

TOURISM AND SPORTS AUTHORITY
Resolution Authorizing Amendment to City of Surprise
Intergovernmental Agreement
and
Authorizing Modification of Original Bond Resolution

I. RECITALS

WHEREAS, pursuant to Arizona Revised Statutes Section 5-801 et seq. (the "Act"), the Board of Directors (the "Board") of the Tourism and Sports Authority (the "Authority") is empowered to enter into agreements necessary to carry out the purposes of the Authority; and

WHEREAS, the Authority has entered into that certain Intergovernmental Agreement (the "Intergovernmental Agreement") dated to be effective May 21, 2001, between the Authority and the City of Surprise, Arizona (the "City"), pertaining to the City's Cactus League spring training facility project (the "Project"); and

WHEREAS, on September 28, 2001, the Board adopted a resolution entitled "Resolution providing for the authorization, issuance and sale of up to \$28,000,000 Subordinate Revenue Bonds for the City of Surprise Cactus League Project" (the "Original Bond Resolution") to authorize the issuance and sale of up to \$28,000,000 principal amount of Subordinate Bonds to assist in financing the Project; and

WHEREAS, the Original Bond Resolution and the Intergovernmental Agreement contemplated that the Authority's contribution to the costs of the Project would be up to \$26,000,000; and

WHEREAS, as a result of the funding delay occasioned by the Authority's litigation with John F. Long, the Authority and the City desire to amend the Intergovernmental Agreement to provide that the Authority's contribution to costs of the Project will be increased up to \$32,000,000; and

WHEREAS, it is therefore necessary to increase the authorized amount of the Subordinated Bonds to be issued to finance the Authority's contribution to the Project to \$34,500,000.

II. AUTHORIZATION OF AMENDMENT

NOW, THEREFORE, BE IT RESOLVED, that the Board, on behalf of the Authority and pursuant to the Act, hereby authorizes the amendment of the Intergovernmental Agreement to provide that the Authority's contribution to costs of the Project will be increased up to \$32,000,000 (the "Amendment"); and

FURTHER RESOLVED, that the Amendment shall be in substantially the same form as the draft Amendment set forth in Exhibit A hereto; and

III. AUTHORIZATION OF MODIFICATION OF ORIGINAL BOND RESOLUTION

FURTHER RESOLVED, the Original Bond Resolution is modified to provide for the authorization, issuance and sale of up to \$34,500,000 in Subordinate Revenue Bonds for the Project; and

FURTHER RESOLVED, each reference in the Original Bond Resolution to the sum of \$28,000,000 shall be deemed to refer to the sum of \$34,500,000; and

FURTHER RESOLVED, the Original Bond Resolution is in all other respects ratified and confirmed; and

IV. MISCELLANEOUS MATTERS

FURTHER RESOLVED, that all actions previously taken on behalf of the Authority by any director or officer of the Authority in connection with any of the foregoing matters are hereby ratified and confirmed in all particulars as the acts of the Authority.

Dated: February 7, 2002.

EXHIBIT A

Second Amendment to Intergovernmental Agreement

When Recorded Return to:
Sarah A. Strunk, Esquire
Fennemore Craig, P.C
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

**SECOND AMENDMENT TO THE
INTERGOVERNMENTAL AGREEMENT**

BETWEEN

THE CITY OF SURPRISE

AND

THE TOURISM AND SPORTS AUTHORITY

PERTAINING TO

THE KANSAS CITY ROYALS

AND

THE TEXAS RANGERS SPRING TRAINING FACILITIES

*** * ***

DATED TO BE EFFECTIVE: JANUARY 1, 2002.

FILED THIS _____ DAY OF FEBRUARY, 2002, IN THE OFFICE OF THE
MARICOPA COUNTY RECORDER, PURSUANT TO A.R.S. §11-952(G).

SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (this “Second Amendment”) is executed effective as of January 1, 2002, and entered into by and between the CITY OF SURPRISE, ARIZONA, a municipal corporation (the “City”), and the TOURISM AND SPORTS AUTHORITY, a corporate and political body having all the rights, powers and immunities of a municipal corporation (the “TSA”).

RECITALS

1. The TSA and the City entered into that certain Intergovernmental Agreement dated effective as of May 21, 2001 (the “Intergovernmental Agreement”).
2. The TSA, the City and the Trustee entered into that certain Construction Trust Agreement dated effective as of May 21, 2001 (the “Construction Trust Agreement”).
3. Pursuant to the Intergovernmental Agreement, the TSA was required to issue Project Bonds and deliver the TSA Contribution to the City prior to October 31, 2001.
4. The TSA was unable to issue the Project Bonds and deliver the TSA Contribution to the City prior to October 31, 2001 because in September 2001, John F. Long (“Mr. Long”) filed a lawsuit (the “Long Lawsuit”) against the TSA challenging, among other things, the constitutionality of the TSA’s authorizing legislation.
5. The TSA desired to provide the City an alternative remedy than provided for under the Intergovernmental Agreement in the event the Project Bonds and the TSA Contribution could not be delivered by October 31, 2001. Therefore, the TSA and the City entered into the First Amendment to the Intergovernmental Agreement (the “First Amendment”) effective as of December 13, 2001 and recorded with the Maricopa County Recorder on December 20, 2001.
6. Pursuant to the terms of the First Amendment, the TSA has transferred to the City all funds then on deposit in the Cactus League Promotion Account and continues to transfer to the City on a monthly basis all monies that are lawfully deposited in the Cactus League Promotion Account, including interest thereon.
7. The Superior Court has found in favor of the TSA and the City on all aspects of the claims presented in the Long Lawsuit, in agreement with the opinion received by Mr. Long from the Attorney General of the State of Arizona prior to filing the Long Lawsuit (the “AG Opinion”).
8. Notwithstanding the TSA and the City’s victory in the Superior Court and the AG Opinion, Mr. Long filed a notice of appeal of the Long Lawsuit on December 14, 2001.

9. Given the AG Opinion and the opinion of the Superior Court in the Long Lawsuit, the TSA and the City contemplate that the issues will be ultimately resolved in favor of the TSA and the City on appeal.
10. Nonetheless, as a result of the continued litigation by Mr. Long, the TSA remains unable to issue the Project Bonds in order to deliver the entire sum of the TSA Contribution to the City.
11. The Long Lawsuit and the resulting delay in the issuance of the Project Bonds, and thus the delivery of the TSA Contribution, has increased the costs of the Project, which was not anticipated at the time of the execution of the Intergovernmental Agreement, and will force the City to fund the Project by interfund loans from other sources of funds within the City's budget. The City will be required to use the interfund loan(s) because of the City's contractual commitment to the Royals and the Rangers under the Team Agreements and to mitigate the harm to the Royals and the Rangers if the City were not able to complete the Project before the start of major league baseball spring training in 2003.
12. The TSA desires to compensate the City for the additional costs incurred by the City as a result of the Long Lawsuit, all on the terms and conditions set forth in this Second Amendment.
13. All undefined capitalized terms used herein shall have the meaning given them in the Intergovernmental Agreement, as amended.

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

AGREEMENT

Section 1. Amended Provisions.

(a) Section 1.1(r) of the Intergovernmental Agreement is deleted in its entirety and replaced with the following:

“(r) “Project Bonds” means the bonds to be issued by the TSA to fund the TSA Contribution, in an aggregate principal amount that, upon sale, will produce sufficient proceeds, after deduction of the Project Financing Costs associated with the Project Bonds, equal to the TSA Contribution less the Temporary TSA Contributions pursuant to Section 3.3(a) of this Agreement.”

(b) Section 1.1(bb) of the Intergovernmental Agreement is deleted in its entirety and replaced with the following:

“(bb) “TSA Contribution” means \$26,000,000, increased by \$600,000 per month commencing January 1, 2002 until the issuance of the Project Bonds, with any partial month to be prorated based on the actual number of days lapsed in

such month prior to the issuance of the Project Bonds, provided, however, that the TSA Contribution shall be no more than \$32,000,000 or two-thirds of the Project Costs, whichever is less.”

(c) Section 3.3(a) of the Intergovernmental Agreement, as amended, is deleted in its entirety and replaced with the following:

“(a) Issuance of the Project Bonds. The City acknowledges and agrees that the TSA Contribution will be funded by the issuance and sale of the Project Bonds. From and after the effective date of this Agreement, the TSA shall take all necessary actions in order to authorize and approve the issuance, sale and delivery of the Project Bonds and market the Project Bonds, including obtaining all necessary consents and approvals in order to issue the Project Bonds, by no later than October 31, 2001, provided, however, the TSA shall use its best efforts to issue the Project Bonds as soon as possible after the effective date of this Agreement. In the event the TSA does not, cannot or is unable to issue and sell the Project Bonds by October 31, 2001, as the City’s sole and exclusive remedy, the City may select one of the following remedies: (i) to immediately terminate this Agreement and the Construction Trust Agreement upon written notice to the TSA and the Trustee; or (ii) to cause the TSA to pay to the City, all monies that are currently then on deposit in the Cactus League Promotion Account, including interest accrued thereon, and all monies that subsequently are lawfully deposited in the Cactus League Promotion Account, including interest accrued thereon, until such time as the TSA issues, sells and receives the proceeds from the Project Bonds (collectively, the “Temporary TSA Contributions”). In the event the City elects to avail itself of the remedy described in (ii) of the preceding sentence to receive the Temporary TSA Contributions, the City acknowledges and agrees that the proceeds from the issuance, sale and receipt of the Project Bonds that the City is to receive pursuant to this Agreement shall be reduced by the Temporary TSA Contributions delivered to the City. The City has the right to elect to have the TSA electronically deliver the Temporary TSA Contributions directly into the City Construction Fund.

Section 2. Continuing Effect. Except as modified or amended in this Second Amendment, all terms and provisions of the Intergovernmental Agreement, as amended, shall remain in full force and effect.

Section 3. References. All references to the Intergovernmental Agreement in the Construction Trust Agreement, Financing Documents and Team Agreements are hereby amended to refer to the Intergovernmental Agreement, as amended.

Section 4. Reaffirmation of Representations. The City hereby reaffirms to the TSA each of the representations, warranties, covenants and agreements of the City set forth in the Intergovernmental Agreement, with the same force and effect as if each were separately stated herein and made as of the date hereof. The City further acknowledges and represents that no event has occurred and no condition exists that, after notice or lapse of time, or both, would constitute a default under the Intergovernmental Agreement, as amended.

Section 5. No Further Amendments. All terms, conditions and provisions of the Intergovernmental Agreement, as amended and the Construction Trust Agreement are continued in full force and effect and shall remain unaffected and unchanged except as specifically amended hereby. The Intergovernmental Agreement, as amended, and the Construction Trust Agreement are hereby ratified and reaffirmed by both the TSA and the City, and both parties specifically acknowledge the validity and enforceability thereof.

Section 6. Entire Agreement; Modification. This Second Amendment, the First Amendment, the Intergovernmental Agreement and the Construction Trust Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous negotiations, understandings and agreements. This Second Amendment may only be modified or amended by a written instrument executed by both the TSA and the City.

Section 7. Severability. The invalidity or unenforceability of any particular provision, or any part thereof, of this Second Amendment shall not affect the other provisions hereof and this Second Amendment shall be continued in all respects as if such invalid or unenforceable provision were omitted.

Section 8. Headings. Headings contained in this Second Amendment are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Second Amendment or any provision thereof.

Section 9. Counterparts. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original document, and all of which combined shall constitute a single document.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to be effective as of the date first written above.

CITY OF SURPRISE, ARIZONA

By: _____
Name: Joan H. Shafer
Title: Mayor

ATTEST:

City Clerk

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

City Attorney

TOURISM AND SPORTS AUTHORITY

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

ATTEST:

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

General Counsel

1264368