

## **FACILITY USE AGREEMENT**

Contract # C-6368  
Parties: City of Glendale, White Sox, Dodgers.  
Date: November 2, 2007.

### **SALIENT DATES**

**Initial Term §2.1** The initial term shall expire on December 31, 2028, unless this FUA is terminated earlier pursuant to the provisions hereof.

**Renewal Term §2.2** A term of five (5) years commencing upon the expiration of the Initial Term or the immediately preceding Renewal Term, if any.

#### **Option to Renew §2.3**

The Teams shall each have four (4) successive options to renew this FUA for a Renewal Term. The Teams may jointly or independently exercise each of these options. Must exercise at least nine (9) months before the expiration of the then-current Term. If a Team fails to provide such notice within the aforementioned time, then the Team's right and option to renew shall continue in full force until the City notifies the Team that the renewal notice has not been received and the Team fails to exercise its renewal right within sixty (60) days after receipt of the City's notice. It is the intention of the parties that the Teams shall not lose any renewal right through inadvertence

### **SALIENT TERMS**

#### **Improvements §1.1.25**

The Stadium, Parking Lots, Playing Fields, all landscaped areas and all other improvements on the Site, including, without limitation, those improvements described in the Scope of Work attached to the FDA.

#### **Maintenance Stds §1.1.30**

The standards of maintenance, repair, and operations maintained by managers of comparable Spring Training facilities in the State in accordance with reasonable commercial practices then in use.

**Parking Lots §1.1.36** Parking spaces for approximately four thousand (4,000) vehicles and all of the driveways, fences and lighting incidental to the use thereof. The Team may make arrangements with the City of Phoenix to obtain parking spaces in an area adjacent to the Site for an additional one thousand five hundred (1,500) vehicles.

**Rent §2.4** The Teams shall each pay to the City the sum of One Dollar (\$1.00) per Lease Year as rent payable in advance.

## **Teams Rights and Obligations §3.2**

Teams exclusively responsible for management, operating and maintaining. Perform the routine maintenance (3.2.2).

## **Public Safet Services §3.2.3**

Subject to the Phoenix IGA provide all security, crowd control, maintenance, cleaning, landscaping, grounds keeping and other personnel for property maintenance etc. (3.2.3). City agrees traffic control services shall be designed to remove 4,225 vehicles 25 minutes after completion of game.

**Comp.Tickets §3.5** The Teams shall provide AzSTA with six (6) tickets, the City with ten (10)) tickets. The City shall be permitted to use one (1) luxury suite at the Stadium for all events conducted at the Stadium, subject to any contract with an event promoter.

**Operation §4.1** The Teams shall provide and pay for, solely from funds of the Teams, all costs and expenses required for the operation and Routine Maintenance of the Facility, including, but not limited to, all personnel (including supervisory staff), labor, equipment, telephone, water, sewer, storm water, and materials; provided, however, that the Teams shall not be responsible for any of such items that are required to be provided and paid for by the City as Capital Repairs, Facility Upgrades and in connection with City Events. The City shall provide or cause to be provided throughout the Term all of the lines and connections needed to deliver water, gas, electricity and other utilities to the Facility. The Teams shall be responsible for all costs related to the use of (as opposed to installation or extension of) such water, gas, electricity and other utilities, as well as all costs related to the production of all baseball events and Ancillary Events, other than City Events, taking place at the Facility. The City will not assess a tax or otherwise charge a fee to the Teams for the cost or depreciation of the Improvements, including, without limitation, for the costs of installing or otherwise providing utilities to the Facility.

**Liaison §4.3** Each party shall name one (1) person to be the liaison to work with the other parties with respect to coordinating the mutual responsibilities of the parties hereunder. The Dodgers hereby designate Mr. Craig Callan as the liaison unless and until a new person is designated in writing by the Dodgers; the White Sox hereby designate Mr. Terry Savarise as the liaison unless and until a new person is designated in writing by the White Sox; and the City hereby designates the Glendale City Manager or his designee as the liaison unless and until a new person is designated in writing by the City.

## **No additional Improvements §4.4.8**

Contemplating development of the southwest corner of the Site a conference center, on land not otherwise designated to be used as part of the Facility.

**Games §5.1** Each Team plays a minimum of ten (10) Spring Training Games at the Facility during the applicable Lease Year.

**Right of Entry §6.1** During the Term, except when exercising its police powers, the City shall have the right to enter into and upon any and all parts of the Facility for the purpose of examining the same with respect to the obligations of the parties under this FUA upon two (2) days' prior written notice to the Teams (or without prior notice in the event of a Life Safety Issue, but with immediate notice thereafter).

## **Advertising and Promotion §6.2**

If, during the Term, the Teams have any unsold advertising display space (e.g., billboards, outfield signs, etc.) at the Facility, then, subject to the Teams' prior reasonable approval as to the content, design, frequency of display, and placement of any such advertisements or promotional materials, the City shall be permitted to have public service advertisements or promotional materials and information that market or promote the City (but not the products, services or brand of any third party) displayed at the Facility in such unsold advertising display space.

### **Public Service Announcements §6.2.2**

Team shall, at the City's request, produce two (2) public service announcements in video format directed at youth crime prevention, youth educational development, and youth sports and recreational participation..

### **Player Public Appearances §6.2.3**

Players and/or publicly recognizable personnel of such Team shall make two (2) public appearances at area schools, youth facilities, or City facilities in support of local youth programs. The players and/or other publicly recognizable personnel of each Team shall be selected by each Team in its sole and absolute discretion.

**City Events §6.2.4** The City shall have the right to use the Stadium, the Parking Lots and the Playing Fields for up to five (5) days per Lease Year for civic, youth and recreation events and programs, including youth sport activities.

**Parking §6.2.5** The Teams shall control and receive all revenues for parking at the Facility for all Spring Training Games, other baseball-related events and all Ancillary Events conducted by the Teams. The City and Teams agree that each Lease Year, the Facility's Parking Lots shall be made available for use in service of the preseason and regular season games (currently ten (10)) of the Arizona Cardinals

**Revenues §7.1** Teams shall control, collect, receive, and retain all revenues generated by any means at or in connection with the Facility.

**Naming Rights §7.2** The Teams have the right to sell naming, affiliation, and/or sponsorship rights in and to the Facility or any portion thereof and/or to change the name of the Facility or any portion thereof. The name of the Facility or the Stadium shall be subject to the prior written review and approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The Facility shall, without cost to the City, be identified with the City in a reasonable manner (e.g., the manner in which the Jobing.com Arena-Glendale, Arizona is currently identified with the City). All revenues derived from the sale of naming, affiliation, and/or sponsorship rights in and to the Facility or any portion thereof shall be retained solely by the Teams.

#### **Allocation of Responsibilities §8.1**

It is the purpose of this Article 8 to allocate the responsibilities between the City and the Teams for the cost of making repairs, restorations, replacements, and upgrades to the Facility that are necessary during the Term. The general overriding principle of such allocation is (but subject in all events to the specific provisions hereof) that the Teams are responsible for funding and providing for all Routine Maintenance, and the City is responsible for funding all Capital Repairs and Facility Upgrades. No action by the Teams to undertake any repairs, replacements or upgrades in accordance herewith shall constitute an admission that any such item is Routine Maintenance.

#### **Routine Maintenance §8.2**

Shall mean the provision of all labor and materials which are required to (a) keep the Facility and its Components in good order and repair, provided such work is of a routine nature and does not constitute Capital Repairs, and (b) keep the Facility in a clean, sanitary and safe condition and free of debris. Without limiting the foregoing, Routine Maintenance shall be in accordance with the Maintenance Standards. Examples of Routine Maintenance include the following:

1. Performing all preventive or routine maintenance which is stipulated in operating manuals for Components as regular, periodic maintenance procedures;
2. Regular maintenance procedures for the HVAC system, include periodic cleaning, lubricating and changing of air filters;
3. Groundskeeping, including, but not limited to, mowing, seeding, fertilizing, and spot resodding;
4. Changing of isolated light bulbs, fuses and circuit breakers;
5. Touch-up painting;
6. Making ready and maintaining the Playing Fields each year for Spring Training; and
7. Repairing or replacing discreet, isolated and immaterial occurrences of cracked or disintegrated concrete, broken pipes or leaking roof or sections thereof.

**Capital Repairs §8.31** Any work which is reasonably required to be performed in and about the Facility to repair, restore or replace any Components of the Facility that may require such work because of any damage, destruction, ordinary wear and tear, defects in construction or design, or any other cause; provided that Capital Repairs shall not include any of the foregoing if such results from Team Misuse; nor shall Capital Repairs include any work related to any Component of the Facility which constitutes an Additional Improvement made by the Teams. The following are examples of Capital Repairs:

1. Replacement of all or significant portions of scoreboard bulbs as a result of sudden damage from the elements or other unforeseen cause;
2. Replacement or repair of an HVAC compressor;
3. Replacement of carpeting with carpeting of similar quality which wears out as a result of ordinary wear and tear;
4. Repair or replacement of areas of cracked or disintegrated concrete, broken pipes or leaking roof;
5. Repair or replacement of seats, or replacement of the seat standards or the concrete into which the seat standards are affixed (but not with respect to isolated seats requiring repair or replacement);
6. Re-application of protective materials, such as paint or weather-proofing, after original application wears out;
7. Changes or improvements to the Facility to meet Legal Requirements or the requirements of Major League Baseball applicable to Spring Training facilities generally;
8. Replacement of all or substantially all of a Playing Field, however in no event shall this be a City responsibility more than once every six (6) years, with fields being resodded on a rotating basis so that no more than two (2) fields are resodded per year, with three (3) fields resodded in the last of each six year rotation; and
9. Repair or replacement of a significant component of the Facility due to extraordinary weather damage.

#### **Facility Upgrades §8.4**

City had no obligation to make any upgrades to the Facility during the first seven (7) years of the agreement. However, the City shall, from time to time, as needed, upgrade, modernize and otherwise improve the Facility so that during the Term, the Facility shall maintain a comparable level of amenities and technology to other Spring Training complexes. The City shall install, within two (2) years, such technological improvements in the Facility.

#### **Capital Repairs Account §8.5**

The City shall establish an account (“**Capital Repairs Account**”) for the purpose of accumulating funds for the payment of the cost of Capital Repairs and Facility Upgrades.

#### **Capital Repairs or Facility Upgrade Procedure §8.6**

All contracts for Capital Repairs and Facility Upgrades to be paid for with Capital Repair Account funds must be procured in accordance with the City's procurement procedures. If the Teams identify a needed Capital Repair or a Facility Upgrade required hereunder, they shall contact the representative designated by the City for concurrence in such designation, and upon City approval, which shall not be unreasonably withheld, delayed or conditioned, and which shall be deemed to have been given with respect to any Capital Repair or Facility Upgrade that is in an approved budget.

#### **Emergency Capital Repairs; Procedures §8.7**

If the Teams determine that an Emergency Capital Repair is needed, they shall immediately contact the City's designated representative empowered to authorize an emergency procurement of the contract needed to make the Emergency Capital Repair with as much competition as is practicable under the circumstances. If the City representative is unavailable to give prior authorization, then the Teams may proceed with effecting the procurement with as much competition as practicable, and within twenty-four (24).

#### **Maintenance and Repair Meetings §8.8**

Prior to the beginning of each Spring Training during the Term, representatives of the Teams and City shall meet to:

1. Review Teams' anticipated Routine Maintenance, which shall be submitted to the City in writing by the Teams;
2. Allocate any anticipated work between anticipated Routine Maintenance and anticipated Capital Repairs and Facility Upgrades;
3. Determine budgets and timetables for anticipated Capital Repairs and Facility Upgrades.

#### **Seven Year Capital Repair Plan §8.9**

On or before May 15, 2008 and thereafter on May 15 of each Lease Year during the Term, the Teams and the City shall jointly develop a seven (7) year capital repair plan ("**Capital Repair Plan**") for the Facility. The contents of such Capital Repair Plan shall be for planning purposes only, and shall not affect in any way the City's obligations for Capital Repairs and Facility Upgrades as set forth in this FUA.

**Grant of Option §11** Option to purchase real property. Lot A is generally known as the Hickman Hog Farm (brown lot). Lot B is generally located west of the intersection of Northern Avenue and 91<sup>st</sup> Avenue with frontage along Northern Avenue, surrounded by land owned by the TO Nation.

Both parcels are subject to the option.

**Assignment §12.1** This FUA may not be assigned by any party to any other Person without the prior written consent of all other parties, which consent may be granted or denied by the parties in their sole discretion; provided, however, that this FUA may be assigned by either Team without the City's consent (but with

prior written notice to the City and the other Team) to any Person who, with the approval of Major League Baseball, acquires the assigning Team's MLB franchise (by any form of acquisition), provided that any such assignee explicitly assumes in writing the duties and responsibilities of the assigning Team under this FUA (in which case the liability of the assigning Team shall cease with respect to liabilities accruing from and after such assignment).

**Sublease §12.2**

The Teams may sublease, with the approval of the City, such approval not to be unreasonably withheld, at any time during the Term, any portion of the Facility, including, but not limited to, any of the Improvements (e.g., offices, practice fields, clubhouses, weight rooms and/or conference facilities) located at the Facility. All revenues derived from subletting any of the foregoing shall be retained solely by the Teams.