plans will be deemed approved if the Authority gives no approval or disapproval in writing within such five (5) Business Day period.

(b) No Changes Resulting in Change in Use. Following completion of construction and during the term of the Baseball Facilities Agreement, no changes to the Stadium shall be made that will adversely affect the use or operation of the Stadium as a Major League Baseball Spring Training Facility without the prior written consent of the Authority.

(c) Minor Changes. Notwithstanding the foregoing, minor changes to the Plans shall be allowed by the Authority, without prior approval, provided such minor changes, individually and in the aggregate do not cause a change in the character, quality or use of the Project or Stadium.

**ARTICLE V  
DISBURSEMENT OF FUNDS**

Section 5.1 Disbursement of Funds. Funding shall be as provided in Article III of this Agreement.

**ARTICLE VI  
CONSTRUCTION OF THE PROJECT**

Section 6.1 Construction of the Project. The City shall promptly commence, through legally permitted procedures for construction of publicly owned projects, and diligently pursue construction of the Project to completion. The City shall perform such duties as may be necessary to complete construction of the Project pursuant to the Plans and in a good and workmanlike manner and all in full compliance with all applicable laws, zoning ordinances, municipal ordinances, regulations and orders of Federal, State, County, City, local and regulatory authorities of every kind.

Section 6.2 Inspection by the Authority. The City shall permit Authority's Representative and agents to enter upon the Project and to inspect the Project and all materials to be used in the construction thereof and will cause the Contractor and all subcontractors to cooperate with Authority's Representative and agents during such inspections.

Section 6.3 Licensing and Bonding. Each Contractor shall be fully licensed and bonded for payment and performance so as to be in full compliance with the provisions of A.R.S. Article 2, Title 34, as amended.

Section 6.4 Owner's Insurance Policy. The City shall require in the Construction Contract that in connection with the Project, the Contractor: (i) retain insurance policies; and (ii) name the Authority as an additional insured under the insurance policies.

Section 6.5 Notice of Design Meetings. The City shall provide the Authority Representative with reasonable written notice of the date, time and place of all Project design and construction meetings, including, but not limited to, all pre-construction meetings, weekly progress meetings, pre-bid conferences and bid openings.

**ARTICLE VII  
FUNDING OF THE PROJECT**

Section 7.1 Funding of the Project. Except for the Authority Contribution and District Contribution that will be to the credit of the City, the City shall provide all additional funds to complete the Project, all in accordance with this Agreement. The Authority acknowledges that in order to meet the Project schedule, the City funded conceptual design phase activities prior to the execution of this Agreement. The Authority agrees that, upon sale of the Project Bonds, the City may reimburse itself for these prior costs of issuance set forth on Exhibit A attached hereto and incorporated herein by this reference.

Section 7.2 Limited Obligation of the Authority. No obligation of the Authority under or arising out of this Agreement or any document executed by the Authority in connection with

the Project shall impose, give rise to or be construed to authorize or permit a debt or pecuniary liability, or a charge against the general credit of the Authority or the State of Arizona but such obligation shall be limited to monies lawfully deposited into the Cactus League Promotion Account. The Authority makes no representation or warranty express or implied that the Authority Contribution and the District Contribution will be sufficient to pay the Project Costs. The Authority's only obligation is to make the Authority Contribution and to transfer to the City the District Contribution and the City shall not be entitled to any other contribution or reimbursement for the payment of Project Costs in excess of this amount, other than as indicated in Article III of this Agreement.

## **ARTICLE VIII UNAVOIDABLE DELAY**

Section 8.1 Unavoidable Delays. The City shall be excused from performing any of its obligations or undertakings provided in this Agreement to the extent that and only for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the control of the City, including but not limited to the following: Act of God; fire; earthquake; flood; explosion; action of the elements; war; riot; sabotage; malicious mischief; acts of terrorism; inability to procure, because of general shortage or rationing or regulation of, labor, equipment, facilities, sources of energy (including, without limitation, electricity, gas, or gasoline), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; bankruptcy proceedings; litigation involving a party or others relating to zoning matters; other governmental action or inaction pertaining to the Project or Stadium; inability to obtain government permits or approvals; or any other cause, whether similar or dissimilar to the foregoing, not within the control of the City. To be entitled to relief under this Section by reason of any event, the City shall notify the Authority as soon as practicable after the City becomes aware of a possible Unavoidable Delay. Further, the City shall give the Authority notice of such event and the nature of such event within a reasonable time and in any event no later than thirty (30) days following the City's obtaining actual knowledge of the occurrence of such event and that an Unavoidable Delay will ensue as a result of such event. Any delay or cause excusing performance pursuant to the terms of this Section 8.1 of this Agreement is referred to herein as an "Unavoidable Delay." An extension of time for any such Unavoidable Delay shall be only for the period of the Unavoidable Delay, which period shall commence to run from the time of commencement of the Unavoidable Delay, provided the City exerts diligent efforts to resolve the delay, and any deadlines for performance set forth in this Agreement affected by the Unavoidable Delay shall be extended for a period of time commensurate with the duration of the Unavoidable Delay.

## **ARTICLE IX WARRANTIES, REPRESENTATIONS AND COVENANTS**

Section 9.1 Representations by the City. The undersigned, on behalf of the City, but not individually, represents and warrants to, and covenants with, the Authority that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State of Arizona, and has, and as of the date of this Agreement will have, full legal right,

power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

(b) Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement have been held, enacted or granted and in the processing thereof all notice and hearing requirements under applicable law have been fully complied with, including, but not limited to, open meeting laws of the State of Arizona.

(c) The Council of the City: (i) have duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement, and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

(d) As of the date of this Agreement, this Agreement will have been duly executed and delivered by the City and will be legal, valid and binding agreements of the City, enforceable in accordance with their terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief.

(e) The consummation of the transactions contemplated in this Agreement, will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the City is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement. The City is not in breach of or default under any such provision, and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice or both would constitute, a breach of or a default under any such provisions, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement. There are no such provisions that, either in any single case or in the aggregate, materially adversely affect or in the future might (so far as can reasonably be foreseen) materially affect the City's condition, financial or otherwise, or materially affect the City's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the City, threatened (i) in any way affecting the City's powers or the existence of the City (ii) in any way contesting or affecting the validity or enforceability of this Agreement, or any agreements entered into in connection therewith, or (iii) that may adversely affect the City or the Project.

(g) The City has made all required filings with and has obtained all material approvals, consents and orders of any government authority, board, agency or commission having jurisdiction that would constitute a condition precedent to performance by the City of its obligations under this Agreement.

(h) Construction of the Project will be in accordance with the Plans and the operation of the Project will comply with all applicable laws, zoning ordinances, municipal ordinances, regulations and orders of Federal, State, County, City, local and regulatory authorities of every kind and with all covenants, conditions and restrictions affecting the Project.

(i) All building permits, authorizations and approvals required for construction of the Project in accordance with the Plans have been or will be obtained prior to the start of each phase of construction and contracts.

Section 9.2 Representations by the Authority. The undersigned, on behalf of the Authority but not individually, represents and warrants to, and covenants with, the City as follows:

(a) The Authority is organized and existing under the laws of the State of Arizona as a corporate and political body having all the rights, powers and immunities of a municipal corporation, and has, and as of the date of this Agreement will have, full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

(b) Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement have been held, enacted or granted and in the processing thereof all notice and hearing requirements under applicable law have been fully complied with, including, but not limited to, open meeting laws of the State of Arizona.

(c) The Board of Directors of the Authority: (i) have duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

(d) As of the date of this Agreement, this Agreement will have been duly executed and delivered by the Authority and will be legal, valid and binding agreements of the Authority enforceable in accordance with their terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief.

(e) The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Authority is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement. The Authority is not in breach of or default under any such provision, and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice or both would constitute, a breach of or a default under any such provisions, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or



any of the transactions contemplated by this Agreement. There are no such provisions that, either in any single case or in the aggregate, materially adversely affect or in the future might (so far as can reasonably be foreseen) materially affect the Authority's condition, financial or otherwise, or materially affect the Authority's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the Authority, threatened (i) in any way affecting the Authority's powers or the existence of the Authority or (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith.

## **ARTICLE X ASSIGNMENT**

Section 10.1 No Assignment. This Agreement may not be assigned by the Authority or the City without the prior written consent of the Parties.

## **ARTICLE XI EVENTS OF DEFAULT**

Section 11.1 Authority Events of Default. The following shall be "events of default" by the Authority under this Agreement:

(a) If any warranty or representation of the Authority herein contained shall prove to be false, misleading, untrue or incorrect in any material respect.

(b) If the Authority breaches or defaults in the performance or observance of any of its covenants, promises, undertakings or agreements contained in this Agreement, and shall fail to cure the same or shall fail to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) calendar days after written notice to the Authority by the City of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the City shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Authority, as appropriate, within the applicable period and diligently pursued until the default is corrected.

(c) Filing by the Authority of a voluntary petition in bankruptcy, failure by the Authority promptly to lift any execution, garnishment or attachment, adjudication of the Authority as a bankrupt, the Authority's failure or inability to pay its debts generally as they become due, except as provided in section 4.2 of this Agreement, the Authority's admission in writing of its inability to pay its debts, general assignment by the Authority for the benefit of creditors, entry by the Authority into an agreement of composition with creditors, or filing of a petition applicable to the Authority in any proceedings instituted under the provisions of the Federal Bankruptcy statute, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) calendar days after service on the Authority; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the Authority's property or assets; or if the Authority has requested the

appointment of such receiver, trustee or custodian; or if the Authority is adjudged insolvent under any state insolvency law.

Section 11.2 City Events of Default. The following shall be “events of default” by the City under this Agreement:

(a) If any warranty or representation of the City herein contained shall prove to be false, misleading, untrue or incorrect in any material respect.

(b) If the City breaches or defaults in the performance or observance of any of its covenants, promises, undertakings or agreements contained in this Agreement, and shall fail to cure the same or shall fail to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) calendars after written notice to the City by the Authority of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the Authority shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City as appropriate, within the applicable period and diligently pursued until the default is corrected.

(c) Filing by the City of a voluntary petition in bankruptcy, failure by the City promptly to lift any execution, garnishment or attachment, adjudication of the City as a bankrupt, the City’s failure or inability to pay its debts generally as they become due, the City’s admission in writing of its inability to pay its debts, general assignment by the City for the benefit of creditors, entry by the City into an agreement of composition with creditors, or filing of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy statute, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) calendars after service on the City; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the City’s property or assets; or if the City has requested the appointment of such receiver, trustee or custodian; or if the City is adjudged insolvent under any state insolvency law.

(d) If any suit or legal action materially affecting the Project, the construction of the Project or the operation and use of the Project is filed and the City fails to take steps to defend or resolve such action within one hundred eighty (180) calendar days after written notice to the City by the Authority.

(e) If the construction work on the Project is abandoned or stopped for a continuous period of ninety (90) calendar days (except for Unavoidable Delay).

(f) If the Giants, pursuant to Section 2.1 of the Baseball Facilities Agreement, terminate the Baseball Facilities Agreement because they have permanently moved to a regular season home field east of the Mississippi River and another Major League Baseball team has not committed to use the Stadium as a Major League Baseball Spring Training facility for a period of time up to and including December 31, 2025 within a period of twenty-four (24) months following such notice from the Giants.

Section 11.3 Authority Remedies. Upon not less than thirty (30) Business Days after written notice has been provided to the City, the Authority may do any one or more of the

following in any order or combination as the Authority shall elect in its sole and unfettered discretion upon the occurrence of any default by the City:

(a) Withhold making any further payments from the Cactus League Promotion Account, as the case may be, it being agreed that the Authority may also take such action upon the occurrence of an event that would be an Event of Default except for any notice or cure periods set forth herein;

(b) Seek legal remedies for any sums owing or for damages;

(c) Terminate this Agreement; and

(d) Take such other actions as may be allowed by law or in equity.

Section 11.4 Cumulative and Nonexclusive Remedies of the Authority. Any and all remedies conferred upon the Authority shall be deemed cumulative with, and nonexclusive of any other remedy conferred hereby or by law, or in equity, and the Authority in the exercise of any one remedy shall not be precluded from and shall not be deemed to have waived the exercise of any other remedy or remedies.

Section 11.5 Remedies of the City. Upon not less than thirty (30) Business Days after written notice has been provided to the Authority, the City shall have the right to pursue any legal or equitable remedy to which it is entitled to under the law with respect to any default or breach by the Authority under or arising out of this Agreement.

Section 11.6 Cumulative and Nonexclusive Remedies of the City. Any and all remedies permitted to the City shall be deemed cumulative with, and nonexclusive of any other remedy conferred hereby or by law, or in equity, and the City in the exercise of any one remedy shall not be precluded from and shall not be deemed to have waived the exercise of any other remedy or remedies.

## ARTICLE XII RECOGNITION OF CONTRIBUTION

Section 12.1 Plaques; Public Recognition. Plaques that evidence the contribution to the Project by the Authority shall be prominently displayed at two of the primary public entrances to the Stadium. All costs associated with such plaques shall be included as Project Costs. The plaques are intended by the Parties to inform visitors to the Stadium that the Stadium was renovated by a contribution from the Authority on behalf of the citizens of Maricopa County. Additionally, members of the Authority's Board of Directors and the Authority's professional staff shall be invited to participate in all public ceremonies concerning the Project such as, without limitation, a Project announcement ceremony or Project dedication ceremony.

## ARTICLE XIII MISCELLANEOUS

Section 13.1 Recording; Duration. Pursuant to A.R.S. §11-952(B)(1) and (G), this Agreement shall be in full force and effect upon filing with the County Recorder of Maricopa

County, Arizona, and shall continue in full force and effect and shall be binding on the Parties until the expiration of the full term of the Agreement.

Section 13.2 Waiver. In the event any agreement contained in this Agreement should be breached by any Party and thereafter waived by the other Party, such waiver shall be in writing and signed by an authorized representative of the Party granting the waiver and shall not be deemed to waive any other breach hereunder.

Section 13.3 Accuracy of Representations and Warranties. The Parties acknowledge that each and every representation, warranty, term and condition in this Agreement shall be true and accurate as of the date of execution of this Agreement, shall constitute a material part of the consideration hereunder and shall survive the execution of this Agreement.

Section 13.4 Indemnification.

(a) The City shall (to the extent permitted by law) indemnify and hold harmless, while acting within the scope of official duties and capacities, the Authority and each director, official, or employee thereof (any such person being herein sometimes called an "Indemnified Party"), for, from and against any and all losses, claims, damages or liabilities, to which any such Indemnified Party may become subject, to the extent such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or caused by the negligent or willful actions or inaction of the City under this Agreement and shall reimburse any legal or other expenses reasonably incurred by any Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action, including the fees of expert witnesses.

(b) An Indemnified Party shall, promptly after the receipt of written notice of a threat of, or the commencement of, any action against such Indemnified Party in respect of which indemnification may be sought against the City pursuant to Section 14.4(a), notify the City in writing of the commencement thereof. The failure of the Indemnified Party to give such notice shall not reduce the liability of the City unless the City is actually prejudiced by such failure to receive notice.

(c) The provisions of this Section 13.4 shall survive the term of the Agreement and any termination hereof.

(d) All amounts due or otherwise arising pursuant to this Section 13.4 shall be paid to the Authority as soon as practicable after such amounts are incurred and due.

Section 13.5 Amendments. This Agreement may not be changed, modified or rescinded, except in writing, signed by the Parties hereto, and any attempt at oral modification of this Agreement shall be void.

Section 13.6 Notices.

(a) The Authority and the City shall notify each other in writing:

(i) Promptly of any claim, demand, action, or dispute that involves the rights, interests, properties or obligations of the Parties, particularly that which involves the

interpretation of any of the provision of, or the rights of the Parties under, this Agreement or any other claim, demand, action or dispute that may, directly or indirectly, materially affect the Project.

(ii) Immediately upon the attachment or seizure, by process of law or otherwise, the Project, the Project Bond proceeds or any monies in the Construction Account.

(b) All notices herein required shall be in writing, signed by the proper officers and either delivered to the proper officers of the City and/or the Authority or sent by first class, certified mail, postage prepaid, not later than the date herein required to the following addresses or to such other addresses as shall be designated by the Parties in like fashion:

As to the Authority: President, Chief Executive Officer  
And Executive Director  
Arizona Tourism and Sports Authority  
14500 North Northsight Boulevard, Suite 312  
Scottsdale, Arizona 85260  
Attention: Ted A. Ferris  
Facsimile: (480) 505-0534

With a copy to: General Counsel  
Arizona Tourism and Sports Authority  
c/o Fennemore Craig, P.C.  
3003 North Central Avenue, Suite 2600  
Scottsdale, Arizona 85012  
Attention: Sarah A. Strunk, Esq.  
Facsimile: (602) 916-5527

As to the City: City Financial Service Department  
City of Scottsdale  
7447 E. Indian School Road, Suite 210  
Scottsdale, Arizona 85251  
Attention: Craig Clifford  
Facsimile: (480) 312-7897

With a copy to: City Attorney Joseph A. Bertoldo  
City of Scottsdale  
3939 North Civic Center Boulevard  
Scottsdale, Arizona 85251  
Attention: Joe Bertoldo  
Facsimile: (480) 312-2548

Section 13.7 Entire Agreement. This Agreement shall represent the entire agreement of the Parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement, other than those specifically incorporated herein by reference, are revoked and superseded by this Agreement upon its effective date.

Section 13.8 Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

Section 13.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the parties hereby waive any right to object to such venue.

Section 13.10 Disadvantaged Business Entities. The Authority has a strong desire and interest in encouraging disadvantaged business enterprises in the same manner and respect as for the multipurpose facility contemplated by A.R.S. §5-813. Therefore, the Authority encourages the City to consider implementing disadvantaged business enterprise participation goals for the design, engineering, construction and operation of the Project.

Section 13.11 Conflicts of Interest. The provisions of A.R.S. § 38-511 are applicable to this Agreement.

Section 13.12 Termination. If any action, rule, law or decision of any legislative or administrative body or of any court should materially impair or materially and adversely affect the enforceability of any material provision of this Agreement, the Parties may mutually terminate this Agreement.

Section 13.13 Exhibits and Attachments. Each exhibit or attachment referenced in this Agreement is incorporated by this reference as if set forth in full herein.

Section 13.14 Good Faith. City and Authority hereby acknowledge and agree that they shall cooperate in good faith with each other and use commercially reasonable efforts to pursue the obligations imposed by this Agreement.

Section 13.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.

Section 13.16 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this \_\_\_ day  
of ~~January~~, 2005.  
*March*

**CITY OF SCOTTSDALE, ARIZONA**

By *Mary Manross*  
Name: Mary Manross  
Title: Mayor

DATE: *03-15-05*

ATTEST:

*Carolyn Jagger*  
City Clerk, Carolyn Jagger

**APPROVED AS TO FORM AND IN  
ACCORDANCE WITH A.R.S. §11-952(D)**

*Joseph Bertoldo*  
City Attorney *Joseph Bertoldo*

**THE ARIZONA TOURISM AND SPORTS  
AUTHORITY d/b/a THE ARIZONA  
SPORTS AND TOURISM AUTHORITY**

By *Ted A. Ferris*  
Name: Ted A. Ferris  
Title: President, Chief Executive Officer  
and Executive Director

DATE: *03-25-05*

**APPROVED AS TO FORM AND IN  
ACCORDANCE WITH A.R.S. §11-952(D)**

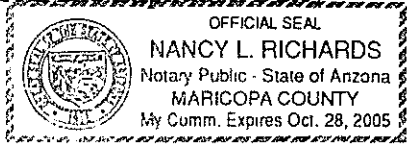
*Samuel A. [Signature]*  
General Counsel

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March, 2005, by Mary Manross, the Mayor of the City of Scottsdale, Arizona, a municipal corporation, on behalf of the City.

(Seal and Expiration Date)



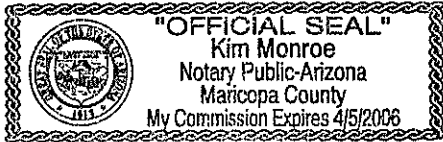
Nancy L. Richards  
Notary Public

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of March 2005, by Ted A. Ferris, the President, Chief Executive Officer and Executive Director of the Arizona Tourism and Sports Authority, d/b/a the Arizona Sports and Tourism Authority.

(Seal and Expiration Date)



Kim Monroe  
Notary Public