

CONFIDENTIAL DRAFT

NON-BINDING MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**MOU**”) is made by and between the City of Mesa, an Arizona municipal corporation (“**City**”), and Chicago Cubs Baseball Club, LLC, a Delaware limited liability company (“**Cubs**”). The City and Cubs may be collectively referred to as “**Parties**” and individually as a “**Party**.”

Recitals

- A. The City desires for Cubs to conduct their spring training, player development and other activities (collectively, “**Spring Training**”) in the City of Mesa.
- B. Cactus League Spring Training is an important community asset providing significant economic benefits and community amenities for the City’s citizens, businesses and visitors as well as significant regional and state economic benefits.
- C. The City is committed to maintaining and enhancing these important community benefits.
- D. Cubs are willing, and desire, to continue their Spring Training in the City if a new stadium, training and administration facility is constructed and operated in the City according to the terms set forth in this MOU and the terms of this MOU are made part of a definitive and binding agreement between the Parties.
- E. A new stadium, training and administration facility will spur additional economic and other beneficial development in the City and the region.
- F. The Cubs have consistently generated the highest attendance in the Cactus League and are supported by a tremendous base of fans in the City and vicinity and around the country, many of whom travel to the City each year for Cubs spring training games.
- G. Attendance at Cubs spring training games is higher than any other Cactus League team and generates significant tax revenue for the City and the State of Arizona.
- H. Other municipalities, with the assistance and support of State of Arizona agencies, have recently constructed new facilities for Spring Training of Major League Baseball teams on terms similar to those in this MOU including, for example, the Spring Training facility used by the Chicago White Sox and Los Angeles Dodgers in Glendale, Arizona.
- I. The City and Cubs desire to outline their mutual points of understanding with respect to the proposed new stadium, training and administration facility and associated areas and to proceed immediately to draft a definitive agreement to include these terms and other terms mutually agreeable to the City and Cubs, to be signed after approval by the City Council.

Non-Binding Memorandum of Understanding

This MOU is not binding or legally enforceable, imposes no enforceable obligations upon the Parties and does not grant any rights. However, the Parties shall utilize this MOU as the framework for an agreement or agreements (which may include a development agreement, lease

agreement and/or other agreements), which will be collectively referred to herein as the “**Agreement.**” Cubs and the City acknowledge the Agreement will be subject to approval by the Mesa City Council, certain financial aspects of the Agreement may be subject to voter approval under Section 613 of the Mesa City Charter and implementation of the Agreement may be contingent on state legislation being passed by the State of Arizona Legislature and becoming effective within the applicable time frames outlined in this MOU.

1. **The Project, Location and Cost.**

1.1 **Overview.** The proposed project, including the design, construction, maintenance and operation of the following (collectively, the “**Project**”) will include a site (which may be located on one or more contiguous or non-contiguous parcels), upon which will be constructed the Stadium, the Ancillary Stadium Facilities, the Other Facilities, and any arterial streets immediately adjacent to the Stadium, as generally defined below:

- (a) **Stadium:** A municipally-owned Spring Training baseball stadium with seating (fixed and berm) for 13,500 to 15,000 patrons constructed with state of the art amenities and a design as determined by Cubs. The Stadium will include 250 improved parking spaces adjacent to the Stadium, as more fully defined in Section 5.4(a).
- (b) **Ancillary Stadium Facilities:** A facility to include: (i) an approximately 50,000 square-foot clubhouse with locker room, meeting rooms, nutritional center, language center, training and administration facility with team offices, dining, classroom, meeting spaces and indoor training for major and minor league baseball players; (ii) a minimum of two Major League-sized practice fields; (iii) a minimum of one practice infield; (iv) one agility field; (v) a minimum of 16 batting tunnels and 16 pitching mounds; (vi) a minimum of 150 parking spaces for staff and player personnel; (vii) temporary living spaces; and (viii) such other facilities, features and amenities as may be agreed in the design approved by the Parties.
- (c) **Other Facilities:** Four full-sized practice fields, located no more than ¼ mile from the Ancillary Stadium Facilities, which facilities will include, among other things, (i) a minimum of four Major League-sized practice fields with instructional and viewing capabilities; (ii) 100 public parking spaces; (iii) Major League quality lighting; and (iv) such other facilities and amenities as may be agreed in the design approved by the parties. At least two of the Major League fields at either the Ancillary Stadium Facilities or the Other Facilities shall be lit for night baseball.
- (d) **Stadium Events:** All events held at the Stadium, including but not limited to, Cubs home Spring Training baseball games as set forth in this MOU and other entertainment-related events and ancillary activity related thereto (e.g., parties, ticket sales, food and beverage, musical performances, etc.).

1.2 **Commitment to Mesa.** The Project will be located and constructed on a site in Mesa. The Stadium Site will be determined by Cubs; the site for the Ancillary Stadium Facilities and Other Facilities to be determined by agreement of the Parties. Cubs will commit its Spring Training activities to Mesa, Arizona, for the next 25 years as provided in the Agreement.

1.3 **Signs on the Stadium Site:** Cubs will have exclusive control of all signage facing into the Stadium and not visible from the public right-of-way. City staff will work with the

Cubs to create a mutually-agreed sign package to accomplish the specific needs of this Project regarding signs at and outside of the Stadium, including the preparation and presentation for approval by City Council of a comprehensive sign plan and, if necessary and mutually agreed, will assist in preparing any amendments to City ordinances, rules or regulations necessary to implement the same. The City understands and acknowledges Cubs intend a comprehensive sign plan which will include: (i) Cubs exclusive control of all signage facing into the Stadium; (ii) up to three externally-facing, electronic digital signs in a size and as otherwise agreed by the Parties, affixed to the Stadium or standing within the Stadium Site; (iii) up to three externally-facing, electronic digital signs in a size and as otherwise agreed by the Parties on the Project site; and, (iv) no third party signage at the Ancillary Stadium Facilities or the Other Facilities unless approved in advance by Cubs.

1.4 Naming. For as long as the Cubs utilize the Stadium and Ancillary Stadium Facilities for Cubs Spring Training, Cubs shall have the exclusive right to sell “naming rights” sponsorship for all and/or individual components of the Stadium and Ancillary Stadium Facilities, subject to approval of the City which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the name(s) shall not include (i) any name of any municipality in Arizona other than the City without the prior written approval of the City (e.g., no University of Phoenix stadium); (ii) names of tobacco manufacturers or distributors; (iii) sexually suggestive names or names of businesses which promote adult businesses, activities or entertainment; (iv) products or merchandise related to sexual activity; or (v) names of any nature (whether explicit or implicit) which could reasonably bring disrepute, shame or opprobrium upon the City.

1.5 Use of the Stadium and Ancillary Stadium Facilities. Cubs shall have exclusive and complete control over the use, management, operation and scheduling of the Stadium and Ancillary Stadium Facilities and may use the Stadium and Ancillary Stadium Facilities for any purpose, subject to all applicable laws, when not being used for Spring Training purposes. It is intended such purposes shall include all Stadium Events. Cubs shall be responsible, at its sole cost and expense, for maintenance and repair of the Stadium and Ancillary Stadium Facilities, unless caused by the gross negligence or willful misconduct of the City. City shall be entitled to use the Stadium for five non-revenue events each year, at City’s cost, subject to reasonable scheduling and availability.

1.6 Use of the Other Facilities. Cubs shall have exclusive use and control over scheduling of the Other Facilities for the period February 1 through April 30 each year of the Term of the Agreement. Cubs shall use the Other Facilities during such times solely and exclusively for Spring Training activities or other activities related to Major League Baseball. At all other times, Cubs shall have the right to request to use the Other Facilities and the City shall grant such request absent another scheduled event or good cause. The City shall not permit any use of the Other Facilities for any purpose which conflicts with Cubs (e.g., no use by other Major League teams or their affiliates). The City shall be responsible, at its sole cost and expense, to operate, maintain and repair the Other Facilities at a standard equal to the highest quality in the Cactus League, unless caused by the gross negligence or willful misconduct of Cubs.

2. Financing.

2.1 Financing. The City’s (and State of Arizona) contribution for the cost of the initial construction of the Project shall be, and will in no event be more than, \$84 million (the

“Financing Amount”). Without limitation of the foregoing, the Financing Amount is expected to be raised through a combination of revenue and general obligation bonds and such bonds shall be issued exclusively by the State of Arizona and/or the City and shall be repaid with, and secured by, revenues segregated for this purpose under this MOU and not any new taxes or revenues related to the Project, or which are otherwise the rights of Cubs under this MOU or the Agreement. Any amounts required to complete the Project in excess of the Financing Amount shall be the sole responsibility and obligation of Cubs, provided however the City shall be responsible for other contributions as set forth in this Section 2.1 and Section 5.9 of this MOU.

Notwithstanding the foregoing or anything in this MOU to the contrary, the following costs shall be paid by the City and shall not be included in the Financing Amount:

- (a) the City-owned Utility Infrastructure for the Stadium, Ancillary Stadium Facilities and Other Facilities and any third-party land dedications therefor as described in Section 5.3;
- (b) the public street improvements, as described in Section 5.3, to the Ancillary Stadium Facilities and Other Facilities will not be included in the Financing Amount. The Street Improvements, as described in Section 5.3, to the Stadium will be included in the Financing Amount.
- (c) costs associated with operating and owning the Other Facilities;
- (d) cost of all parking will be included in the Financing Amount with the exception of the City’s obligation to provide 2,500 to 3,500 spaces for overflow parking, as more fully defined in Section 5.4(b);
- (e) costs of Capital Expenditures after the initial construction as defined in Section 5.5;
- (f) costs of Utility Services, as defined in Section 5.6;
- (g) costs associated with operations of the City services as described in Section 5.8;
- (h) taxes and fees as set forth in Section 5.9;
- (i) costs of City services related to the Project construction only (e.g., fire, police, traffic control, when performed by City employees, etc.);
- (j) costs of material design or engineering changes requested by the City after approval of the Project’s plans and specifications; and,
- (k) costs related to the willful misconduct of the City; and,
- (l) any other costs described in this MOU and agreed in the Agreement to be the responsibility of the City.

The City will be responsible for paying all development (impact) fees and similar fees or assessments related to City-Owned Utility Infrastructure and any other items to be paid for outside the Financing Amount pursuant to this Section 2.1.

The City reserves the right, in its sole discretion, to utilize one or more municipal corporations to finance portions of the Project.

2.2 **Segregation of Funds.** The Financing Amount and Capital Improvement Fund will be maintained by the City in a separate account, outside the City's general revenue fund and shall be used by the City for and in connection with its obligations under the Agreement.

2.3 **Excess Funds.** In the event the actual costs of the Project are less than \$84 million, the City, using monies other than proceeds of tax-exempt bonds, will provide to the Capital Improvement Fund an amount equal to such savings, it being the intent of the parties to not jeopardize the tax exempt status of interest payments made on any obligation issued to fund the Financing Amount. No additional costs or obligations shall be imposed on Cubs to access such funds.

3. **Exclusive Negotiations with Mesa.**

3.1 Cubs agree to negotiate exclusively with the City with respect to Cubs Spring Training, provided however this exclusivity may be terminated by Cubs only if the City fails to meet any of the commitments set forth below or subject to Section 7 below. The exclusivity provision will be an ongoing obligation of the Cubs so long as the City continues to meet these commitments and the Agreement has not been terminated:

- (a) February 1, 2010: the City Council has approved the amendments to the Lease Agreement, as defined in Sections 3.3, and 3.4 of this MOU.
- (b) February 25, 2010: State legislation consistent with this MOU and as more fully described in Section 4 of this MOU (the "**Legislation**") has been introduced at the State Legislature.
- (c) July 12, 2010: the City Council has approved the Agreement in material compliance with the terms of this MOU and containing such other terms as Cubs and the City determine are necessary, the Parties have signed the Agreement and the Agreement has been recorded within five business days thereafter.
- (d) July 12, 2010: the Legislation has been enacted.
- (e) July 12, 2010: City Council has, if the City determines it is required by law or the City's charter, called an election for Mesa voters to consider a ballot measure to authorize the Project. (the "**Election**").
- (f) November, 2010: Mesa voters approve a ballot measure authorizing the Project.
- (g) January 30, 2011: Selection of architect and contractor agreed by the Parties.
- (h) Within six months after Cubs identify the Stadium Site and submit all required zoning applications to the City, such applications must be complete and include all required information, together with, if applicable, the consent of the landowner of the Stadium Site: All necessary zoning and other ordinances, amendments and exceptions necessary to allow development of the Project as contemplated by this

MOU have been adopted and enacted and the Comprehensive Sign Plan and any other agreements to facilitate the Project have been signed by City and Cubs and approved as necessary; and,

- (i) On-going: All funds required to be provided by the City are provided on the timetables required in the Project Schedule attached to the Agreement and the City and Cubs are each providing full cooperation in the compilation, application and submission of applicable permits and applications.

Note: the Agreement will provide Cubs the option to terminate the Agreement if material milestone(s) in the Project Schedule, including without limitation any element in this Section 3.1 or other requirement which is a condition to the Cubs obligations, is not timely met.

- 3.2 If City successfully completes all commitments set forth in Section 3.1 of this MOU and construction of the Project is proceeding as agreed by the Parties, Cubs agree, until construction of the Project is completed, Cubs will not directly or indirectly negotiate with or consider offers from any other jurisdiction or entity regarding relocation of Cubs Spring Training.
- 3.3 In exchange for this exclusivity, the City Council will consider, concurrently with this MOU, a binding amendment in a form to be agreed by the Parties to amend the Lease Agreement between the City of Mesa and the Chicago National League Ball Club dated March 31, 1996, and any fully executed amendments thereto (the "**Lease Agreement**") to eliminate the \$850,000 payment found in Section 1 of the Lease and any other penalty or fee to Cubs for early termination of the Lease Agreement.
- 3.4 Also in exchange for this exclusivity and in particular the exclusive negotiation period noted in Section 3.1, the City Council will consider, concurrently with this MOU, a binding amendment in a form to be agreed by the Parties to amend the Lease Agreement to modify the two-year notice requirement found in Section 1 of the Lease. More specifically, the proposed amendment will provide Cubs may terminate the Lease Agreement at any time during the term of the Lease Agreement by providing the City 365 days written notice with termination to take effect at the conclusion of such 365 days with no further costs or obligations to Cubs.
- 3.5 If Cubs fail to meet its obligations as set forth in Sections 3.1 of this MOU, then as City's exclusive remedy the amendments to the Lease Agreement described in Sections 3.3 and 3.4 of this MOU will be deemed withdrawn and have no force and effect and the Lease Agreement shall thereupon continue as though not amended as described in this MOU. If Cubs fail to meet its obligations as set forth in Sections 3.2 of this MOU, then the City shall be entitled to the remedies set forth in the Development Agreement.
4. **State Legislation.** The Parties will undertake diligent, reasonable, good faith efforts to obtain the approval of the Arizona State Legislature and governor for Legislation needed to facilitate financing and construction of the Project in a form agreed by the Parties in accordance with the terms of this MOU and the Agreement including, without limitation, payment of a portion of the debt service for the Project.
5. **City Responsibilities.** The following is a general outline of responsibilities the City will have under the Agreement.

5.1 **Design of Project.** The City agrees to coordinate with, and solicit detailed input from, Cubs concerning all aspects of the Project design, which design will be subject to Cubs approval, at no cost to City. Without limitation of the foregoing, in compliance with all applicable state and local laws, Cubs will have the right to approve the layout of the Project, the elements to be included, the City's criteria for selection of the architect(s) and other designers for the Project. Through the use of a Project Committee to include the City Manager (or his designee) and a representative of Cubs, and subject to public procurement requirements, Cubs will have input into the review and selection of all advisers, design professionals and contractors to be used on the Project. To the maximum extent consistent with applicable law, Cubs will control the selection of such personnel. Such personnel will report to Cubs or its designee and City, who will work together to administer the Project. City agrees the cost of city employees working on the Project will not be included in the Financing Amount, but any outside personnel retained will be included in the Financing Amount. The Agreement will include an agreed-upon rendering, rough design and schematic layout for the Project.

5.2 **Construction of Project.** Construction services in connection with the Project shall be publicly procured as required by law and the City may utilize construction manager at risk construction services, design/build or such other public procured job delivery methods as may be determined by the City with involvement by Cubs. The Parties will use reasonable efforts to complete construction of the Project in time for Spring Training 2013. If construction of the project is delayed beyond 2013, but as long as the Agreement remains in effect, City shall allow Cubs to continue to use Ho Ho Kam Stadium and Fitch Park on the terms of the Lease Agreement until the Project is completed.

5.3 **City-Owned Utility Infrastructure and Public Street Improvements.** The City will acquire, design, construct (during the construction of the Project), operate and maintain, all at its cost, the City-Owned Utility Infrastructure and public Street Improvements as described in this Section 5.3. The Utility Infrastructure and Street Improvements will be designed, constructed and maintained per City of Mesa standards. For purposes of this provision, City-Owned Utility means water (potable and non-potable), wastewater (sanitary sewer), and gas. "**Street Improvements**" means roadways, driveways, streets and other public rights-of-way and includes street paving, curb, gutter, sidewalk, traffic signals and landscaping. Infrastructure shall include all sewer, pipes, poles or other means of conveying the utility. The Agreement will include an agreed-upon rendering, rough design and schematic layout for such infrastructure and other improvements:

- (a) For the Ancillary Stadium Facilities and Other Facilities, City will provide all City-Owned Utility Infrastructure and Public Street Improvements;
- (b) For the Stadium Site, City will provide all City-Owned Utility Infrastructure and such amounts are not included in the Financing Amount. Street Improvements for the Stadium Site and the street improvements needed to access the Stadium will be included in the Financing Amount, provided however City will provide Street Improvements, if necessary, for the arterial streets immediately surrounding the Stadium Site and such amounts are not included in the Financing Amount. City will also provide Infrastructure for electricity up to the property line for the Stadium Site. The cost of electricity from the property line to the Stadium Site will be included in the Financing Amount. At the request of Cubs, Infrastructure provided pursuant to this provision shall be increased in size (oversized) to accommodate reasonable

future private development of the area around the Stadium Site, provided any increase in cost may be paid from the Financing Amount, subject to the City's agreement based on criteria to be set forth in the Agreement.

5.4 Parking for Stadium Events. In addition to the parking for staff and players noted in Section 1.1(b) and (c) above, the City will provide parking as described below:

- (a) The Stadium Site will include 250 improved parking spaces ("**Stadium Parking**"). The Stadium Parking will be available to Cubs for all Stadium Events.
- (b) **Overflow Parking:** For all Cubs home Spring Training baseball games, and for other Stadium Events absent another scheduled event or good cause, City will also provide to Cubs the right to use land of a size sufficient to park a minimum of 2,500 (and up to 3,500 if the publicly-owned land permits) automobiles within a reasonable distance from the Stadium. All such parking shall be located on either the Project or publicly-owned property adjacent to the Project and not included in the Financing Amount.
- (c) For all Stadium Events. Cubs will operate and manage all parking for all Stadium Events at no cost to the City and Cubs will retain all revenue therefrom.

5.5 Capital Improvements and Facility Upgrades. The City will establish a fund to pay for capital improvements to the Stadium and Ancillary Stadium Facilities during the Term (the "**Capital Improvements Fund**"). The Capital Improvement Fund may also be used for the Other Facilities, but only with agreement of the Cubs, which shall not be unreasonably withheld when related to Cubs baseball. In addition to its other Capital Improvement obligations under the Agreement, the City will provide all Capital Improvements for the Other Facilities and will contribute, in a manner which does not jeopardize the tax exempt status of any obligation issued to fund the Financing Amount, an amount equal to the unspent funds in the Financing Amount. "**Capital Improvements**" shall have the meaning set forth in the Agreement, but at a minimum shall include all permanent additions and improvements to the Project and shall include all facilities and improvements necessary to ensure the Project remains at the forefront of all Cactus League facilities (meaning, with regard to any particular improvement, at least five Major League Baseball teams in the Cactus League have a Spring Training facility or feature equipment, amenity, capacity or character including such improvement). Capital Improvements for the Stadium and Ancillary Stadium Facilities will be funded as follows:

- (a) Capital Improvements will be paid for by funds, if any, in the Capital Improvement Fund;
- (b) If there are insufficient funds in the Capital Improvement Fund, then Capital Improvements will be funded as follows:
 - (i) In the first nine years of the Agreement, the cost of Capital Improvements will be shared 50-50 by Cubs and the City;
 - (ii) In Year Ten of the Agreement, Capital Improvements will be paid by the City. It is intended the parties will evaluate the Stadium, Ancillary Stadium Facilities and Other Facilities in Year Ten and undertake in Year Ten any Capital

Improvements necessary to ensure the facility remains among the elite in the Cactus League.

(iii) In years 11-19 of the Agreement, Capital Improvements will be shared 50-50 between Cubs and the City;

(iv) In Year 20 of the Agreement, Capital Improvements will be paid by the City. It is intended the parties will evaluate the Stadium, Ancillary Stadium Facilities and Other Facilities in Year 20 and undertake any Capital Improvements necessary to ensure the facility remains among the elite in the Cactus League.

To further this provision, it shall be Cubs right to determine whether any Capital Improvement is added to the Project and such Capital Improvement will be added if (a) the Parties agree; or (b) at least five Major League Baseball teams in the Cactus League have a Spring Training facility or feature equipment, amenity, capacity or character including such improvement. If Cubs desire to add any Capital Improvement to the Project, Cubs shall so notify the City and the Parties will immediately work together to add the improvement according to the terms noted herein.

Without limiting the foregoing, the Capital Improvements Fund shall be pledged to Cubs as security for the obligations of the City in this Section 5.

5.6 Utility Services. The City will pay for water, wastewater, gas and solid waste service, for the Stadium, Ancillary Stadium Facilities and Other Facilities. City will pay all other utilities for the Other Facilities, to the extent included in the Other Facilities. With regard to electricity: (a) Cubs shall pay for all electricity to the Stadium, (b) City shall pay for all electricity to the Other Facilities and (c) City shall pay for all electricity to the Ancillary Stadium Facilities, provided however the amount spent by the City pursuant to 5.6(c) shall be limited to a maximum of 1.5 times the average amount spent for electricity in 2008 and 2009 at HoHoKam and Fitch Park, such amount to be increased in each year of the Term by the Consumer Price Index—All Urban Consumers U.S. All Items, 1982-84=100). After two years of operation of the Ancillary Stadium Facilities, the Parties will adjust this maximum amount to equal the average cost of electricity used for the first two years of the Ancillary Stadium Facilities, adjusting for any additional equipment or other uses, also to increase by CPI. All costs in excess of this amount for electricity at the Ancillary Stadium Facilities shall be paid by Cubs. Cubs agree to accept non-potable water for all landscaping needs at the Ancillary Stadium Facilities (but not at the Stadium) if made available by City.

5.7 Regular Meetings. The City will cause its representatives to meet with Cubs as needed at the City's offices, but no less frequently than every other week, to work to complete the Agreement. The Parties anticipate the Agreement should be completed within 120 days of execution of the MOU.

5.8 Public Safety Services. City will provide all security, emergency services, traffic control, police, fire and other public services for the Project, subject to the terms of this Section 5.8. It is anticipated the level of public safety services to be provided will be sufficient to accommodate the capacity of the Stadium, Ancillary Stadium Facilities and Other Facilities, but may be less for Stadium Events where attendance of less than capacity is expected.

- (a) **Security.** Cubs will provide and pay for all security services needed to support operations on the Stadium Site during Stadium Events;
- (b) **Emergency Services and other public safety functions.** Cubs will pay the City \$1,500 per Stadium Event (\$2500 for non-Spring Training Stadium Events) for emergency services and other public safety functions at the Stadium. This amount will increase by \$300 every five years for the term of the Agreement;
- (c) **Traffic Control.** Cubs will provide and pay for all traffic control on private roadways on the Stadium Site; City will pay for all traffic control on the public way.
- (d) **Public Rights-of-Way.** The City will provide and pay for all security, emergency services, traffic control, police, fire and other public services necessary for the Project during Stadium Events.

5.9 Taxes, Assessments and Fees.

- (a) Prior to completion of construction, the following will be paid from the Financing Amount: any construction sales taxes or equivalent fees or charges and any application and processing fees and charges payable in respect of the Project Site, Stadium, Ancillary Stadium Facilities and Other Facilities, as applicable, provided however if after the MOU is signed the City increases an existing imposition or imposes any new imposition affecting the Project construction, then such imposition will be paid from the Financing Amount but the City will reimburse the Financing Amount for any amounts paid. The City is responsible for any other taxes, assessments and fees.
- (b) Following completion of construction:
 - (i) the City is responsible for any ad valorem real property (including without limitation any lease tax) or equivalent taxes and assessments payable in respect of the Project site, Stadium, Ancillary Stadium Facilities and Other Facilities;
 - (ii) Cubs are responsible to pay all federal, state and county taxes (other than real property and lease taxes) applicable to the Stadium, Ancillary Facilities and Other Facilities to the extent related to revenue retained by Cubs, provided however City will reimburse Cubs for any such imposition impacting solely Cubs.
 - (iii) Cubs shall pay all City income and sales taxes applicable to the revenues Cubs retain from Project, provided however in the event the City adopts an income, sales or equivalent tax applicable only to sports teams or sports/entertainment facilities or their fans, Cubs shall pay such imposition and the City will reimburse Cubs for the amount of such imposition.
 - (iv) City will reimburse Cubs for any taxes, fees and assessments due in connection with the Project and not mentioned in Sections (b)(i-iii) above, including any City tax other than income tax and sales tax. The operator of the event will pay for generally applicable processing and permit fees associated with ~~non-baseball~~ Stadium Events. The responsible party will pay ~~and~~ any taxes, fees or assessments

on future construction (the latter will be paid by Capital Improvement Fund, if applicable, or the entity doing the construction).

(c) Without limitation of the foregoing, Cubs are not responsible for any new or increased sales tax or equivalent taxes, fees or charges adopted by the City which is applicable to Cubs, any activity of Cubs at the Project and/or any revenues Cubs retain from the Project, unless applicable to all other citizens or entities within the City. If the City increases its amusement tax or similar imposition applicable to any use of the Project during the Term of the Agreement, then City will pay to Cubs an amount equal to the amount of tax collected.

(d) In the event the City does not reimburse Cubs for any amount to be reimbursed pursuant to this Section 5.9 or any amount for which Cubs are not responsible, then any such amount(s) paid by Cubs shall be a credit against amounts due from Cubs under the Agreement (without limiting the foregoing, upon request of Cubs, City shall pay Cubs share of such Capital Improvements in Section 5.5 up to the amount of the credit).

6. **Cubs Responsibilities.** The following is a general outline of responsibilities Cubs will have under the Agreement.

6.1 **Conveyance and Lease-Back of Stadium Site.** Cubs (or an entity formed or identified to acquire the Stadium Site) will convey to the City, at no cost or expense to City, fee simple title to a parcel of land to be used as and for the Stadium, including public right-of-way to an arterial street (the “**Stadium Site**”). Following conveyance of the Stadium Site to the City, the City shall lease the Stadium Site to Cubs, utilizing a form of lease attached to the Agreement as an exhibit (“**Stadium Lease**”), the terms of which will be consistent with this MOU. The term of the Stadium Lease will be coterminous with the Agreement. Following the 30th year after signing of the Agreement (or, if earlier, the period in which the bonds used to finance the initial construction of the Project will have been paid), Cubs may in its discretion purchase from the City for \$1 the Stadium Site. Following termination of the Agreement, Cubs may in its discretion purchase from the City the Improvements on the Stadium Site for a value to be agreed by the Parties, provided however Cubs shall have a credit against such price equal to the value of the Cubs’ contribution(s) to Capital Improvements as set forth in Section 5.4, provided such Improvements have a reasonable useful commercial life remaining after Year 20.

6.2 **Facilities Use Agreement for Ancillary Stadium Facilities.** The City shall permit Cubs to use the Ancillary Stadium Facilities pursuant to a facilities use or license agreement, utilizing a form of agreement attached to the Agreement as an exhibit. This agreement will be consistent with this MOU and coterminous with the Agreement.

6.3 **Facilities Use Agreement for Other Facilities.** The City shall permit Cubs to use the Other Facilities pursuant to a facilities use or license agreement, utilizing a form of agreement attached to the Agreement as an exhibit. This agreement will be consistent with this MOU and coterminous with the Agreement.

6.4 **Commitment to use the Project.** During the Term of the Agreement, Cubs will at minimum use the Project as follows:

- (a) **Spring Training Headquarters.** Once the Stadium, Ancillary Stadium Facilities and Other Facilities are constructed, the Project shall serve as the Cubs' spring training headquarters. All Cubs' player development such as, but not limited to, Extended Spring Training Season and the Fall Instructional League Season (but not including activities related to Cubs other minor league facilities) shall occur at the Project unless the Project is not available in which case Cubs may use other facilities; and,
 - (b) **Minimum Number of Home Games.** The Cubs will play a minimum of 12 home Spring Training baseball games per year at the Stadium unless otherwise required by Major League Baseball or prevented by a force majeure or the unavailability of the Stadium. ("**Minimum Number of Home Games**'). In the event a player strike or lockout prevents the Cubs from playing more than eight home games, that year shall not count as one of the years of the Term.
- 6.5 **Rent.** During the Term, Cubs shall maintain and operate the Stadium, Ancillary Stadium Facilities, and contribute to the Capital Improvement Fund as described in this MOU.
- 6.6 **Suite for City's Use.** Cubs shall provide City, at no cost or expense to City, a reserved suite suitable for occupancy of 20 persons, together with applicable admission and parking passes, within the Stadium for City's exclusive use for all Stadium Events (the "**City Suite**"). The location of the City Suite to be agreed upon by the Parties.
- 6.7 **Operations.** Cubs will have the exclusive right to operate ticket sales and distribution, concessions, retail sales, merchandise, sponsorships, advertising, signage, ushers, groundskeepers, scoreboard operators, announcers, security personnel, clean-up crews, first aid and paramedic personnel and all other operational elements of spring training baseball games and other Stadium Events and also the operation of Ancillary Stadium Facilities and Other Facilities during Cubs period of exclusive and priority use thereof, subject to compliance with applicable procurement requirements (if any). Cubs have the exclusive right to schedule all events held at the Stadium and may do so in Cubs discretion, subject to applicable law. To the extent required by law, such services will be competitively bid. Cubs will control all decision-making as noted in this MOU.
- 6.8 **Operating Revenue.** Cubs will have the exclusive right to sell and retain all revenue from tickets, suites and all other admissions charges, concessions, retail sales, merchandise, sponsorships, advertising, signage, parking and any other revenue of any sort generated from the Stadium and the Ancillary Stadium Facilities and, to the extent related to Cubs, the Other Facilities, subject to current sales taxes.
- 6.9 **Reasonable Assistance Regarding HoHoKam and Fitch Park.** Cubs will assist the City, as reasonably requested but at no out-of-pocket cost to Cubs, in the City's effort to obtain another professional baseball team to use the HoHoKam Stadium and Fitch Park for spring training, player development and other activities after Cubs move to the Stadium.
- 6.10 **Maintenance and Repair.** Cubs will be responsible for all maintenance and repair of the Stadium and Ancillary Stadium Facilities. City is responsible for all maintenance and repair of the Other Facilities. Capital Expenditures and improvements are set forth pursuant to Section 5.5 above.

6.11 **Continue to use HoHoKam.** Except as noted in Section 3 above, until the Project is completed, Cubs will continue to use the HoHoKam Stadium in compliance with the Lease Agreement as amended pursuant to Section 3.3 and 3.4 of this MOU. The Agreement shall provide the Lease Agreement will terminate upon occupancy of the Stadium by Cubs.

6.12 **Development of adjoining land.** The Development Agreement may also include such terms as the Parties shall agree related to cooperation on zoning and other permissions for the development of the land adjoining the Stadium Site, it being the intent of the City to encourage the development of such land.

7. **Stadium Site:** Notwithstanding anything in Section 6.1 to the contrary, if Cubs have not entered into a binding agreement to purchase, acquire or authorize construction of the Stadium on, the Stadium Site by December 31, 2012, the following will occur:

7.1 The City will offer Cubs a choice of at least two separate locations consisting of publicly-owned land on which the Project may be constructed. The City shall not be required to purchase land for this purpose. The Cubs shall select one of the locations offered by City or, if Cubs fail to select one of the two locations offered by City by January 31, 2013, the Agreement will terminate and either (i) Cubs will play Spring Training at HoHoKam Stadium through the 2013 Spring Training Season and Cubs will pay Mesa \$1,000,000; or (ii) Cubs will play Spring Training at HoHoKam Stadium through the 2014 Spring Training Season.

7.2 If City fails to offer Cubs a choice of two separate locations, as described in this Section 7.1, the Agreement will terminate.

8. **Term of the Agreement.**

8.1 The term of the Agreement (“**Term**”) will commence upon approval by the City Council of the City and execution by the Parties and will expire 90 days after the end of the 25th Spring Training Season following the opening of the Stadium. Cubs will have two successive options to extend the Agreement an additional five years each upon the expiration of the initial term or additional five-year term, as applicable. As in the Lease Agreement, Cubs may terminate the Agreement if fewer than five other Major League teams participate in the Cactus League.

8.2 Cubs will have the option to terminate the Agreement (and Stadium Lease and facilities use agreements) as of the end of the 20th Spring Training Season of the Term or any calendar year thereafter. Cubs may exercise such option by giving the City written notice of such exercise and specifying the termination date. Cubs will be required to give at least two years’ notice prior to the specified termination date. For every Spring Training Season subsequent to the termination date which would have been included in the initial 25-year Term, Cubs will pay to the City the greater of \$1,000,000 per year or the amount of payments remaining on the initial bonds used to secure the initial funding for construction of the Project. Such amount will be payable annually, at the end of each Spring Training Season which would have been included in the initial 25-year Term. In the event Cubs so terminate the Agreement, the City will use commercially reasonable efforts to lease the Project to another Major League Baseball team. In the event the City is successful in leasing the Project to another Major League Baseball team, Cubs will not be required to pay \$1,000,000 per year for each Spring Training Season for which the

Project is leased to another Major League Baseball team, but will rather pay to the City, as its exclusive obligation, \$250,000 per year for each such Spring Training Season after the termination of this Agreement which would have been included in the initial 25-year Term.

8.3 Upon expiration of the Agreement, Cubs will have the right to renew the Agreement on such terms as may be agreed by the Parties. Notwithstanding the foregoing, City will not enter an agreement with any third party for the use of the Stadium or Ancillary Stadium Facilities without first offering to Cubs the option to enter into any agreement with the City on the same terms as offered to the third party.

The City of Mesa, an Arizona
municipal corporation

Chicago Cubs Baseball Club, LLC
a Delaware limited liability company

Christopher J. Brady
City Manager

Crane H. Kenney
President