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INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF PHOENIX

AND

THE TOURISM AND SPORTS AUTHORITY

PERTAINING TO

**THE PHOENIX MUNICIPAL STADIUM SPRING TRAINING FACILITY
RENOVATION PROJECT**

* * *

DATED TO BE EFFECTIVE: March __, 2003.

FILED THIS _____ DAY OF _____, 2003, 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 ____, 2003 by and between the CITY OF PHOENIX, 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 "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 statutory authority to enter into agreements with other governmental entities and agencies, and the City Manager of the City is authorized and empowered by law to execute such agreements.

3. 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.

4. 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.

5. In connection with planned renovations to and improvement of Phoenix Municipal Stadium (the "Stadium"), currently the spring training facility for the Oakland Athletics Major League Baseball franchise organization (the "Oakland A's"), the City has requested that the Authority provide up to \$4,365,000.00 for the Project with the City providing the balance of the costs of the Project, provided that the Authority's contribution is no more than two-thirds of the actual costs of the Project (taking into account Project contingency funds budgeted but not actually spent).

6. The Oakland A's have agreed to enter into an amendment to their agreement with the City for the use of the Stadium prior to or contemporaneous with the execution and delivery of this Agreement.

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, a corporate and political body having all the rights, powers and immunities of a municipal corporation.

(c) "Authority Contribution" means up to \$4,365,000.00; provided, however, that the Authority Contribution shall be no more than two-thirds of the Project Costs.

(d) "Authority Construction Fund" means the sub-account of the Construction Trust Account established pursuant to Section 1.02 of the Construction Trust Account Agreement.

(e) "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.

(f) "Authorized City Representative" means the City Manager or such other person or persons designated by the City Manager to act on behalf of the City.

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

(j) "City Construction Fund" means the sub-account of the Construction Trust Account established pursuant to Section 1.02 of the Construction Trust Account Agreement.

(k) "City Contribution" means the Project Costs less the Authority Contribution.

(l) "Closing" means the date the Authority Contribution and City Contribution are transferred to the Construction Trust Account, which shall be no later than three (3) Business Days after execution of this Agreement.

(m) "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.

(n) "Construction Trust Account" means the construction trust account created pursuant to the Construction Trust Account Agreement.

(o) "Construction Trust Account Agreement" means that certain Construction Trust Account Agreement between the City, the Authority and _____, as trustee, the form of which is set forth on Exhibit A hereto, as amended or supplemented from time to time.

(p) "Contractor" means Barton Malow Company, or any other person or entity entering into a Construction Contract.

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

(r) "Oakland A's" has the meaning set forth in Recital 5 of this Agreement.

(s) "Plans" means the conceptual and construction plans and specifications for the Project attached hereto as Exhibit C, together with such other construction plans and specifications 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.

(t) "Project" means the project undertaken by City to improve the Stadium all as more particularly set forth and described in the Plans.

(u) "Project Financing Costs" means any fees, charges, costs and reserves incurred by the City or the Authority in order to issue, market, sell, make payment on and secure any bonds, loans or financing arrangements, including, but not limited to, all reasonable and necessary financing costs, legal fees and costs and expenses incident thereto.

(v) "Project Costs" means the total costs for development, design, installation, construction, engineering, and expenses directly related to the construction of the Project, all as set forth in Exhibit B to this Agreement, the fees of the Trustee in connection with the Construction Trust Account 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.

(w) "Stadium" has the meaning set forth in Recital 5 of this Agreement.

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

(y) "Team Agreement" means that certain Sports Facility Use Agreement relating to the use of the Stadium by the Oakland A's.

(z) "Term of the Team Agreement" means from the effective date of this Intergovernmental Agreement to December 31, 2014.

(aa) "Trustee" means _____ and any successors thereto.

**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 Project Plans. The Authority and the City have reviewed and acknowledge the Plans and the Project Costs.

Section 3.2 City Contribution. Within five (3) Business Days after execution of this Agreement, the City shall deliver \$2,103,395 to the Trustee for deposit into the City Construction Fund. The City shall provide the Authority with a written certification signed by the Authorized City Representative certifying as to the deposit by the City into the City Construction Fund.

Section 3.3 Authority Contribution. Within three (3) Business Days after execution of this Agreement, the Authority shall deliver \$4,365,000 to the Trustee for deposit into the Authority Construction Fund. The Authority shall provide the City with a written certification signed by the Authority Representative certifying as to the deposit by the Authority into the Authority Construction Fund. Further, upon the execution and delivery by the City of a Construction Contract, the City shall promptly provide a copy of such Construction Contract to the Authority; provided, however, if the Construction Contract is not executed and delivered on or prior to December 31, 2003, the Authority may, in its sole discretion and upon written notice to the City, immediately terminate this Agreement and the Construction Trust Account Agreement. Upon such termination, the City shall immediately refund to the Authority that portion of the Authority Contribution used to fund Project Costs, if any. After the Authority has deposited the Authority Contribution as required by this Section 3.3, the Authority shall have no further obligation to fund the Construction Trust Account or the Project Costs.

Section 3.4 Obligation of the City to Complete the Project. The City shall complete the construction of the Project in accordance with the Plans. If the proceeds in the Construction Trust Account are at any time insufficient to pay all Project Costs or insufficient to pay for the completion of the Project, the City agrees to pay or cause to be paid to the Trustee, from its own funds or other amounts available to it, the amount of such deficiency for deposit to the Construction Trust Account. The City shall provide the Authority with a written certification signed by the Authorized City Representative certifying as to each deposit by the City into the City Construction Fund.

Section 3.5 Execution of Other Agreements. Concurrent with the execution and delivery of this Agreement: (i) the City and the Oakland A's shall each execute an amended Team Agreement, providing for the Oakland A's continuous use of the Stadium through

December 31, 2014; and (ii) the City and the Authority shall execute and deliver the Construction Trust Account Agreement.

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 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, 2014, 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 Team Agreement. The City shall take any action necessary to enforce the Team's obligation under the Team Agreement to use the Stadium as a Major League Baseball spring training facility.

Section 3.9 Fire or Other Casualty. If the Project or Stadium shall be damaged or destroyed by fire or other casualty, the City's rights and obligations with respect thereto shall be as set forth in the Team Agreement.

ARTICLE IV PROJECT COSTS, FINANCIAL PARTICIPATION AND PLANS AND SPECIFICATIONS

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.

(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 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) In the event that the Authority and City are unable to reach agreement on the inclusion of an increase in the Project Costs, the matter shall be submitted to expedited

Alternative Dispute Resolution ("Expedited ADR") in accordance with Article XII of this Agreement.

(c) Changes in Project Costs. Any change in the Project Costs that receives the applicable approval or approvals required by Section 4.1(b) or is resolved in favor of inclusion pursuant to Article XII relating to Expedited ADR hereof shall constitute a Project Cost and shall be eligible for payment from amounts held in the Construction Trust Account in accordance with the terms of the Construction Trust Account Agreement; provided, however, that any such change in the Project Costs shall not increase the amount of the Authority Contribution.

Section 4.2 Funding of the City Contribution. The City Contribution shall be fully funded by City.

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 Closing 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 no approval or disapproval is given in writing by the Authority 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 Team Agreement, no changes to the Stadium shall be made that will adversely affect the use or operation of the Stadium as a spring training facility for Major League Baseball 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 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 Deposits with the Trustee. On the date of the Closing, the deposits with the Trustee required to be made by the City into the City Construction Fund pursuant to Section 3.2 hereof shall be made and the deposits with the Trustee required to be made by the Authority pursuant to Section 3.3 hereof shall be made. All such funds constituting the City Contribution and the Authority Contribution shall be deposited in the Construction Trust Account for application pursuant to the Construction Trust Account Agreement and used solely to pay Project Costs.

Section 5.2 Disbursements. Disbursements of monies held in the Construction Trust Account shall be made pursuant to the terms of the Construction Trust Account Agreement.

**ARTICLE VI
CONSTRUCTION OF THE PROJECT**

Section 6.1 Construction of the Project. The City shall promptly commence 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 and with all covenants, conditions and restrictions affecting the Project.

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 Policy. The City shall require in the Construction Contract that in connection with the Project, the Contractor: (i) retain the insurance policies set forth on Exhibit D; and (ii) name the Authority as an additional insured under the insurance policies set forth on Exhibit D.

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
FINANCING OF THE PROJECT**

Section 7.1 Funding of the Project. Except for the Authority Contribution, the City shall provide all funds to finance the Project, all in accordance with this Agreement and the Construction Trust Account Agreement. The Authority acknowledges that in order to meet the Project schedule, the City funded all design phase activities prior to the execution of this Agreement. The Authority agrees, upon opening the Construction Trust Account, to reimburse the City for two-thirds of these prior costs in accordance with the disbursement provisions in the Construction Trust Account Agreement.

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 amounts that will be credited to the Construction Trust Account will be sufficient to pay 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 VIII UNAVOIDABLE DELAY

Unavoidable Delays. The City shall be excused from performing any of its obligations or undertakings provided in this Agreement and the Construction Trust Account(except any of its obligations to pay any sums of money under the applicable provisions hereof) 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 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

Section 8.1 The City, at its own cost and expense, shall enforce the terms of the Team Agreement and manage, operate, maintain and insure the Stadium in a manner that is in compliance with the terms and provisions of the Team Agreement until the expiration of the full Term of the Team 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 Team Agreement to: (i) shorten the Term of the Team Agreement; or (ii) no longer require that the Oakland A's or some other Major League Baseball franchise organization use the Stadium for spring training activities.

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 the Closing 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, the Construction Trust Account Agreement and the Team Agreement.

(b) Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement, the Construction Trust Account Agreement and the Team 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, the Construction Trust Account Agreement and the Team Agreement; and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement, the Construction Trust Account Agreement and the Team Agreement.

(d) As of the date of the Closing, this Agreement, the Construction Trust Account Agreement and the Team 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, the Construction Trust Account Agreement and the Team 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 or the Construction Trust Account 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 or the Construction Trust Account 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 or the Construction Trust Account 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, the Construction Trust Account Agreement, the Team 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 Team Agreement and 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 construction.

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 the Closing will have, full legal right, power and authority to: (i) enter into this Agreement and the Construction Trust Account Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement and the Construction Trust Account Agreement.

(b) Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement and the Construction Trust Account 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 the Construction Trust Account Agreement; and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement and the Construction Trust Account Agreement.

(d) As of the date of the Closing, this Agreement and the Construction Trust Account 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 and the Construction Trust Account 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 or the Construction Trust Account 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 or the Construction Trust Account 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 or the Construction Trust Account 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 the Construction Trust Account Agreement or any agreements entered into in connection therewith.

ARTICLE X ASSIGNMENT

Section 10.1 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 knowingly 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 or the Construction Trust Account 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, 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 knowingly 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 or the Construction Trust Account 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 ninety (90) calendars 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 thirty (30) calendars days (except for Unavoidable Delay).

Section 11.3 Authority Remedies. Provided the Authority is not in default under this Agreement, upon the occurrence of any default by the City set forth in Section 11.2, at its option and not less than ten (10) 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:

(a) Withhold making any further payments from the Authority Construction Fund or 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. With respect to any default or breach by the Authority under or arising out of this Agreement or the Construction Trust Account Agreement the City shall have the right to pursue any legal or equitable remedy to which it is entitled to under the law.

ARTICLE XII ALTERNATIVE DISPUTE RESOLUTION

Section 12.1 All claims and disputes concerning Project Costs, City and Authority Contribution and payments that may arise between the Authority and the City under this Agreement shall be resolved by Alternative Dispute Resolution as set forth below and in accordance with A.R.S. §12-1501, et seq.

(a) Any Party by written notice to the other involved Parties within ten (10) Business Days after a controversy has arisen shall select a person to act as an arbitrator.

(b) The other involved Party may by written notice within ten (10) Business Days after receipt of such written notice by the first Party appoint a second arbitrator.

(c) If two arbitrators have been appointed as provided above, they shall agree on a third arbitrator within five (5) Business Days after their appointment and shall appoint him or her by written notice signed by both of them and a copy mailed to each Party involved. In the event that the Parties fail to appoint a third arbitrator, the Parties authorize the appointment of a third arbitrator by the American Arbitration Association.

(d) The City or Authority may join any other party to the arbitration proceeding who is needed for just adjudication to the arbitration. The standard for joinder of any other party shall be that provided under Rule 19, Arizona Rules of Civil Procedure.

(e) On appointment of three arbitrators (hereinafter, "the Panel") as provided for above, the Panel shall hold a hearing within ten (10) Business Days after the appointment of the third member of the Panel, or upon the expiration of the time period in Subsection (b) if no other arbitrator is appointed. The hearing shall be held in the City of Phoenix, or at any other place agreed to by the Parties involved. The Parties shall be entitled to reasonable discovery prior to the arbitration.

(f) At least five (5) Business Days prior to the hearing, the Parties shall meet, exchange exhibits, stipulate and agree on nondisputed facts. No exhibit shall be admitted unless exchanged between the Parties. Prior to or at the hearing, the Parties shall submit memorandums not to exceed five (5) pages outlining the relevant issues for the arbitrators. At the hearing, the laws of evidence of the State of Arizona shall apply, and the arbitrator, or the Panel, as the case may be, shall allow each Party to present that Party's case, evidence and witnesses and render the decision as to the disputed matter. Each Party shall bear their respective expenses of arbitration.

(g) The award of the arbitrator or the majority of the Panel shall be final and binding on the Parties to this Agreement.

ARTICLE XIII RECOGNITION OF CONTRIBUTION

Section 13.1 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 XIV MISCELLANEOUS

Section 14.1 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, as provided for by A.R.S. §11-952(G) and shall continue in full force and effect and shall be binding on the Parties until the expiration of the full Term of the Team Agreement.

Section 14.2 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 14.3 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 14.4 Indemnification.

(a) The City shall (to the extent permitted by law) indemnify and hold harmless, jointly and severally, the Authority and each director, official, independent contractor 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, joint or several to which any such Indemnified Party may become subject, whether under any statute or regulation at law or in equity or otherwise, whether arising under statute, contract or tort, insofar as and 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 or the Construction Trust Account 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. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the City of the commencement thereof, the City shall defend the Indemnified Party therein.

(c) The provisions of this Section 14.4 shall survive the term of the Agreement and any termination hereof.

(d) All amounts due or otherwise arising pursuant to this Section 14.4 shall be paid to the Authority as soon as practicable after such amounts become due or otherwise arose.

Section 14.5 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 14.6 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, the Construction Trust Account Agreement or the Team 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
Phoenix, Arizona 85012
Attention: Sarah A. Strunk, Esq.
Facsimile: (602) 916-5527

As to the City: Director of Economic Development Department
City of Phoenix
200 West Washington Street, 20th Floor
Phoenix, Arizona 85003-1611
Attention:
Facsimile: (602) 495-5097

With a copy to: City Attorney
City of Phoenix
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003-1611
Attention: H. Paul Graves, Esq.
Facsimile: (602) 534-2476

Section 14.7 Entire Agreement. This Agreement and the Construction Trust Account Agreement 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 are revoked and superseded by this Agreement.

Section 14.8 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

Section 14.9 Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

Section 14.10 Governing Law. This Agreement shall be construed in accordance with the law of the State of Arizona.

Section 14.11 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 strongly encourages the City to consider implementing disadvantaged business enterprise participation goals for the design, engineering, construction and operation of the Project

Section 14.12 Conflicts of Interest. The provisions of A.R.S. § 38-511 are applicable to this Agreement.

Section 14.13 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.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective March __, 2003.

CITY OF PHOENIX, ARIZONA

By _____
Name:
Title: City Manager

DATE: _____

ATTEST:

City Clerk

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

City Attorney

THE TOURISM AND SPORTS AUTHORITY

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

DATE: _____

ATTEST:

**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 ____ day of March, 2003, by _____, the City Manager of the City of Phoenix, Arizona, a municipal corporation, on behalf of the City.

(Seal and Expiration Date)

Notary Public

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this __ day of March, 2003, by Ted A. Ferris, the President, Chief Executive Officer and Executive Director of the Tourism and Sports Authority.

(Seal and Expiration Date)

Notary Public

EXHIBIT A

CONSTRUCTION TRUST ACCOUNT AGREEMENT

EXHIBIT B
PROJECT COSTS

EXHIBIT C

PLANS

EXHIBIT D

REQUIRED INSURANCE