

CITY COUNCIL REPORT



Meeting Date: September 13, 2016
 General Plan Element: *Open Space & Recreation*
 General Plan Goal: *Provide attractive, well-maintained recreational facilities*

ACTION

Arizona Fall League Stadium License Agreement. Adopt Resolution No. 10556 authorizing the execution of the Arizona Fall League Stadium License Agreement No. 2016-144-COS between the City of Scottsdale and the Office of the Commissioner of Baseball doing business as the Arizona Fall League, for the use of Scottsdale Stadium.

BACKGROUND

In September 1992, the City of Scottsdale entered an agreement with the Arizona Fall League to utilize Scottsdale Stadium for the purpose of training professional baseball players and playing professional baseball games. Since the initial contract, there have been three (3) more agreements respectively with the Scottsdale Scorpions and the Grand Canyon Rafters as the home teams. Due to the expansion of spring training facilities in the Valley, the Grand Canyon Rafters moved to Surprise in 2005 leaving only the Scorpions as the home team. The most recent long-term contract ended in 2013, and the City of Scottsdale and the Arizona Fall League have entered into temporary Facility Use Agreements in subsequent years. The City of Scottsdale and the Arizona Fall League now would like to enter a new license agreement for the Arizona Fall League to conduct its baseball activities, which contains updated terms, conditions and charges for Arizona Fall League's use. The initial term is approximately one (1) year with the possibility of four, one (1) year extensions so long as both parties comply with the terms and conditions of this agreement. Since the initial agreement 24 years ago, the Arizona Fall League has successfully fulfilled all of their previous contract obligations.

ANALYSIS & ASSESSMENT

Policy Implications

If agreement is not approved, the City of Scottsdale and the Arizona Fall League will enter into a one-year Facility Use Agreement as it has done since 2013.

Traffic Impacts

There will be no serious traffic impacts during the Fall League games. All cars park in either the Stadium parking lot on Osborn Road or in the Civic Center Parking lot on Drinkwater Blvd.

Community Involvement

The Arizona Fall League offers many promotional nights throughout the season and partners with many local community groups such as Scottsdale Little League, Special Olympics and Scottsdale Senior Centers. At \$6 a ticket for children and \$8 a ticket for adults, Fall League games allow families to see major league players without the major league price. It is estimated that 12,000 - 13,000 people will attend Fall League games at Scottsdale Stadium each year bringing people into Scottsdale and the downtown area.

RESOURCE IMPACTS

Available funding

It is estimated that \$25,000 annually will be spent from the Community Services General Fund operating budget on the Arizona Fall League. This includes spending money for cleaning and power washing the stadium, fertilizer, Turface, and labor as well as paying the Fall League 1/2 of the City's collected revenue from concessions. The estimated \$25,000 is not an extra expenditure as these items were already planned for and are included in the FY 2016/17 adopted budget.

Maintenance Requirements

During the 6-week season daily field prep will be needed to ensure the fields stay at a professional level at all times. This includes constant mound, bullpen and home plate repair. Additional maintenance includes mowing, edging, and providing fertilizer during the season. The infield will also require Turface infield mix to maintain a good playing surface. The Stadium is also required to have daily and post-game clean ups throughout the season at the Arizona Fall League's expense.

Cost Recovery Options

The Arizona Fall League will pay the City a fee to use Scottsdale Stadium of \$1,000 per game. In addition the Fall League will be obligated to pay \$62 per hour to use the field lights, \$80 to use the washing machines and dryers, \$188 per non-home game to use the home locker room, the current-adopted charge to use the scoreboard video screen (currently at \$188 per game), and the going-rate for office space (for the initial term, \$1.25 per square foot (per month)) for office space not already included in this agreement, including any use in the office season. Lastly, the Fall League must reimburse the City for the cost of its custodial services during the season. The fees paid to the City will cover the costs including utilities, field preparation, supplies and staff hours. The projected revenue should be around \$35,000 annually with the addition of 22.2% of the shared concession revenue and 17.5% of shared beer and wine revenue. These revenues would be in addition to currently estimated revenues for FY16/17.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 10556 authorizing the execution of License Agreement No. 2016-144-COS between the City of Scottsdale and the Office of the Commissioner of Baseball doing business as the Arizona Fall League for use of Scottsdale Stadium.

Description of Option B

Decline the request and continue with a Facility Use Agreement. If the request is denied, the Arizona Fall League may look to move to another facility.

RESPONSIBLE DEPARTMENT(S)

Community Service Division, Parks and Recreation Department

STAFF CONTACTS (S)

Reed Pryor, Parks and Recreation Director, rpryor@scottsdaleaz.gov, 480-312-1011.

APPROVED BY



William B. Murphy, Community Services Director
480-312-7954, bmurphy@scottsdaleaz.gov

8/30/16

Date



Judy Doyle, Budget Director
480-312-2603, jdoyle@scottsdaleaz.gov

8.30.16

Date

ATTACHMENTS

1. Resolution No. 10556
2. Arizona Fall League Stadium License Agreement No. 2016-144-COS

RESOLUTION NO. 10556

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE ARIZONA FALL LEAGUE STADIUM LICENSE AGREEMENT NO. 2016-144-COS WITH THE OFFICE OF THE COMMISSIONER OF BASEBALL, DBA ARIZONA FALL LEAGUE, FOR THE USE OF SCOTTSDALE STADIUM.

WHEREAS, subject to certain requirements, Scottsdale Revised Code Section 2-221(c) provides that the City may enter into temporary licenses or similar agreements for the use of city-owned property, including but not limited to, land, buildings, office space, rooms and other interior and exterior space; and

WHEREAS, the City of Scottsdale ("City") owns a baseball stadium ("Scottsdale Stadium"), located at 7408 East Osborn Road in Scottsdale, Arizona; and

WHEREAS, Arizona Fall League is a baseball league sponsored by Major League Baseball that operates during the fall season at six Arizona spring training complexes, including Scottsdale Stadium; and

WHEREAS, beginning in 1992, the City and Arizona Fall League have entered into and performed mutually beneficial license agreements for the use of Scottsdale Stadium for Fall League baseball; and

WHEREAS, the parties wish to enter into a new license agreement with a one-year initial term and the possibility of four one-year renewals for the continued use of the Stadium subject to the terms and conditions set forth in Agreement No. 2016-144-COS ("Agreement"); and

WHEREAS, under the terms of the Agreement, Arizona Fall League will pay Use Period Fees to the City to use Scottsdale Stadium and reimburse the City for custodial services; and

WHEREAS, the City Council has considered any City expenditure authorized by this Agreement and the direct consideration that the City will receive, and finds that there is a clearly identified public purpose for the City's expenditure, if any, and that the City will receive direct consideration substantially equal to its expenditure;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby authorizes and directs the Mayor to execute, on behalf of the City, License Agreement No. 2016-144-COS between the City of Scottsdale and the Office of the Commissioner of Baseball, dba Arizona Fall League, for the use of Scottsdale Stadium for Fall League baseball.

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Resolution No. 10556

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ATTACHMENT 1

Section 2. The City Council also hereby authorizes, approves and directs the Community Services Director to execute any other documents and take such other actions as are necessary to carry out the intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 13th day of September, 2016.

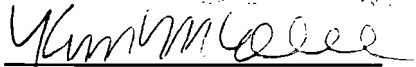
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: Kimberly McIntier, Assistant City Attorney

ARIZONA FALL LEAGUE STADIUM LICENSE AGREEMENT

This ARIZONA FALL LEAGUE STADIUM LICENSE AGREEMENT (this "Agreement") is made and entered into this 13th day of September, 2016, between the City of Scottsdale, an Arizona municipal corporation ("City"), and the Office of the Commissioner of Baseball, an unincorporated association, dba Arizona Fall League ("AFL").

RECITALS

- A. City owns a baseball stadium ("Stadium"), located at 7408 East Osborn Road in Scottsdale, Arizona.
- B. Arizona Fall League ("Fall League") is a baseball league sponsored by Major League Baseball that operates during the fall season at six (6) Arizona spring training complexes, including the Stadium.
- C. Since 1992, AFL and City have been parties to agreements that have permitted AFL to use the Stadium for the purposes of training professional baseball players and playing scheduled baseball games as part of Fall League.
- D. The parties desire to provide for AFL to continue to conduct Fall League activities at the Stadium pursuant to the terms in this Agreement.

TERMS

NOW, THEREFORE, in consideration of the foregoing, the amounts hereinafter to be paid by AFL, and the covenants and agreements contained herein to be kept and performed by the parties, and other good and valuable consideration, the parties agree as follows:

- 1. Recitals. The foregoing recitals are incorporated into this Agreement.
- 2. Definitions. Unless otherwise expressly stated, the following terms shall mean:

2.1 "Baseball" means the following activities: the game of baseball, played with a bat and ball by two (2) opposing teams of nine players, each team playing alternately in the field and at bat, and the players at bat having to run a course of four (4) bases laid out in a diamond pattern in order to score.

2.2 "Baseball Practice" means batting practice and infield/outfield practice in or on the Stadium playing field, practice field, practice infield, practice pitching mounds, batting tunnels and bull pens. Baseball Practice does not include, and AFL shall not engage in, any pitcher fielding practice or other forms of practice or training, or any other activity on the Stadium playing field or elsewhere in, on or at the Stadium.

2.3 "Game Day" means that time during a day of the Use Period when the Home Team has the exclusive right to use the Stadium solely for Baseball, as such right is limited in this Agreement. A Game Day (including a double header) shall begin no earlier than three (3) hours

before scheduled first pitch (e.g., no earlier than 9:35 a.m. for a day game and 3:35 p.m. for an evening game), and shall end no later than one (1) hour after the conclusion of the game. The hours of a Game Day may be modified, by mutual agreement of the parties, to accommodate special needs or circumstances (e.g., extra inning games, rain delays).

2.4 "Home Team" means the Scottsdale Scorpions. AFL may add a second Home Team upon City's written approval. However, under no circumstances shall more than one (1) Home Team be entitled to exercise any rights under this Agreement on any given day during the Use Period.

2.5 "Off-Season Office Space Use Period" means collectively the Spring/Summer Office Space Use Period and the Winter Office Space Use Period.

2.6 "Practice Day" means that time during a day of the Use Period when the Home Team has the non-exclusive right to use the Stadium solely for Baseball Practice. A Practice Day shall not exceed three (3) hours.

2.7 "Spring/Summer Office Space Use Period" means the period starting five (5) business days after the San Francisco Giants leave the Stadium in April through August 1 of each year during the Term of this Agreement.

2.8 "Stadium" means any and all portions of the Stadium facilities as shown on Exhibit "A," including the playing field, practice field, practice infield, portable batting cages, practice pitching mounds, bull pens, batting tunnels, spectator seating, concourse, clubhouses, locker rooms, press box, Meeting Room A, Meeting Room B, TV/Radio Room A, TV/Radio Room B, kitchen, patio, sound booth, scoreboard, public address system, parking facilities, and other improvements at, appurtenant to or about the Stadium. Notwithstanding the immediately preceding sentence, Stadium does not include food and beverage concession spaces, Stadium Coordinator's Office, Assistant Stadium Coordinator's Office, East Wing/Giants Administrative Offices, and storage and maintenance rooms and areas; provided, however, City will use its best efforts to provide a secured storage area for printed material and souvenirs to be distributed and sold by AFL during Game Days. If such an area cannot be made available, AFL shall have the right to locate temporary storage facilities in the Stadium in the home clubhouse (known as the Giants Storage Unit). Stadium also does not include the home team workout room, unless AFL obtains the Giants' written consent to the use of the Giants' equipment therein, and provides such notice to City as provided elsewhere in this Agreement.

2.9 "Use Period" means the period from August 1 through November 30 of each year during the Term of this Agreement.

2.10 "Winter Office Space Use Period" means the period from November 30 through December 15 of each year during the Term of this Agreement.

3. Term.

3.1 The initial term of this Agreement shall begin on August 1, 2016 (the "Effective Date") and end on December 31, 2016 (the "Initial Term"). At the end of the Initial Term, the parties may mutually agree to extend this Agreement for an additional year, which shall begin on

January 1, 2017, and end on December 31, 2017 (the "First Extension"). At the end of the First Extension, if any, the parties may mutually agree to extend this Agreement for an additional year, which shall begin on January 1, 2018, and end on December 31, 2018 (the "Second Extension"). At the end of the Second Extension, if any, the parties may mutually agree to extend this Agreement for an additional year, which shall begin on January 1, 2019 and end on December 31, 2019 (the "Third Extension"). At the end of the Third Extension, if any, the parties may mutually agree to extend this Agreement for one last additional year, which shall begin on January 1, 2020 and end on December 31, 2020 (the "Fourth Extension"). The terms and conditions of this Agreement during any extension period shall be those in effect at the time of the expiration of the Initial Term, except as otherwise agreed upon by the parties in writing. The full term of this Agreement shall consist of the Initial Term and any extensions thereof (collectively, the "Term").

3.2 The options for extension provided for in this section shall be exercised by AFL giving written notice of intent to extend to City, subject to acceptance by the Contract Administrator (as defined in section 23.9 below). Notices of intent to extend, if any, shall be given on or before the first day of December of the Initial Term, or any extension thereof, and shall be filed with the Scottsdale City Clerk.

3.3 If Major League Baseball cancels the Fall League for any Use Period during the Term of this Agreement, AFL must notify City in writing on or before the first day of December immediately preceding the cancelled Use Period. Failure of AFL to so notify City shall constitute an Event of Default.

4. Use of Stadium.

4.1 Use of Stadium During Use Period. Subject to the terms and conditions of this Agreement, City grants AFL a license for the use of the Stadium during the Use Period as follows:

4.1.1 AFL shall use the Stadium solely for Baseball and Baseball Practice. If AFL desires to use the Stadium at any time, whether on a Game Day, Practice Day or otherwise, for any use other than Baseball or Baseball Practice, it must first enter into an appropriate facility use permit or agreement with City and pay City all applicable fees.

4.1.2 Notwithstanding anything to the contrary in this Agreement, AFL shall have no rights of any kind whatsoever to the use of the Stadium or any portion thereof on any Sunday during any Use Period, unless AFL first receives City's consent, which City may withhold in its sole discretion.

4.1.3 During each day of each Use Period, AFL shall have the exclusive right to use TV/Radio Room A and TV/Radio Room B as office space, as depicted on Exhibit "B."

4.1.4 During each Game Day: (a) the Home Team shall have exclusive use of the Stadium, except as otherwise provided in this Agreement; and (b) the non-Home Team may use TV/Radio Room A and TV/Radio Room B without charge.

4.1.5 During each day of each Use Period, AFL shall have the exclusive right to use the clubhouses and the locker rooms, including the use of three (3) commercial washing

machines and three (3) commercial dryers in the home locker room, and one (1) commercial washing machine, one (1) regular washing machine, and one (1) commercial dryer in the visiting locker room.

4.1.6 During each day of each Use Period, AFL shall have the exclusive right to use the home team workout room; provided, however, such right is conditioned on AFL providing City with a written letter by the first day of October of each Use Period, signed by an authorized representative of the San Francisco Giants ("Giants"), which indicates the Giants' consent to AFL's use of the Giants' workout equipment.

4.1.7 During each Use Period, AFL shall have the right to use the Stadium on forty-five (45) regular Game Days and up to two (2) additional post-season playoff Game Days.

4.1.8 During each Use Period, AFL shall have the right, without charge, to use the Stadium on four (4) Practice Days prior to the first Game Day. The fields available for practice will be determined by the City with a minimum of one (1) of the Practice Days being on the Stadium field. Due to overseeding, the practice field will only be available for these Practice Days through the first week of October.

4.1.9 During each Use Period, AFL shall have the first choice of all available dates for its Practice Days, regular season Game Days and post-season playoff Game Days, except for dates on which the City has planned special events and a minimum of four (4) Saturdays during each Use Period.

4.1.9.1 City shall provide AFL with the dates of City's special events no later than the first day of April preceding each Use Period.

4.1.9.2 No later than the first day of May preceding each Use Period, AFL shall deliver to City a proposed schedule of AFL's dates and times for the upcoming Fall League games, including proposed Practice Days, regular season Game Days and post-season playoff Game Days at the Stadium.

4.1.9.3 City shall prepare and provide the final schedule in writing to AFL within fifteen (15) days from receipt of AFL's proposed schedule. City shall prepare the final schedule in such fashion as to give City exclusive control of the Stadium on alternate Weekends during the Use Period. "Weekend" means the period from 6:00 a.m. on Friday to 9:00 a.m. on the following Monday. City shall use its best efforts to accommodate AFL's selection of dates for re-scheduling any postponed games.

4.1.10 AFL shall conduct at the Stadium all Home Team home games played during the Term.

4.1.11 During each Use Period, AFL shall use its best efforts to play Baseball at the Stadium on at least fifteen (15) Game Days.

4.1.12 AFL shall hold the Fall League championship game at the Stadium during the last week of each Use Period, unless AFL provides notice to the contrary to City by the first day of April of each year during the Term.

4.1.13 On each Game Day, City will prepare the Stadium playing field for batting practice three (3) hours before scheduled first pitch. AFL must provide City with at least twenty-four (24) hours' notice of any request to commence batting practice more than three (3) hours prior to scheduled first pitch. City may grant or deny any such requests in its sole discretion.

4.1.14 On each Game Day, with AFL's consent, which AFL shall not unreasonably withhold, City may use Meeting Room A, Meeting Room B and the patio, as depicted on Exhibit "B" for private rental prior to, during and after AFL games. City shall retain all revenue generated from such rentals.

4.2 Use of Office Space Outside of the Use Period. Subject to the terms and conditions of this Agreement, including the timely receipt of payment of the Off-Season Office Space Use Fee (as defined in section 16.3), and in addition to the license granted under section 4.1.3 for office space during the Use Period, City grants AFL a license to use as office space up to seven (7) of the East Wing/Giants Administrative Offices labeled #2-8 on Exhibit "B," during the Off-Season Office Space Use Period as approved by City annually as follows ("Off-Season Office Space Use"). By the first day of February of each year of the Term, AFL shall submit to the City the desired amount of office space to be used for the upcoming year of the Off-Season Office Space Use Period. City shall provide AFL with a list of the approved, designated offices no later than the 10th day of March of each year of the Term.

5. Parking. AFL may use the following parking facilities during each Use Period:

5.1 On Game Days, the existing parking lot between the Stadium and Osborn Road, as depicted on Exhibit "A."

5.2 On non-Game Days during each Use Period, City shall make available to AFL parking space sufficient for thirty (30) automobiles. The location of such space shall be designated by City and may be changed by City from time to time upon reasonable notice.

6. City's Rights Regarding Stadium.

6.1 City shall have the right to enter the Stadium at all times. City reserves the right to refuse admission, or to eject or cause to be ejected from the Stadium, in the exercise of its sole discretion, any person or persons displaying inappropriate behavior, drunkenness, deliberate disregard for Facility Rules and Regulations, as posted at the Stadium and as may be updated by City from time to time, creating excessive noise or disturbance or engaging in any activity that creates or results in a potential threat to public health, safety or welfare. City further reserves to itself and excludes from this Agreement the right to use all parts of the Stadium at all times for any and all purposes that do not materially interfere with team operators' lawful conduct of the uses permitted under this Agreement.

6.2 With the exception of TV/Radio Room A, TV/Radio Room B, clubhouses and locker rooms, or as otherwise specified in this Agreement, City shall have the sole and exclusive right to the use and possession of the Stadium on non-Game Days and non-Practice Days during the Use Period. As a courtesy, City will endeavor to notify AFL of events and uses scheduled for the Stadium on non-Game Days and non-Practice Days.

6.3 City reserves the right to use the name, image, photograph, likeness or any other reproduction, taken or acquired by City, of any visitor or user of the Stadium, for publicity purposes of City without notifying or compensating AFL or said visitors or users. City will use its best efforts to ensure that any use under this provision does not negatively reflect on AFL. AFL shall provide City with publicity photos upon request.

7. Use Restrictions. AFL's use of the Stadium is subject to the following use restrictions:

7.1 AFL shall not allow any person to enter onto the Stadium playing field or "run the bases" before or after a game without City's prior consent, which City may withhold in its sole discretion.

7.2 AFL understands and acknowledges the Stadium is located next to HonorHealth Scottsdale-Osborn Medical Center, and in close proximity to several nursing homes, apartments and other residences. AFL shall not produce any event or effect that may negatively affect the quiet enjoyment of those working or residing in those facilities and residences. All activities requiring Stadium lighting, or producing noise, or both, shall cease at or before 10:30 p.m. except as otherwise specifically provided in this Agreement, or unless AFL receives City's prior written consent, which City may withhold in its sole discretion.

7.3 In connection with its use of the Stadium, AFL shall neither cause nor permit the use of fireworks or any noise or sound that materially exceeds the type, volume, duration and frequency of noise commonly generated by the applause at a baseball game. Causing or permitting noises or sounds exceeding 53dB at a distance of 1,300 feet, measured from home plate in the Stadium, shall constitute a violation of this provision. City shall notify AFL of any such violations in writing. Notwithstanding anything in this Agreement to the contrary, any violation of this provision that occurs after AFL has previously received a notice of violation as provided herein during the same Use Period, shall constitute an Event of Default, regardless of when the subsequent violation occurs.

7.4 AFL shall limit its use of the public address system to announcements directly related to the game being played, to lead the singing of the national anthem, and, for a maximum of ninety (90) seconds between innings, either individually or in combination, for commercial advertisements, non-game-related announcements, or between-inning musical interludes. No other music, including bugles (live, mechanical or recorded), shall be permitted. AFL shall not use wireless microphones after the first inning of any game except for presentation of the championship trophy after the final playoff game of the season. AFL shall use only canopy speakers when turnstile attendance is under two thousand five hundred (2,500).

7.5 AFL shall neither permit nor promote what are traditionally known as tailgate parties in the Stadium parking lot or any other parking lot(s) serving the Stadium at any time.

7.6 In the event of special needs or circumstances, such as cancellations occasioned by rain or other adverse conditions, AFL may schedule a doubleheader during the Use Period with City's prior consent. The first game of any such doubleheader shall commence not later than

12:35 p.m. and shall be comprised of two (2) seven (7) inning games, with the second game starting not later than thirty (30) minutes following the conclusion of the first game.

7.7 In furtherance of the purposes of this section, City shall:

7.7.1 Check and adjust Stadium field lights annually, prior to the first Game Day of each Use Period, and monitor the lights on a weekly basis. The field lights shall be set to minimum directional standards established by Major League Baseball, as of the effective date of this Agreement.

7.7.2 Turn on field lights in the Stadium not sooner than thirty (30) minutes before dusk, or the time an evening game starts, whichever occurs first.

7.7.3 Turn off field lights not later than thirty (30) minutes following the conclusion of a game. AFL may, however, for safety and security purposes, request that City keep one (1) north-facing bank of lights illuminated for a reasonable amount of time following the conclusion of a game.

7.7.4 Inspect, adjust, certify and seal the sound system amplifier ("Amplifier") in the Stadium, prior to the first Game Day. City shall regularly monitor the Amplifier during games and the Use Period to assist in maintaining the sound system standards.

7.8 In furtherance of the purposes of this section, AFL shall:

7.8.1 Refrain from tampering in any way with the Amplifier, or otherwise attempt to tamper with the way that it has been adjusted by City. In the event City determines the seals on the Amplifier have been broken by AFL, or when AFL has been in control of the Amplifier, either on Game Days or as otherwise approved by City, the Amplifier will be re-certified and re-sealed at AFL's sole expense. This shall be in addition to any other remedy that City may have at law or in equity, or under the terms of this Agreement.

7.8.2 Adhere to the sound system standards when using the Amplifier.

7.8.3 Keep public restroom facilities open within the Stadium whenever the Stadium ticket office is open, during all games, and for at least one (1) hour immediately before and after all games.

7.8.4 Close all windows and lock all gates before exiting the Stadium.

7.9 In the event City decides to replace or modify the existing sound system in the Stadium, City shall determine what settings, standards or specifications should be used with the sound system to achieve a sound level as effective as those referred to above. City shall notify AFL, in writing, of these settings, standards and specifications and AFL shall comply with them, provided that the sound level achieved is as effective as the previous sound system.

8. Maintenance and Operations. AFL and City shall be responsible for maintenance, operations and utilities at the Stadium during the Use Periods as follows:

8.1 City. City shall, at its expense:

8.1.1 Maintain the Stadium playing field in compliance with Major League Baseball standards.

8.1.2 Provide at least one (1) staff member during all Game Days for purposes of Stadium coordination and supervision of the playing field.

8.1.3 Perform normal maintenance and repair of the Stadium, except as otherwise provided in this Agreement.

8.1.4 Provide AFL with necessary keys and adequate access to the Stadium.

8.2 AFL.

8.2.1 AFL shall pay City for all special services (e.g., tarping the field) at City's actual cost. The decision whether to pull the tarp will be made upon request of the AFL baseball operations staff or Home Team manager and upon the approval the Stadium Coordinator.

8.2.2 AFL shall, at its expense, reimburse City for all costs to repair damage, exclusive of normal wear and tear, to the Stadium caused by AFL. The preceding sentence includes damage caused by any and all persons at the Stadium for or during AFL activities.

8.2.3 AFL recognizes that adequate time is required to mow, water and groom the playing field, and to perform City's maintenance and work at the Stadium, and that AFL activities may prevent City's ability to timely perform City's maintenance and other work at the Stadium, or to maintain the Stadium to the level required by this Agreement, and may increase the cost to City of doing such work. To address those issues, the following shall apply:

8.2.3.1 AFL shall notify City at least seven (7) days in advance if AFL intends to use the Stadium after 4:00 p.m. If AFL desires to use the Stadium at a time that is not provided in the final schedule but which use will end before 4:00 p.m., AFL shall notify City at least twenty-four (24) hours in advance.

8.2.3.2 To the extent AFL's activities prevent City's ability to perform its maintenance and other work at the Stadium, City shall be excused from the consequences of delays in performing the work and AFL shall pay to City the increased cost of such work.

8.2.4 AFL's activities upon or about the Stadium shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

8.2.4.1 AFL shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Stadium.

8.2.4.2 AFL shall not use the Stadium in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environmental Quality or any other governmental agency.

8.2.4.3 AFL shall immediately notify City of any Toxic Substance at any time discovered or existing upon or about the Stadium.

8.2.4.4 In addition to and without limitation of any other indemnities or obligations, AFL shall indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Stadium attributable to or caused by AFL or anyone using the Stadium under this Agreement or acting or claiming under AFL or this Agreement or otherwise relating to this Agreement.

8.2.5 AFL shall pay for utilities as part of the fees charged pursuant to section 16 of this Agreement.

9. Responsibilities of AFL. AFL shall:

9.1 Arrange for any telephone and data services it deems appropriate at the Stadium. All costs for telephone and data services and equipment, including installation, shall be at the sole expense of AFL. AFL may use the existing telephone outlets located in the Stadium.

9.2 Remit to City all fees and charges incurred pursuant to this Agreement.

9.3 Comply with all laws of the United States, the State of Arizona, all ordinances of the City of Scottsdale, Maricopa County or any other political jurisdiction, and all applicable federal, state, city and Maricopa County rules and regulations. AFL shall not do nor permit to be done anything at the Stadium in violation of any such laws, ordinances, rules or regulations. AFL shall also strictly observe all reasonable rules and regulations now or hereafter adopted by City for the use, regulation, care, protection, cleanliness and operation of the Stadium.

9.4 Make no structural changes or modifications to the Stadium, erect no temporary structures, and bring no trailers in or onto the Stadium without City's prior written consent. AFL shall bear all costs for any structural changes, modifications, temporary structures and trailers approved by the City.

9.5 Perform no maintenance or grooming of the Stadium without City's prior written consent.

9.6 Without first obtaining City's written consent, which City may withhold in its sole discretion, not use in connection with its use of the Stadium or otherwise any name or logo that directly or indirectly refers to or contains any part of City's name or otherwise suggests a connection between City and AFL or AFL's activities.

9.7 Remove all personal property owned by AFL on or before November 30 of each Use Period. Any such property remaining at the Stadium after November 30 shall, at City's option, become City property or shall be disposed of by City as surplus property in accordance with City rules and regulations.

10. Custodial and Clean-up Services.

10.1 City shall retain the services of a competent, professional custodial service at AFL's expense.

10.2 The custodial service shall perform custodial and clean-up services at the Stadium no later than 10:00 a.m. of the day immediately following each Game Day or any other use permitted pursuant to this Agreement, and upon termination of this Agreement for any reason. Notwithstanding the foregoing, the press box shall be cleaned not later than 6:30 a.m. following each Game Day.

10.3 Custodial and clean-up services shall include, without limitation:

10.3.1 Removal of all foodstuffs, spilled beverages, paper, litter, trash, debris, dirt and dust in, on, under and around, and cleaning of, the concourse, arcade, patios, walkways, grandstands, bleachers, dugouts, bullpens, hitting tunnel, batting cage area, press box, stairwells, parking lot and all other portions of the Stadium.

10.3.2 Cleaning and sanitizing of all restrooms, which shall include: washing all floors with a concentrated disinfectant cleaner; emptying all trash receptacles and replacing liners; cleaning and polishing all chrome and mirrors; cleaning all countertops; removing all paper/litter or other debris; spot cleaning all partitions, doors, tile and ceilings; cleaning and sanitizing all lavatory fixtures; and maintaining an adequate stock of paper products.

10.3.3 High-pressure wash of the grandstands and concourse in City's discretion, but not more often than every five (5) Game Days.

10.3.4 Spot clean operations as may be required during a Game Day.

10.3.5 A comprehensive cleaning of the clubhouses, locker rooms, showers, kitchen and bathrooms at the end of each week and at the end of each Use Period.

10.3.6 Deep cleaning the carpets and refinishing tiled floors in the kitchen, press box, Meeting Room A, Meeting Room B, TV/Radio Room A and TV/Radio Room B, sound booth and hallways at the conclusion of each Use Period as may be required in City's sole discretion.

11. Security and Game Day Services. AFL shall, at its expense, provide security and surveillance to adequately ensure the reasonable safety and well-being of the general public. Security resources include emergency medical resources. Event security and crowd control shall be commensurate with current public assembly standards and shall be based on the projected total attendance for each Game Day and other events open to the public. AFL is

responsible for all costs associated with, and shall coordinate with City, all ticketing, ushering, security, first aid, parking control, and on and off-site traffic control. AFL shall consider and confer with City regarding crowd size, crowd behavior, security threats and any other factors that may bear on the resources to provide public safety at AFL activities. AFL shall provide, at no cost to City, ticket sellers, ticket takers, parking attendants, clubhouse personnel, ushers, umpires and other Game Day support AFL may desire or require. Any individuals performing the above services who are not employed by AFL must be qualified personnel of a licensed, bonded company with current active Liability and Workers' Compensation Insurance. Should City determine the need for additional personnel due to AFL not meeting its obligations for the above services, City shall first, except in an emergency, notify AFL to provide AFL the opportunity to address and correct the situation prior to City taking action. AFL shall reimburse City for the cost of any such personnel.

12. Concessions.

12.1 AFL understands and acknowledges City has a contract with Arizona Sportservice, Inc. and may contract with other vendors in the future ("Concessionaire") for operation of the concessions at the Stadium (including during the Use Periods). AFL shall not engage in the sale or provision of any concessions.

12.2 City shall pay AFL one-half of the gross revenues paid to City by Concessionaire from its concession sales during AFL events, less any applicable sales tax.

12.3 City or Concessionaire shall provide to AFL the daily reports for food and beverage concession sales, including gross revenues, within seventy-two (72) hours after each Game Day. City shall account to AFL for AFL's share in the City's invoice to AFL at the conclusion of each Use Period.

12.4 AFL shall have the right to discuss with City or Concessionaire, what alcoholic beverages, meat and other major products Concessionaire intends to sell during Game Days. City shall use reasonable efforts to cause Concessionaire to use the products of AFL's sponsors and advertisers, so long as said products are priced competitively with Concessionaire's primary suppliers. The prices for the food and beverage products shall be reasonable and consistent with prices charged in other stadiums being used by AFL during the Fall League season. City or Concessionaire shall provide a list of items and prices to AFL by September 30 of each year during the Term.

12.5 Regardless of the number of fans in attendance, the food and beverage concessions shall be open when the gates are opened to the public for a game and shall remain open and in operation until the last out of the game. AFL understands that no alcoholic beverages shall be sold after the completion of the seventh inning of a single game, or the completion of the fifth inning of the second game of a double header, as applicable, on any Game Day.

12.6 Vending machines, if any, shall be controlled by City.

13. City Promotion. To promote the City of Scottsdale as a tourist destination, AFL shall provide to City commercial space on radio, television, or other audio or video during games

transmitted from the Stadium. Those commercials and/or broadcasts paid for by AFL that meet the criteria delineated in section 16.1.9 of this Agreement may qualify for credit toward fees paid by the AFL pursuant to section 16.1 of this Agreement.

14. Advertising. For advertising and signage purposes, City shall be entitled to the exclusive use at all times of the year of the following portions of the Stadium: the physical scoreboard, all building windows, dugouts, field tarp and cup holders. In addition, City shall be entitled to install two (2) concourse banners and fifteen (15) field banners and to use the scoreboard video screen to promote the City and City-sponsored events up to twenty-five percent (25%) of the air time per Game Day. Subject to these City reserved rights, AFL may only place advertising at the Stadium during each Use Period and such advertising shall be regulated as follows:

14.1 AFL shall only have the right to affix advertising in, on or at the following locations, and only on Game Days:

14.1.1 Bullpens.

14.1.2 Concourse.

14.1.3 Field walls (i.e., field banners).

14.1.4 Scoreboard video screen, subject to the additional fees in sections 14.2 and 16.1.5 for use, design services and operation.

14.2 AFL shall bear all of the expenses associated with the sale, production and placement of advertising. For scoreboard video screen advertising, City shall provide, at AFL's expense, a competent, professional scoreboard technician for scoreboard design services and operation, and AFL shall pay the scoreboard technician directly, subject to AFL's prior approval of an estimate.

14.3 Advertising is only allowed within the Stadium directed at persons inside the Stadium.

14.4 Upon City request, AFL shall remove all advertising of any type on non-Game days. City may, in its sole discretion, cover any advertising and use the space on any non-Game Days.

14.5 AFL shall not affix any advertising, signage or anything else to the physical scoreboard.

14.6 All advertising must comply with all applicable laws and design requirements and also be compatible in City's reasonable judgment with the Stadium. AFL shall not display any advertising or signage where it will impede the safety of anyone at the Stadium or where it will cause harm to the Stadium. City has the right to prohibit the display of any advertisements, signs, show bills, newspapers, magazines, lithographs, posters or cards of any description on any part of the Stadium that are not appropriate for the nature of the Stadium.

14.7 The parties may elect from time to time to cooperate in joint signage programs with revenues to be divided as the parties may agree at that time.

14.8 City retains all naming rights for the Stadium.

15. Revenues.

15.1 During the Use Period, and subject to the limitations stated herein, AFL may solicit and receive revenues from the following sources, and only the following sources, resulting from AFL's use of the Stadium pursuant to this Agreement:

15.1.1 Ticket sales.

15.1.2 Program or "Fan Guide" sales.

15.1.3 Souvenir sales.

15.1.4 On-site parking.

15.1.5 Product sponsorship (including product giveaways).

15.1.6 Television and other broadcast and media coverage.

15.1.7 Advertising within the Stadium during Game Days.

15.1.8 Except as otherwise provided, AFL's right to engage in these revenue-generating activities shall be exclusive to AFL and City shall not compete with AFL in these areas.

15.2 AFL shall determine the price for admission, parking, souvenirs, advertising and all other charges for sources of revenue that are exclusively for AFL.

16. Fees; Payment.

16.1 Use Period Fees. For the rights and privileges to which it is entitled under the terms of this Agreement during the Use Period, AFL shall pay City the following fees and charges (collectively, "Use Period Fees"):

16.1.1 One thousand dollars (\$1,000.00) per Game Day, plus three hundred dollars (\$300.00) for each Game Day that consists of a double header.

16.1.2 Sixty-two dollars (\$62.00) per hour for use of field lights.

16.1.3 One hundred eighty-eight dollars (\$188.00) per non-Home Team Game Day for the right to use the home and visitor locker rooms.

16.1.4 Eighty dollars (\$80.00) per day of each Use Period for the right to use the washing machines and dryers in the home and visitor locker rooms.

16.1.5 The Scoreboard video screen fees for commercial use as set forth in the current adopted Community Services Division Program Charges, Rental Fees & Fines, which as of the Effective Date is one hundred eighty-eight dollars (\$188.00) per Game Day, for any use of the Scoreboard beyond the basic game line score and placement of a static team logo.

16.1.6 A monthly charge of the going-rate of office space rental in the area per square foot of office space for the use of any additional office space not already included in this Agreement. For the Initial Term, the charge is one dollar and twenty-five cents (\$1.25) per square foot of office space per month, which is based on the going-rate of fifteen dollars (\$15.00) per square foot per year for similar office space in the area. The charge for additional office space for any extensions of this Agreement shall be determined each year of the Term by City in its sole discretion.

16.1.7 All fees, costs and expenses for staffing, services, or other resources AFL requests from City.

16.1.8 All sales taxes and other taxes, fees and amounts that may be applicable to activities or business conducted by AFL at the Stadium.

16.1.9 If AFL (i) holds the AFL Championship Game(s) at the Stadium, (ii) provides for a minimum of six (6) mentions of the City of "Scottsdale, Arizona" and/or the "Scottsdale Stadium" during any Major League Baseball Network or national television broadcasts of the AFL Championship Game(s) held at the Stadium, and (iii) provides for a minimum of six (6) thirty-second commercials promoting the City of "Scottsdale, Arizona" and/or the "Scottsdale Stadium" during any satellite radio broadcasts of Game Days held at the Stadium, then a credit in an amount equivalent to five thousand dollars (\$5,000.00) will be applied toward AFL's rental fees to offset such fees.

16.2 Payment of Use Period Fees. Following each Use Period, City shall submit an invoice to AFL for all fees and charges incurred during such Use Period. Invoices shall be due and payable not later than thirty (30) days from the date thereof. Should any invoice not be paid on or before the date due, a ten percent (10%) late fee shall be added to the amount due. Furthermore, any invoice that is not timely paid shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid. AFL expressly agrees that the foregoing represent reasonable estimates of City's costs in the event of a delay in payment of fees and charges.

16.3 Off-Season Office Space Use Fee. For the Off-Season Office Space Use under the terms of this Agreement, AFL shall pay City a monthly charge of the going-rate of office space rental in the area per square foot of office space ("Off-Season Office Space Use Fee"). For the Initial Term, the rate is one dollar and twenty-five cents (\$1.25) per square foot of office space per month, which is based on the going-rate of fifteen dollars (\$15.00) per square foot per year for similar office space in the area. The rate for Off-Season Office Space Use Fee for any extensions of this Agreement shall be determined each year of the Term by City in its sole discretion.

16.4 Payment of Off-Season Office Space Use Fees. For the Spring/Summer Office Space Use Period, AFL shall pay City a lump sum of the combined four (4) months of Off-Season Office Space Use Fee in advance of such use, within thirty (30) days from the date of City invoice. For the Winter Office Space Use Period, AFL shall pay City the monthly Off-Season Office Space Use Fee in advance of such use, within thirty (30) days from the date of City invoice. Should any invoice not be paid on or before the date due, a ten percent (10%) late fee shall be added to the amount due. Furthermore, any invoice that is not timely paid shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid. AFL expressly agrees that the foregoing represent reasonable estimates of City's costs in the event of a delay in payment of fees and charges.

17. Consideration. As and for consideration for rights and privileges which are the subject of this Agreement, AFL agrees to provide, among other things, the fees and promotions set forth in sections 13 and 16 hereof, which the City regards as serving a valuable purpose, constituting fair and direct consideration that is substantially equal to its expenditure.

18. Indemnification.

18.1 To the fullest extent permitted by law, throughout the Term and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, AFL, its successors, assigns and guarantors, and all other persons using, acting, working or claiming through or for this Agreement, shall jointly and severally indemnify, defend and hold harmless City, its officers, directors, officials, board members, commissioners, employees, agents and representatives, from and against any and all allegations, claims, demands, charges, penalties, obligations, fines, administrative and judicial actions or proceedings, suits, liabilities, judgments, damages, and losses of any kind or nature (including, without limitation, personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment; settlements paid in settlement of claims in accordance with this paragraph; and environmental damage, cleanup, response, removal and remediation costs), and all costs and/or expenses of any kind or nature (including, without limitation, attorneys' fees and expenses, expert witness and consultant fees and expenses, arbitration fees, court costs and the cost of appellate proceedings) (collectively, "Claims") imposed upon or incurred by or asserted against City, its officers, directors, officials, board members, commissioners, employees, agents and representatives, by reason of this Agreement, or by reason of the discharge of any duties or the exercise of any rights or privileges pursuant or incidental to this Agreement. AFL's duty to defend, indemnify and hold harmless includes any claims, damages, losses and expenses relating to, arising out of or resulting from any person (excluding City's agents, representatives, officers, directors, officials and employees) accessing any part of the Stadium roof for any purpose, whether or not authorized by City.

18.2 The obligations of AFL under this section apply to all Claims of any kind whatsoever, even though caused partially by the acts, mistakes, errors, omissions or negligence of City, its officers, directors, officials, board members, commissioners, employees, agents and representatives, or anyone for whose acts, mistakes, errors, omissions or negligence City or AFL may be liable.

18.3 The obligations of AFL under this section do not extend to Claims which arise only from the sole negligence or willful misconduct of City, its officers, directors, officials, board members, commissioners, employees, agents and representatives.

18.4 If any Claims are made or brought against City, then, upon demand by City, AFL shall, at its sole cost and expense, resist and defend such Claims (in City's name, if necessary) through counsel reasonably approved by City, even if such Claims are groundless, false or fraudulent. Notwithstanding the foregoing, City may engage its own attorneys at its own expense to defend it or to assist in its defense. City shall cooperate in the defense of any Claims and shall make its records and employees available under reasonable terms and conditions to AFL and its attorneys for the purposes of providing information and/or witnesses. AFL shall pay and discharge, when and as the same become due, any and all Claims or other sums due against or incurred by City or any other indemnitees.

18.5 Any settlement of Claims shall fully release and discharge the indemnified parties from any further liability for those Claims. The release and discharge shall be in writing and shall be subject to City's approval, which approval shall not be unreasonably withheld or delayed. If City unreasonably refuses to approve such settlement and subsequently a judgment is entered in excess of the settlement proposal, AFL shall be liable only for the amount of the proposed settlement. If AFL neglects or refuses to defend City as provided in this Agreement, then (i) any arbitration award or judgment against City for a Claim covered by this Agreement shall conclusively establish AFL's liability to City in connection with such recovery; and (ii) City, at its option, shall be entitled to settle the dispute in good faith, after consultation with AFL, and AFL shall be liable for the amount of such settlement.

18.6 The amount and type of insurance coverage requirements set forth in this Agreement shall in no way be construed as limiting the scope and magnitude of the indemnifications in this section.

19. General Insurance Requirements.

19.1 Without limiting any obligations or liabilities of AFL, AFL shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc., rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City. Failure to maintain insurance as specified may result in termination of this Agreement at City's option.

19.2 By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect AFL. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve AFL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

19.3 All insurance coverage and self-insured retention or deductible portions, except Worker's Compensation insurance and Professional Liability insurance, if applicable, shall

name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, City, its agents, representatives, officers, directors, officials and employees, as Additional Insured as specified under the respective coverage provisions of this Agreement.

19.4 All insurance required herein shall be maintained in full force and effect throughout the Term of this Agreement.

19.5 AFL's insurance shall be primary insurance as respects this Agreement and in the protection of City as an Additional Insured.

19.6 In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past the termination or expiration of this Agreement for any reason, evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

19.7 All policies, including Worker's Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against City, its agents, representatives, officials, directors, officers and employees for any claims arising out of this Agreement. AFL shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

19.8 The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retentions shall not be applicable with respect to the policy limits provided to City. AFL shall be solely responsible for any such deductible or self-insured retention amount. City, at its option, may require AFL to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

19.9 If any work under this Agreement is contracted or subcontracted in any way, AFL shall execute a written agreement with each contractor and subcontractor containing the same Indemnification provisions and Insurance Requirements set forth herein protecting City and AFL. AFL shall be responsible for executing the agreement with each contractor and subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

19.10 Prior to exercising any rights under this Agreement, AFL shall furnish City with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by AFL's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificates shall identify the City of Scottsdale Agreement Number for this Agreement and be sent to the designated Contract Administrator. If any of the above-cited policies expire during the life of this Agreement, it shall be AFL's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

19.10.1 City of Scottsdale, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

19.10.1.1 Commercial General Liability.

19.10.1.2 Auto Liability.

19.10.1.3 Excess Liability - Follow Form to underlying coverage as required.

19.10.2 AFL's insurance shall be primary insurance as respects this Agreement.

19.10.3 All policies, including Worker's Compensation, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees, for any claims arising under this Agreement.

19.10.4 If AFL receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be AFL's responsibility to provide prompt notice of same to the City, unless such coverage is immediately replaced with similar policies.

20. Insurance Coverage. Upon executing this Agreement and at all times thereafter, AFL shall obtain and cause to be in force and effect the following insurance:

20.1 Commercial General Liability. AFL shall maintain "occurrence" form Commercial General Liability insurance with not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury and Contractors Pollution Liability/Environmental Impairment Liability coverage. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than the underlying insurance.

20.2 Automobile Liability. AFL shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on AFL's owned, hired and non-owned vehicles assigned to or used during the term of this Agreement. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than the underlying insurance.

20.3 Workers' Compensation. AFL shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of AFL's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

21. Events of Default.

21.1 The occurrence of any of the following shall constitute an event of default ("Event of Default") by AFL when such default or breach of performance continues for a period of forty-eight (48) hours after AFL receives a notice from City specifying the particulars of each default or breach of performance: (1) Failure to pay any fees due and owing to City under the terms of this Agreement in the manner or at the time provided in this Agreement; and (2) failure to promptly and fully perform any other promises, covenants or agreements contained in this Agreement.

21.2 The occurrence of any of the following shall constitute an Event of Default by City, when such default or breach of performance continues for a period of forty-eight (48) hours after City receives a notice from AFL specifying the particulars of each default or breach of performance: (1) Failure to provide facilities and services in accordance with this Agreement; and (2) failure to promptly and fully perform any other promises, covenants or agreements contained in this Agreement.

21.3 Following the passing of the period for notice as required herein, the party giving notice shall have the right to exercise any and all remedies available to it, including correcting the default and recovering from the defaulting party the amount expended.

21.4 Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to terminate this Agreement upon giving forty-eight (48) hours' written notice to the other party.

22. Lost Property. City shall not be liable for lost, stolen or damaged personal property.

23. Miscellaneous.

23.1 Governing Law and Venue. The validity, construction, interpretation, administration and enforcement of this Agreement shall be governed by the laws of the State of Arizona without regard to any provisions of the laws of Arizona relating to the question of conflicts of laws. The parties agree that in the event any action is commenced in connection with this Agreement, venue for such action or proceeding 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.

23.2 Notices. Except as otherwise indicated, all notices, waivers, demands, requests and other communications required or permitted by this Agreement (collectively, "Notices") shall be in writing and shall be effective only if sent by one or more of the following methods: (a) personal delivery; (b) generally-recognized overnight commercial courier regularly providing proof of delivery, with delivery charges prepaid or duly charged; or (c) United States registered or certified mail, return-receipt requested, postage prepaid, addressed to the parties at the respective addresses set forth opposite their names below, or to any other address or addresses as either party shall designate from time to time by notice given to the other in the manner provided in this section.

If to CITY: Stadium Coordinator
Scottsdale Stadium
7408 E. Osborn Road
Scottsdale, Arizona 85251

Copy to: City Attorney
City of Scottsdale
3939 N. Drinkwater Boulevard
Scottsdale, Arizona 85251

If to AFL: Office of the Commissioner of Baseball,
dba Arizona Fall League
7408 E. Osborn Road
Scottsdale, Arizona 85251

Notices given or served by personal delivery shall be deemed to have been received upon tender to the respective party. If a copy of the notice is also given to a party's counsel or other recipient, the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice. Notices given or served by mail or commercial courier shall be deemed to have been given or served as of the date of delivery (whether accepted or refused) established by the United States Postal Service return-receipt or the overnight courier's proof of delivery, as the case may be.

23.3 Assignment. Neither this Agreement nor any of the rights of AFL hereunder may be assigned or otherwise transferred without City's written consent.

23.4 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and assigns.

23.5 Severability. If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, that provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the greatest extent possible. In any event, the remaining provisions of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

23.6 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other party in the performance by such party of his obligations under this Agreement will be deemed or construed to be a consent or waiver of any other breach or default in the performance by such party of the same or any other obligations of such party. Failure on the part of a party to complain of any act or failure to act of another party or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

23.7 Headings. Headings, titles and captions in this Agreement are solely for ease of reference and are not intended to define or limit the scope of any provision of this Agreement.

23.8 Attorneys' Fees, Costs and Expenses. In the event any action, suit or proceeding is brought in a court of law or forum of arbitration by either party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement, or to declare the rights of the parties to this Agreement, the party which does not prevail shall pay to the prevailing party all costs and expenses of such action, arbitration, suit or proceeding, together with such sum as the court or arbitrator (and not the jury), as applicable, may adjudge reasonable as attorneys' and/or arbitrators' fees to be allowed in said suit, action or proceeding, in addition to any other relief to which said party may be entitled.

23.9 Contract Administrator. The contract administrator for City shall be the Scottsdale Stadium Coordinator or his/her designee ("Contract Administrator"). The Contract Administrator shall be authorized to represent City on all matters relating to the performance and enforcement of this Agreement.

23.10 Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the cancellation rights specified in A.R.S. § 38-511.

23.11 Relationship Created. The parties acknowledge and agree the sole and exclusive relationship between the parties is that of licensor and licensee and indemnitor and indemnitee. Nothing contained within this Agreement shall be deemed or construed to create a partnership, joint venture, principal and agent, landlord and tenant, or any other relationship between City and AFL.

23.12 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement.

23.13 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. The words "include" and "including" shall mean "include, without limitation" and "including, without limitation." Any reference to any federal, state, local or foreign statute, law or ordinance shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires.

23.14 Time Periods. Unless otherwise expressly indicated, any reference to a period of time shall mean calendar time (e.g., "thirty (30) days" shall mean thirty (30) calendar days; "one (1) year" shall mean one (1) calendar year). Where any action in this Agreement is required on or by a date which is either a Saturday, a Sunday or a legal holiday, the party obligated to take such action shall be entitled to delay such action until the next succeeding day which is not a Saturday, a Sunday or a legal holiday.

23.15 Joint Participation in Negotiation of Agreement. The parties have participated jointly with the assistance of counsel in the negotiation and drafting of this Agreement. This Agreement has been negotiated at arm's length by parties of equal bargaining power. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

23.16 Non-appropriation of Funds. This section shall control notwithstanding any provision of this Agreement. If the Scottsdale City Council does not appropriate funds to

continue this Agreement and pay for charges hereunder, City may terminate this Agreement at the end of the current fiscal period. City agrees to give written notice of termination to AFL at least thirty (30) days prior to the end of its current fiscal period and will pay to AFL all approved charges incurred through the end of such period. AFL shall pay to City all approved charges incurred through the end of such period within thirty (30) days of the end of such period. Termination in accordance with this provision shall not constitute a breach of this Agreement by the City. No person will be entitled to any compensation damages or other remedy from City if this Agreement is terminated pursuant to the terms of this section.

23.17 Arizona Legal Workers Act. To the extent applicable under the provisions of A.R.S. § 41-4401, AFL warrants to City that AFL and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that AFL and all its subcontractors now comply with the E-Verify Program under A.R.S. § 23-214(A).

A breach of this warranty by AFL or any of its subcontractors will be considered a material breach of this Agreement and may subject AFL or subcontractor to penalties up to and including termination of this Agreement or any subcontract. AFL will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. AFL's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Agreement by the City.

City retains the legal right to inspect the papers of any employee of AFL or any subcontractor who works on this Agreement to ensure that AFL or any subcontractor is complying with the warranty given above.

City may conduct random verification of the employment records of AFL and any of its subcontractors to ensure compliance with this warranty. AFL agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

23.18 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

23.19 Entire Agreement. This Agreement (including Exhibits A and B, which are attached hereto and incorporated herein by this reference), contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. There are no promises, agreements, conditions, undertakings, understandings, warranties, covenants or representations, oral or written, express or implied, between them with respect to this Agreement, other than as set forth in this Agreement. Any prior or contemporaneous representations or agreements, whether oral or written, express or implied, with respect to the subject matter of this Agreement are of no effect and void.

23.20 Amendments. All amendments, modifications, revisions or additions to this Agreement must be in writing and signed by duly authorized representatives of the parties.

IN WITNESS whereof, the parties hereto have caused to be affixed the signatures of their respective authorized officials on the date first written above.

“CITY”

CITY OF SCOTTSDALE, an
Arizona municipal corporation


ATTEST:

Carolyn Jagger
City Clerk

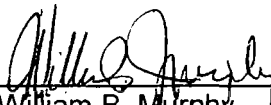
By: _____
W.J. “Jim” Lane
Mayor

APPROVED AS TO FORM:

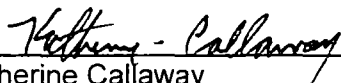
Office of the City Attorney



Bruce Washburn, City Attorney
By: Kimberly McIntier
Assistant City Attorney



William B. Murphy
Community Services Director



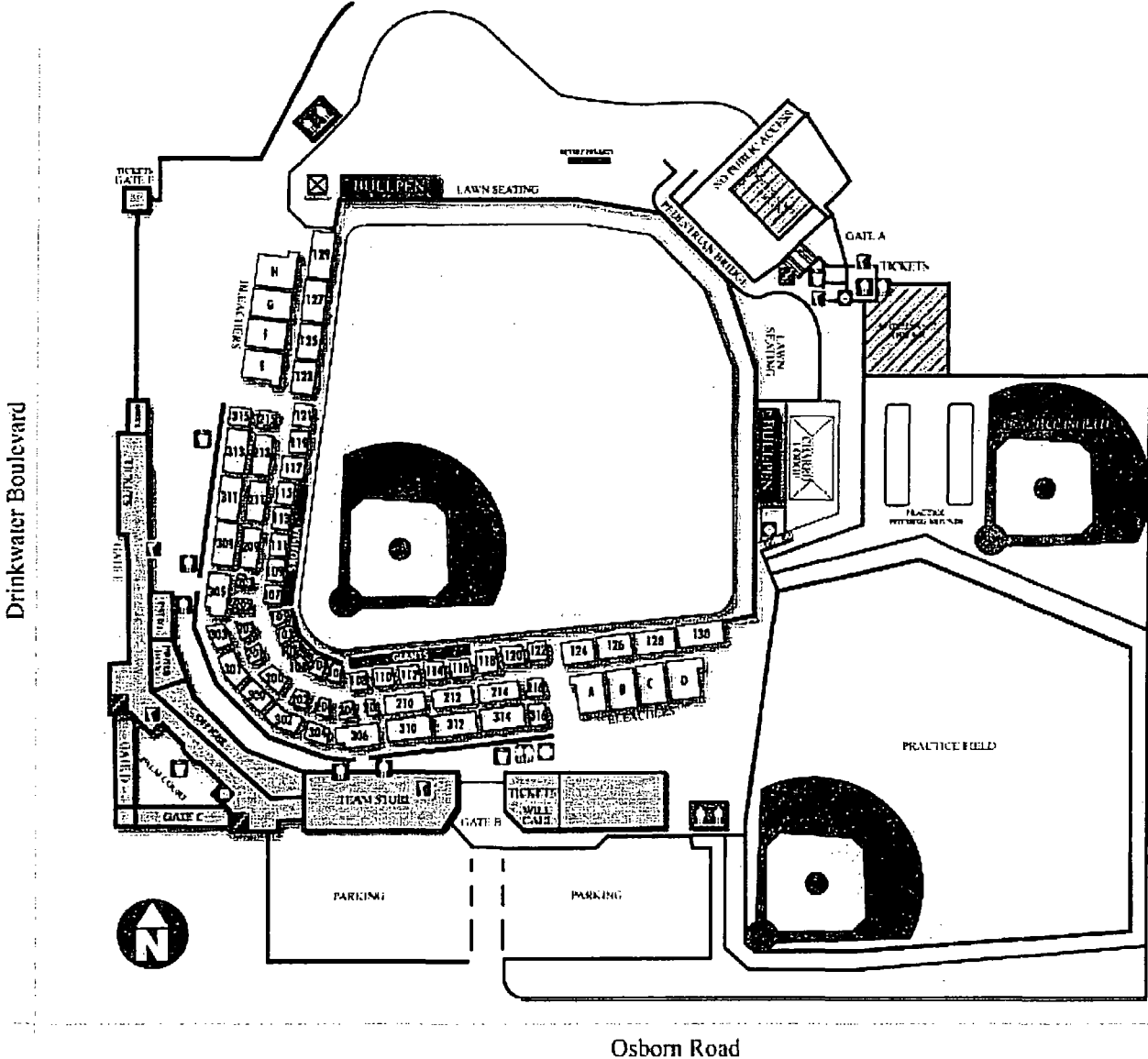
Katherine Callaway
Risk Management Director

"AFL"

**OFFICE OF THE COMMISSIONER OF
BASEBALL, an unincorporated association,
dba Arizona Fall League**

By: 
Stephen M. Cobb
Director

EXHIBIT A—Stadium Map



Drinkwater Boulevard

Osborn Road

▨ Areas not available for use

EXHIBIT B

SCOTTSDALE STADIUM PRESS BOX FLOOR PLAN

