

SPORTS COMPLEX  
IMPROVEMENTS AGREEMENT

by and between

City of Peoria, Arizona,  
an Arizona municipal corporation

and

Padres, L.P.,  
a Delaware limited partnership dba  
San Diego Padres Baseball Club

and

The Baseball Club of Seattle, LLLP,  
a Washington limited liability limited partnership dba  
Seattle Mariners Baseball Club

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## SPORTS COMPLEX IMPROVEMENTS AGREEMENT

THIS SPORTS COMPLEX IMPROVEMENTS AGREEMENT (the "Agreement") is made and entered into as of June \_\_\_\_\_, 2012 by and between the CITY OF PEORIA, ARIZONA, an Arizona municipal corporation (the "City"), PADRES L.P., a Delaware limited partnership (the "Padres"), and THE BASEBALL CLUB OF SEATTLE, LLLP, a Washington limited liability limited partnership (the "Mariners") (together, the "Teams" or individually, a "Team").

### **1. RECITALS**

Unless otherwise defined herein, capitalized terms used in this Section 1 shall have the meaning ascribed to them in Section 2 of this Agreement.

1.1 Clubs. The Padres own a franchise for a Major League Baseball Club; the Mariners own a franchise for a Major League Baseball Club.

1.2 Original Agreement. The City and the Teams entered into a Sports Complex Development Agreement dated June 3, 1993, and recorded in the Office of the City Clerk for the City of Peoria, Arizona as LCON 5493 ("Original Agreement").

1.3 Satisfaction of Original Agreement. Under the Original Agreement, the City developed the Complex to induce the Teams to enter into their respective Sports Facilities Use Agreements with the City dated June 3, 1993, as amended August 23, 2006 (each, an "Original Use Agreement"), under which the Teams conduct their Major League Baseball Spring Training Season activities and games at the Complex. The City and the Teams acknowledge that all of the obligations contained in the Original Agreement were met and the Original Agreement was terminated.

1.4 New Agreement for Complex Improvements. As the original 20-year terms of the Original Use Agreements between each Team and the City are set to expire on January 31, 2014, the City and the Teams have concluded that they would like to continue and expand upon their successful partnerships for up to another 20-year period by entering into new Sports Facilities Use Agreements and agreeing to the financing and construction of improvements to the Complex for the next 20 years.

1.5 Complex. The City finds that improvements to the Complex and the use of such Complex by the Padres and the Mariners will promote the continued viability of Spring Training Season activities in the City and region, and will further the public recreational programs and activities available for the enjoyment of all of the citizens of the City.

1.6 Major League Baseball. The City recognizes the economic development impact of conducting Major League Baseball Spring Training Season games in the City due to, among other things, the national publicity that the City receives, the substantial direct and indirect economic benefit resulting from such spring training, and direct and indirect increased excise tax revenues.

1.7 Rights Provided to the Teams. To induce the Padres and the Mariners to commit to continuing to conduct their Major League Baseball Spring Training Season activities and games at the Complex, the City has agreed to provide the Padres and the Mariners with certain rights, standards, and assurances as set forth in this Agreement.

1.8 Retention of Governmental Powers. Notwithstanding any contrary interpretation of the provisions of this Agreement, the actions required to be taken by the City pursuant to this Agreement are not a delegation of the City's governmental, legislative, executive, judicial, or regulatory powers, and nothing in this Agreement shall be construed as a limitation on the exercise by the City of such powers.

1.9 Public Interest. The City finds that this Agreement is in the public interest.

1.10 Purpose. The purpose of this Agreement and the exhibits attached hereto is to set forth the respective rights and obligations of the Parties with respect to the financing and construction of improvements to the Complex. The Parties intend that this Agreement shall permit and limit the extent to which the Site may be improved under any applicable laws, regulations, and specific stipulations applicable thereto.

## **2. DEFINITIONS**

The following terms shall have the meanings ascribed to them as follows:

"Affiliate" or "Affiliated" of any person (the "Subject Person") means any other person (the "Affiliated Person") who (a) is Directly or Indirectly controlled by, or under common control with, the Subject Person; (b) owns Directly or Indirectly five percent (5%) or more of any class of the outstanding debt or equity of the Subject Person; (c) is a general partner, officer, or director of the Subject Person or of any person described in clause (a) or (b) above; or (d) is a member of the Immediate Family of the Subject Person or of any person described in clauses (a) through (c) above; provided, however, that a person shall not be an Affiliated Person solely by reason of being indebted to another person who, by virtue of owning outstanding debt of such Subject Person, controls such Subject Person.

"Architect" means the Person or Persons selected by the City, with the approval of the Teams, to perform the normal functions of an architect with respect to the design and observation of construction of any Project Phase, including the determination of whether such Phase has been completed in full compliance with the applicable Plans. The City has selected Populous as the Architect for Phase I.

"AZSTA" means the Arizona Sports and Tourism Authority, a corporate and political body of the State of Arizona, which was created to provide, among other things, a mechanism to provide funds for the construction and renovation of major league baseball spring training facilities in Arizona, and which is funding a portion of the Project Costs for the Project.

"Base Program" means the general program requirements for any Project Phase. The

Base Program for Phase I is set forth in Exhibit A to this Agreement. The Base Programs for Phases II and III will be developed by the Parties pursuant to the provisions of this Agreement.

"BOC" means the Office of the Commissioner of Baseball, an unincorporated association comprised of the Major League Baseball Clubs who are party to the Major League Constitution, and any successor organization thereto.

"Bonds" are defined in Section 6.2.

"Cactus League Facilities" means other stadium and practice facilities constructed for Major League Baseball Team Spring Training Season activities and games located in Goodyear, Glendale, and Surprise, Arizona.

"City" means the City of Peoria, Arizona, a municipal corporation of the State of Arizona, any of its administrative departments, divisions and functions, and its successors and assigns.

"City Development Fees" means Project-related fees assessed by the City, including but not limited to Development Plan Review Fees, Development Permit Fees, and Development Impact Fees.

"Clubhouse(s)" means the Padres' clubhouse building, or, depending on the context, the Mariners' clubhouse building or both, each such Clubhouse identified as such in the attached Exhibit A and each containing, among other things, major and minor league locker rooms, training rooms, a strength and conditioning area, food service area, and adjoining administrative space, including offices, media space and storage facilities.

"Commissioner" means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.

"Complex" means the Site and all Improvements now or hereafter located on it, including without limitation those set forth in the Plans. The Complex is presently divided into three sub-areas: the Stadium Facilities, the Padres Facilities, and the Mariners Facilities.

"Construction Manager" means the Person or Persons selected by the City, with the approval of the Teams, to perform pre-construction services, and, following a notice to proceed, perform construction services and otherwise manage the construction of any Project Phase. The City has determined to utilize the Construction Manager At-Risk process under A.R.S. Title 34. The City, in consultation with the Teams, has selected M.A. Mortenson Company, a Minnesota corporation, as the Construction Manager for Phase I.

"Default Rate" means an annual rate of interest equal to the lesser of (a) the United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal plus one and one-half percent (1.5%), or (b) ten percent (10%).

"Development Impact Fees" means impact fees assessed by the City on construction projects within City limits.

"Development Permit Fees" means fees assessed by the City to obtain permits for construction projects within City limits.

"Development Plan Review Fees" means fees assessed by the City for the review and approval of design plans for construction projects within City limits.

"Direct" or "Indirect" or "Directly" or "Indirectly" means through one or more tiers of subsidiaries, partnerships or other tiered structures.

"Expedited ADR" means the Expedited Alternative Dispute Resolution procedures attached as Exhibit B to this Agreement.

"FF&E" means movable furniture, fixtures, and equipment that have no permanent attachment to any structure within the Complex.

"Field(s)" means collectively the playing fields within the Complex, including the field within the Stadium and the practice fields.

"Final Completion" or "Finally Complete" means, with respect to the applicable Project Phase, the stage of construction after Substantial Completion has been achieved when the construction work has been completed in accordance with this Agreement and the contract for construction, all "punch list" items have been satisfactorily completed, and the City has received all required deliverables, permits, warranties, and other required documents and certifications (e.g., LEED).

"Force Majeure" has the meaning set forth in Section 19.3.

"GMP" means the guaranteed maximum price approved by both Teams and established pursuant to the City's contract with the Construction Manager for construction of each Project Phase. If the City determines to use a different construction delivery method in future Project Phases, the GMP shall mean the contract sum or price for all construction under that Project Phase. The GMP does not include cost for the Architect's design services.

"Immediate Family" means any spouse, son, daughter or parent of any individual (by blood, adoption or marriage), or any trust, estate, partnership, joint venture, company, corporation, operation or any other legal entity or business or investment enterprise Directly or Indirectly controlled by such spouse, son, daughter or parent.

"Improvement(s)" means the Stadium, Clubhouses, Parking Lots, Fields, batting cages and tunnels, pitching mounds, landscaped areas and all other improvements to real property as set forth on the Plans, or as hereafter located on the Site.

"Legal Requirement(s)" means all federal, state, county and other governmental laws

(including applicable constitutions), ordinances, codes, rules, regulations, statutes and orders (including court and administrative agency orders), all covenants and restrictions of record, and the requirements of all fire insurance underwriters or rating bureaus, applicable to the Project, Complex, or Site.

"Major League Baseball" or "MLB" means, depending on the context, any or all of (a) the BOC, each other MLB Entity and/or all boards and committees thereof, including, without limitation, Executive Council and the Ownership Committee, and/or (b) the Major League Baseball Clubs acting collectively.

"Major League Baseball Club" means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.

"Major League Constitution" means the Major League Constitution adopted by the Major League Baseball Clubs (which amended and superseded the Major League Agreement dated January 1, 1975, the Agreement in re Major Leagues Central Fund dated as of December 8, 1983, as amended, and the respective constitutions of the former American and National Leagues of Professional Baseball Clubs) as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Baseball Clubs.

"Mariners" means The Baseball Club of Seattle, LLLP, a Washington limited liability limited partnership d/b/a Seattle Mariners Baseball Club and any valid successors.

"MLB Approval" means, with respect to the Major League Baseball Clubs, the Commissioner, the BOC or any other MLB Entity, any approval, consent or no-objection letter required to be obtained from such Person(s) pursuant to the MLB Rules and Regulations (as exercised in the sole and absolute discretion of such Person(s)).

"MLB Entity" means each of the BOC, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., The MLB Network, LLC, MLB Advanced Media, L.P., and/or any of their respective present or future affiliates, assigns or successors.

"MLB Governing Documents" means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (a) the Major League Constitution, (b) the Basic Agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, (c) the Professional Baseball Agreement between the BOC, on behalf of itself and the Major League Baseball Clubs, and the National Association of Professional Baseball Leagues, (d) the Major League Rules (and all attachments thereto), (e) the Interactive Media Rights Agreement, effective as of January 20, 2000, by and among the BOC, the various Major League Baseball Clubs, MLB Advanced Media, L.P. and various other MLB Entities and (f) each agency agreement and operating guidelines among the Major League Baseball Clubs and any MLB Entity, including, without limitation, the Amended and Restated Agency Agreement, effective as of November 1, 2006, by and among Major League Baseball Properties, Inc., the various Major League Baseball Clubs and the BOC (and the Operating

Guidelines related thereto).

"MLB Rules and Regulations" means (a) the MLB Governing Documents, (b) any present or future agreements or arrangements entered into by, or on behalf of, the BOC, any other MLB Entity or the Major League Baseball Clubs acting collectively, including, without limitation, agreements or arrangements entered into pursuant to the MLB Governing Documents, and (c) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or behalf of, the Commissioner, the BOC or any other MLB Entity as in effect from time to time.

"Padres" means Padres, L.P., a Delaware limited partnership d/b/a San Diego Padres Baseball Club and any valid successors.

"Parking Lots" means the outdoor parking lots within the Site, containing vehicular parking, together with the driveways, fences and lighting incidental to the use thereof, the locations of which Parking Lots are shown on the Plans, or any structures or replacement parking as may be mutually agreed or developed pursuant to the terms of the Sports Facilities Use Agreements between the City and each respective Team.

"Parties" means collectively the City and the Padres and the Mariners.

"Person" means any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business or investment enterprise.

"Phase I" means the planning, development, design, and construction of that phase of the Project described in the applicable Base Program, attached hereto as Exhibit A, which consists generally of improvements to each Team's Clubhouse and Team Facilities pursuant to the terms of this Agreement, and which is planned for the 2013-14 time period.

"Phase II" means the planning, development, design, and construction of the phase of the Project that consists generally of improvements to the Stadium pursuant to the terms of this Agreement, and which is planned for the 2014-15 time period.

"Phase III" means the planning, development, design, and construction of the phase of the Project that consists generally of future improvements to the Team Facilities and the Stadium pursuant to the terms of this Agreement, tentatively planned for the 2021-2027 time period.

"Plans" means the detailed architectural plans and specifications describing the size and character of the Complex, the Project or any Project Phase as to architectural, structural, mechanical and electrical systems, all as agreed upon by the City and the Teams pursuant to this Agreement.

"Project" means the planning, development, design, and construction of the improvements to the Complex contemplated in this Agreement, including Phase I, Phase II, and Phase III.

"Project Budget" means the budget of all Project Costs for the Project according to the design and construction provisions implemented by the City in accordance with this Agreement.

"Project Cost(s)" means any and all costs of designing and constructing the Project, including all costs for services of the Architect and Construction Manager, reasonable costs for temporary employees hired by the City to assist in managing the Project, Development Plan Review Fees, Development Permit Fees, and the cost of permits required by governmental entities other than the City; provided, however, that such costs shall exclude (a) costs of causing the Site to comply with federal, state and local environmental laws, rules and regulations; (b) costs of off-site improvements related to the Site that are not included in the Base Program; (c) any required payments to the City's "Percent for the Arts" Program; and (d) any Development Impact Fees assessed by the City.

"Project Cost(s) Ceiling Amount" means \$48,000,000, subject to (a) increase based on available Bond funding as described in Sections 6.2 and 7.5; (b) decrease based on reduced Bond funding as described in Sections 6.2 and 7.4; and (c) increase pursuant to Section 9.3 for any Change Orders that the City elects to approve and pay for or cost overruns for which the City is responsible as provided in Section 7.2.

"Project Phase" means Phase I, Phase II, or Phase III, depending on the context of the sentence.

"Project Phase Budget" means the agreed and approved budget for all Project Phase Costs for any specific Project Phase.

"Project Phase Cost(s)" means any and all costs of designing and constructing a Project Phase, including all costs for services of the Architect and Construction Manager, reasonable costs for temporary employees hired by the City to assist in managing the Project, Development Plan Review Fees, Development Permit Fees, and the cost of permits required by governmental entities other than the City; provided, however, that such costs shall exclude (a) costs of causing the Site to comply with federal, state and local environmental laws, rules and regulations; (b) costs of off-site improvements related to the Site that are not included in the Base Program; (c) any required payments to the City's "Percent for the Arts" Program; and (d) any Development Impact Fees.

"Project Schedule" means the schedule for Final Completion of any Project Phase. The Project Schedule for Phase I is set forth in Exhibit C.

"Site" means the land area located in the vicinity of 83rd Avenue and Paradise Lane in the City of Peoria, Maricopa County, Arizona, as shown definitively in the map attached as Exhibit D to the Agreement.

"Sports Facilities Use Agreement" means that certain Sports Facilities Use Agreement by and between the City and the Teams executed simultaneously herewith.

"Spring Training Season" means the annual use period during which Major League

Baseball conducts Spring Training operations and/or training for the Major League Baseball championship season, this period generally running from February 1 through April 15 of each calendar year, but subject to change at the discretion of Major League Baseball.

"Stadium" means the sports stadium building located at the Site and to be improved in conformity with the Plans, where exhibition baseball games during the Spring Training Season are to be played by the Teams.

"Stadium Facilities" means the land and Improvements within the area designated in the Plans as the Stadium Facilities Area, including the Stadium itself, the public Parking Lots adjacent to the Stadium, and all landscaped areas and other improvements to real property related to the Stadium within that Area, all as more fully described in the Plans.

"Substantial Completion" or "Substantially Complete" or "Substantially Completed" means, with respect to the applicable Project Phase, that (a) the affected areas are operational and usable in all material respects for the purpose(s) intended; (b) all required governmental permits, approvals and certificates of occupancy have been properly and validly issued; and (c) the Architect has certified to the Teams or the affected Team and the City that such Phase has been completed in full compliance with the Plans (subject only to minor and insubstantial "punch list" items which do not affect operations by the Teams or the affected Team in any material fashion; such punch list items shall be corrected to the reasonable satisfaction of the Teams or the affected Team within sixty (60) days after the date the applicable Project Phase is otherwise Substantially Complete, unless such Substantial Completion date falls immediately prior to a Spring Training Season, in which case such punch list items shall be corrected within sixty (60) days of completion of such Spring Training Season).

"Team Facilities" means the land and Improvements within the area designated in the Plans as the Padres Facilities Area and the Mariners Facilities Area, including each Team's Clubhouse, practice fields, batting cages and tunnels, pitching mounds, observation tower, practice area concession stand, and Parking Lots.

### **3. TERM**

The "Term" of this Agreement shall commence on the date hereof and shall terminate upon performance of the last of the Parties' post-Final Completion obligations toward one another under this Agreement, unless terminated earlier pursuant to Sections 17 or 18; provided, however, that in no event shall the Term of this Agreement extend beyond January 31, 2034.

### **4. OWNERSHIP OF SITE; PERMITS AND FEES**

4.1 Responsibility. Unless otherwise agreed to by the Parties, the City, at its expense, shall hold fee title to or a leasehold interest in the Site at all times during the Term of the Sports Facilities Use Agreements. In the event the City continues to hold a leasehold interest rather than fee title, the leasehold interest shall be for a period in excess of the term of the Sports Facilities Use Agreements, including any renewal option periods permitted thereunder, or, if for a shorter term, shall automatically vest fee title in the City at the end of said shorter term. The

City will not sell, convey, transfer, assign, dispose of or further encumber the Complex or any part thereof or any interest therein or enter a lease covering all or any portion thereof or an undivided interest therein, either voluntarily, involuntarily or otherwise, or enter an agreement that would materially affect the City's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement, the Sports Facility Use Agreement(s) or operate and maintain the Complex as a spring training Major League Baseball facility or that would materially affect the Teams' ability to exercise any of their rights set forth in this Agreement or the Sports Facilities Use Agreements without the prior consent of the Teams. Unless otherwise agreed to by the Parties, the City will not create or place, permit to be created or placed or through any act or failure to act, acquiesce in the creation or placing of or allow to remain, any mortgage, lien (statutory, constitutional or contractual), pledge, security interest, encumbrance or charge or conditional sale or other title retention agreement on the Complex, or other property, either real or personal, comprising the Complex, including the real property upon which the Complex is located or any portion thereof, or any encumbrances or conveyances that are consented by the Teams. Notwithstanding the foregoing, nothing in this Section 4.1 shall prevent the City from transferring fee title or granting a leasehold interest to a third party within the Parking Lots for purposes of developing such area consistent with the terms of Section 7 of the Parties' respective Sports Facilities Use Agreements.

4.2 Condition of Title. The City shall at all times hold and keep its interest in the Site free and clear of all claims, liens, encumbrances, covenants, restrictions and clouds on title, other than as provided in Section 4.1.

4.3 Permits and City Development Fees. The City, at its expense, shall obtain all necessary permits, licenses and approvals required for construction and Final Completion or the Project, and occupancy of the Complex. Development Plan Review Fees and Development Permit Fees for any Project Phase shall be included in the Project Phase Costs; other City Development Fees shall be excluded from Project Phase Costs. To the extent that the City is required to assess any other City Development Fees for any Project Phase, the City shall increase the applicable Project Phase Budget by such amount.

## **5. PROJECT OVERVIEW**

The Project consists of three distinct phases: Phase I, Phase II, and Phase III. The intent of the City and the Teams is that the design and construction process shall be a cooperative, mutual endeavor in which the City and the Teams work together constructively during each Project Phase. The Teams will continue to be the primary lessees and principal users of the Complex and, as such, the City recognizes that the Teams have a substantial and continuing interest in the design, development, construction, and financing of the Project. Accordingly, as described more specifically below, the City will involve the Teams in all significant aspects of design and construction of the Project, including but not limited to, attendance and participation at the Teams' discretion at hearings and meetings regarding the Project development, including meetings with the Architect and meetings with City officials. Also as described more specifically below, during each Project Phase, the Teams shall have the right to specific prior review and approval of: the Project Phase Budget, program requirements, design, interior design programs, construction process and staging, and selection of the Construction Manager. The

City will fully and fairly review and make every good faith effort to address satisfactorily each Team's concerns, so long as such input is timely received. In addition, as specifically provided herein, during each Project Phase, the City will seek each Team's approval of the design (upon completion of each of the three major stages of the design process: Schematic Design, Design Development and Construction Documents), the Project Phase Budget, and change orders.

## **6. PROJECT FINANCING**

6.1 Project Costs. The Parties agree that the applicable Project Phase Costs will be paid by the City as provided in this Agreement, subject to the Project Cost Ceiling Amount, unless either or both Teams elect to provide supplemental funding for any Project Phase. The City will provide the Project financing as follows.

6.2 Phase I and Phase II Financing. The City pledges an annual revenue stream of \$2,500,000 in each of the twenty years 2013-2032 toward repayment of bonds or other appropriate debt instrument(s) selected by the City ("Bonds"), which are expected to generate available funds of approximately \$36,000,000 for Phase I and Phase II. The City will use its best efforts to maximize the available Project funding that can be generated by Bonds repayable from this committed revenue stream; all proceeds after payment of bond issuance costs that are generated by the Bonds will go toward the Project, for use consistent with the commitments in this Agreement. Prior to issuing Bonds, the City will provide the Teams with the opportunity to review and approve the City's final financing plan, which shall be reasonably consistent with the preliminary plan approved by the Teams on May 22, 2012; Team approval shall not be unreasonably withheld or delayed. In the event that the City does not generate at least \$34,000,000 for the Project by the time contemplated in the financing plan, the Parties will meet in good faith to discuss alternatives to ensure that the Project is accomplished. In the event that this cannot be achieved, each Team will have the right to terminate its respective Use Agreements or, at its option, approve a revised Project plan agreeable to the City.

In addition to the Bond funding, the City will make available for use in Phase I, and the Teams approve the use for this purpose of, the sum of \$1,512,149 available as of the date of this Agreement in the existing ticket surcharge and premium account, plus any interest subsequently accrued therein.

6.3 Phase III Financing. The City will use its best efforts to maximize potential AZSTA funding, or other similar funding sources, for Phase III Complex improvements as described in Section 7.6.

## **7. PROJECT BUDGET AND PROGRAM**

7.1. Responsibility. The City, at its sole cost and expense (except as otherwise provided in this Agreement), shall cause each Project Phase to be designed, constructed and completed in full compliance with the applicable Plans (including all "punch list" items); provided, however, that the Project Cost for any Project Phase shall not exceed the applicable Project Phase Budget unless: (1) the City approves those costs exceeding the applicable Project Phase Budget; or (2) one or both of the Team(s) agrees to pay for its requested Project Costs that

are in excess of the applicable Project Phase Budget. Each Team shall have the option, but no obligation, to supplement any Project Phase Budget to exceed the amount provided by the City.

7.2 Budget Preparation. Preparation of the Project Phase Budget for each Project Phase will be a cooperative exercise between the City and the Teams. Design and construction of each Project Phase are subject to consistency with the applicable Project Phase Budget, as approved by the City and the Teams. The Project Phase Budget for each Phase will be reviewed and revised over time during such Phase. At the conclusion of the Design Development stage and Construction Documents stage, the City also shall update and approve a consistent Project Budget, subject to the Teams' approval. Each Team will work closely with the City, the Architect, the Construction Manager, and all of their respective sub-consultants and subcontractors to develop plans for each Project Phase and to achieve a GMP for each Phase. After GMP is agreed upon and awarded, the City will be responsible for all cost overruns for each Project Phase, unless such overruns are the result of Team-initiated and approved change orders that cause costs to exceed such Team's portion of the Phase Budget; in such event, the Team initiating such approved change orders will be responsible for such cost overruns. For any such Team-initiated and approved change order, the City will prepare an itemized invoice, which the initiating Team will pay within sixty (60) days of receipt.

7.3 Phase I Budget. From the sale of Bonds described in Section 6.2, the City will provide funding of \$30,000,000 for the design and construction of renovated Clubhouses and/or improvements to the Team Facilities, subject to the terms set forth herein. \$15,000,000 of such funds will be allocated toward each Clubhouse ("Phase I Budget"). The Phase I Budget shall not be reduced, except by separate mutual agreement, but may be increased as described in Section 7.5 if additional funding becomes available pursuant to Section 6.2. Each Club may allocate up to \$1,500,000 of its Phase I Budget toward FF&E. At the end of the Term, the City will own all such FF&E. While the City funding allocated to Phase I shall be equal for each Team, each Team may choose different design ideas, different improvements or finishes, different FF&E, or other differences.

7.4 Phase II Budget. The City will contribute at least \$6,000,000 ("Phase II Budget") toward the design and construction of improvements to the Stadium, subject to the conditions described in this Agreement. The Phase II Budget may be reduced, but not below \$4,000,000, if the available Project financing under Section 6.2 above falls below \$36,000,000. The Phase II Budget shall be increased as described in Section 7.5 if additional funding becomes available pursuant to Section 6.2.

7.5 Allocation of Additional Bond Funds. In the event that the City generates more than \$36,000,000 from the sale of Bonds, the additional funds will be allocated as follows unless otherwise agreed in writing by the Parties. Additional funds in excess of \$36,000,000 but no more than \$40,000,000 will be allocated in the following order: first, toward any remaining Relocation Costs as described in Section 10.1.4; then one-half of the remaining funds shall be allocated to the Phase I Budget and one-half of the remaining funds shall be allocated to the Phase II Budget. Additional funds in excess of \$40,000,000 will be applied entirely to the Phase II Budget.

7.6 Phase III Budget. The City will provide an additional \$12,000,000 ("Phase III Budget") for the design and construction of such additional Complex improvements to be completed no later than the start of 2027 Spring Training. The Parties anticipate that the City will make the Phase III Budget available for design and construction of Phase III at the rate of \$2,000,000 per year from 2021 through 2026. The first \$6,000,000 of the Phase III Budget will go toward additional improvements to the Clubhouses, with half of this amount allocated to each Team's Clubhouse. The remainder of the Phase III Budget will go toward the design and construction of improvements to the Stadium. The planning, design and construction of Phase III shall be done consistent with the process described in Sections 6 through 9.

7.7 Project Cost Ceiling Amount. The City and the Teams will use all reasonable efforts to keep the Project Costs within the Project Cost Ceiling Amount (apart from the effect of any increase in construction costs relating to Change Orders paid for by the Teams).

7.8 GMP Cost Savings. Cost savings from any Project Phase will be used for additional improvements consistent with the applicable Base Program or, at the mutual agreement of the Parties, for other Project Phases, either during the applicable Project Schedule or otherwise.

## **8. PROJECT DESIGN**

8.1 Design. The City will design each Project Phase in close consultation with and subject to the approval of the Teams in accordance with the process described herein. City staff, the Construction Manager and the Architect will work cooperatively with Team representatives, and the Parties will freely share information, drawings, and other materials.

8.2 Design Stages. The Design of each Project Phase shall consist of three distinct stages: (a) Schematic Design; (b) Design Development; and (c) Construction Documents, each as described in further detail below.

8.2.1 Schematic Design. At the Schematic Design stage, the City shall prepare Schematic Design Documents based on the Base Program for the applicable Project Phase. Subject to timely approval by the Teams, the Schematic Design will be substantially completed consistent with the schedule prepared by the City for timely completion of the applicable Project Phase.

8.2.2 Design Development. At the Design Development stage, the City shall prepare Design Development Documents based on the Schematic Design Documents and any adjustments in the program, value engineering, schedule, or Project Phase Budget for the applicable Project Phase. Subject to timely concurrence by the Teams, the Design Development will be substantially completed consistent with the schedule prepared by the City for timely completion of the applicable Project Phase.

8.2.3 Construction Documents. At the Construction Documents stage, the City shall prepare Construction Documents based on the Design Development Documents and any further adjustments in the scope or quality of the applicable Project Phase or Project Phase

Budget. Subject to timely concurrence by the Teams, the Construction Documents shall be completed consistent with the schedule prepared by the City for timely completion of the applicable Project Phase.

8.2.4 Team Participation. At every stage of design, the City will seek the active participation of the Teams and will give the Teams the continuing opportunity to provide advice and identify Team requirements. The Teams' continuing involvement and consultation in the planning, design, construction, and use of each Project Phase are intended to ensure that the plans, design and construction of the Project will be satisfactory to the Teams and the City. Consistent involvement and timely participation by the Teams are prerequisites to this end.

8.2.5 Team Comments and Approval. As the Architect completes each stage of design, the City shall provide to the Teams the drawings and documentation from that stage of design for each Team's information and review. The Parties will promptly evaluate the quality and condition of the drawings and documents and agree on a collaborative review process, leading to each Team's approval, to be completed consistent with overall Project Schedule requirements for the applicable Phase. Following completion of this review, each Team will provide its comments on the documents from that stage of design to the City. If the Teams fail to produce comments within fourteen (14) calendar days after completion of the review, that Team's concurrence will be deemed to have been granted and the City will move on to later stages of design. Alternatively, the City may suspend work on the affected portion of the Project until the non-responsive Team's comments are provided. The Teams' comments shall include their respective determination whether to concur that the City should then proceed to the next phase of design and/or construction and to develop or refine the applicable Project Phase Budget based on the results of the collaborative review process, as reflected or to be reflected in revised drawings and documents, as appropriate. If either Team's concurrence is withheld from any stage of design for any Project Phase, the City may suspend work on the affected portion of the Project and not proceed to the next stage.

8.2.6 Cooperation. Although the design for each Project Phase is undertaken in stages and each Team's concurrence is required at each stage as provided herein, design of each Project Phase is an evolutionary process, throughout which the Parties will collaborate. The Parties understand and expect that this collaboration will produce iterative changes in the Project design, which necessarily will be reflected in the applicable Project Budget as they also evolve consistent with the evolution of the design. In order to ensure that both Teams are well-informed about Project status and able to provide meaningful input to the Architect and its consultants and the Construction Manager and its subcontractors, the Parties will develop and implement procedures for the Teams to inform and receive information from the Architect and its consultants and the Construction Manager and its subcontractors. Such procedures will provide the Teams with the opportunity to communicate directly with the Architect and its consultants and the Construction Manager. Each Team shall ensure that all verbal and written communications provided to the Architect and the Construction Manager consistent with such procedures shall also be communicated to the City and the other Team (to the extent that such communications involve a portion of the Project that affects the other Team) so that all Parties involved in the development of the Project are aware of the Teams' comments and concerns.

### 8.3 Estimates.

8.3.1 Design and Budget Reconciliation. The Parties understand and agree that the evolution of each Project Phase design also is subject to parallel evolution of the applicable Project Budget as provided herein and that the Project design and capital budget for each Phase are directly related and mutually dependent. The City will cause the Construction Manager and the Architect to participate in value engineering and constructability exercises during the design stages. If it becomes apparent that funds available will be insufficient to proceed with a previously-approved design, the City, with each affected Team's participation and approval, will identify design modifications that will result in a balanced Project Budget for the applicable Project Phase. The Teams may elect to provide supplemental funding to balance the Project Budget for any Project Phase. The Parties also agree that each Project Phase Budget will provide reasonable contingency funding.

8.3.2 Preliminary Estimates. Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Project Phase Cost for the Architect's review and the City's and Teams' approval.

8.3.3 Reconciliation Process. The Construction Manager will collaborate with the Architect, the City and the Teams on cost estimates throughout Pre-Construction and will prepare detailed cost estimates following completion of the Schematic Design stage, the Design Development stage, and at completion of the Construction Documents stage. As the Architect progresses with the preparation of the Design Development and Construction Documents, the Construction Manager will prepare and update, at appropriate intervals agreed to by the City, the Teams and the Construction Manager, estimates of the Project Phase Cost with increasing detail and refinement and allowing for the further development of the design. The City will inform or the City will cause the Construction Manager to inform the Teams when estimates of the Project Phase Cost exceed the latest approved Project Phase Budget and make recommendations for corrective action, including participation in preparing a list of proposed cost savings equal to or greater than the overage.

8.3.4 Recommendations. If any submitted estimate exceeds previously approved estimates or the Project Phase Budget, the Construction Manager shall make appropriate recommendations to the City, Teams and Architect.

## **9. PROJECT CONSTRUCTION**

### 9.1 Relationship During Construction.

9.1.1 Construction Documents. The City will construct each Project Phase consistent with the approved Construction Documents and an approved GMP.

9.1.2 Collaboration. The Parties agree to collaborate to the maximum extent practicable during the construction process without modifying the City's working and contractual relationships with its Architect and Construction Manager. The City will cooperate with the Teams to achieve their shared objective of completing each Project Phase on schedule, within the

Project Phase Budget, and without depleting available contingencies or compromising the quality of the Project. As provided herein, the City will closely consult with the Teams in evaluating and resolving proposed change orders and other developments that may cause an unanticipated increase in Project capital cost. The City will administer construction of each Project Phase in close consultation with the Teams.

9.1.3 Authorized Representatives. Each Team shall identify a representative authorized to act on behalf of the Team with respect to the Project. Each Team shall be entitled but not obligated to have its representative on site at all times during construction. Each Team's representative shall be kept informed of all major pending matters by the City or its designee and have reasonable access to relevant information.

9.1.4 Joint Construction Oversight Team. The Parties will appoint a Joint Construction Oversight Team ("JCOT"), which will include each Team's representative as well as at least one (1) representative from the City, the Construction Manager, and the Architect. The JCOT will serve as the primary vehicle for joint monitoring of construction progress and will convene as frequently as necessary to ensure effective collaboration and decision making between the City and the Teams. During construction, each Team's representatives on the JCOT, as well as such other appropriate personnel or representatives as the Teams may designate, will receive copies of all major normal and customary reports or other reports of significance prepared by the Architect and/or Construction Manager regarding the progress of construction.

9.2 Cost Savings Procedures. The City shall review with the Teams potential cost savings measures identified by the Construction Manager, the Architect, or other appropriate consultant during the development of subcontractor bid packages or resulting from value engineering efforts. The Teams may also propose ideas for developing savings or submit value engineering proposals to the City which shall be referred to the Construction Manager, the Architect, and any other appropriate consultant for review. Based on these reviews and as long as the proposed changes do not materially extend or delay the applicable Project Schedule, the City shall require the Construction Manager to include in the subcontract specifications measures which offer a reasonable possibility of cost savings by providing for mandatory and non-mandatory deductive alternates and similar bid techniques. Implementation of any such cost-saving measures that may require or result in changes to Design Development Documents, Construction Documents or the Project Budget, which the Club has previously approved, shall be subject to Club approval.

9.3 Change Orders. The Parties acknowledge that events may occur during the course of construction that will cause the Construction Manager, the Architect, the City, or the Teams to seek changes in the approved Construction Documents, time of performance, and/or GMP for any Project Phase. The Parties acknowledge that design and/or construction changes must be reviewed cumulatively, including any additional compensation due to the Architect where the scope of work deviates from the Architect contract. The following process will be observed in evaluating and resolving such change order proposals.

9.3.1 Change Order Proposal Review. The JCOT will be the initial and primary venue for the City's Project manager to secure review and approval of all proposed change

orders. Following review of each change order proposal by the JCOT, the City's Project manager will formulate a recommendation for the City and Teams' review and approval. Approvals required by the City and Teams, and the time within which each is to respond, will vary with the size of proposals submitted. Each Party will make reasonable best efforts to respond to change order proposals as expeditiously as possible, and in no case later than the time agreed by the Parties. In the event either Team, if approval is required from such Team, fails to provide to the Project manager a response to a recommendation within such time frame, as measured from the date of submittal to the Team, such Team shall be deemed to have approved the recommendation. If a Team fails to respond timely, the City's Project manager may approve a change order that is required to maintain the Project Schedule.

9.3.2 Change Order Dispute Resolution. If the City or either Team, at any level, does not concur in the disposition of any change order proposal, the City's recommendation will be considered by the next level of the Parties' representatives until informal review has been exhausted. If possible, consistent with maintaining the Project Schedule, any continuing deadlock will be submitted to Expedited ADR.

9.3.3 Comparable Team Facilities. The parties acknowledge that the Team Facilities for each Team are being designed to have some differences due to the requests of each Team. Notwithstanding the foregoing, if the City (as distinguished from the benefitted Team) pays the Project Phase Costs that affect one Team's Team Facilities, then the other Team shall have the right to a Change Order pursuant to which the City shall pay the additional Project Phase Costs for the same or substantially similar Improvements to the other Team's Facilities. For example, if the City (as distinguished from the benefitted Team) pays the additional Project Phase Costs for higher practice Field fencing or for improved "batter's eye" screen at the Mariners Facilities than were previously paid for by the City at the Padres Facilities, then the Padres shall have the right to require the City and the Mariners to approve a Change Order pursuant to which the City shall pay the additional Project Phase Costs for the same or substantially similar Improvements to the Padres Facilities. The governing principle shall be that the Teams' respective Facilities when viewed in their entirety shall be comparable in Project Costs (unless additional costs are paid for by the benefitted Team itself).

9.3.4 Payment Responsibility. No Change Order shall be effective unless it (a) specifies the Party or Parties who are to pay the Project Phase Costs, if any, of the Change Order, and (b) is signed by the Party or Parties whose approval of the Change Order is required by this Agreement.

9.3.5 Payment Billings. In the event of a Change Order specifying that a Team or the Teams shall pay the additional Project Phase Cost for the Change Order, the City shall bill the Team or Teams for the additional Project Phase Cost upon final approval of the Change Order. The Team or Teams shall either pay, provide an irrevocable letter of credit from a City approved financial institution and in a form approved by the City, or provide other security, adequate in the City's good faith judgment, for the additional Project Phase Costs to be incurred by the City in connection with the Change Order within thirty (30) days after their receipt of the bill from the City. If the request for the Change Order specifies payment by both Teams, the Teams shall equitably allocate such additional Project Phase Costs.

9.3.6 Acts of God. If a Change Order is necessitated by acts of God or other events beyond the reasonable control of the City and the Teams, yet additions or deletions must be made to the Plans in order to construct the Project for the purposes and uses for which it is intended, in accordance with minimum Major League Baseball standards, prevailing standards at other Cactus League Facilities and all applicable Legal Requirements, then the City and the Teams shall meet to determine an appropriate allocation of the costs of the Change Order. The Parties recognize that the costs for insurance, in order to provide a source to the City for payment for any such Change Order, are properly includable as Project Costs. Any disagreement between the Parties as to the necessity for the Change Order shall be resolved by Expedited ADR. If such a Change Order becomes necessary, the Parties agree to use every reasonable effort to find line items in the Project Phase Budget to delete at the same time, in order to offset any increase in the Project Phase Cost associated with such a Change Order.

9.4 New Condition. Each Project Phase shall be delivered to the Teams upon Substantial Completion of the Phase in like new and clean condition, and with all building systems in good working order and repair.

9.5 Additional Improvements. Except for "Minor Improvements" as defined below, the Teams shall not construct any additional Improvements on the Complex, or otherwise alter, change or improve any part of the Complex without the prior written approval of the City. Such additional Improvements, alterations and changes shall be governed by the following provisions:

9.5.1 Team Requests. A Team may request written approval of the City Manager at any time and from time to time. The City shall give good faith consideration to any such request and respond to such a request in writing within fifteen (15) days after receipt. Its failure to respond within such period shall be deemed approval.

9.5.2 City Consent. The granting of such approval shall be upon such terms and conditions as the City may reasonably deem appropriate. Consent, once given, may be revoked in the event that the Team fails to comply in any material respect with any term or condition imposed by the City as a condition to the approval.

9.5.3 Minor Improvements. The Teams are hereby authorized to make "Minor Improvements" to their respective Clubhouses without prior approval from the City. "Minor Improvements" shall mean any work, installation, construction, repair or the like which does not require a permit from any federal, state or local governmental agency; provided that such improvements (a) shall be solely for permitted purposes under this Agreement or the Team's Sports Facilities Use Agreement, and (b) shall not be commenced unless and until the Team making the request, at its expense, provides the City with payment and performance bonds if required by A.R.S. § 34-221 et seq., as the same may be amended.

#### 9.6 Subcontractors and Suppliers.

9.6.1 Subcontracting Plan. In accordance with A.R.S. Title 34, a subcontractor selection plan for each Project Phase has been or will be submitted and awarded as part of the

Construction Manager selection process and will be followed as outlined in the awarded Construction Manager's contract.

9.6.2 Subcontractor Interest. The City shall cause the Construction Manager to develop subcontractor interest in the Project and to furnish to the teams for their information a list of possible eligible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. A Team will promptly reply in writing to the City if the team knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Team to investigate the qualifications of proposed subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Team later to object to or reject any proposed subcontractor or supplier. The City reserves the right to reject a subcontractor who has previously underperformed on a City construction project, thus deeming them unqualified/under-qualified.

9.6.3 Subcontractor and Supplier Bids. The City shall cause the Construction Manager to obtain bids from subcontractors and from suppliers of materials or equipment fabricated especially for the Work from the list previously reviewed and, after analyzing such bids, to deliver such bids to the City and the Teams. The City and the Teams shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Teams may suggest specific persons or entities from whom the Construction Manager could obtain bids; however, the Teams may not prohibit the Construction Manager from obtaining bids from other qualified bidders. Any subcontractor shall meet the Construction Manager's list of qualifications.

## **10. PROJECT EXECUTION AND SCHEDULE**

10.1 Phase I. Financing, budgeting, design, and construction of Phase I will be performed in accordance with the provisions of this Agreement unless otherwise agreed by the Parties.

10.1.1 Architect. Parties acknowledge that the City has, with input from the Teams, selected the Architect for Phase I. The Architect shall, at the sole cost and expense of the City, design and oversee construction of Phase I. The Architect shall not be changed without prior notice to and approval of both Teams. If it becomes necessary to solicit a new Architect, the City shall do so with input from the Teams.

10.1.2 Construction Manager. The Parties acknowledge that the City has, with input from the Teams, selected the Construction Manager for Phase I. The Construction Manager will manage construction of Phase I. The Construction Manager shall not be changed without prior notice to and approval of both Teams. If it becomes necessary to solicit a new Construction Manager, the City shall do so with input from the Teams.

10.1.3 Schedule. Construction of Phase I will begin as soon as reasonably possible after the 2013 Spring Training Season, but in any event will be Substantially Complete

on or before the first day that pitchers and catchers report to spring training 2014. As of the date of this Agreement, pitchers and catchers are expected to report on or about February 12, 2014. In the event that Phase I is not Substantially Complete by that date, the City will be responsible for all additional costs incurred by the Teams, including but not limited to the costs of replacement facilities, moving costs, storage, and travel; provided, however, that the City shall be relieved of this responsibility to a particular Team if, and to the extent that, the delay in achieving Substantial Completion has been proximately caused by that Team failing to meet one or more of the critical path deadlines, as shown in the Phase I Project Schedule attached hereto as Exhibit C, where the failure is in such Team's control and has not been caused by the City's breach or failure to perform its obligations under this Agreement.

10.1.4 Temporary Relocation of the Teams. The City and the Teams shall work collectively to arrange temporary facilities for each Team during the construction of Phase I.

10.1.4.1 Relocation Costs. Relocation costs of the Teams during the period of construction, including but not limited to costs incurred for temporary facilities from which to run the Teams' player development programs, and reasonably necessary moving and storage of the Teams' FF&E and supplies (collectively, "Relocation Costs"), will be addressed as follows. Each Team will pay the first \$140,000 of its own Relocation Costs. In consideration of this payment by the Clubs, the City shall waive the Use Fee otherwise payable by each Team in 2012 and 2013 under their respective Original Use Agreements or, if applicable, the utility costs payable under the Sports Facilities Use Agreements. If either Team's respective relocation costs exceed \$140,000 up to \$500,000, the City will reimburse the Team for this additional amount; provided, that this reimbursement by the City shall be from Bond proceeds and be offset against that Team's Phase I Budget. If either Team's respective relocation costs exceed \$500,000, the City and the Team will meet to discuss an equitable allocation of the responsibility for those costs.

10.1.4.2 Temporary Facilities. The Teams will determine which temporary facilities are to be used for relocation. The City will assist in this effort as requested by the Teams, but the City shall not participate in any physical improvements to temporary facilities. As soon as the Teams determine the estimated Relocation Costs, the Teams will notify the City of the amount.

10.2 Phase II. Financing, budgeting, design, and construction of Phase II will be performed in accordance with the provisions of this Agreement unless otherwise agreed by the Parties. The improvements made during Phase II will be actual facility upgrades to the Stadium, including but not limited to additional seating, seating enhancements, new plaza areas, and suite level upgrades, and shall not include deferred maintenance or replacement of existing structures, facilities or seats; provided, however, that the City may allocate up to \$500,000 toward replacement of existing seating that includes upgrading such seating. After such consultation, the final determination on the scope of work for Phase II shall be subject to mutual agreement by the City and Teams.

10.2.1 Architect. The City will select an Architect for Phase II with input from the Teams. Such Architect shall, at the sole cost and expense of the City, design and oversee

construction of Phase II. The Architect shall not be changed without prior notice to and approval of both Teams. If it becomes necessary to solicit a new Architect for Phase II, the City shall do so with input from the Teams.

10.2.2 Construction Manager. The City will select a Construction Manager for Phase II with input from the Teams. Such Construction Manager shall, at the sole cost and expense of the City, will manage construction of Phase II. The Construction Manager shall not be changed without prior notice to and approval of both Teams. If it becomes necessary to solicit a new Construction Manager for Phase II, the City shall do so with input from the Teams.

10.2.3 Phase II Schedule. The Parties will meet and confer in good faith no later than August 31, 2012 regarding the development of a Base Program for Phase II. Construction of Phase II is expected to begin in April 2014 and, in any event, will be completed prior to the start of the 2015 Spring Training Season. Notwithstanding the foregoing, the Parties may agree that certain Phase II improvements will be completed prior to the start of the 2016 Spring Training Season; provided, however, that such improvements shall not interfere with 2015 Spring Training.

10.3 Phase III. Financing, budgeting, design, and construction of Phase III will be performed in accordance with the provisions of this Agreement unless otherwise agreed by the Parties. The improvements made during Phase III will include additional improvements to the Clubhouses and the Stadium in accordance with this Agreement.

## **11. CITY REPRESENTATIONS, WARRANTIES AND COVENANTS**

The City represents, warrants and covenants to the Teams that:

11.1 Possessory Interest. The City presently has all ownership, access and occupancy rights needed to commence and to achieve Final Completion of construction of the Project in a timely manner.

11.2 Authority. The City has full power and authority to enter into this Agreement, and the execution, delivery, and consummation of this Agreement by the City have been duly authorized by all necessary actions.

11.3 Compliance with Other Agreements and Instruments. The execution, delivery and consummation of this Agreement by the City is not prohibited by and does not conflict with any other agreements or instruments to which the City is a party or is otherwise subject.

11.4 Compliance with Law. The City has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the City with applicable Legal Requirements, and the City is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other governmental authority that is in any respect material to the transactions contemplated in and by this Agreement.

11.5 Construction Workmanship. All construction shall be performed in a good,

substantial and workmanlike manner in compliance with the Construction Documents and all applicable Legal Requirements.

11.6 Construction Oversight. In overseeing construction of the Project, the City shall comply, and cause its agents to comply, with all Legal Requirements. The City shall cause to be erected and maintained, as required by existing conditions and progress of the construction, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of properties adjacent to the Site. When the use or storage of hazardous materials or equipment is necessary for execution of the construction, the City shall cause the Construction Manager to exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. The City shall provide, or cause its agents to provide, security fencing (or such other security measures as the City deems necessary or appropriate in its reasonable discretion) to exclude trespassers, vandals and thieves.

## **12. PADRES REPRESENTATIONS AND WARRANTIES**

The Padres represent and warrant to the City and the Mariners that:

12.1 Authority. The Padres are a limited partnership duly organized and validly existing under the laws of the State of Delaware, qualified to transact business in the State of Arizona, and in good standing under the laws of the State of Arizona. The Padres have full partnership power to enter into this Agreement, and the execution, delivery, and consummation of this Agreement by the Padres has been duly authorized by all necessary partnership actions.

12.2 Compliance with Other Agreements and Instruments. The execution, delivery and consummation of this Agreement by the Padres is not prohibited by and does not conflict with any other agreements or instruments to which the Padres are a party or are otherwise subject.

12.3 Compliance with Law. The Padres have received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Padres with applicable Legal Requirements, and the Padres are not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority that is in any respect material to the transactions contemplated in and by this Agreement.

## **13. MARINERS REPRESENTATIONS AND WARRANTIES**

The Mariners represent and warrant to the City and the Padres that:

13.1 Authority. The Mariners are a limited liability limited partnership duly organized and validly existing under the laws of the State of Washington, qualified to transact business in the State of Arizona, and in good standing under the laws of the State of Arizona; and have full partnership power to enter into this Agreement, and the execution, delivery, and consummation of this Agreement by the Mariners has been duly authorized by all necessary partnership actions.

13.2 Compliance with Other Agreements and Instruments. The execution, delivery and consummation of this Agreement by the Mariners is not prohibited by and does not conflict with any other agreements or instruments to which the Mariners are party or are otherwise subject.

13.3 Compliance with Law. The Mariners have received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Mariners with applicable Legal Requirements, and the Mariners are not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority that is in any respect material to the transactions contemplated in and by this Agreement.

## 14. INSURANCE

14.1 By City. The City shall procure and maintain, or cause to be procured and maintained, insurance coverage throughout the course of construction of each Project Phase. The extent and scope of such coverage shall be consistent with the City's general insurance standards in effect at the time of the Project Phase. Insurance shall be required of the Construction Manager, the Architect, and all subcontractors. As appropriate, insurance coverage will address commercial general liability, business auto policy, workers' compensation and employer's liability, and professional liability.

14.1.1 Waiver of Subrogation. Each party hereby releases and relieves the other party, and waives its entire right of recovery against the other party, for direct or consequential loss or damage arising out of or incident to the perils covered by any property insurance carried by the other party, whether due to the negligence of the released party or its agents, employees, contractors or invitees. If necessary, all property insurance policies required by this Agreement shall be endorsed to so provide.

14.1.2 City Agents. The City shall make good faith efforts to require the Construction Manager, the Architect and all subcontractors to name the Teams as additional insureds on the commercial general liability and business auto policy, which insurance shall be primary and non-contributory with any insurance maintained by the City and the Teams. The City shall further make good faith efforts to require the Construction Manager, Architect and all subcontractors to defend, indemnify and hold the Teams harmless from any claims arising out of the Project.

14.2 Policies. All insurance policies obtained pursuant to this Section 14 shall be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all Parties. At the City's election, all or a portion of the City's insurance may be provided by self-insurance. Upon commencement of the Term, the City shall furnish to the Teams certificates of insurance required by this Section 14. Renewal policies shall be obtained at least thirty (30) days in advance of termination of each policy, and renewal certificates shall be delivered by the City to the Teams at least thirty (30) days prior to termination. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to all Parties.

14.3 Remedies. If the City fails to obtain and provide insurance in accordance with this Section 14, then either or both Teams may give written notice to the City, and the City shall have until the earlier of (a) five (5) days after its receipt of such notice, or (b) regardless of whether notice shall have been given, one (1) day before the date the required insurance will lapse, to cure the default. If the default is not cured within such period, then either or both Teams shall have the remedies set forth in Section 18 below.

## 15. INDEMNIFICATION

15.1 By City. The City agrees to and will at all times defend, indemnify, save and hold the Teams, and their respective Affiliates, employees, agents, officers, directors, shareholders, partners, successors and assigns harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs of every kind and nature, including reasonable attorneys' fees at trial or appellate level, and all court costs, arising out of:

15.1.1 Injury to or death of Persons (including personnel or employees of the City or the Teams), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of, or in connection with any willful, wanton or negligent act or omission of the City or any agent, officer, servant, employee, contractor or subcontractor of the City.

15.1.2 Any act or omission (whether or not such act or omission is willful, wanton or negligent) occurring or failing to occur at the Site at a time when the Padres or the Mariners, any Affiliate of the Padres or the Mariners, or any of their respective agents, officers, servant, employees, contractors or subcontractors are not in control of that portion of the Site at which the alleged act or omission occurred.

15.1.3 Any liability tied to the real property of the Site (whether or not such liability arises out of, or in connection with, any willful, wanton or negligent act or omission), including but not limited to environmental liability.

15.1.4 Any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of the City shall not extend to liabilities caused by any willful, wanton or negligent act or omission of the Padres or the Mariners, or any Affiliate of the Padres or the Mariners, or any of their respective agents, officers, servants, employees, contractors or subcontractors. In the event any action or proceeding shall be brought against the Padres or the Mariners, or any Affiliate of the Padres or the Mariners, by reason of any claim for which the Padres or the Mariners, or any of their Affiliates, is entitled to indemnification hereunder, the City, upon notice from the Padres or the Mariners, shall defend the same at the expense of the City, with counsel reasonably satisfactory to the Team or Teams, which consent shall not be unreasonably withheld.

15.2 By Teams. Each Team agrees to and will at all times defend, indemnify, save and hold the City and the other Team, their respective elected officials, officers, Affiliates, agents

and employees harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs of every kind and nature, including reasonable attorneys' fees at trial or appellate level, and all court costs, arising out of:

15.2.1 Injury to or death of Persons (including personnel or employees of the City or the Teams), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of any willful, wanton or negligent act or omission of the indemnifying Team, or any of its Affiliates, or any of their respective agents, officers, servants, employees, contractors or subcontractors.

15.2.2 Any breach or default in the performance of any obligation on the indemnifying Team's part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of each Team shall not extend to liabilities caused by any willful, wanton or negligent act or omission of the City, the other Team or any of their Affiliates, agents, officers, servants, employees, contractors or subcontractors. In the event any action or proceeding shall be brought against the City or the other Team by reason of any claim for which the City or the other Team is entitled to indemnification hereunder, the indemnifying Team, upon notice from the City or the other Team, shall defend the same at the expense of the indemnifying Team, with counsel reasonably satisfactory to the City or the other Team, as the case may be, which consent shall not be unreasonably withheld.

## **16. ASSIGNMENT**

16.1 Prohibition Against Assignment. Neither the City nor the Padres nor the Mariners shall assign or otherwise transfer all or any portion of its interests in this Agreement without the consent of the other Parties to this Agreement, except that either the Padres or the Mariners may assign its interests in this Agreement in a like manner as it may assign its interests in its Sports Facilities Use Agreement and City may assign its interest to the Peoria Municipal Development Authority in conjunction with the issuance of bonds to finance the construction of the Project, provided, however, that such an assignment by the City shall not relieve the City of its obligations under this Agreement.

16.2 Notice; Release from Liability. Each Team shall promptly notify the City and the other Team of any transfer of its interests in this Agreement. Unless the transferee of such interest shall expressly assume the obligations of the transferor Team hereunder in writing (in which case the transferor Team shall be released from any liability arising hereunder from and after the date of such assumption and transfer), the transferor Team shall remain primarily liable under this Agreement, notwithstanding any such transfer.

## **17. CITY DEFAULT**

17.1 Default. If the City shall default in any of its obligations under this Agreement, the affected Team or Teams shall provide notice of such default to the City and the other Team and afford the City a grace period to cure said default, as follows:

17.1.1 Where a grace period is specifically provided for in any Section of this Agreement, that specific grace period shall apply.

17.1.2 Where a grace period is specifically provided for in any other Section of this Agreement, the affected Team or Teams shall provide notice of such default to the City and the other Team and afford the City a grace period of thirty (30) days to cure said default provided, however, that if the default in question is a non-monetary default that cannot be cured within such thirty (30) day period, the City shall be afforded such additional time (but in no event more than sixty (60) additional days) as shall be reasonably required to cure such default if the City has commenced the appropriate cure within said initial thirty (30) day period, and thereafter proceeds with reasonable diligence to cure such default.

17.2 Rights and Remedies. If the City remains in default hereunder beyond the expiration of the applicable grace period stated above, the affected Team or Teams shall have the right (but not the obligation):

17.2.1 To cure such default on behalf of the City, in which event the City shall immediately reimburse the affected Team or Teams for all sums paid by it or them to effect such cure, together with interest thereon at the Default Rate; and

17.2.2 To collect all sums paid by the affected Team or Teams to effect such cure, together with interest thereon at the Default Rate; and

17.2.3 In the event of a material breach that substantially and adversely affects both Teams' ability to utilize the Complex or the Improvements for the purposes intended under the terms of this Agreement and the Sports Facilities Use Agreements, and provided that both Teams consent to this remedy, to terminate this Agreement.

17.3 Cumulative Rights. The remedies heretofore described in this Section 17 shall be in addition to any other remedy the affected Team or Teams may have at law and in equity in the event of a default by the City, including without limitation:

17.3.1 An action to recover monies then due and owing from the City, together with interest thereon at the Default Rate from the date on which such monies were due; and

17.3.2 An action for specific performance of covenants and agreements on the part of the City; and

17.3.3 An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the affected Team or Teams in connection with the default; provided, however, that in no event shall the City be liable for consequential damages suffered by the affected Team or Teams, and the affected Team or Teams shall in all events seek to mitigate their damages to the extent required by law.

## 18. TEAM DEFAULT

18.1 Default. If either or both Teams shall default in any of their obligations under this Agreement, the City shall provide notice of default to both Teams and afford the defaulting Team or Teams a grace period to cure said default, as follows:

18.1.1 Where a grace period is specifically provided for in any Section of this Agreement, that specific grace period shall apply.

18.1.2 Where a grace period is specifically provided for in any other Section of this Agreement, the City shall provide notice of such default to both Teams and afford the defaulting Team or Teams a grace period of thirty (30) days to cure said default provided, however, that if the default in question is a non-monetary default that cannot be cured within such thirty (30) day period, the defaulting Team or Teams shall be afforded such additional time (but in no event more than sixty (60) additional days) as shall be reasonably required to cure such default if the defaulting Team or Teams have commenced the appropriate cure within said initial thirty (30) day period, and thereafter proceed with reasonable diligence to cure such default.

18.2 Rights and Remedies. If the defaulting Team or Teams remain in default hereunder beyond the expiration of the applicable grace period stated above, the City shall have the right (but not the obligation):

18.2.1 To cure such default on behalf of the defaulting Team or Teams, in which event the defaulting Team or Teams shall immediately reimburse the City for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

18.2.2 To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

18.3 Cumulative Rights. The remedies heretofore described in this Section 18 shall be in addition to any other remedy the City may have at law and in equity in the event of a default by either or both Teams, including without limitation:

18.3.1 An action to recover monies then due and owing from the defaulting Team or Teams, together with interest thereon at the Default Rate from the date on which such monies were due; and

18.3.2 An action for specific performance of non-monetary covenants and agreements on the part of the defaulting Team or Teams; and

18.3.3 An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the City in connection with the default; provided, however, that in no event shall the defaulting Team or Teams be liable for consequential damages suffered by the City, and the City shall in all events seek to mitigate its damages to the extent required by law.

## 19. MISCELLANEOUS

19.1 Consents. Whenever a party's approval, permission, consent or satisfaction is required under this Agreement, such approval, permission, consent or satisfaction shall not be unreasonably withheld or delayed, except as and to the extent expressly provided to the contrary in this Agreement.

19.2 Additional Instruments. The Parties agree to execute and deliver any instruments in writing necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever the occasion shall arise and reasonable request for such instrument shall be made.

19.3 Force Majeure. A party shall not be in default under this Agreement if it is unable to fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of a strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, weather conditions, acts of God, order of any government officer or court (but excluding orders promulgated by the City itself), national emergency, war, or other cause beyond the reasonable control of such party (collectively, "Force Majeure").

19.4 A.R.S. § 38-511. The Teams are hereby placed on notice of the provisions contained in A.R.S. § 38-511 (cancellation of contracts with state or political subdivision for conflict of interest).

19.5 Notices. Any notice required to be given hereunder shall be in writing and sent by either overnight courier service or United States certified or registered mail, postage prepaid, addressed to the Parties as follows:

If to Padres:                    Executive Vice President, Chief Financial Officer  
Padres, L.P.  
Petco Park  
100 Park Blvd.  
San Diego, California 92101

With a copy to:                Senior Vice President – Business Admin. & General Counsel  
Padres, L.P.  
Petco Park  
100 Park Blvd.  
San Diego, California 92101

If to Mariners:                 Executive Vice President, Ballpark Operations & Finance  
The Baseball Club of Seattle, LLLP  
P.O. Box 4100  
Seattle, Washington 98194

With a copy to: Executive Vice President, Legal & Governmental Affairs  
The Baseball Club of Seattle, LLLP  
P.O. Box 4100  
Seattle, Washington 98194

If to City: City Manager  
City of Peoria  
8401 West Monroe St.  
Peoria, Arizona 85345

With a copy to: City Attorney  
City of Peoria  
8401 West Monroe St.  
Peoria, Arizona 85345

Notices shall be deemed given when received or when delivery is refused. Notices by a person designated herein as counsel to a party to this Agreement (or as hereafter changed by notice from a party given as herein required) shall be deemed notice from the City, the Padres or the Mariners, as applicable. The address for notices to a party may be changed, from time to time, by notice from such party given as herein required.

19.6 No Joint Venture. The City, the Padres and the Mariners do not intend by entering into this Agreement to create a partnership, joint venture or any other form of joint ownership. Nothing in this Agreement shall be construed to create such a partnership, joint venture or joint ownership relationship.

19.7 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

19.8 Construe with Neutrality. This Agreement shall not be construed for or against any party on the basis that such party drafted any provision of this Agreement. In construing this Agreement, feminine or neuter pronouns shall be substituted for those pronouns masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

19.9 Binding Effect. The covenants, terms, conditions, provisions and undertakings in this Agreement, or in any renewals hereof, shall extend to and be binding upon the successors and assigns of the respective Parties hereto as if they were in every case named and expressed, and wherever reference is made to either of the Parties hereto, it shall be held to include and apply also to the successors and assigns of such party as if in each and every case so expressed.

19.10 Entire Agreement. This Agreement, together with the exhibits hereto and simultaneous writings, contains the entire agreement and understanding between the Parties. There are no oral understandings, terms or conditions, and no party has relied on any representation, express or implied, not contained in this Agreement or simultaneous writings.

All prior understandings, terms or conditions are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought; provided that no such waiver, change, modification or discharge shall be entered into until such time as all necessary MLB Approvals have been obtained in advance thereof.

19.11 Severance. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

19.12 Captions. The headings of this Agreement are for convenience only and shall not be deemed a part of this Agreement, nor shall they be deemed to effect the meaning or construction of any portion of this Agreement.

19.13 Time of Essence. Time is of the essence of this Agreement.

19.14 Interest on Delinquent Amounts. Any amounts owing from one party to another under this Agreement and not paid when due shall bear interest from and after the due date at the Default Rate until paid.

19.15 Waivers. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent right by either party under the same or any other provision.

19.16 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19.17 Teams' Liability. The term "Team" as used herein shall mean only the entity owning, at the time in question, the rights and interests provided to such Team under this Agreement. In the event of any transfer of a Team's rights and interests under this Agreement, the transferring entity originally named herein (and in the case of any subsequent transfers, the grantor) shall be relieved from and after the date of such transfer of all liability as respects such Team's obligations thereafter to be performed. The obligations contained in this Agreement to be performed by such Team shall, subject as aforesaid, be binding on such Team's successors and assigns, only during their respective periods of ownership.

19.18 MLB Subsistence.

19.18.1 MLB Rules and Regulations. Notwithstanding any other provision of this Agreement, this Agreement and any rights or exclusivities granted by the Padres and the Mariners hereunder shall in all respects be subordinate to the MLB Rules and Regulations. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. The territory within which the City is granted rights is limited to, and nothing herein shall be construed as conferring on the City rights in areas outside of, the "Spring Training" territory of the Padres/Mariners as established and amended from time to time.

19.18.2 Changed Circumstances. If Major League Baseball hereafter adopts any new or amended MLB Rules and Regulations or enters into or modifies any of the MLB Rules and Regulations or applies any of the existing MLB Rules and Regulations, and the result thereof, individually or in the aggregate, materially and demonstrably impairs any rights or benefits granted to the City hereunder or results in a material increase in the cost of the City meeting its obligations hereunder, all as measured from the Effective Date hereof (collectively, "Changed Circumstances"), the City will give the Teams written notice upon experiencing or believing that it may be experiencing Changed Circumstances. During the period of sixty (60) days thereafter, the Teams and the City shall meet and attempt to negotiate in good faith an appropriate amendment to this Agreement, or other modifications or adjustments to the extent appropriate to mitigate the Changed Circumstances. In the event the parties, after good faith negotiations, are unable to agree on an appropriate amendment or other appropriate modifications or adjustments, the dispute shall be resolved by arbitration conducted in accordance with the Expedited ADR provisions of this Agreement. It shall be the City's burden, in any such arbitration, to provide demonstrable evidence establishing with reasonable certainty the magnitude and value of any diminution of its rights proximately caused by the Changed Circumstances. The Teams shall have no right to assert an independent claim for additional rights or compensation as a result of any Changed Circumstances that operate to the City's benefit. But if the City asserts a claim for compensation or other adjustments as a result of Changed Circumstances, then in any Expedited ADR proceeding that follows, the Teams may introduce evidence of any material positive effects received by the City which resulted from any changes to any of the MLB Rules and Regulations or changes in the application of policy under any of the MLB Rules and Regulations after the Effective Date hereof, to offset any City-proposed compensation or other adjustments, provided that the Teams shall bear a similar burden of establishing any such material positive effects.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF PEORIA, ARIZONA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

PADRES, L.P.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE BASEBALL CLUB OF SEATTLE, LLLP

By: Baseball of Seattle, Inc.,  
Its Managing General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT LIST

Exhibit A – Base Program for Phase I

Exhibit B – Expedited ADR

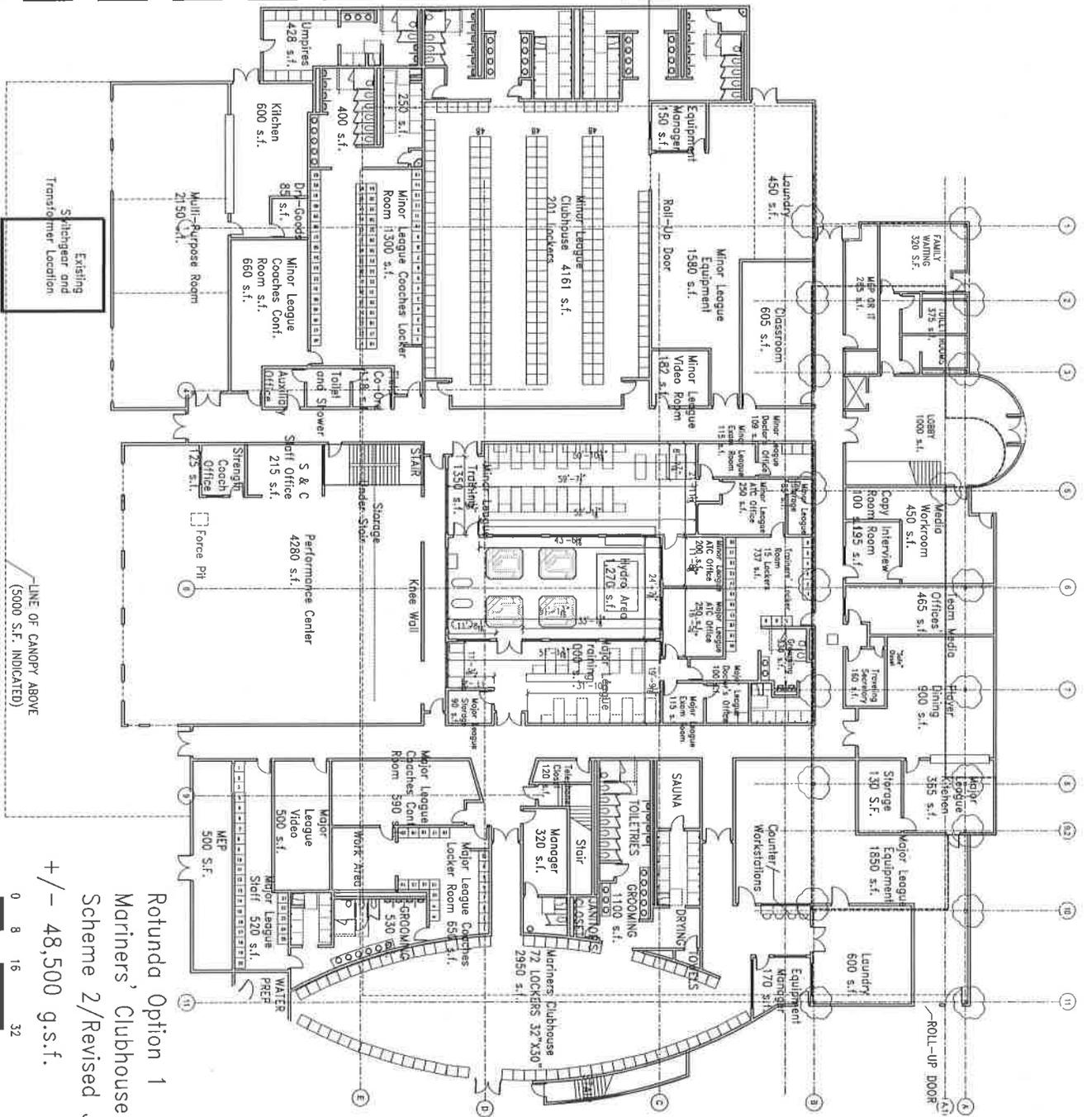
Exhibit C – Project Schedule for Phase I

Exhibit D – Site Map

## **EXHIBIT A**

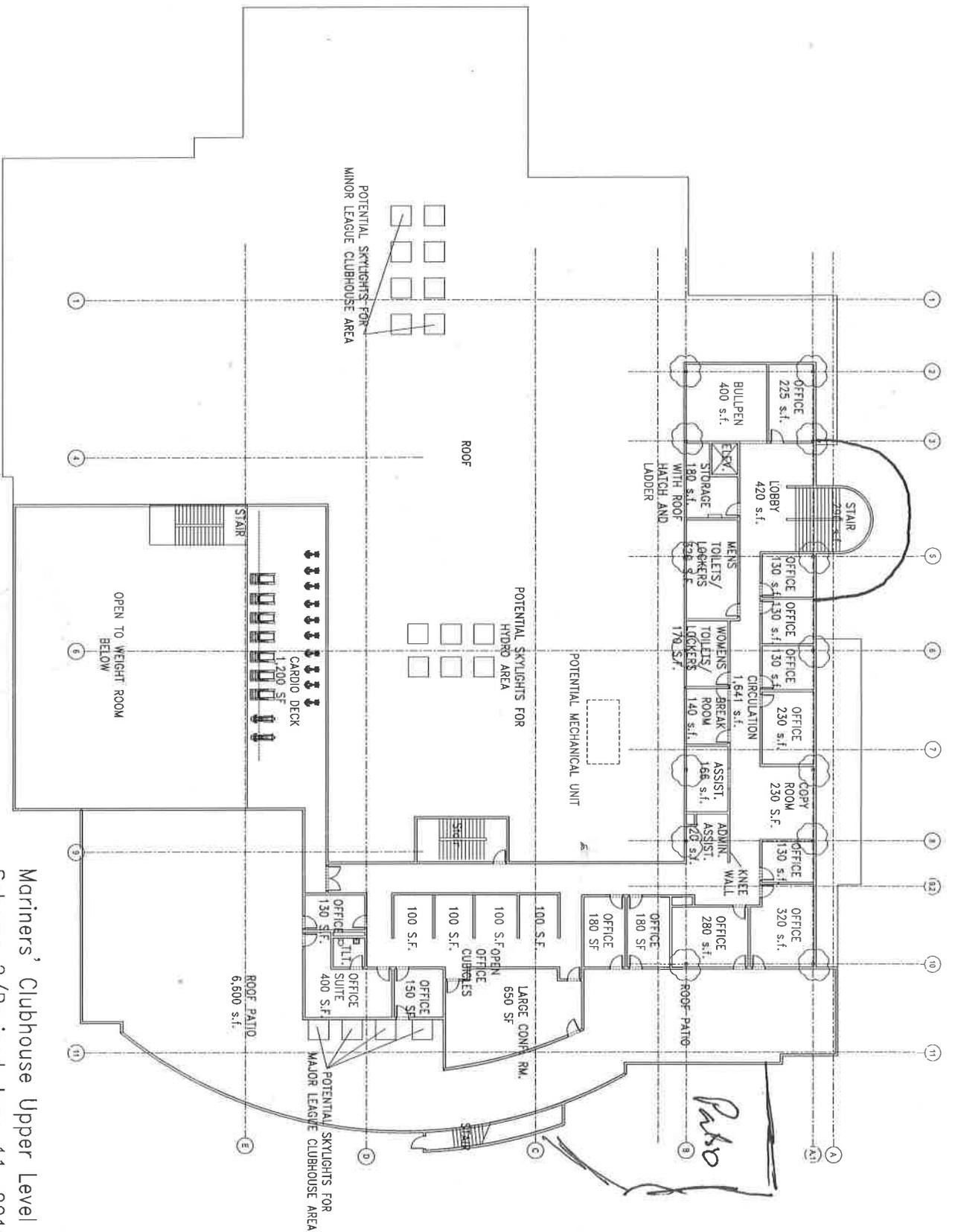
### **PHASE I BASE PROGRAM**

The Base Program for Phase I includes the partial demolition and remodeling of each Team's Clubhouse as shown generally on the attached schematic drawings, subject to revision consistent with the terms of this Agreement, and related improvements to the Team Facilities.



Rotunda Option 1  
 Mariners' Clubhouse Lower Level Plan  
 Scheme 2/Revised June 15, 2012

+/- 48,500 g.s.f.



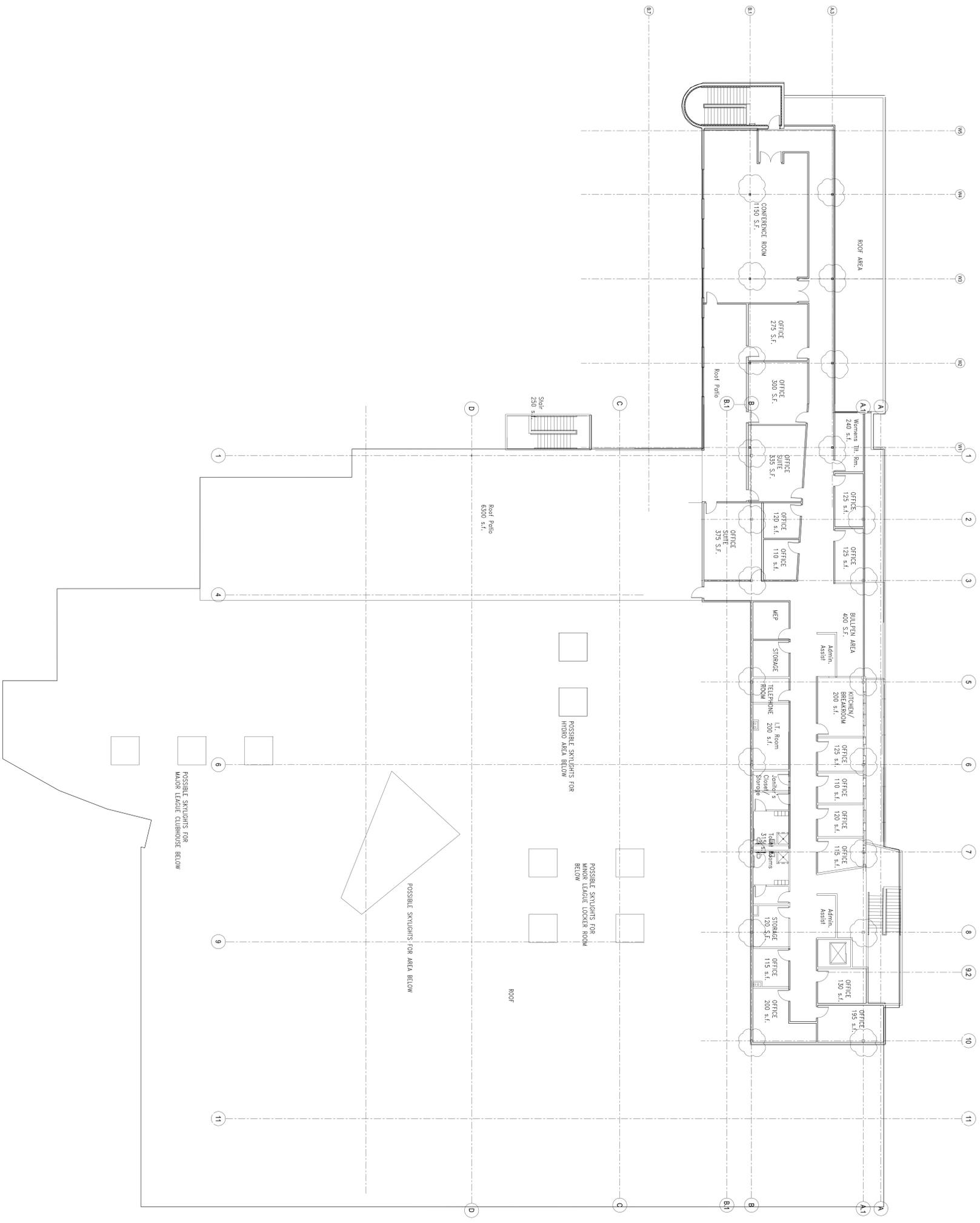
Mariners' Clubhouse Upper Level Plan  
 Scheme 2/Revised June 11, 2012

+/- 9,900 g.s.f.

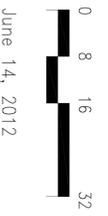


June 11, 2012





Padres Clubhouse Upper Level Plan  
 Scheme 2/Revised June 14, 2012  
 +/- 9,000 g.s.f.



June 14, 2012

## **EXHIBIT B**

### **EXPEDITED ADR**

All claims, demands disputes, controversies and differences that may arise under this Agreement between the City and the Padres, the City and the Mariners, the City, the Padres and the Mariners, or between the Padres and the Mariners, concerning any controversies under the sections of this Agreement making reference to the use of Expedited ADR shall be resolved by the dispute resolution procedure set forth below.

#### **1. INFORMAL DISPUTE RESOLUTION**

1.1 Commitment. The Parties are fully committed to working with each other throughout each Project Phase and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Parties commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to any Project Phase.

1.2 Field Level Resolution. The Parties will first attempt to resolve disputes or disagreements at the field level through discussions between the City's designated representative and a representative from the Team(s) involved.

1.3 Senior Representative Resolution. If a dispute or disagreement cannot be resolved at the field level, a senior representative of each Party involved in the dispute, upon the request of any Party, shall meet as soon as conveniently possible, but in no case later than seven (7) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the senior representatives, the Parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

1.4 Mediation. If after meeting the senior representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to all involved Parties, the Parties shall consider submitting the dispute to non-binding mediation, time permitting. If the Parties elect to submit the dispute to mediation, the mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. An officer of each Party involved, having full authority to settle the Claim, must attend the mediation session. To the extent there are other parties in interest, their representatives, with full authority to settle the dispute, shall also attend the mediation session. The mediator's fee will be divided equally among the Parties participating in the mediation. Notwithstanding the foregoing, nothing in this Section 1.4 shall require the Parties to engage in mediation or prevent any Party from proceeding directly to Expedited Arbitration as provided in Section 2 below.

## 2. EXPEDITED ARBITRATION

2.1 Expedited Arbitration. Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, that have not been resolved in accordance with the procedures set forth in Section 1 above shall be decided by the following Expedited Arbitration procedure and in accordance with A.R.S. §12-1501, *et seq.*, unless the parties mutually agree in writing otherwise. Any Party may commence Expedited Arbitration by initiating the Qualified Arbitrators selection process in Section 2.2 below.

2.2 Selection of Qualified Arbitrators. The Parties shall appoint one or more Qualified Arbitrators to an Arbitration Panel to hear the matter through the following process.

2.2.1 Any Party, by written notice to the other involved Party or Parties within ten (10) days after a controversy has arisen that is subject to this Section 2, shall select a Qualified Arbitrator to hear the matter.

2.2.2 The other involved Party or Parties, by written notice within ten (10) days after receipt of the notice by the first Party, shall appoint a second Qualified Arbitrator. In the event the controversy requiring Expedited ADR involves both the Padres and the Mariners being adverse to the City, the Teams shall be treated as a single party for the purposes of appointment of a Qualified Arbitrator. If the other involved Party fails to appoint a Qualified Arbitrator within the required time period, the first Qualified Arbitrator appointed shall serve as the sole arbitrator.

2.2.3 When two arbitrators have been appointed as provided above, they shall agree on a third Qualified Arbitrator within five (5) days after their appointment and shall appoint him or her by written notice signed by both of them, with a copy mailed to the Parties involved. In the event that the two arbitrators fail to appoint a third Qualified Arbitrator, the parties authorize the appointment of a third Qualified Arbitrator by the American Arbitration Association.

2.2.4 For purposes of this Section 2.2 a "Qualified Arbitrator" shall be either (a) an attorney admitted to the state Bar of Arizona and who engages in a practice of not less than 25% that is commercial related and 10% that is construction related, or (b) a current or former municipal official involved in the Arizona Cactus League Association and who during his or her tenure with a municipal entity had significant oversight of a facility used by a Major League Baseball Club in the Cactus League.

2.3 Joinder. Any Party may join any other Party to the arbitration who is needed for just adjudication. The standard for joinder of any other Party shall be that provided under Rule 19 of the Arizona Rules of Civil Procedure.

2.4 Arbitration Panel. On appointment of three arbitrators (hereinafter, "the Panel") as provided above, the Panel shall hold a hearing within thirty (30) days after the appointment of the third member of the Panel, or upon the expiration of the time period in Section 2.2.2 if only one Qualified Arbitrator is appointed. The hearing shall be held at the City of Peoria, Municipal

Complex, 8401 West Monroe Street, Peoria, Arizona, or at any other place agreed to by the parties involved.

2.5 Exhibits, Statements, and Memoranda. At least ten (10) days prior to the hearing, the Parties shall meet and exchange exhibits and pre-hearing statements and stipulate and agree on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the hearing, the parties shall submit memorandums not to exceed five (5) pages outlining the relevant issues for the arbitrators. At the hearing, the laws of evidence of the state of Arizona shall apply, and the panel shall allow each Party to present that Party's case, evidence and witnesses and render their award, including a provision for payment of attorneys' fees and costs of arbitration to be paid by one or both of the parties to this Agreement, as the panel deems just.

2.6 Award. The award of the majority of the Panel shall be final and binding on the parties to this Agreement and judgment may be entered on such award in the Superior Court of the State of Arizona.

2.7 Costs of Expedited ADR. The costs of the Panel shall be divided equally between the involved Parties. Each Party shall be responsible for its own attorneys' fees and costs.

### **3. DUTY TO CONTINUE PERFORMANCE**

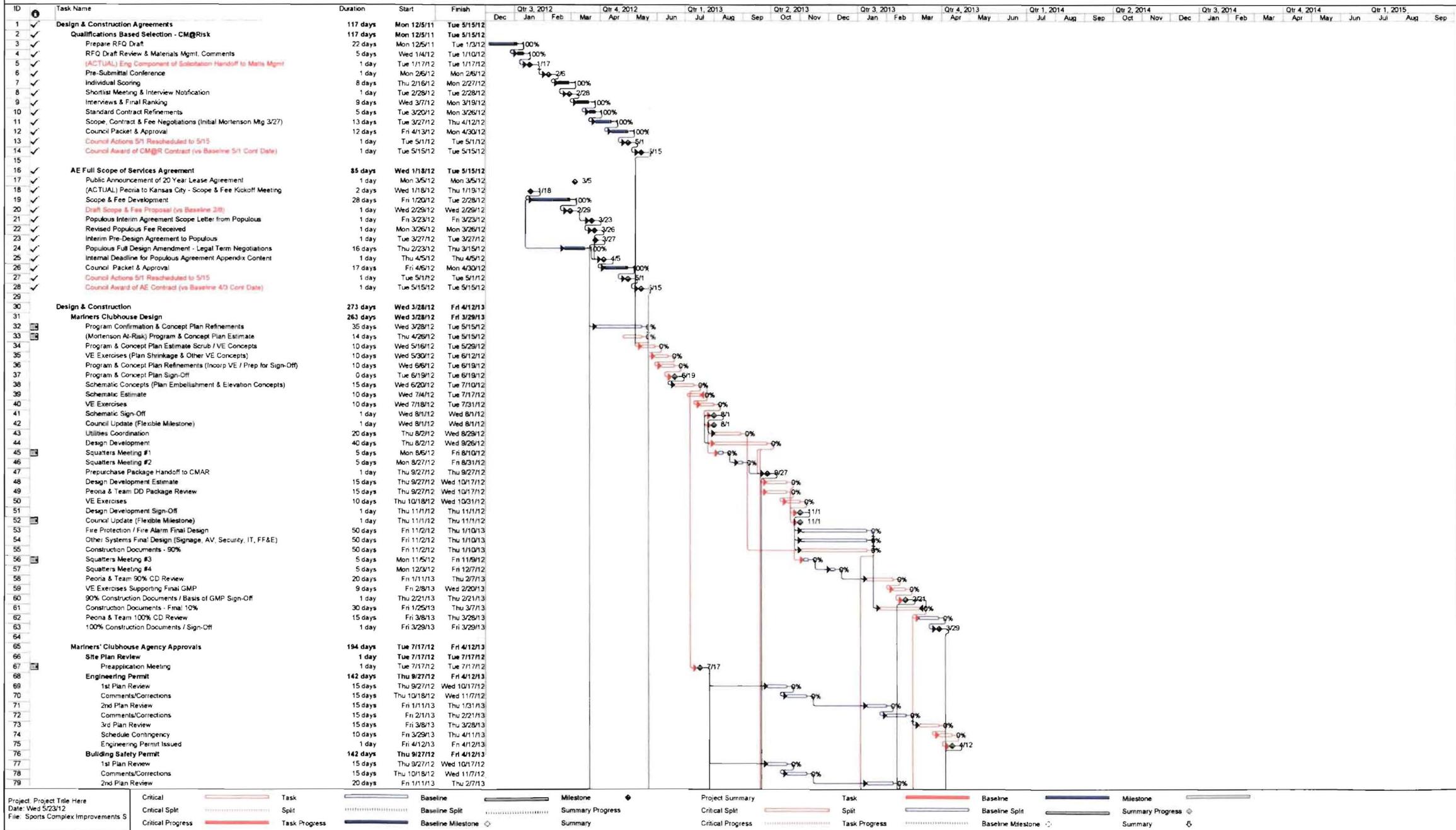
The City shall continue to cause the applicable Project Phase to be constructed in accordance with the applicable Project Schedule pending the final resolution of any dispute or disagreement between the Parties.

# Sports Complex Improvements - Phase I Mariners and Padres Clubhouse Improvements

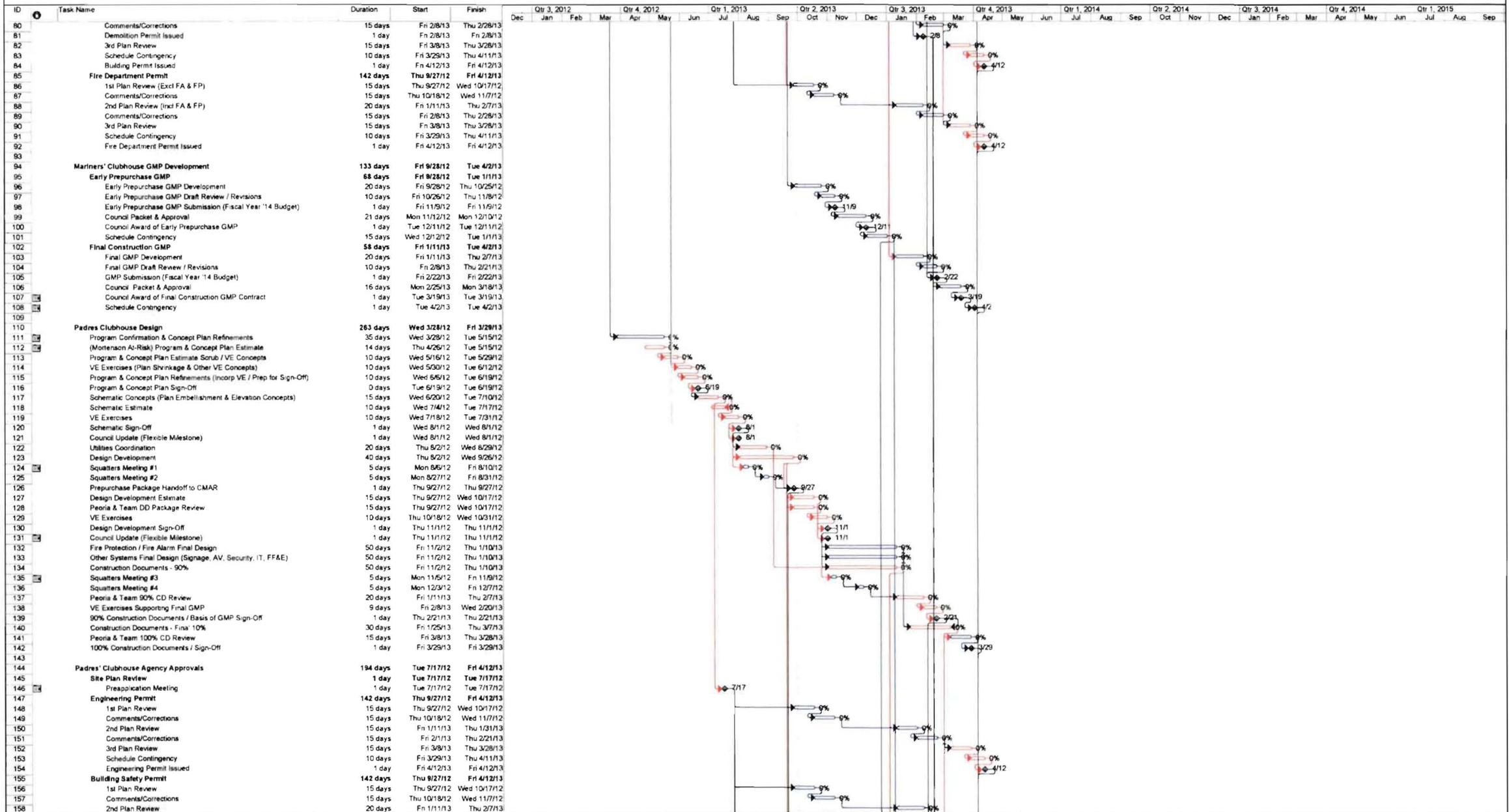
(Revision 1 to 04/30/12 MOU / Award Baseline)



Page 1 of 3



**Sports Complex Improvements - Phase I Mariners and Padres Clubhouse Improvements**  
 (Revision 1 to 04/30/12 MOU / Award Baseline)



Project: Project Title Here  
 Date: Wed 5/23/12  
 File: Sports Complex Improvements S

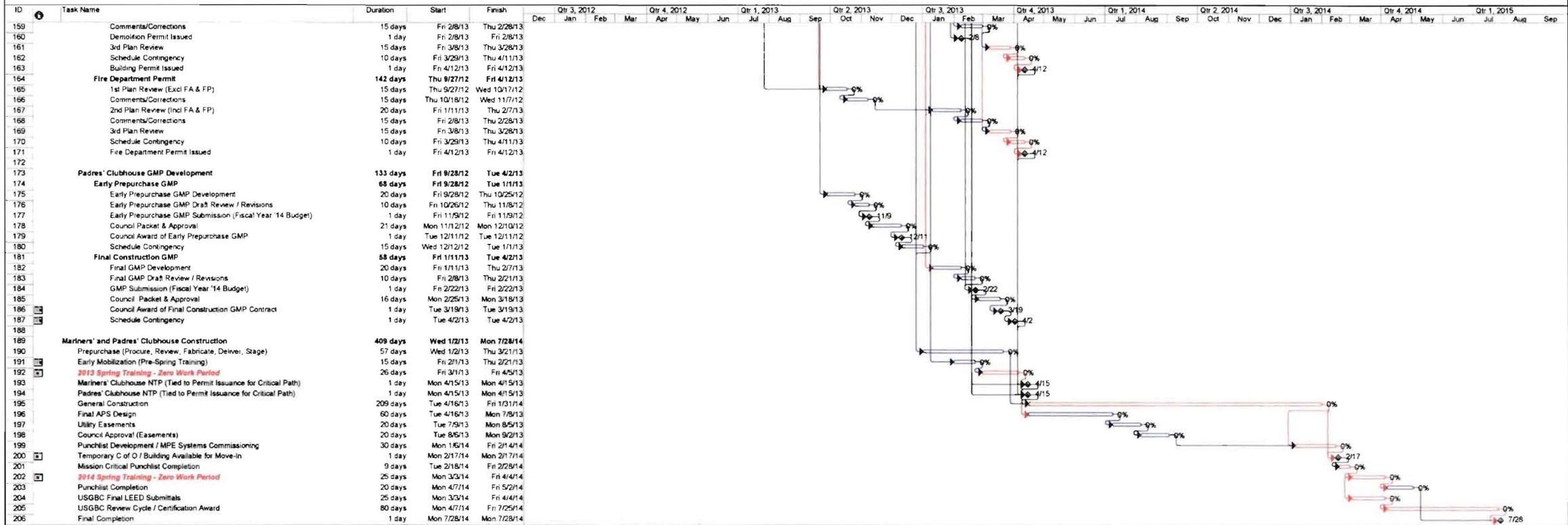
Critical Split Task Baseline Milestone   
 Critical Progress Task Progress Baseline Milestone Summary

Page 2

**Sports Complex Improvements - Phase I Mariners and Padres Clubhouse Improvements**  
 (Revision 1 to 04/30/12 MOU / Award Baseline)



Page 3 of 3



Project: Project Title Here  
 Date: Wed 5/23/12  
 File: Sports Complex Improvements S

Critical	Task	Baseline	Milestone	Project Summary	Task	Baseline	Milestone
Critical Split	Split	Baseline Split	Summary Progress	Critical Split	Split	Baseline Split	Summary Progress
Critical Progress	Task Progress	Baseline Milestone	Summary	Critical Progress	Task Progress	Baseline Milestone	Summary

Page 3

Exhibit "D"



map not to scale