

Recording Number: 20070091718
Time of Recording: 01/24/2007 09:50
Filename: 073225-27-1-1--
Affidavit: N
Official Records of
Maricopa County Recorder
Helen Purcell

When recorded return to:

Electronic Recording

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

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF GOODYEAR

AND

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

PERTAINING TO

**THE GOODYEAR MUNICIPAL SPRING TRAINING
FACILITY CONSTRUCTION PROJECT**

* * *

Dated January 17, 2007

FILED THIS _____ DAY OF _____, 2007, IN THE OFFICE OF THE MARICOPA
COUNTY RECORDER, PURSUANT TO A.R.S. § 11-952(G).

TABLE OF CONTENTS

		Page
ARTICLE I	DEFINITIONS.....	2
Section 1.1	Definitions.....	2
ARTICLE II	PURPOSE.....	5
Section 2.1	Purpose.....	5
ARTICLE III	AUTHORITY AND CITY OBLIGATIONS	5
Section 3.1	Contributions.....	5
Section 3.2	Payments; City's Priority	5
Section 3.3	Project Plans.....	6
Section 3.4	City's Project Financing	6
Section 3.5	Obligation of the City to Commence and Complete the Project	6
Section 3.6	Books and Records Maintained by the City	6
Section 3.7	No Changes in Use.....	6
Section 3.8	Enforcement of Baseball Facilities Agreement	7
Section 3.9	Fire or Other Casualty.....	7
ARTICLE IV	PROJECT COSTS, FINANCIAL PARTICIPATION AND PLANS	7
Section 4.1	Project Costs	7
Section 4.2	Plans	8
ARTICLE V	CONSTRUCTION OF THE PROJECT.....	9
Section 5.1	Construction of the Project	9
Section 5.2	Inspection by the Authority	9
Section 5.3	Licensing and Bonding	9
Section 5.4	Contractor's Insurance Policy	9
Section 5.5	Notice of Design Meetings	9
ARTICLE VI	LIMITED OBLIGATION OF THE AUTHORITY	9
Section 6.1	Limited Obligation of the Authority	9
ARTICLE VII	UNAVOIDABLE DELAY	10
Section 7.1	Unavoidable Delays.....	10
ARTICLE VIII	WARRANTIES, REPRESENTATIONS AND COVENANTS	10
Section 8.1	Representations by the City	10
Section 8.2	Representations by the Authority.....	12

TABLE OF CONTENTS
(continued)

	Page
Section 8.3 Covenant of Authority as to MCSD IGA	13
ARTICLE IX ASSIGNMENT.....	13
Section 9.1 No Assignment.....	13
ARTICLE X EVENTS OF DEFAULT	13
Section 10.1 Authority Events of Default.....	13
Section 10.2 City Events of Default	14
Section 10.3 Authority Remedies	14
Section 10.4 Cumulative and Nonexclusive Remedies of the Authority.....	15
Section 10.5 Remedies of the City.....	15
Section 10.6 Cumulative and Nonexclusive Remedies of the City	15
ARTICLE XI RECOGNITION OF CONTRIBUTION	15
Section 11.1 Plaques; Public Recognition; Tickets	15
ARTICLE XII MISCELLANEOUS	16
Section 12.1 Recording; Duration.....	16
Section 12.2 Waiver.....	16
Section 12.3 Accuracy of Representations and Warranties	16
Section 12.4 Indemnification	16
Section 12.5 Amendments	16
Section 12.6 Notices	16
Section 12.7 Entire Agreement.....	18
Section 12.8 Time is of the Essence	18
Section 12.9 Governing Law	18
Section 12.10 Disadvantaged Business Entities	18
Section 12.11 Conflicts of Interest.....	18
Section 12.12 Termination.....	18
Section 12.13 Exhibits and Attachments	18
Section 12.14 Good Faith	18
Section 12.15 Counterparts.....	18
Section 12.16 Severability	18

EXHIBIT A PROJECT DESCRIPTION AND COSTS

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into January 17, 2007 by and between the CITY OF GOODYEAR, ARIZONA, a municipal corporation (the "City"), and 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 (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 has agreed to acquire, construct and maintain a new professional baseball spring training stadium and practice facilities and related land and improvements as generally described on Exhibit A attached hereto (the "Project") to be used by the Cleveland Indians Major League Baseball franchise organization (the "Indians"). The Project is located within the City of Goodyear, in Maricopa County, Arizona.

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

4. 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.

5. 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.

6. The Project is estimated to cost approximately \$74,750,000 (exclusive of finance costs and public infrastructure costs, if any) but the actual costs and Project elements have not yet been determined.

7. The City has requested that the Authority provide funding for the Project, from funds lawfully deposited into the Cactus League Promotion Account authorized and established pursuant to A.R.S. Section 5-837 (the "Authority Funds") and from other funds (the "MCSD Funds") being 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 (the "MCSD IGA").

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 Definitions. 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) "Authorized Authority Representative" means the President, Chief Executive Officer and Executive Director of the Authority, his designee or such other person or persons designated by the Authority's Board of Directors to act on behalf of the Authority with respect to the Project.

(d) "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.

(e) "Authority Contribution" means the Authority's contribution of 50% of those Project Costs that are approved in writing by the Authorized Authority Representative on a present value basis (using the lesser of (i) the City's actual cost of borrowing for the Project Bonds or (ii) 5.00%, as the discount rate) to be paid by the Authority from Authority Funds and MCSD Funds.

(f) "Baseball Facilities Agreement" means an Agreement to be entered into between the Indians and the City concerning the Indians' use of the Project, with a primary term of at least 20 years.

(g) "Business Day" means a day other than a Saturday, Sunday or day on which banks are not authorized by law to close in the State of 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 Goodyear, a municipal corporation.

(j) "City Contribution" means the costs to complete the Project less the Authority 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 with the City.

(m) "Event of Default" means any of the events described in Sections 11.1 and 11.2 of this Agreement.

(n) "Plans" means the conceptual plans for the Project, 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 4.2(a) of this Agreement.

(o) "Prior Authority Funds Commitments" means the payment from Authority Funds of:

(1) debt service on, and the funding of a bond reserve fund with respect to, the \$32,400,000 Subordinate Tax Revenue Bonds (Professional Baseball Training Facilities Project) Series 2003;

(2) debt service on the senior bonds of the Authority related to the multipurpose stadium facility located in the City of Glendale;

(3) amounts due the City of Tempe from Authority Funds pursuant to the terms and conditions of the Intergovernmental Agreement dated as of November 10, 2004; and

(4) amounts due the City of Scottsdale from Authority Funds pursuant to the terms and conditions of the Intergovernmental Agreement dated as of March 15, 2005;

(p) "Prior MCSD Funds Commitment" means the payment from MCSD Funds of:

(1) amounts due the City of Tempe from MCSD Funds pursuant to the terms and conditions of the Intergovernmental Agreement dated as of November 10, 2004;

(2) amounts due the City of Scottsdale from MCSD Funds pursuant to the terms and conditions of the Intergovernmental Agreement dated as of March 15, 2005; and

(3) commencing no earlier than the year 2020, amounts expended to repay the Authority's share of the actual costs (on a present value basis at a discount rate of 5.00%) of stadium renovation projects for 5 facilities serving 7 teams whose leases expire between 2012 and 2022, in approximately the following years and amounts, but not exceeding in the aggregate, on a present value basis as of January 1, 2007, at a discount rate of 5.00%, \$28,000,000:

<u>Year</u>	<u>Renovation Payment</u>
2020	\$ 9,204,647
2021	9,434,763
2022	9,670,632
2023	9,864,045
2024	10,061,325
2025	10,262,552
2026	8,008,197

(q) "Project" means the design, acquisition and construction of major league baseball stadium and training facilities and related land and improvements that may include practice fields, parking areas, a clubhouse and related facilities and is generally described on Exhibit A which is attached to this Agreement, as amended pursuant to Section 3.3 hereof, and which shall be substantially in conformance with the Plans.

(r) "Project Bonds" means the bonds or obligations of one or more series to be issued by or on behalf of the City to finance some or all of the Project Costs.

(s) "Project Costs" means the total costs for development, design, acquisition, installation, construction, engineering, and expenses related to the construction of the Project together with the costs of real property or interests therein and the Project Financing Costs, *but excluding* any Project Financing Costs and any Project contingency funds budgeted but not actually spent. For the determination of Project Costs, unless another value is agreed to by the Authority, land shall be valued at \$5.74 per square foot.

(t) "Project Financing Costs" means the actual Net Interest Cost for the Project Bonds but not to exceed 5.00%, 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. If the Project Bonds are issued in more than one series, the Net Interest cost will be the weighted average Net Interest Cost of all series of the Project Bonds, not to exceed 5.00%.

(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 Purpose. The purpose of this Agreement is to provide for the following:

- (a) Partial funding of the Project from the Authority Funds and the MCSD Funds;
- 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 City will provide the City Contribution for the purpose of completing the Project.

Section 3.2 Payments; City's Priority.

(a) The Authority shall pay to the City each year, to repay Project Costs expended by the City, 100% of all Authority Funds available after payment of the Prior Authority Funds Commitments and 100% of all MCSD Funds available after payment of the Prior MCSD Funds Commitments until the amount paid to the City from Authority Funds and MCSD Funds equals the Authority Contribution.

(b) The Authority will not commit to, or make, any other expenditure of Authority Funds or MCSD Funds with a priority senior to or on a parity with the payments to the City except that when the City of Glendale ("Glendale") constructs a two-team Cactus League facility funded by the Authority, the Authority Funds and MCSD Funds otherwise available after the Prior Authority Funds Commitments and the Prior MCSD Funds Commitments each year shall be divided 3/8 to the City and 5/8 to Glendale (said another way, for each dollar, 37.5 cents shall be paid to the City and 62.5 cents shall be paid to Glendale), but the aggregate amount due to the City shall not be reduced. If, by the time the payments are to be made to the City by the Authority (currently projected to be in the year 2017), Glendale has not constructed a two-team Cactus League facility, then the payments to the City shall be 100% of the Authority Funds and MCSD Funds otherwise available after the Prior Authority Funds Commitments and the Prior MCSD Funds Commitments each year and until such time as the Authority Contribution is paid in full, provided, however, if Glendale constructs a one-team Cactus League facility then the funds shall be divided 50% to the City and 50% to Glendale and if and when a two-team Cactus League facility is constructed by Glendale, the funds shall thereafter be divided 3/8 to the City and 5/8 to Glendale.

(c) Current projections show the commencement of payments to the City in the year 2017. This date of commencement of payments is a projection only and the exact date of commencement may be sooner or later than this date. Payment of the Prior Authority Funds Commitments and the Prior MCSD Funds Commitments may be completed sooner or later than

expected and payment to the City will begin immediately thereafter. The exact amount of revenues accruing to MCSD or the Authority will vary from year to year. Payment of the total amount to be paid to the City may take more or less time than expected but the amount to be paid shall be as determined in this Agreement and nothing in this Section 3.2(c) shall alter the funding priority of the City as established in this Agreement or increase or reduce the aggregate amount payable to the City.

(d) The Authority shall semi-annually disburse the payments for the portion of the Authority Contribution from Authority Funds to the City no later than January 1 and July 1 each year. The Authority shall disburse the payments for the portion of the Authority Contribution from MCSD Funds to the City within thirty (30) days after receipt by the Authority of any sums from the MCSD.

Section 3.3 Project Plans. The City shall cause to be prepared more detailed Plans and estimates of Project Costs and submit them to the Authorized Authority Representative for review and approval. As more detailed Plans are approved by the Authorized Authority Representative, Exhibit A will be revised to include the additional detail.

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 and contributions. The Project Bonds and other City funding shall include all Project Costs. 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 corresponding Project Finance Costs.

Section 3.5 Obligation of the City to Commence and Complete the Project. The City shall diligently commence and complete the acquisition and 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 or causing to be paid all Project Costs, subject to reimbursement from the Authority Contribution as provided herein.

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. For a period of not less than 20 years, the City shall be obligated to operate and maintain the Project as a Major League Baseball Spring Training Facility unless otherwise agreed to with the prior written consent of the Authority.

Section 3.8 Enforcement of Baseball Facilities Agreement. The City shall enter into the Baseball Facilities Agreement with the Indians for the use of the Project as a Major League Baseball spring training facility for a minimum term of 20 years. 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 Project 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. The City shall not, without the prior written consent of the Authority, which consent may be withheld or granted 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 Indians use the Project as a Major League Baseball Spring Training Facility during the term of the Baseball Facilities Agreement. The Authority shall not be responsible for any of the operation and maintenance costs associated with the Project.

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 Project for the full replacement cost of the Project. If the Project shall be damaged or destroyed by fire or other casualty and 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 paid. This obligation terminates at the earlier of the following dates: (i) the termination of the 20-year term of the Baseball Facilities Agreement; or (ii) such earlier date when the parties mutually agree in writing that the Project 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) Determination of Project Costs. All Project Costs shall be subject to review and written approval by the Authorized Authority Representative. Project Costs, and the written approval thereof, may be based on estimates, actual contract prices, or actual expenditures as the parties may agree in writing. Construction costs pursuant to construction manager at-risk construction contracts and which are included in Project Costs shall be determined and fixed based on the guaranteed maximum price set in the construction contract pursuant to which such costs are paid. The Authority will not unreasonably withhold approval of Project Costs which are (i) commercially reasonable costs associated with the design, acquisition and construction of facilities, improvements and appurtenances typically included in spring training facilities in the metro-Phoenix area financed by the Authority or the MCSD; (ii) consistent with the Project as described in Exhibit A hereto; and (iii) not in excess of \$74,750,000.

(b) Reimbursement of Prior Expenditures. Project Costs, approved by the Authorized Authority Representative in writing, may include amounts previously expended by the City with respect to the Project, which may be reimbursed to the City from proceeds of the Project Bonds.

(c) Changes in Project Costs. Following initial approval by the Authority, 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 Authorized 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 previously approved by the Authorized Authority Representative 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 previously approved by the Authorized Authority Representative.

(d) Excess Bond Proceeds. To the extent that any proceeds of the Project Bonds are not required to pay Project Costs, such proceeds may be used to redeem Project Bonds.

Section 4.2 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 Representative 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 Project shall be made that will adversely affect the use or operation of the Project 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.

ARTICLE V
CONSTRUCTION OF THE PROJECT

Section 5.1 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 5.2 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 5.3 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 5.4 Contractor's Insurance Policy. The City shall require in the Construction Contract that in connection with the construction of the Project, the Contractor: (i) retain insurance policies of a type and in amounts that are reasonable and prudent for a project similar to the Project; and (ii) name the Authority as an additional insured under the insurance policies.

Section 5.5 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 VI
LIMITED OBLIGATION OF THE AUTHORITY

Section 6.1 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 or provided to the Authority from the MCSD. The Authority makes no representation or warranty express or implied that the Authority Contribution will be sufficient to pay any portion of the Project Costs. The Authority's only obligation is to make the Authority 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.

**ARTICLE VII
UNAVOIDABLE DELAY**

Section 7.1 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 (other than by the City); requisition; order of government (other than the City) 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; inability to obtain government permits or approvals (other than those issued by the City); or any other cause, whether similar or dissimilar to the foregoing, not within the control of the City. Any delay or cause excusing performance pursuant to the terms of this Section 7.1 of this Agreement is referred to herein as an "Unavoidable Delay." 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. 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 VIII
WARRANTIES, REPRESENTATIONS AND COVENANTS**

Section 8.1 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 its 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 8.2 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.

Section 8.3 Covenant of Authority as to MCSD IGA. The Authority will not (a) take or fail to take any reasonable action or (b) consent to, waive or approve of any action or failure to act by the MCSD where such action or failure to act by either would constitute a default under the MCSD IGA or otherwise reduce or interfere with the receipt by the Authority of MCSD Funds. The Authority will keep the MCSD IGA in full force and effect until the full amount of the Authority Contribution has been paid to the City.

ARTICLE IX ASSIGNMENT

Section 9.1 No Assignment. This Agreement may not be assigned by the Authority or the City without the prior written consent of the Parties.

ARTICLE X EVENTS OF DEFAULT

Section 10.1 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 10.2 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 Indians, pursuant to the Baseball Facilities Agreement, terminate the Baseball Facilities Agreement prior to the completion of the 20-year term and another Major League Baseball team has not committed to use the Project 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 Indians.

Section 10.3 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 of the Authority Contribution, 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 10.4 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 10.5 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 10.6 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 XI RECOGNITION OF CONTRIBUTION

Section 11.1 Plaques; Public Recognition; Tickets. 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 design and content of the plaques shall be subject to the prior review and reasonable approval of the Authority. The plaques are intended by the Parties to inform visitors to the stadium that the stadium was constructed in part 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. During the term of the Baseball Facilities Agreement, the City shall provide, or cause the Indians to provide, to the Authority 6 season tickets for each Spring Training game held at the stadium, together, in an excellent location, which location shall not change during any Spring Training Season, for the Authority's use in marketing the University of Phoenix Stadium and the Cactus League.

ARTICLE XII
MISCELLANEOUS

Section 12.1 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 12.2 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 12.3 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 12.4 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 12.4(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 12.4 shall survive the term of the Agreement and any termination hereof.

(d) All amounts due or otherwise arising pursuant to this Section 12.4 shall be paid to the Authority as soon as practicable after such amounts are incurred and due.

Section 12.5 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 12.6 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
Tourism and Sports Authority
1 Cardinals Drive
Glendale, Arizona 85305
Attention: Ted A. Ferris
Facsimile: (623) 433-7510

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

As to the City: City Financial Service Department
City of Goodyear
190 N. Litchfield Road
Goodyear, Arizona 85338
Attention: Larry Lange
Facsimile: (623) 932-1177

With a copy to: City Attorney Roric M. Massey
City of Goodyear
190 N. Litchfield Road
Goodyear, Arizona 85338
Attention: Roric M. Massey
Facsimile: (623) 932-1177

Section 12.7 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 12.8 Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

Section 12.9 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 12.10 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 12.11 Conflicts of Interest. The provisions of A.R.S. § 38-511 are applicable to this Agreement.

Section 12.12 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 12.13 Exhibits and Attachments. Each exhibit or attachment referenced in this Agreement is incorporated by this reference as if set forth in full herein.

Section 12.14 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.

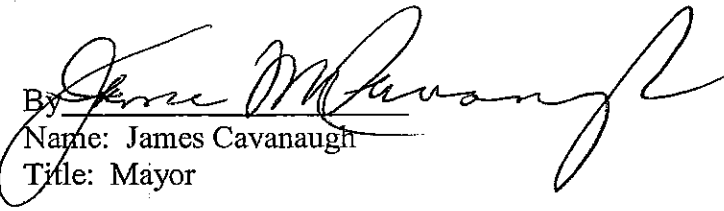
Section 12.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.

Section 12.16 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
17 day of JANUARY, 2007.

CITY OF GOODYEAR, ARIZONA

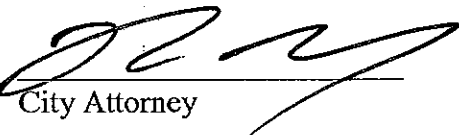
By 
Name: James Cavanaugh
Title: Mayor

DATE: JANUARY 17, 2007

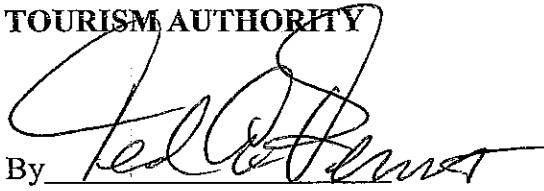
ATTEST:


City Clerk, Dee Cockrum

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


City Attorney

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

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

DATE: January 17, 2007

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

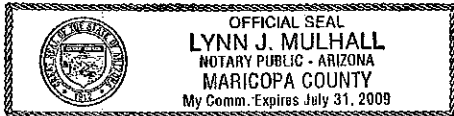
General Counsel

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 17 day of January, 2007, by James Cavanaugh, the Mayor of the City of Goodyear, Arizona, a municipal corporation, on behalf of the City.

(Seal and Expiration Date)



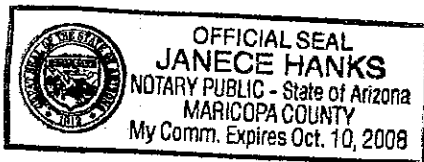
Lynn J. Mulhall
Notary Public

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 22ND day of JANUARY 2007, by Ted A. Ferris, the President, Chief Executive Officer and Executive Director of the Tourism and Sports Authority, d/b/a The Arizona Sports and Tourism Authority.

(Seal and Expiration Date)



Janece Hanks
Notary Public

EXHIBIT A

PROJECT DESCRIPTION AND COSTS

**INDIANS SPRING TRAINING FACILITIES
PROJECT DESCRIPTION**

1. **Stadium.** Major league baseball ballpark suitable for conducting spring training baseball games with seating for approximately 10,000 persons (8,000 fixed stadium seats and 2,000 berm seats), parking for 3,000 automobiles, and all other improvements and appurtenances thereto as are typically found in spring training baseball stadiums in the metro-Phoenix area financed by the Authority or the Maricopa County Stadium District.
2. **Practice Facilities.** Six full baseball practice fields, two half practice fields (or, in lieu of one half practice field, an agility field of approximately equal cost), a major league clubhouse of a minimum of 34,000 square feet and all related facilities and improvements typically found in spring training practice facilities in the metro-Phoenix area financed by the Authority or Maricopa County Stadium District.
3. **Related Land and Improvements.** All necessary improvements, utilities, public infrastructure, land or interests therein, equipment, appurtenances and facilities related to the Stadium and Practice Facilities described above.