

IN THE SUPREME COURT
STATE OF FLORIDA

DENNIS ROPER,
Defendant/Appellant,

CASE NO. SC01-796
Circuit Court Case No. 01-460-CI-015

vs.

CITY OF CLEARWATER,
a municipal and public body corporate
and politic of the State of Florida,
Plaintiff/Appellee.

FILED
THOMAS D. HALL
APR 30 2001

CLERK, SUPREME COURT
BY _____

ON APPEAL FROM THE SIXTH JUDICIAL CIRCUIT
PINELLAS COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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INTRODUCTION

The City of Clearwater, Florida (the "City") files this Answer Brief to affirm the decision of the trial court below validating its Revenue Bonds (Spring Training Facility), Series 2001 (the "Bonds"). The proceeds of the Bonds are intended to finance a portion of the cost of constructing and equipping a new major league baseball spring training facility replacing the existing spring training facility located within the municipal corporate limits of the City (herein, the "Spring Training Project"). (T-22-23)

At issue in this appeal is the meaning of Article IX of the Charter of the City of Clearwater (the "Charter") with regard to projects for "industrial development" (A-Supp-1-20). Article IX places some limitations on the broad home rule authority of the City to issue bonds, with the applicable limitation in the instant case requiring a referendum if the bond issue exceeds \$1 million unless the bonds are revenue bonds for projects for "industrial development".

The City Commission of the City determined that the Spring Training Project was a project for industrial development as described in the Charter since the Spring Training Project has a significant economic impact to the City and in light of the fact that the Spring Training Project constitutes a "Tourism Facility" as defined in Section 159.27(11), Florida Statutes, and as such is included in the definition of an industrial

development project set forth in Section 159.27(5), Florida Statutes. (A-1-9) Indeed, the fact that the Spring Training Project constitutes a "Tourism Facility" and thus a "project for industrial development" is readily admitted by the Appellee.

(Initial Brief -5)

Thus, the judgment of the trial court should be affirmed and the Bonds validated.

References to the Parties and the Record

In this brief, the Appellee/Plaintiff, the City of Clearwater, Florida, will be referred to as the "City," and the Appellant/Defendant, Dennis Roper, will be referred to as the "Appellant." References to the Appendix supplied by the Appellant will be cited by the symbol "A" followed by the tab number followed by the page number. References to the Supplemental Appendix supplied by the City will be cited by the symbol "A-Supp" followed by the tab number followed by the page number. References to the Transcript attached to the Appellant's Appendix will be cited by the symbol "T" followed by the page number.

COUNTER-STATEMENT OF THE FACTS

Appellant's Statement of the Facts makes several omissions that require the City to submit this Counter-Statement of the Facts and Supplemental Appendix to fully develop the record upon which the trial court validated the Bonds.

The City has been the host city for the spring training activities of The Philadelphia Phillies major league baseball franchise ("The Phillies") for 55 years. Such activities have been conducted at Jack Russell Stadium as well as the Carpenter Field complex. (T-23) The City has determined that the overall economic impact of The Phillies locating their spring training activities in the City equals an annual amount of between \$20,000,000 and \$25,000,000. (T-28,29; A-1-10)

The Spring Training Project consists of a 7,000 seat baseball stadium together with practice fields consisting of one full size baseball field and a half field or in-field, together with related office and training facilities. (T-22) The Phillies will operate the Spring Training Project on behalf of the City in accordance with the Sports Facility Use Agreement (the "Use Agreement")(A-Supp-2), pursuant to which The Phillies will have primary responsibility for the ongoing maintenance of the Spring Training Project. (T-23,24)

In accordance with the requirements of Article IX of the City's Charter, the City Commission enacted Ordinance No. 6675-01 on January 18, 2001 (the "Bond

Ordinance”(A-1-7), providing for the issuance of the Bonds. Sections 3(A) of the Bond Ordinance (A-1-10,11), setting forth certain legislative findings by the City Commission of the City, provides:

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

A. The Philadelphia Phillies is a major league baseball franchise which has been conducting its spring training program in the City for the prior 54 years.

B. The Philadelphia Phillies generates a significant economic impact in the City and the County as a direct result of the spring training activities which occur within the City each year, and that such impact has been reported to the City Commission to be approximately \$24.5 million each year, and that in order to preserve this economic benefit for the City, the City must undertake the Project, and the City has further determined that the Project is in furtherance of its municipal purposes to provide for the health and general welfare of the citizens and residents of the City, and that undertaking the Project is a valid municipal purpose.

C. The Project constitutes a “Tourism Facility” as defined in Section 159.27(11), Florida Statutes, and is included within the definition of an industrial development project set forth in Section 159.27(5), Florida Statutes, and that the Project constitutes a “project for industrial development” within the meaning of Article IX of the City’s Charter.

D. No funds (including but not limited to ad valorem tax revenues of the City) or property of the City will be pledged to the repayment of the Bonds, and no property of the City will be pledged to secure the Bonds, and the Bonds will be secured solely by, and repayable solely from the County Payments and the State Payments, neither of which would otherwise be payable to the City in the event the City did not undertake the Project.

E. The Pledged Revenues will be sufficient to pay all of the principal of and interest on the Bonds as the same become due, and to make all required sinking fund, reserve and other payments required under this Ordinance.

F. The principal of and interest on the Bonds and all required sinking fund, reserve and other payments shall be made solely from the Pledged Revenues as herein provided. The Issuer shall never be required to levy ad valorem taxes on any property therein to pay the principal of and interest on the Bonds or to make any of the required sinking fund, reserve or other payments, and any failure to pay the Bonds shall not give rise to a lien upon any property of the Issuer, except the Pledged Revenues.

G. The total indebtedness of the Issuer, within the meaning of the Issuer's charter, does not exceed twenty per centum (20%) of the current assessed valuation of all real property located in the Issuer, and will not exceed such amount after issuance of the Bonds.

On January 1, 2001, the City was certified by the State of Florida as a "facility for a retained spring training franchise" in accordance with Section 288.1162, Florida Statutes. (A-Supp-3) As the result of such certification, the City will receive monthly payments from the State of Florida pursuant to Section 212.20, Florida Statutes, in an annual amount of \$500,000 a year for thirty (30) years. (T-16,17) In December, 2000, the City and Pinellas County, Florida, entered into an Interlocal Agreement (A-Supp-4), pursuant to which Pinellas County will make monthly payments to the City in the annual amount of \$587,650 for a period of twenty (20) years. (T-16; A-Supp-4) These two revenue streams are the sole source of repayment of the Bonds, and no funds or other assets of the City are pledged to the repayment of the Bonds. (T-17; A-1-9,16)

In accordance with the Use Agreement, the City is obligated to provide the proceeds of the Bonds for the payment of a portion of the costs of the Spring Training Project by no later than October 1, 2001. (T-18,19)

STANDARD OF REVIEW

This Court's scope of review in bond validation cases is limited to the following issues: (1) whether the public body has the authority to issue bonds; (2) whether the purpose of the obligation is legal; and (3) whether the bond issuance complies with the requirements of the law. *See Pinellas County v. State*, 776 So.2d 262 (Fla. 2001); *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997). The Appellant has the burden of demonstrating that the record and evidence fails to support the trial court's conclusions when it validated the Bonds. *Wohl v. State*, 480 So. 2d 639,641 (Fla. 1985). Such validation judgment comes with a presumption of correctness that must be overcome by the Appellant. *International Broth. Of Elec. Workers, Local Union No. 177 v. Jacksonville Port Authority*, 424 So.2d 753 (Fla. 1982). This standard of review applies to all issues set forth in this Answer Brief.

STATEMENT OF THE ISSUES

DOES THE SPRING TRAINING PROJECT CONSTITUTE A PROJECT FOR INDUSTRIAL DEVELOPMENT SUCH THAT THE BONDS ARE EXEMPT FROM THE REFERENDUM REQUIREMENT OF ARTICLE IX OF THE CITY'S CHARTER.

SUMMARY OF THE ARGUMENT

The Appellant's only argument against the validation judgment issued below is that because the City Commission used the definition of industrial development projects found in Section 159.27(5), Florida Statutes, to interpret its Charter, the City is then restricted by such use to exercise powers limited to a "local agency" under Chapter 159, Part II, Florida Statutes, rather than the broad home rule constitutional authority granted to municipalities in Article VIII, Section 2(b) of the Florida Constitution, and in Chapter 166, Florida Statutes. The proposed issuance of Bonds which is the subject of this appeal, however, does not meet the requirements of Chapter 159, Part II, Florida Statutes, for the simple reason that such authority is not the basis of the authority upon which the City relies to issue the Bonds. (A-1-7)

The Appellant does not question any determinations made by the City Commission regarding the Bonds, nor does the Appellant question that the evidence submitted at trial below does not support the judgment rendered by the Circuit Court from which this appeal was taken. Indeed, if as a matter of law, the City is not restricted to exercising powers of a "local agency" under Chapter 159, Part II, Florida

Statutes, in order to finance projects for industrial development under its Charter, the Appellant has admitted in its Initial Brief that the City may issue the Bonds without prior referendum approval. Since the City is not so restricted as a matter of law, the Appellant's appeal has no merit and the judgment of the circuit court below validating the Bonds must be affirmed.

REPLY TO APPELLANT'S ARGUMENT

THE SPRING TRAINING PROJECT CONSTITUTES A PROJECT FOR INDUSTRIAL DEVELOPMENT WHICH EXEMPTS IT FROM THE REFERENDUM REQUIREMENT OF ARTICLE IX OF THE CITY'S CHARTER.

A. Introduction.

Although the Appellant recognizes in his Initial Brief at page 5 that the Spring Training Project meets the definition of a "tourism facility" found in Section 159.27(11), Florida Statutes, and thus is within the definition of a "project" for industrial development found in Section 159.27(5), Florida Statutes, the Appellant argues that such an industrial development project can only be financed in accordance with Chapter 159, Part II, Florida Statutes. Essentially, the Appellant argues that the requirements of Chapter 159, Part II, Florida Statutes, must be read into Article IX of the Charter, and that since the City is not exercising powers under Chapter 159, Part II, Florida Statutes, revenue bonds to finance a portion of the costs of the Spring Training Project are not exempt for the referendum requirements of Article IX of the Charter. The City does not believe that it is either necessary or appropriate to read restrictions into the City's Charter which are clearly not present in the Charter, and that the Appellant's arguments to so incorporate extraneous restrictions into the Charter are without merit. Similar attempts to read non-existent restrictions into the City's Charter have been rejected by this Court. *Boschen v. City of Clearwater*, 777 So.2d 958 (Fla.

2001); *Turner v. City of Clearwater*, Case No. 00-2296 (April 12, 2001).

B. Clearwater's Charter permits bonds for industrial development.

Article IX of the City's Charter requires that the City's revenue bonds in excess of \$1,000,000 must be approved by public referendum unless the bonds meet certain exceptions set forth in the City's Charter. One exception contained in the City's Charter permits the City to issue revenue bonds in excess of one million dollars without a referendum, if the project being financed with the proceeds of revenue bonds is in furtherance of "industrial development". Therefore, the central issue in this appeal is whether the Bonds to finance the Spring Training Project are revenue bonds for a project, which project is for, or in furtherance of, industrial development, and therefore exempt from the public referendum requirement of Article IX of the City Charter.

Article IX of the City's Charter provides:

The fiscal management procedures shall include provisions relating to the operating budget, capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption. Such ordinance shall in addition contain a provision requiring that *revenue bonds for projects in excess of one million dollars shall be put to public referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.* [Emphasis added]

C. The Spring Training Project is a "project" for "industrial development".

The City Charter does not define the term "industrial development". However, at the time the City Charter was adopted in 1978, Chapter 159, Part II, Florida Statutes,

known as the "Florida Industrial Development Financing Act", had been part of the law of Florida for almost ten years. In the Florida Industrial Development Financing Act, the Florida Legislature provided a definition of "projects for industrial development" in Section 159.27(5), Florida Statutes, which reads in part: "(5) "Project" means any capital project comprising ... a tourism facility...". A definition of what constitutes a "tourism facility" is provided in Section 159.27(11), Florida Statutes, which states:

Tourism facility means property used for or useful in connection with theme parks; zoological gardens; amusement parks; major art, historical, educational, or trade museums; cultural or performing arts centers; or *spectator or participatory sports facilities generally available to the public*, including, without limitation thereto, marinas, arenas, beaches, bathing facilities, golf courses, theaters, auditoriums, racetracks, and frontons. [Emphasis supplied]

The Spring Training Project clearly consists of a capital facility used for or useful in connection with a spectator or participatory sports facility generally open to the public. The Florida Supreme Court, in *Poe v. Hillsborough County*, 695 So.2d 672 (Fla. 1997), recognized that the purpose of a professional sports facility is both to increase trade by attracting tourists and to provide recreation for the citizens of the area. In like manner, the Spring Training Project, consisting of the spring training home of The Phillies and the home of one of The Phillies minor league teams, will similarly constitute a facility which increases trade and recreational activities, and as such constitutes a "tourism facility" within the meaning of Section 159.27(11), Florida Statutes. The Appellant takes no issue with such conclusion.

D. Prior interpretations of the City's Charter.

In two recent decisions by the Florida Supreme Court interpreting the “health and safety” exceptions found in Article IX of the Charter, this Court held that so long as the projects were in furtherance of, or would maintain, the health and safety needs of the citizens of the City, revenue bonds may be issued by the City to finance all or a portion of the costs of such projects without prior referendum approval. *Boschen v. City of Clearwater, supra*; *Turner v. City of Clearwater, supra*. In both of these decisions, this Court recognized the broad grant of home rule powers to the City as evidenced by Article I of the Charter (A-Supp-1-3) when interpreting Article IX of the Charter. In *Boschen*, this Court stated “the Charter vests the City with broad governing authority”, citing in a footnote reference to Article I of the Charter. *Boschen v. City of Clearwater*, 777 So.2d at 965.

E. The City has the ability to determine which authority it uses to issue bonds.

The City has the ability to determine whether it will invoke its home rule powers under Chapter 166, Florida Statutes, or to exercise the powers of a “local agency” under Chapter 159, Part II, Florida Statutes, in order to issue the Bonds to finance a portion of the costs of the Spring Training Project. Although the City could clearly elect to exercise powers as a “local agency” under Chapter 159, Part II, Florida Statutes, and as such issue revenue bonds pursuant to such statutory authority without prior referendum approval, the City did not elect to follow such authority with respect

to the Bonds. Rather, the City decided to invoke the powers it retains under Article I of its Charter and Chapter 166, Florida Statutes, in order to finance a portion of the costs of the Spring Training Project. (A-1-7)

It has been long recognized that a governmental body may elect to exercise powers from a variety of sources, and is not limited to exercising only certain permitted powers. When determining whether Pasco County could issue bonds under the authority of Chapter 125, Florida Statutes, or whether the county was required to issue such bonds under other statutory authority, the court stated:

So, therefore, this Court has not only stated that in an act, when it recites that it is an additional and supplemental grant of power, may be used in addition to other laws on the same subject, but may be rejected by a public entity and another applicable law used in its place. So it is in this case. Pasco County has elected to proceed solely under the provisions of Chapter 125, Florida Statutes (1975), as amended, and has rejected the use of any other statute. In so doing it has acted properly and within the scope of its authority as set forth by decisions of this Court.” *Speer v. Olson*, 367 So.2d 207, at 213 (Fla. 1978).

It should be noted that Chapter 159, Part II, Florida Statutes, is by its own terms, supplemental authority and not intended to operate in derogation of any powers otherwise held by a governmental entity. Section 159.43, Florida Statutes.

This principal was more recently affirmed in *Pinellas County v. State, supra.*, where the Florida Supreme Court held that Pinellas County, which was authorized by its home rule charter powers and Special Acts of 1935, 1939, and 1953, to add reclaimed water improvements to its existing water and sewer system, was not required

to comply with additional requirements of Chapter 153, Florida Statutes, where it neither relied, nor was required to rely, upon such supplemental authority in order to add reclaimed water to its water and sewer system.

In another decision, the Florida Supreme Court held that the City of Boca Raton was not bound to follow the special assessment requirements of Chapter 170, Florida Statutes, in order to levy a special assessment, but was free to exercise its home rule powers to develop its own special assessment procedures. In reaching this conclusion, this Court recognized that Chapter 170, Florida Statutes, provided a “supplemental, additional, and alternative method of procedure for the benefit of all cities, towns, municipal corporations of the state ...” *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla. 1992). Similarly, in *Pinellas County*, this Court, after reviewing the prior decision of the Second District Court of Appeals in *Mountain v. Pinellas County*, 152 So.2d 745 (Fla. 2d DCA 1963), and the applicability of Chapter 153, Florida Statutes, stated “[w]here not invoked, its provisions *and restrictions* need not be followed.” *Pinellas County v. State*, 776 So.2d at 266. Thus, a city is free to exercise its own inherent powers and not be constrained by restrictions and procedures set forth in supplemental general law provisions. In the *City of Boca Raton* decision, the Court made reference to a case where Lee County sought to issue bonds to finance a new bridge pursuant to its home rule authority. *See: Taylor v. Lee County*, 498 So.2d 424 (Fla. 1986) (citing *City of Boca Raton*, 595 So.2d at 30). The *Taylor* court held that “in areas in which

a non-charter county has authority to issue bonds, it may choose between adopting an ordinance pursuant to its home rule power or adopting it pursuant to another statutory authority.” *Taylor*, 498 So.2d at 426. The Court, in reaching its decision, explicitly relied on Section 159.14, Florida Statutes, that by its express terms, provided supplemental and additional authority to that conferred by the other laws. *Taylor*, 498 So.2d at 426.

F. Chapter 159, Part II, Florida Statutes, provides supplemental authority.

In the instant case, the City only sought guidance from Chapter 159, Part II, Florida Statutes, in order to interpret its Charter and define the concept of a project for industrial development due to the concept’s lack of definition in the Charter. In a recent case, the City’s use of general law concepts and definitions to interpret Section 2.01(d) of its Charter was sanctioned by this Court. *Turner v. City of Clearwater*, *supra*.¹ In *Boschen*, the court observed that “[b]y using the words ‘public health, safety or industrial development’ the Charter refers to situations that could reasonably be construed as falling within the ambit of these categories.” *Boschen v. City of Clearwater*, 777 So.2d at 965. The City submits that a project recognized by general law to constitute a project for industrial development could reasonably be construed as

¹ See also: *Spatuzzi, et. al. v. City of Clearwater*, Case No. 2D00-1482 (Fla. 2d DCA Dec. 1, 2000), affirming without written opinion the Circuit Court decision in *Spatuzzi, et. al. v. City of Clearwater*, No.00-4060-CI-021 (Fla. 6th Cir. Ct. Sept. 26, 2000)

falling within the ambit of industrial development projects within the meaning of Article IX of the Charter.

The City's position on the guidance of Chapter 159, Florida Statutes, is substantiated by a statutory provision found in Chapter 159, Part II, Florida Statutes, that parallels the supplemental authority issues discussed in the aforementioned cases. In specific, Chapter 159, Part II, Florida Statutes, contains a provision explicitly supporting the supplemental authority of Part II of Chapter 159. Section 159.43, Florida Statutes (2000), reads in relevant part:

Part II of this chapter, being necessary for the prosperity and welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof; shall be, and be deemed, authority in addition to, and shall provide alternative methods of, and other authority provided by law for the same or similar purposes; and is supplemental to and not in derogation of any powers of any local agency otherwise conferred. The criteria and requirements of this part are applicable only to projects financed under authority of this part, except as otherwise expressly incorporated by references in other provisions of law. (Emphasis added)

Clearly, Chapter 159, Part II, Florida Statutes, by its own terms is intended to provide additional, supplemental authority for local governments to issue bonds for industrial development, but is not intended, nor does it operate, to be in derogation of any powers of any local government, such as the City.

G. Legislative findings support Charter interpretation.

The City Commission, in enacting the Bond Ordinance, made specific legislative findings to the effect that the Spring Training Project was a project for "industrial

development". (A-1-10,11) When a legislative body makes a factual determination of municipal purpose, a party challenging such legislative determination must show that such determination was "so clearly wrong as to be beyond the power of the legislature." *Nohrr v. Brevard County Educational Facilities Authority*, 247 So.2d 304, 309 (Fla. 1971), *Boschen v. City of Clearwater*, *supra*.

Florida courts have continued to reiterate that they will not rule on anything that is clearly within the purview of the legislature. The City, and not the courts, in furtherance of their legislative function determine what is "industrial development". Absent a showing that such funding was arbitrary or contrary to law, the question of whether an action is necessary rest solely with the legislative body. Such determination of necessity by a city's legislative body is not open to redetermination by the courts in proceedings to validate such actions. *State v. City of St. Petersburg*, 198 So. 837 (Fla. 1940).

In *Miller v. St. Augustine*, 97 So.2d 256 (Fla. 1957), the Florida Supreme Court had to determine whether certain city charter provisions restricted the City of St. Augustine in completing certain beach renovations and issue its bonds to finance them. The court, in following its decision in *State v. City of St. Petersburg*, concluded that the decision as to whether to renovate or destroy certain landmarks was clearly within the legislative purview of the elected representative of the city sitting as a legislative body, and was not open to question by the courts. In this case, the court upheld the

legislative findings contained in the city's ordinance to the effect that the actions to be taken were imperative in order to serve the public health and safety of its inhabitants.

The City Commission of the City has spent several Commission meetings on the issue of the Spring Training Project and the City's relationship with The Phillies. (T-25,26) In enacting the Bond Ordinance, the City Commission made specific legislative findings regarding the needs to construct the Project and the fact that the Project constitutes a project for industrial development. On previous occasions, this Court has deferred to the legislative findings of the City Commission of the City, determining such findings to be of great weight. *Boschen v. City of Clearwater, supra; Turner v. City of Clearwater, supra*. Ample evidence exists which demonstrates that these finding are not arbitrary and capricious. Indeed, Appellant not only does not contest the determinations of the City Commission that the Spring Training Project is a project for industrial development, but in fact agrees with such determinations.

CONCLUSION

For all of the foregoing reasons, the trial court's decision validating the Bonds should be affirmed. This Court should enter an order validating the Bonds.

Respectfully submitted this 30th day of April, 2001.



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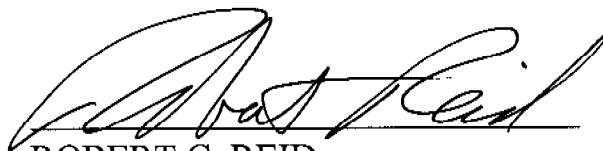
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CERTIFICATE OF SERVICE

A true and complete copy of the foregoing Answer Brief of Appellee was delivered to (i) C. Marie King, Assistant State Attorney, by mailing a copy to her at P.O. Box 5028, Clearwater, Florida 33718-5028, and (ii) Patrick T. Maguire, Esq., counsel for Dennis Roper, by mailing a copy to him at 1253 Park Street, Clearwater, Florida 33765, this 30th day of April, 2001.



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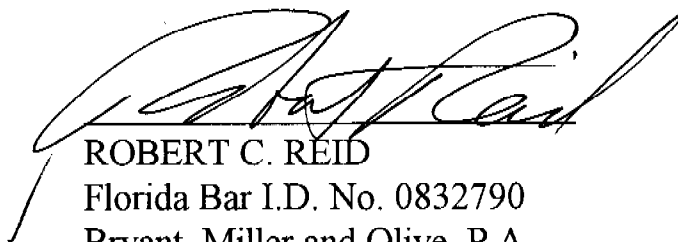
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CERTIFICATION

The undersigned does hereby certify that this Brief used 14 point Times New Roman type and does hereby comply with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

A handwritten signature in black ink, appearing to read "Robert C. Reid", is written over a horizontal line. The signature is fluid and cursive.

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Appendix Part 1



CHARTER

March 9, 1999

I hereby certify that this is a true and correct copy of the original as it appears in the files of the City of Clearwater. Witness my hand and official seal of the City of Clearwater.

This 13th day of February, 2001
Lusan Hepburn
Deputy City Clerk

PART I CHARTER AND RELATED LAWS

Subpart A CHARTER*

*Editor's note--Printed herein is the home rule charter of the city, Ordinance No. 6371-99, as approved by the electors on March 9, 1999. Formerly, said Charter derived from Ordinance No. 1830, as approved by the electors on December 12, 1978. Additions made for clarity are indicated by brackets. Obviously misspelled words have been corrected without notation. A uniform style of capitalization and a uniform style of expression of numbers have been employed. Sections amended by subsequent ordinances are followed by a history note in parentheses.

State law reference(s)--Municipal home rule powers act, F.S. ch. 166; charter amendments, F.S. § 166.031.

Article I. Corporate Existence and Powers

- Sec. 1.01. Corporate existence and powers.
- Sec. 1.02. Corporate boundaries.

Article II. Legislative Power

- Sec. 2.01. Commission; composition; powers.
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ARTICLE I. CORPORATE EXISTENCE AND POWERS

Section 1.01. Corporate existence and powers.

- (a) *General Powers.* The City of Clearwater, Florida, (the "city"), as created by Chapter 9710, Special Laws of Florida, 1923, as amended, shall exist and continue as a municipal corporation, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law. In addition to the powers enumerated herein, the city shall be vested with all powers granted by general or special acts of the Legislature of the State of Florida and otherwise provided by law.
- (b) *Exercise of Powers.* The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, by contract or otherwise, jointly or in cooperation with any one or more states or political subdivisions or agencies thereof, or the United States or any agency thereof, or with any person as defined by law.
- (c) *Construction.* The powers of the city under this charter shall be construed liberally in favor of the city. The city is empowered to do whatever is necessary and proper for the safety, health, convenience and general welfare of its inhabitants. The specific mention of a particular power in this charter shall not be construed as limiting the general power stated in this section of Article I.

(6372-99, § 1, 1-21-99/3-9-99)

Section 1.02. Corporate boundaries.

The corporate boundaries of the city shall be as they exist on the date this charter takes effect, provided that the city shall have the power to change its boundaries in the manner prescribed by law.

ARTICLE II. LEGISLATIVE POWER

Section 2.01. Commission; composition; powers.

- (a) *Composition.* There shall be a city commission, (the "commission"), composed of five commissioners, including the mayor-commissioner. The members will occupy seats numbered one through five, inclusive. All members shall be elected at large by the voters of the city.
- (b) *Powers.* All legislative power of the city shall be vested in the commission, except as otherwise provided by law or the provisions of this charter, and the commission shall

provide for the exercise thereof and for the performance of all duties and obligations imposed upon the city by law.

(c) *Duties.* It shall be the duty of the commission to discharge the obligations and responsibilities imposed upon the commission by state law, city ordinance and this charter. As a part of the discharge of its duty, the commission shall:

1. Each October, evaluate the performance of the city manager and city attorney, recognizing areas of exceptional performance as well as areas of in which performance can be improved. The evaluation process shall be determined by the commission. The results of the evaluation shall be reported to the citizens of the city.
2. Adopt by ordinance a comprehensive system of fiscal management. The fiscal management ordinance shall include provisions relating to the operating budget, capital budget and capital program, providing for hearings on the budget, capital budget and capital program and the amendment of the budget following adoption.
3. Provide for an annual or more frequent independent audit of all city accounts by a firm of certified public accountants. No firm shall be employed for more than five consecutive years. All audits shall be in accordance with law.
4. Regulate comprehensive planning, zoning and land development as provided by law.

(d) *Limitations.* The legislative power provided herein shall have the following limitations:

1. The total indebtedness, which for the purpose of this limitation shall include revenue, refunding, and improvement bonds of the city, shall not exceed 20 percent of the current assessed valuation of all real property located in the city. The total budgeted expenditures in any fiscal year shall not exceed the total estimated revenue plus any unencumbered funds carried forward from a prior fiscal year.
2. The city commission shall by ordinance adopt procedures for the purchase or rental of goods and services.
3. Any non-budgeted expenditure in excess of \$5 million must be approved by the commission at two separate meetings held at least two weeks apart and advertised notice of a public hearing must be given at least five days prior to the second meeting.
4. With the exception of maintenance or emergency dredging, or dredging relating to that portion of

Dunedin Pass located within the boundaries of the city, permits for dredging or filling in excess of 10,000 cubic yards below the mean high water line may be authorized only after a properly advertised public hearing before the commission and approval at referendum.

5. Real property.

- (i) Prior to the sale, donation, lease for a term longer than five years, or other transfer of any municipal real property, the real property must be declared surplus and no longer needed for municipal public use by the commission at an advertised public hearing. Except in the case of right-of-way dedications, the granting of easements, or transactions with governmental entities as described herein, no real property may be given away or donated without prior approval at referendum.
- (ii) Except as otherwise provided herein, real property declared surplus shall be sold to the party submitting the highest competitive bid above the appraised value whose bid meets the terms set by the commission and whose proposed use of the property is in accordance with the commission's stated purpose for declaring the property surplus, if any.
- (iii) Surplus real property may be transferred to another governmental entity for less than the appraised value after an advertised public hearing has been held and a finding by the commission of a valid public purpose for the transfer.
- (iv) Surplus real property may be exchanged for other real property having a comparable appraised value.
- (v) No municipally owned real property identified as recreation/open space on the city's comprehensive land use plan map on November 16, 1989 (or as may be amended thereafter), may be sold, donated, leased for a new use, or otherwise transferred without prior approval at referendum, except when the commission determines it appropriate to dedicate right-of-way from such property. Such recreation/open space property may be leased for an existing use, without referendum, unless such lease is otherwise prohibited by charter or ordinance.
- (vi) No right-of-way or easement which terminates at, or provides access to, the water's edge of a body of fresh or salt water may be vacated for private benefit. Nothing contained in this section shall prevent an easement for utility purposes from

being exchanged for a new easement for similar purposes or from converting a fee interest for utility purposes into an easement for such purposes.

(vii) The commission may lease municipal real property for five years or less without declaring it surplus. Municipal real property declared surplus may be leased for a term up to 30 years, provided, however, nothing herein shall preclude renewal of any lease for a maximum of 30 years. Municipal property declared surplus may be leased for an initial period of time or a renewal period exceeding 30 years, if approved at referendum, but not to exceed 60 years total. Leases of real property in an industrial park shall provide for continual use for private/public business purposes, shall provide a reasonable rate of return on the city's investment, and shall include a rent escalation clause.

(viii) All leases of municipal real property shall contain recapture and reverter clauses.

(ix) When purchasing real property for less than \$250,000.00, the commission shall obtain an appraisal performed by city staff or independent certified appraiser. If the purchase price of such property equals or exceeds \$250,000.00 but is less than \$500,000.00, the commission shall obtain at least one appraisal by an independent certified appraiser. If the purchase price of such property equals or exceeds \$500,000.00, the commission shall obtain at least two appraisals by independent certified appraisers.

6. No municipal or other public real property lying west of Osceola Avenue, east of Clearwater Harbor between Drew and Chestnut Streets, being further described as:

That portion of city-owned land bounded on the north by the right-of-way of Drew Street, on the east by the right-of-way of Osceola Avenue, on the south of the right-of-way of Pierce Street, and on the west by the waters of Clearwater Harbor, lying below the 28 mean sea level elevation, together with the following described tract: Beginning at the northeast corner of section 16, township 29 south, range 15 east, Pinellas County, Florida, and run thence west along the north line of said section, 1320.0 feet; thence south along the west line of the east one-half of the northeast one-quarter of said section 16, 1526.16 feet to an intersection with an easterly projection of the centerline of Pierce Street; thence south 89°45'00" W along the centerline of Pierce Street, 418 feet to an iron stake set in a projection of the west line of Osceola Avenue as extended across Pierce Street; thence south 20 feet along

this projection of the southwest corner of the intersection of Pierce Street and Osceola Avenue; thence south $88^{\circ}18'42''$ W along the south line of Pierce Street, 375 feet to the point of beginning; thence continue south $88^{\circ}18'42''$ W, 270.89 feet along said south line of Pierce Street to the east right-of-way line of Pierce Boulevard; thence south $19^{\circ}24'39''$ east along aforesaid east right-of-way along a curve to the right, chord 157.24 feet, arc 157.41 feet, radius 980 feet; thence north $88^{\circ}18'46''$ east, 120.42 feet; thence north $0^{\circ}14'32''$ west, 50 feet; thence north $88^{\circ}18'42''$, 100 feet; thence north $0^{\circ}14'32''$ west, 99.80 feet to the point of beginning less and except that portion of the above described tract designated for the Bandshell Site,

and no municipal or other public real property constituting the Memorial Causeway or lands immediately contiguous thereto, more particularly described as:

That portion of Memorial Causeway (S.R. 60) a 1200-foot-wide right-of-way, lying between the east abutment of the west bridge and the east line of Clearwater Harbor, and the submerged portions of Board of Trustees of the Internal Improvement Trust Fund Deed Numbers 17,500 and 17,502,

shall be developed or maintained other than as open space and public utilities together with associated appurtenances, except upon a finding by the commission at a duly advertised public hearing that such development is necessary in the interest of the public health, safety and welfare of the citizens of the city and approval of such finding at referendum, conducted subsequent to the public hearing. City-owned tennis courts and associated appurtenances may be constructed and maintained on such property south of Cleveland Street.

7. No city owned real property in the area bounded on the north by Drew Street, on the east by Osceola Avenue, on the south by Pierce Street, and on the west by the waters of Clearwater Harbor, shall be sold, donated, leased, or otherwise transferred or used for other than city facilities except upon a finding by the commission at a duly advertised public hearing that such transfer or use is necessary and in the interest of the public health, safety and welfare of the citizens of the city and the approval of such finding at referendum; except for that structure known as Harborview Center, more particularly described as:

Beginning at the Northeast corner of Lot 1 of Rompon's & Baskin's Corrected Map of Causeway Business District, according to the plat thereof as recorded in Plat Book 57, Pages 1 and 2, Public Records of Pinellas County, Florida, for a POINT OF BEGINNING, said point being said Westerly right-of-way line of Osceola Avenue; run thence S $01^{\circ}26'17''$ E, along said Westerly right-of-way

line of Osceola Avenue, 224.38 feet, to the Northerly right-of-way line of Cleveland Street; thence N 89°58'26" W, along said Northerly right-of-way line of Cleveland Street, 403.55 feet; thence N 00°00'15" W, along a line West of the existing Harborview Center Building, 217.30 feet; thence along a line Northerly of said Harborview Center Building the following two courses, S 89°58'26" E, 187.20 feet; thence N 88°07'145" E, 310.85 feet to the POINT OF BEGINNING.

Which structure may be leased for and used in furtherance of any municipal purpose consistent with the character and ordinances of the city.

(Ord. No. 6373-99, §§ 1, 2, 1-21-99/3-9-99)

Section 2.02. Qualifications.

Members of the commission shall be qualified voters of the city and shall have continuously resided in the city for at least one year prior to submitting a petition for election. The commission shall be the judge of the election and the other qualifications of its members and of the grounds for forfeiture of their office.

Section 2.03. Election and terms.

All commissioners, including the mayor-commissioner, shall be elected for terms of three years. Terms shall overlap, with two commissioners elected one year, and the additional two commissioners and the mayor-commissioner elected the following year.

No person who has, or but for resignation or forfeiture of office would have, served as a commissioner for two consecutive full terms shall serve as a commissioner other than mayor-commissioner for the succeeding three-year term. No person who has, but for resignation or forfeiture of office would have, served as mayor-commissioner for two consecutive full terms, shall serve as mayor-commissioner or commissioner for the succeeding three-year term. Term limits shall be effective for each respective seat on the date of the next election for that seat after 1994.

Newly elected commissioners shall take office at the next commission meeting following certification of city election returns.

(Ord. No. 63-74-99, § 1, 1-21-99/3-9-99)

Section 2.04. Compensation and expenses.

The commission may determine the annual salary of commissioners and the mayor-commissioner by ordinance. No ordinance increasing such salary shall become effective until the

date of commencement of the terms of commissioners elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six months. Commissioners shall be reimbursed their actual and necessary expenses incurred in the performance of their duties of office.

Section 2.05. Mayor-commissioner, functions and powers.

The mayor-commissioner shall preside at all meetings of the commission, perform such other duties consistent with the office as may be imposed by the commission and this charter, and shall have a voice and a vote in the proceedings of the commission, but no veto power. The mayor-commissioner may use the title of mayor in the execution of legal instruments on behalf of the city or otherwise as required by law. This authorization does not confer upon the mayor-commissioner administrative duties except as required to carry out the responsibilities stated in this charter. The mayor-commissioner shall be recognized as the official head of the city by the courts for the service of process, by the governor for purposes of military law, and for all ceremonial purposes.

At the second commission meeting each April, the commission shall elect one of its members as vice-mayor. The vice-mayor shall act as mayor-commissioner during the temporary absence or inability of the mayor-commissioner to perform the duties of the office of the mayor.

Section 2.06. Prohibitions.

- (a) *Appointments and removals.* Neither the commission nor any of its members shall in any manner dictate the appointment or removal of any city administrative officer or employee whom the city manager, or any of the city manager's subordinates, is empowered to appoint.
- (b) *Dealing through city manager.* Except for the purpose of inquiries and investigations, the commission members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager. Neither the commission nor its members shall give orders to any such officer or employee, either publicly or privately. Recommendations for improvement in city operations by individual commissioners shall be made to and through the city manager.

Nothing in the foregoing paragraph prohibits individual members of the commission from questioning and observing city operations so as to obtain independent information to assist them in the formulation of policy.

- (c) *Holding other office.* No present or former commissioner shall hold any compensated appointive city office or employment until one year after the expiration of the term for which such commissioner was elected.

Section 2.07. Vacancies; forfeiture of office; filling vacancies; advisory boards.

- (a) *Vacancies.* The office of a commissioner shall become vacant upon the death, resignation, removal from office in any lawful manner, or forfeiture of the office, such forfeiture to be declared by the remaining members of the commission.
- (b) *Forfeiture of office.* A commission member shall forfeit such office if such member:
1. Lacks at any time during the term of such office any qualification for the office prescribed by law, or
 2. Is convicted of a felony or a crime involving moral turpitude, or
 3. Fails to attend six consecutive regular meetings of the commission, unless such absence is excused by the commission, or
 4. Fails to attend twenty-five percent of the regular meetings during a 12-month period whether excused or not.
- (c) *Filling of vacancies; vacancy in commissioner's seat.*
1. A vacancy on the commission should be filled by majority vote of the remaining commission members within 30 days after the vacancy. The person so appointed shall serve as a commissioner until the next regular or special election. At such election, a commissioner shall be elected to serve for the remainder of the unexpired term of office.
 2. If the commission fails to fill such vacancy within 60 days after it occurs, a special election shall be called to fill the unexpired term.
 3. Any person appointed to fill such a vacancy shall possess all the qualifications required of a commission member by law.
- (d) *Extraordinary vacancies.* In the event that all commission members resign or are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that shall call a special election to be held within 90 days after the occurrence of the vacancies. Such election shall be held in the same manner as the first election under this charter. In the event vacancies cannot be filled as provided in section 2.07(c) because of permanent vacancies which make it impossible to assemble a quorum, then in such case the governor shall appoint that number of commission members necessary to constitute a

quorum who shall hold office until the next regular or special election.

- (e) *Boards.* The commission is empowered to appoint such advisory boards as it deems appropriate and regulatory board(s) as may be established by law.

(Ord. No. 6375-99, § 1, 1-21-99/3-9-99)

Section 2.08. Procedure.

- (a) *Meetings.* The commission shall meet regularly at least once each month at such times and places as the commission may prescribe by rule. Special meetings may be held on call of the mayor-commissioner, the city manager, or any two commissioners and, when practical, upon no less than 24 hours' notice to each member and the public. All meetings shall be public. The city manager and any commissioner shall have the power to cause any item to be placed on the next agenda.
- (b) *Rules and minutes.* The commission shall determine its own rules and order of business. The city clerk shall keep minutes of the commission proceedings.
- (c) *Voting.* Voting on ordinances and resolutions shall be by roll call and shall be recorded in the minutes. A majority of the commission shall constitute a quorum; but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the commission.

Except as provided in section 2.07(c), section 3.02 and in the preceding sentence, no action shall be valid or binding unless adopted by the affirmative vote of the majority of all commission members.

Section 2.09. Ordinances and resolutions in general.

- (a) *Definitions.*

1. "*Ordinance*" means an official, legislative action of the commission, which action is a regulation of a general and permanent nature and enforceable as a local law.
2. "*Resolution*" means an expression of the commission concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the business of the commission.

- (b) *Form.* Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly

stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended action, section, subsection, or paragraph of a section or subsection.

- (c) *Procedure.* A proposed ordinance shall be read by title, or in full, on at least two separate days, at either regular or special meetings of the commission, and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in the city. The notice of proposed enactment shall state the date, time, and place of the meeting, the title or titles of proposed ordinances and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.
- (d) *Effective date.* Except as otherwise provided in this charter, every adopted ordinance shall become effective ten days after adoption or as otherwise specified therein.
- (e) *Emergency ordinances.* An ordinance may be passed as an emergency measure on the day of its introduction if it contains a declaration describing in clear and specific terms the facts and reasons constituting the emergency and receives the vote of at least four commission members. An emergency ordinance shall remain effective as an ordinance for a period of 90 days and shall automatically expire at the end of such 90-day period unless during the time of such period the ordinance is submitted for adoption in the manner provided for non-emergency ordinances. Such ordinances may not levy taxes; grant, renew or extend a franchise; change election qualifications; set service or user charges for any municipal services; authorize the borrowing of money; enact or amend a land use plan; or rezone private real property. Emergency ordinances shall become effective upon passing or at such other date as shall be specified in the ordinance.

Section 2.10. Authentication, recording and disposition of charter amendments, ordinances and resolutions.

- (a) *Authentication.* The mayor-commissioner and the city clerk shall authenticate by their signatures all ordinances and resolutions adopted by the commission. In addition, when charter amendments have been approved at referendum, the mayor-commissioner and the city clerk shall authenticate by their signatures the charter amendment.
- (b) *Recording.* The city clerk shall keep properly indexed records in which shall be recorded, in full, all ordinances and resolutions passed by the commission. Ordinances shall periodically be codified. The city clerk shall also maintain the city charter in current form and shall enter all charter

amendments. A copy of the charter and any amendments thereto shall be sent to the secretary of state.

- (c) *Availability of Public Records.* The commission shall, by ordinance, establish procedures for making all resolutions, ordinances, technical codes adopted by reference, and this charter available to the people of the city for public inspection and available for purchase at a reasonable price to cover the cost of reproduction.

ARTICLE III. ADMINISTRATION

Section 3.01. City manager.

The city manager shall serve as the chief administrative officer and chief executive officer of the city. The city manager shall be appointed on the basis of administrative qualifications, experience, and training. The city manager need not be a resident of the city or state at the time of appointment, but shall establish residency within the city within one year after the appointment. The city manager shall be responsible to the commission for all city administrative affairs.

Section 3.02. Appointment; removal; compensation.

- (a) *Appointment.* The commission shall appoint a city manager by an affirmative vote of four commission members. The city manager shall hold office at the pleasure of the commission.
- (b) *Removal.* The commission may remove the city manager by an affirmative vote of four commission members or a majority of the commission members at two separate meetings held at least two weeks apart. Upon request by the city manager, a public hearing will be held prior to a vote to remove the city manager.
- (c) *Compensation.* The compensation of the city manager shall be fixed by a majority of all the commission members.
- (d) *Acting city manager.* By letter filed with the commission, the city manager shall designate one or more assistant city managers to exercise the powers and perform the duties of city manager during the city manager's temporary absence or disability. This designation shall be limited to a period of 60 days. At the expiration of this period, the commission shall appoint an interim or new city manager in accordance with the provisions of this charter.

Section 3.03. Powers and duties of the city manager.

The city manager shall:

- (a) Appoint and suspend, demote, or remove any city employees or appointive administrative officers under

the city manager's jurisdiction, except as may be otherwise provided by law. Such appointment, suspension, demotion, or removal shall be in compliance with the civil service law and other applicable rules and regulations.

- (b) Establish or discontinue any department, division or board in the administrative affairs of the city, subject to commission approval.
- (c) Attend commission meetings and have the right to take part in discussion, but not to vote.
- (d) See to the faithful executive of all laws, provisions of this charter, and acts of the commission subject to enforcement by the city manager or officers subject to the city manager's supervision.
- (e) Prepare and submit to the commission in the form provided by ordinance, the annual budget, a capital improvement budget, and a projected capital improvement program for a minimum five-year period.
- (f) Submit to the commission at the first regular meeting in September of each year and make available to the public a comprehensive report on the financial and administrative activities of the city.
- (g) Make such other reports as the commission may require concerning the operations of city departments, offices and agencies subject to the city manager's supervision.
- (h) Keep the commission fully advised as to the financial condition and future needs of the city and make recommendations to the commission concerning the affairs of the city.
- (i) Sign contracts on behalf of the city pursuant to the provisions of appropriations ordinances.
- (j) Develop and keep current an administrative code which sets forth the organizational and operational procedures of the city government.
- (k) Provide administrative assistance to the commission in connection with their official duties, and perform such other duties as are specified in this charter or may be required by the commission.
- (l) Act as purchasing agent for the city.
(Ord. No. 6375-99, § 2, 1-21-99/3-9-99)

Section 3.04 City clerk.

The city manager shall appoint a city clerk, which appointment must be confirmed by the commission prior to becoming

effective. The city clerk or the official representative of the city clerk shall:

- (a) Be custodian of all records and the official seal of the city;
- (b) Attest all documents requiring attestation and agreements to which the city is a party;
- (c) Arrange for and supervise all city elections;
- (d) Attend all meetings of the commission and keep minutes of its proceedings;
- (e) Give notice of commission meetings to its members and the public;
- (f) Perform such other duties as directed or required by law.

Section 3.05. Personnel system.

Appointments and promotions of city officials and employees, except those specifically exempted by ordinance, shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence as provided by law.

ARTICLE IV. CITY ATTORNEY; LEGAL DEPARTMENT*

*Code reference--Officers and employees generally, § 2.261 et seq.

Section 4.01. City attorney, legal department.

There shall be a legal department, headed by the city attorney, operating under the authority of and responsible to the commission. The legal department shall consist of the city attorney, assistant city attorneys, when appointed and authorized by the commission, and such other staff as the commission may direct.

Section 4.02. City attorney, appointment, removal, compensation, qualifications and duties.

- (a) *Appointment.* The city attorney shall be appointed by the affirmative vote of four commission members and may be removed by a majority of the members of the commission members voting for removal. Upon request by the city attorney a public hearing will be held prior to a vote to remove the city attorney. The city attorney shall be a member in good standing of The Florida Bar.

- (b) *Duties.* The city attorney shall be the legal advisor to the commission, the city manager and all city departments, offices and agencies. When required by the city commission, the city attorney shall prosecute or defend, on behalf of the city, all complaints, suits and controversies in which the city is a party; and shall prepare or review and approve as to form and legal sufficiency all contracts, bonds, and other instruments to which the city is a party. The city attorney shall perform such other duties as may be directed by law or the city commission.
- (c) *Absence.* By letter, filed with the commission, the city attorney shall designate one or more assistant city attorneys to perform the duties of city attorney during a temporary absence or disability. This designation shall be limited to a period of 60 days. At the expiration of this time, the commission shall appoint an interim or new city attorney in accordance with the provisions of this charter.

(Ord. No. 6375-99, § 3, 1-21-99/3-9-99)

Section 4.03 Assistant city attorneys, special counsel.

- (a) *Assistants.* The city attorney shall appoint as many assistant city attorneys as authorized by the city commission.
- (b) *Special Counsel.* The commission may employ special counsel, outside of the legal department, who shall conduct such investigations and perform such services as the commission may direct and who shall report directly to the commission.

Section 4.04 Compensation.

The commission shall determine the compensation to be paid to the city attorney and special counsel. Compensation for the assistant city attorneys shall be established by the city attorney and approved by the commission.

ARTICLE V. RESERVED

ARTICLE VI. INITIATIVE, REFERENDUM; RECALL

Section 6.01. Initiative.

The voters of the city shall have power to propose ordinances to the commission, and, if the commission fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a city election, provided that such powers shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, or salaries of city officers or employees.

Section 6.02. Referendum.

The voters of the city shall have power to require a reconsideration by the commission of any adopted ordinance and, if the commission fails to repeal an ordinance so reconsidered, to approve or reject it at a city election, provided that such power shall not extend to the budget or capital program, any emergency ordinance, or ordinance relating to appropriation of money, levy of taxes, or appointment or salaries of city officers or employees.

Section 6.03. Recall.

The voters of the city shall have the power to recall or remove from office any elected official or officials of the city, for the reasons and in the manner set forth in the General Laws of the State of Florida, and more particularly section 100.361, Florida Statutes, including any amendments thereto.

Section 6.04. Commencement of proceedings.

Any five voters may commence initiative or referendum proceedings by filing with the city clerk or other official designated by the commission an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses, specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioners' committee is filed, the clerk or other official designated by the commission shall at the committee's request issue the appropriate petition blanks to the petitioners' committee at the committee's expense.

Section 6.05. Petitions.

- (a) *Number of signatures.* Initiative or referendum petitions must be signed by voters of the city equal in number to at least ten percent of the total number of voters registered to vote in the last regular city election.
- (b) *Form and content.* All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (c) *Affidavit of the circulator.* Each paper of a petition shall have attached to it, when filed, an affidavit executed by the circulator thereof stating: That the circulator

personally circulated the paper; the number of signatures thereon; that all the signatures were affixed in circulator's presence; that the circulator believes them to be the genuine signatures of the persons whose names they purport to be; and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

- (d) *Time for filing referendum petitions.* Completed referendum petitions must be filed within 90 days after the effective date of the ordinance sought to be reconsidered.

Section 6.06. Procedure to filing.

- (a) *Certificate of city clerk; amendment.* Within 20 days after the initiative or referendum petition is filed, the city clerk or other official designated by the commission shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is insufficient and shall promptly send a copy of the certificate to the petitioner's committee by registered mail. Grounds for insufficiency are only those specified in section 6.05 hereof. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend with the city clerk or other official designated by the commission within two working days after receiving the copy of the city clerk's certificate and files a supplementary petition within ten days after receiving the copy of such certificate. The supplementary petition shall comply with the requirements of subsections (b) and (c) of section 6.05 hereof and within five days after it is filed the city clerk or other official designated by the commission shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioner's committee by registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient, or if a petition or amended petition is certified insufficient and the petitioner's committee does not elect to amend or request commission review under subsection (b) of this section within the time required, the city clerk or other official designated by the commission shall promptly present the certificate to the commission and the certificate shall then be a final determination as to the sufficiency of the petition.
- (b) *Commission review.* If a petition has been certified insufficient and the petitioner's committee does not file a notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two working days after receiving the copy of such certificate, file a request that it be reviewed by the commission. The commission shall within 30 days review and approve or disapprove it, and the commission's determination

shall then be a final determination as to the sufficiency of the petition.

Section 6.07. Referendum petitions; suspension of effect of ordinance.

When a referendum petition is filed with the city clerk or other official designated by the commission, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (a) There is a final determination of insufficiency of the petition, or
- (b) The petitioners' committee withdraws the petition, or
- (c) The commission repeals the ordinance, or
- (d) Tabulation of the ballots cast by the voters of the city on the ordinance has been certified and repeal of the ordinance has failed.

Section 6.08. Action on petitions.

- (a) *Action by commission.* When an initiative or referendum petition has been determined sufficient, the commission shall promptly consider the proposed initiative ordinance in the manner provided in article II or reconsider the referred ordinance by voting its repeal. If the commission fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the city.
- (b) *Submission to voters.* The vote of the city on a proposed or referred ordinance shall be held not less than 90 days and not later than 150 days from the date that the petition was determined sufficient. If no regular city election is to be held within the period prescribed in this subsection, the commission shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the commission may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.
- (c) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the 15th day preceding the day scheduled for a vote of the city by filing with the city clerk or other official designated by the commission a request for withdrawal signed by at least four members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 6.09. Results of election.

- (a) *Initiative.* If a majority of the voters voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as an ordinance of the same kind adopted by the commission except that it may not be repealed until after the next regular city election. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- (b) *Referendum.* If a majority of the voters voting on a referred ordinance vote against the referred ordinance, it shall be considered repealed upon certification of the election results and may not be reenacted in substance until after the next regular city election.

(Ord. No. 6375-99, § 4, 1-21-99/3-9-99)

ARTICLE VII. GENERAL PROVISIONS

Section 7.01. Charter amendment.

- (a) *Initiation by ordinance.* In addition to charter amendments otherwise authorized by law, the commission may, by ordinance, propose amendments to any part or all of this charter, except article I, section 1.02, prescribing boundaries, and upon passage of the initiating ordinance shall place the proposed amendment to a vote at the next general election held within the city or at a special election called for such purpose.
- (b) *Initiation by petition.*
1. The voters of the city may propose amendments to this charter, except article I, section 1.02, prescribing boundaries, in the manner set forth in article VI, section 6.05(a) -- (c).
 2. Upon certification of the sufficiency of the petition by the city clerk, the commission shall place the proposed amendment to a vote of the voters at the next general or special election held not less than 90 days nor more than 150 days after certification.

Section 7.02. Charter review advisory committee.

The commission shall appoint a charter review advisory committee in January, 1994, and at least every five years thereafter provided the appointments are made in January of a year preceding a city election. The charter review advisory committee shall be composed of not less than ten members. It

shall review the existing charter and make recommendations to the commission for revisions thereto.

ARTICLE VIII. NOMINATIONS AND ELECTIONS

Section 8.01. Qualified voters.

Any person who is a resident of the city who has qualified as a voter of Florida, and Pinellas County, and who registers in the procedural manner prescribed by law, shall be a qualified voter of the city.

Section 8.02. Nonpartisan elections.

All nominations and elections for commission shall be conducted on a nonpartisan basis without regard for or designation of political party affiliation of any nominee on any nomination petition or ballot or political advertisement under the control of the candidate.

(Ord. No. 6375-99, § 5, 1-21-99/3-9-99)

Section 8.03. Form of ballots.

The commission shall by ordinance prescribe the form of the ballot and the method conducting all elections of the city..

- (a) *Commission ballots.* Candidates for seats on the commission shall be grouped according to the seat number for which they are candidates. Within each group, names shall be placed on the ballot alphabetically. No candidate may seek election to more than one seat in any election.
- (b) *Charter amendment.* A charter amendment to be voted on by the voters of the city shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot title shall appear the following question: "Shall the above described (ordinance) (amendment) be adopted?" Immediately below such question shall appear, in the following order, the word "yes" and also the word "no" with a location thereafter to indicate the voter's choice.

Section 8.04. Nominations.

The names of candidates for commission shall be placed upon the ballot by the filing of a written notice of candidacy with the city clerk at such time and in such manner as may be prescribed by ordinance. The ordinance shall require the payment of a qualifying fee in the amount of \$50.00. The candidate shall submit petition cards from not less than 250 city voters.

The qualifying fee and petition cards are to be received by the city clerk not more than 60 days nor less than 46 days prior to the date of the election. The notice must designate the number of the seat for which the candidate is seeking election. All applications shall be accompanied by an affidavit that the candidate is a voter of the city and has been a resident of said city continuously for at least one year immediately prior to the filing of the notice of candidacy. Where only one candidate qualifies for nomination to a seat on the commission, then no general election shall be held with respect to the seat and the candidate shall be declared elected to the seat.

Section 8.05. Elections.

- (a) *Commission positions.* All members of the city commission shall be elected at large. The candidate receiving the largest number of votes among the candidates for that seat shall be elected.
- (b) *Regular elections.* Regular city elections shall be held on the second Tuesday in March of each year in which a commission term expires.
- (c) *Special elections.* Special municipal elections may be called by the commission at any time for such purposes as are authorized by law.
- (d) *Canvassing board.* The commission shall meet as a canvassing board within 24 hours after the closing of the polls in any municipal election and shall canvass the election returns except when such election is held in conjunction with an election conducted by Pinellas County, in which case certification of the returns by the county canvassing board may be accepted as the certification of the municipal election returns.

Section 8.06. Candidate vacancy.

If the death, withdrawal or removal from the ballot of a candidate occurs after the end of the qualifying period and leaves fewer than two candidates for an office, then the qualifying period shall be extended to the latest date on which a name can be added to the ballot. If a name cannot be added to the ballot, the remaining candidate shall be declared elected.

ARTICLE IX. FISCAL MANAGEMENT PROCEDURE

The fiscal management procedure shall include provisions relating to the operating budget, capital budget, and capital program, providing for hearings on the budget, capital budget, and capital program and the amendment of the budget following adoption. The ordinance shall contain a provision requiring that revenue bonds for projects in excess of one million dollars be put to referendum with the exception of revenue bonds for public health, safety or industrial development and revenue bonds for refunding.

ARTICLE X. TRANSITION SCHEDULE

Section 10.01. Continuation of former charter provisions.

All provisions of Chapter 9710, Special Acts of 1923, Florida Legislature, as amended by special law or otherwise, which are not embraced herein and which are not inconsistent with this charter shall become ordinances of the city subject to modification or repeal in the same manner as other ordinances of the city.

Section 10.02. Ordinances preserved.

All ordinances in effect upon the adoption of this charter to the extent not inconsistent with it, shall remain in force until repealed or changed as provided herein.

Section 10.03. Rights of officers and employees.

Except as is specifically provided herein, nothing in this charter shall affect or impair the rights or privileges of persons who are city officers or employees at the time of adoption. City commissioners shall continue to hold their offices until their successors are elected.

Section 10.04. Pending matters.

All rights, claims actions, orders, contracts and legal or administrative proceedings involving the city shall continue except as modified pursuant to the provisions of the charter.

Section 10.05. Schedule.

- (a) *Effective date.* Article VIII of this charter shall take effect immediately upon passage of this charter. Term limits as specified in Section 2.03 shall become effective for elections after 1994.
- (b) *Time of taking full effect.* This charter shall be in full effect for all purposes on and after approval by a majority of the electors voting in a valid election to be called for such purpose, and upon being filed with the secretary of state.

Appendix Part 2

SPORTS FACILITY
USE AGREEMENT

by and among

THE CITY OF CLEARWATER, FLORIDA

and

THE PHILLIES

I hereby certify that this is a true and
correct copy of the original as it appears
in the files of the City of Clearwater.
Witness my hand and official seal of
the City of Clearwater.
This 15th day of February, 2021
Susan Stephenson
Deputy City Clerk

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EXHIBITS

EXHIBIT A Expedited ADR

SPORTS FACILITY USE AGREEMENT

THIS SPORTS FACILITY USE AGREEMENT (the "Agreement") is made and entered into as of December 31, 2000, by and among THE CITY OF CLEARWATER, FLORIDA, a municipal corporation ("City") and THE PHILLIES, a Pennsylvania limited partnership ("The Phillies").

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 Club. The Phillies owns the Philadelphia franchise for a MLB club in the National League of Professional Baseball Clubs.

1.2 Economic and Industrial Development. The City may in accordance with applicable Florida law engage in economic and industrial development activities (such as those contemplated by this Agreement) which improve the condition of the residents and businesses of the City, which contribute to the overall economic condition of the City as a whole, and which may provide jobs for residents of the City as well as providing recreational and entertainment activities for the use and enjoyment of the residents of the City.

1.3 Intergovernmental Agreement. The City and The Phillies believe that conducting The Phillies' MLB Spring Training Season games in Clearwater will create significant economic, recreational, cultural and other benefits to Clearwater and to Pinellas County. For the foregoing reasons, the City is concurrently herewith entering into an intergovernmental agreement with Pinellas

County for funding of a portion of the costs of the development of the Sports Facility as contemplated by the SFDA. In addition, the City has represented to The Phillies and The Phillies acknowledge that the City has represented to it that the City is unable to finance the public sector costs of the Sports Facility but for the assistance and cooperation of and providing of funds by other Public bodies.

1.4 Spring Training Season. The Phillies is willing to conduct its home Spring Training Season activities at the Sports Facility, on the terms set forth in this Agreement.

1.5 Public Interest. The City finds that this Agreement is in the public interest and that the public funds are to be expended for a public purpose.

2. Definitions.

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

2.1 "Affiliate" or "Affiliated" of any Person (the "Subject Person") means any other Person who (i) controls, is directly or indirectly controlled by, or is under common control with, the Subject Person; or (ii) is a general partner, officer or director of the Subject Person or of any Person described in clause (i) above.

2.2 "Civic Event" means an event (which may, but need not, be a Revenue Event) held at the Sports Facility which is for charitable, community or civic purposes, the net ticket revenues from which, if any, may be distributed only to a charitable, community or civic organization.

2.3 "Claim" shall have the meaning set forth in Section 13.3.

2.4 "Club" means the MLB franchise owned by The Phillies, or successors thereto.

2.5 "Commercial Space" means the space and facilities in the Sports Facility that are described as such in the Scope of Work.

2.6 "Consulting Engineer" means a qualified consulting engineer mutually selected and equally paid by the parties, as provided in Section 9.2 hereof.

2.7 "CPI Index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers specified for "All Items" for Tampa, St. Petersburg and Clearwater, Florida published by the Bureau of Labor Statistics of the United States Department of Labor (1982 - 84 =100). If the method by which such index is calculated is hereafter substantially changed, appropriate adjustments will be made by the parties to produce results approximating as nearly as possible the results which would have been obtained absent such change. A change in the base year shall be deemed such a substantial change. If the index is no longer published or otherwise becomes unavailable to the public, a reasonable substitute index shall be mutually agreed upon by the City and The Phillies.

2.8 "CPI Adjustment" shall have the meaning set forth in Section 6.1.

2.9 "Concession Facilities" means these portions of the Sports Facility (other than the Commercial Space), used for the preparation, storage, display and sale of food, beverages, merchandise and other products at events.

2.10 "Default" shall have the meaning set forth in Section 17.1.

2.11 "Defaulting Party" shall have the meaning set forth in Section 17.1.

2.12 "Default Rate" means an annual rate of interest equal to the prime rate of interest charged from time to time by Citibank (or some other bank agreed upon by the parties) plus one and one-half percent but in no event greater than the amount permitted by Chapter 218, Part VII, Florida Statutes. As used in the preceding sentence, the "prime rate of interest charged from time to time by Citibank shall mean the rate of interest announced from time to time by Citibank for loans to its commercial customers with the highest credit rating.

2.13 "Disaster Staging Uses" shall have the meaning set forth in Section 5.5.

2.14 "Environmental Laws" means any and all currently existing or subsequently enacted or effective federal, state, and local laws, statutes, codes, rules, regulations, ordinances, orders, standards, permits, licenses and requirements (including, but not limited to, consent decrees, judicial decisions and administrative orders) and any amendments, implementing regulations and reauthorizations thereto in effect during the Term regulating, dealing with, pertaining to or imposing liability or standards of conduct concerning the use, exposure, generation, manufacture, transportation, treatment, storage, disposal, emission, release, discharge, remediation or abatement of hazardous substances, or the preservation, conservation or regulation of the environment.

2.15 "Event" means a Phillies Event, a Partnership Event or a Civic Event.

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

2.17 "Fields" means collectively the three baseball playing fields within the Sports Facility.

2.18 "Force Majeure" shall have the meaning set forth in Section 19.4.

2.19 "Grapefruit League" means the collection of MLB clubs that conduct their spring training operations in the State of Florida and who play exhibition games among each other during the spring training season, which collection is commonly known and referred to as the Grapefruit League.

2.20 "Home Game" means every regularly scheduled Grapefruit League exhibition game to be played between the Club and a MLB team during the Spring Training Season of each year during the Term (exclusive of so-called "B games"), including split-squad games, as to which the Club is designated as the home team. (For this purpose, the term "B game" shall mean the one game

of two, that are played by The Phillies on the same day for which no admission is charged and which may be played either at the Stadium or at another location, such as the Carpenter Complex.

2.21 "Improvements" means the Stadium, and all other improvements to real property now or hereafter located on the Site, including, without limitation, all improvements described in the Scope of Work and the Site Plan.

2.22 "Legal Requirements" means all federal, state, county, municipal 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 Sports Facility.

2.23 "Luxury Suites" means the private suites identified as such on the Scope of Work.

2.24 "Minor League Affiliate" means any minor league team which has a player development agreement with or is an Affiliate of The Phillies.

2.25 "MLB" means Major League Baseball or any successor or substitute association or other entity which engages in professional baseball competition comparable to Major League Baseball, of which The Phillies is or becomes a member.

2.26 "MLB Agreements" means the following governing documents and agreements, as they may be amended from time to time: the Major League Constitution, the Major League Rules, the Major League Agreement, the Major League Central Fund Agreement, the collective bargaining agreement between the MLB and the MLB Players Association, the directives, rules and bulletins from the National League of Professional Baseball Clubs and/or the Office of the Commissioner of MLB and the Professional Baseball Leagues Agreement and any future MLB instruments or

requirements which may govern The Phillies and/or with respect to which The Phillies is required to comply.

2.27 "Non-Defaulting Party" shall have the meaning set forth in Section 17.1.

2.28 "Office Space" means the space in the Sports Facility provided to The Phillies for office purposes, as shown in the Scope of Work.

2.29 "Offset Amount" means for each calendar year during the Term the sum of (i) all reimbursements by The Phillies' relating to field maintenance supplies, as contemplated by Section 9.1; (ii) The Phillies Utilities Share; and (iii) all Sports Facility operating and maintenance labor costs paid by The Phillies.

2.30 "Partnership Event" shall have the meaning set forth in Section 5.4.

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

2.32 "Phillies Event" means an Event conducted by or for The Phillies at the Sports Facility, including without limitation MLB and Minor League baseball games, but excluding Partnership Events and Civic Events.

2.33 "Phillies Exclusive Use Areas" means the Office Space and any other spaces (such as the weight training rooms) identified as such in the Scope of Work.

2.34 "Phillies Maintenance Obligations" shall have the meaning set forth in Section 9.1.

2.35 "Phillies Possessory Tax Share" shall have the meaning set forth in Section 11.1.

2.36 "Phillies Users" shall have the meaning set forth in Section 5.

2.37 "Phillies Utilities Share" shall have the meaning set forth in Section 8.2.

2.38 "Public Uses" shall have the meaning set forth in Section 5.2.

2.39 "Revenue Event" means any use of the Sports Facility for concerts, plays, pageants or other revenue producing events unrelated to MLB or minor league baseball, for which a paid admission is required to attend.

2.40 "Satisfaction Date" shall have the meaning set forth in Section 20.3.

2.41 "Scope of Work" means the schematic drawings and program narrative set forth in an Exhibit to the SFDA.

2.42 "SFDA" means the Sports Facility Development Agreement to be entered into between the City and The Phillies, pursuant to which The Phillies will construct the Sports Facility on the Site on behalf of the City.

2.43 "Site" means the land area described in the Site Plan.

2.44 "Site Plan" shall mean the Exhibit to the SFDA designated as the Site Plan.

2.45 "Sports Facility" means the Site and all Improvements now or hereafter located on it as described in the Scope of Work and the Site Plan and all personal property used in connection therewith other than personal property owned by The Phillies.

2.46 "Sports Facility Manager" shall mean City's Park & Recreation Director or his or her designee.

2.47 "Spring Training Season" shall mean the period in each calendar year in which spring training activities are customarily conducted for MLB teams, which period currently commences on or about February 15 of each year and ends on or about March 31 of each year.

2.48 "Stadium" means the baseball stadium building located in the Sports Facility where Home Games are to be played by The Phillies, including (in addition to the stadium building itself)

the public Parking Lots adjacent to the stadium building, and all landscaped areas and other improvements to real property related to the stadium building, all as more fully described in the Scope of Work and the Site Plan.

2.49 "Term" shall have the meaning set forth in Section 3.1.

3. Term.

3.1 Initial Term. The initial term of this Agreement shall commence ("Commencement Date") on the later of (i) January 1, 2003 or (ii) the date on which the entire Sports Facility is "Complete" (as defined in the SFDA) and shall end on December 31 of the year in which occurs The Phillies' twentieth full Spring Training Season at the Sports Facility . The "Term" shall mean the initial term as such term may be extended, renewed or terminated as provided for in this Agreement.

3.2 Rights of The Phillies Prior to Commencement Date. This Agreement becomes effective as of the date hereof. Prior to the Commencement Date, The Phillies shall have all rights hereunder necessary or convenient to enable The Phillies to prepare for its operations at the Sports Facility during the Term and to the exercise of the approvals and consents granted to it hereunder and under the SFDA, including, without limitation, the right to enter onto the Sports Facility. The Phillies' rights, obligations, and duties pursuant to Section 13 shall be applicable to any such activities of The Phillies at the Sports Facility prior to the Commencement Date.

3.3 Options to Renew. The Phillies shall have, and the City hereby grants to The Phillies, the option of renewing this Agreement and of extending the initial term for an additional five-year period, on the same terms as are set forth in this Agreement. That option shall be exercisable by The Phillies by written notice to the City not less than one year prior to the then scheduled expiration of the Term; provided that the option may not be exercised at a time when The Phillies are in Default

hereunder. If The Phillies duly exercise that option and if the parties hereto shall thereafter so agree, this Agreement may be extended for three additional five-year periods, on such terms as may be contained in such future agreements to extend.

3.4 Jack Russell Stadium Lease. The lease between the City and The Phillies relating to Jack Russell Stadium, as heretofore and hereafter amended, shall, without further act or deed, end on the Commencement Date, as if the Commencement Date had been expressly fixed in that lease as the last day of the term thereof.

4. Certain Covenants of the Parties.

4.1 Ownership of Sports Facility. The City covenants and agrees that, at all times during the Term, the Sports Facility will be owned by the City, with complete and sufficient right to make use of the Sports Facility available to The Phillies on the terms and with the rights herein provided, subject only to restrictions of record as of the date hereof as reflected in the title report delivered by the City pursuant to the SFDA. This Agreement does not create or grant any real property interest or similar right, title or interest in the Sports Facility to The Phillies or any of its Affiliates.

4.2 Delivery of the Sports Facility. Subject to the timely completion of all actions required of The Phillies under the SFDA, the City covenants and agrees to make the Sports Facility available for The Phillies' use on the Commencement Date, in a new, clean and completed condition, and that the Sports Facility, in its condition as existing on the Commencement Date, shall be in full compliance with all applicable Legal Requirements then in effect, all in accordance with the SFDA.

4.3 Home Field Commitment. Subject to Force Majeure and the requirements of any MLB Agreements and so long as City is not in Default, The Phillies covenants and agrees that it shall, during the Term, utilize the Stadium as its "home field" for all Home Games; provided,

however, nothing contained herein shall limit The Phillies' right to be occasionally designated and act as home team for games at venues other than the "home field" of either participating team (recent examples of which have been games played in Las Vegas and Seattle).

4.4 Florida State League Commitment. Subject to Force Majeure and the requirements of any MLB Agreements and so long as the City is not in Default, The Phillies covenants and agrees that it will during the Term cause a Minor League Affiliate in the Florida State League to play its regularly scheduled home games at the Sports Facility during the first three full Florida State League seasons following the commencement of the Term.

4.5 Environmental Laws Indemnity. The City covenants and agrees to indemnify, defend and hold harmless The Phillies from any liabilities arising under the Environmental Laws from the use of the Sports Facility by Phillies Users as contemplated by this Agreement, except to the extent such liabilities may be caused by the wrongful or negligent act of a Phillies User.

5. Use of Sports Facility. The exclusive right to use the Sports Facility shall throughout the Term be vested solely in The Phillies and its Affiliates and its and their partners, officers, employees, licensees, franchisees, independent contractors and permittees ("Phillies Users"), subject only to the limitations and exceptions hereinafter in this Section specifically set forth.

5.1 Phillies Use. The Phillies Users may use the Sports Facility only for the following purposes:

5.1.1 For all MLB Spring Training Season operations, including without limitation playing Home Games, so-called "B games" and intra-squad games and training and player development activities.

5.1.2 For all Minor League spring training season operations, including without limitation playing home games and intra-squad games and training and player development activities.

5.1.3 For all Minor League regular season operations, including without limitation playing Florida State League and Gulf Coast League home games and intra-squad games and training and player development activities, and any Minor League playoff and championship games and Minor League all-star games.

5.1.4 For all Florida Instructional League operations, including without limitation home games and intra-squad games and training and player development activities.

5.1.5 For all MLB and Minor League "mini-camp" operations, including without limitation intra-squad games and training and player development activities.

5.1.6 For all baseball fantasy camp, youth camp, youth instructional and like activities.

5.1.7 To use the Office Space for any office uses, in the pursuit of any aspect of the business and operations of the Phillies Users whatsoever.

5.1.8 To use the Commercial Space as a restaurant/sports bar, souvenir/sporting goods store and/or other synergistic uses open to the general public.

5.1.9 For Phillies Events.

5.1.10 For Civic Events sponsored by The Phillies, alone or with the City.

5.1.11 For any other lawful purpose directly or indirectly related to any of the foregoing uses.

5.2 Public Uses. Subject to Section 5.3, City shall have the right to authorize use of the Sports Facility for these, and only these purposes (the "Public Uses"):

5.2.1 For baseball and softball games played without an admission charge by St. Petersburg Junior College, Clearwater's two public high schools and youth baseball and like organizations; provided, however, that the user shall reimburse The Phillies for the cost of The Phillies Maintenance Obligations allocated to such games played other than by St. Petersburg Junior College and Clearwater High School.

5.2.2 For any other Civic Events proposed by the City and approved by The Phillies, such approval not to be unreasonably withheld.

5.2.3 For Partnership Events, at the rate of up to twelve per calendar year during the Term.

5.2.4 For Disaster Staging Uses.

5.3 Limitations on Public Uses. The Public Uses shall be subject to the following limitations:

5.3.1 Public Uses shall be limited to those areas of the Sports Facility that are necessary and appropriate therefor in each instance and in no event shall use be made of the Phillies Exclusive Use Areas (of which The Phillies are hereby granted the exclusive right to use). Whether the Commercial Space and/or the Concession Facilities shall be operated during Events which constitute Public Uses (any such operations to be effected solely by The Phillies and/or any concessionaire of The Phillies) shall be determined by The Phillies at its discretion; provided, however, that when requested by the City in respect of any Events which constitute the Public Uses where attendance is reasonably projected to exceed 200, Concession Facilities shall be opened by

The Phillies, to the extent that The Phillies deem appropriate, based on a reasonable estimate of attendance,

5.3.2 The City shall make mutually satisfactory arrangements in advance with The Phillies, for The Phillies to provide (but at the expense of the City) appropriate staffing and operations during each Event which constitutes a Public Use, such as ticket takers, ushers, parking attendants, food and beverage preparers and servers, security and paramedical personnel.

5.3.3 Each Public Use maybe scheduled only at a time that is reasonably acceptable to The Phillies, it being understood that each of the uses specified in Sections 5.1.1 through 5.1.6 inclusive shall have absolute scheduling priority over every Public Use, except Disaster Staging Uses.

5.3.4 Each Public Use (other than those provided for in Section 5.2.1 and 5.2.4) shall be subject to The Phillies' prior approval, which may be withheld by The Phillies only if in its reasonable judgment conducting the Public Use at the Sports Facility would risk damage to the playing fields or cause unreasonable wear and tear to structures or, in the reasonable judgment of The Phillies, be inconsistent with the image of MLB and The Phillies.

5.4 Partnership Events. The City shall be responsible at its expense to book, manage and conduct significant Kevenue Events at the Sports Facility, at a rate of at least six but not more than twelve per calendar year throughout the Term (each, a "Partnership Event"). For purposes hereof, a "significant Revenue Event" shall mean an Event, the reasonably anticipated net revenues from which are expected to be not less than \$15,000 (in 2003 dollars, subsequently adjusted by the CPI). The Phillies shall be responsible for ticket taking, food and beverage, merchandise and broadcasting

operations **only**, at prices set by The **Phillies** subject to the City's **approval, not to be unreasonably withheld.**

5.5 Disaster Staging Uses. The City may, in each instance of actual or imminently threatened natural disaster, use the Sports Facility as a staging area for disaster preparations, response or other related uses ("Disaster Staging Uses"), provided that (i) there will not be any cost to The **Phillies** and (ii) the City will immediately restore any resulting damage to the playing field or any other element of the Sports Facility caused as a result of the Disaster Staging Use. (Any loss caused by the natural disaster, as opposed to the City's Disaster Staging Use, is governed by Section 14 hereof.) The City shall not be responsible to The **Phillies** for any loss of revenue or consequential damages resulting from Disaster Staging Uses, except any attributable to its failure to duly effect any such restoration and restore full use of the Sports Facility to The **Phillies** immediately following the end of the disaster.

6. Use Fee. From and after the Commencement Date, The **Phillies** shall pay, in arrears, a use fee to the City at the rate of \$70,000 per calendar year during the Term, subject to adjustment pursuant to Section 6.1 (as so adjusted, the "Use Fee") and to offset pursuant to Section 6.2. The Use Fee for each calendar year during the Term shall be payable by March 31st of the following year.

6.1 Adjustment. The Use Fee for the second and each subsequent full calendar year during the Term shall be subject to an adjustment (a "CPI Adjustment"), for any change in the CPI Index between that for December of the year prior to the first such full calendar year and ~~that~~ for December of the year prior to the calendar year with respect to which the calculation is being made.

6.2 Offset. The **Phillies** may offset against and deduct from the Use Fee payable in respect of any whole or partial calendar year during the Term, the Offset Amount attributable to that period.

7. Revenues. Except as otherwise specifically provided in this Section 7, The **Phillies** alone shall be entitled to retain all revenues generated on and from the Sports Facility during the Term from all sources whatsoever, including by way of illustration but not limitation, all ticket, premium seating, luxury suite, food and beverage, **signage**, merchandise, broadcasting, sponsorship and parking revenues and all revenues from the operation of the Commercial Space and fantasy camps.

7.1 Revenues from Partnership Events and Civic Events. All ticket, food and beverage, merchandise, parking and broadcasting revenues generated on and from the Sports Facility (excluding only revenues derived from the Luxury Suites and the Commercial Space) attributable to each Partnership Event and each Civic Event, net of the direct incremental cost to The **Phillies** of operating and maintaining the Sports Facility (excluding the Luxury Suites and the Commercial Space) attributable solely to such use (which shall not include administrative or overhead costs or the like or any utility charges or other costs that would have been incurred irrespective of such use) will be: (i) in the case of Partnership Events, shared equally by The **Phillies** and the City; and (ii) in the case of Civic Events, will be retained by The **Phillies** (except for any net ticket revenues, which shall be distributed by The **Phillies** to the appropriate charitable, community or civic organization), in each case within thirty days following the Event. The **Phillies** shall institute a method of accounting for the collection and calculation of the net revenues collected in respect of Partnership Events and Civic Events and shall furnish to the City appropriate accounting statements in respect of such Events, which shall be prepared in accordance with **generally** accepted accounting

principles. The City may, upon reasonable notice and during normal business hours, examine, inspect and copy the books and records of The **Phillies** pertaining to such net revenues and, at its own expense, cause an audit to be performed of such pertinent books and records,

7.2 Naming Rights. The City hereby grants to The **Phillies** the power and authority from time to time during the Term to assign or license to a third party the right to name (i) all (e.g. “ABC Sports Facility” or “DEF Stadium”) or (ii) portions (e.g. “GHI Bullpen” or “JKL Pavilion”) of the Sports Facility and to retain all net proceeds therefrom, The term “net proceeds” for this purpose means the gross proceeds from the assigning or licensing of such naming rights less any direct costs associated with conducting the naming process and, in cases where any additional benefits (e.g. suite usage, tickets, stadium **signage**, advertising etc) may be included as part of the naming rights package and not separately priced, then the fair market value of such additional benefits shall also be deducted. The City shall have the right to disapprove any such name only, if in the City’s reasonable judgment, such name is inconsistent with a wholesome public image for the Sports Facility. The net proceeds from any naming of the whole Stadium or the Sports Facility referred to in clause (i) (but not from any naming of portions thereof, as referred to in clause (ii)) shall be shared as follows: two-thirds to The **Phillies** and one-third to the City.

7.3 Signage During Partnership and Civic Events. Temporary signs identifying and promoting participants in or sponsors of **Partnership** Events or Civic Events may be displayed during the Event, provided, however, that: (i) no such **signage** shall relate to a product, service or Person which competes with the Person (or that one Person from time to time designated by The **Phillies**, at any time or times when there may be more than one such Person) for which all or any part of the Sports Facility is named or with that Person’s products or services or with any products or services

designated by The **Phillies** as falling within either of up to two exclusive **product categories** (e.g. soft drinks, beer, banking etc) for the Sports Facility; (ii) no such display may obscure fixed **signage** then located in the **Sports Facility**; and (iii) the City shall be responsible at its expense for the removal thereof immediately upon conclusion of the Event.

8. Operation of the Sports Facility. Subject to Section 5.5, The **Phillies** shall have the sole right and obligation to operate the Sports Facility during the Term (which it shall do in a first-class manner and in compliance with all applicable Legal Requirements), including without limitation, the right and obligation to perform any ticket taking, food and beverage, merchandising, parking and broadcasting operations.

8.1 Operating Staff. The **Phillies** shall employ or retain all Persons necessary to discharge its operating responsibilities and shall bear the expense of their compensation.

8.2 Utilities. All electric, gas, water, sanitary sewer, storm sewer and trash disposal service provided to and **used at** the Sports Facility during the Term will be contracted for and either paid by the City or shall be provided by the City. The **Phillies** will reimburse the City for twenty-five percent of the total cost thereof as incurred by the City and at the rate charged to similar users, in the case of utilities supplied by the City, payable within thirty days of each monthly bill **therefor** from the City, accompanied by evidence of payment **and/or** of such rates so charged (such twenty-five percent reimbursements are herein referred to as the “Phillies Utilities Share”)

8.3 Parking. **In** addition to operating all parking areas at the Sports Facility, The **Phillies** shall have the right to make arrangements for **offsite** parking for Events at the Sports Facility, including without limitation at the Carpenter Sports Facility, St. Petersburg Junior College and under the Florida Power Corporation right of way. For each Home Game, The **Phillies** will engage such

civic organization that the City shall propose (subject to The Phillies' approval, not to be unreasonably withheld) to staff the public parking areas at the Sports Facility and at any utilized offsite parking areas. The Phillies will pay to that organization for such services an honorarium of \$1,250 per Game, which figure shall be subject to a CPI Adjustment.

8.4 City Services. City will provide all appropriate City services at appropriate levels of coverage for all Events," including without limitation, police surrounding the Sports Facility for security and traffic control purposes and to prevent scalping and unauthorized sale of merchandise at the Sports Facility and paramedical services. (For this purpose, "scalping" shall mean the selling of tickets for more than \$1 above face amount, and the "unauthorized sale of merchandise" shall mean the sale of goods by a Person who has not been authorized by The Phillies to make such sales and the sale of unlicensed goods, whenever a license is required for such sale to be given by The Phillies, MLB or other holders of the marks embodied on such goods.) The Phillies will provide necessary security and paramedical services within the Sports Facility.

9. Maintenance and Repair of Sports Facility. The following provisions govern the maintenance and repair of the Sports Facility.

9.1 Phillies Cleaning and Maintenance Obligations. The Phillies shall have the obligation to keep the Sports Facility clean and to provide light housekeeping (e.g. changing bulbs, towels, etc) for the interior areas of the Sports Facility. The Phillies shall be responsible for the ordinary and customary day-to-day maintenance of the following (and only the following) portions of the Sports Facility: (i) the playing fields, (ii) the Phillies Exclusive Use Areas, (iii) the Luxury Suites, and (iv) the Commercial Space (together, the "Phillies Maintenance Obligations"). The City shall acquire for and supply to The Phillies all field care (e.g. clay, sod, sand, fertilizer and chemicals) and other

supplies necessary for The **Phillies** to discharge the **Phillies Maintenance Obligations** relating to the playing fields, and The **Phillies** shall reimburse the City for its **actual** out-of-pocket costs therefor. Notwithstanding anything herein to the contrary, any City **employee** providing City Services to the Sports Facility shall be operating under the direction and control of the City, and shall be subject to any applicable City rule, regulation or policy, provided however, that The **Phillies** may directly engage City employees during the off-duty time, in which case such City employees shall be deemed to operate under The **Phillies** control.

9.2 City Maintenance. Repair etc. Obligations. Except for The **Phillies** Maintenance Obligations, the City shall have the obligation to provide all maintenance, repairs, restorations, refurbishments and replacements, whether interior or exterior, structural or non-structural, routine or extraordinary, ordinary or capital in nature, as shall be necessary to keep the Sports Facility clean, safe and in good order, condition and repair, and in compliance with all applicable Legal Requirements and in first class condition and up to first class MLB spring training stadium standards at the time of reference, provided however, that (subject to Sections 14 and 15 hereof) this obligation shall not operate to require the City to construct a new Sports Facility, or to substantially reconstruct the Sports Facility during the Term hereof. The Consulting Engineer shall annually determine which capital repairs, restorations, refurbishments and replacements are needed to be done currently and which capital repairs, restorations, refurbishments and replacements shall be scheduled to be done in the future, and when. The costs of the Consulting Engineer shall be borne equally by The **Phillies** and the City. The determinations of the Consulting Engineer shall be conclusive on both the City and The **Phillies**.

9.3 Upgrading of the Sports Facility. The City shall **from** time to time, as needed, upgrade, modernize and otherwise improve the Sports Facility so that during the Term of this Agreement, the Sports Facility shall not only meet all **applicable MLB** standards but shall, in addition, include that level of amenities and technological facilities as is comparable at the time of reference to those of first class MLB spring training facilities of comparable age (such as Roger Dean Stadium in Jupiter, FL, City of Palms Park in Ft. Myers, FL and Hohokam Stadium in Mesa, AZ). Without limiting the generality of the foregoing, at such time as any technological improvements (e.g., video rooms) have been incorporated in at least two of those three comparable MLB spring training facilities, then the City shall install such technological improvements in the Sports Facility. However, this provision shall not require the City to expend monies within the last five years of the Term, unless The **Phillies** agree to (i) exercise the option to renew provided for in Section 3.3 hereof (in which event, if necessary, the one-year notice period for exercising such option shall be waived), or (ii) if the option to renew has already been exercised, The **Phillies** and the City agree to extend the Term by at least five years.

9.4 Sports Facility Manager. The Sports Facility Manager shall be responsible for the day-to-day oversight of the maintenance, repair and condition of the Sports Facility, and shall be the representative of the City with whom The **Phillies** may communicate. The Sports Facility Manager shall have authority to bind the City to the fullest extent permitted by law, provided, however, that the Sports Facility Manager shall not have the legal authority to bind the City to financial obligations without the prior approval of City's governing body.

9.5 Personnel, The City shall provide such level of qualified and properly trained personnel to perform its obligations under Section 9.2.

9.6 Capital Expenditures. The Consulting Engineer shall, by November 1 of each calendar year during the Term, submit to the parties his recommendation as to what capital repairs, refurbishments, restorations, replacements and upgrades are to be done currently and schedule those to be done in the future, which are necessary, in the judgment of the Consulting Engineer, in order for the City to fulfill its obligations under this Section 9. On December 1 of each calendar year during the Term the City shall furnish to The **Phillies** a capital expenditure schedule prepared by the City, with due regard to such recommendations, setting forth in detail the projected capital repairs and improvements expenditures scheduled for the following calendar year and shall appropriately budget any amounts necessary to do so. The **Phillies** shall be afforded the right to have input in the preparation of such schedule and it shall be subject to The **Phillies**' approval, which shall not be unreasonably withheld.

9.7 Action by The Phillies. Without limiting The **Phillies**' rights under Section 17, if The **Phillies** in good faith determines that any portion of the Sports Facility (excluding only the playing fields) is not being maintained and/or repaired by the City in accordance with the standards and requirements set forth in Sections 9.2, 9.3 and 9.6, The **Phillies** shall have the right, but not the obligation, to advance funds for or otherwise provide appropriate maintenance **and/or** repair, subject to the following provisions:

9.7.1 Notice Practicable. If practicable, The **Phillies** shall give written notice to the City specifying the nature of the required work, and the date by which The **Phillies** reasonably considers it necessary to commence such work following its receipt of such a notice:

(i) The City may commence such work prior to the date and time so specified by The **Phillies** and prosecute the same diligently to **completion**; if the City does so, The **Phillies** shall not undertake such work itself.

(ii) If the City disputes whether the requested work required to fulfill the City's obligations under this Agreement, the City shall so inform The **Phillies** in writing prior to the date and time specified by The **Phillies** in its notice. If the City gives timely notice, the dispute shall be submitted to Expedited ADR prior to the date and time specified by The **Phillies** in its notice.

(iii) If(a) the City does not commence such work prior to the date and time specified by The **Phillies** and prosecute the same diligently to completion, or (b) the City fails to give timely notice of a dispute, or (c) it is not practicable to submit the matter to Expedited ADR prior to the date and time specified by The **Phillies** in its notice, then in any such event, The **Phillies** may commence the work necessary to remedy the matter on an emergency basis and prosecute the same diligently to completion.

9.7.2 Emergency. If The **Phillies** in good faith determines that the work must be performed on an emergency basis (that is, it must be performed in order to prevent an imminent danger to health or safety or it is otherwise not practicable to give notice provided in this Section 9.7), then The **Phillies** may commence work to remedy the matter on an emergency basis and prosecute the same diligently to completion.

9.7.3 Payment to The Phillies. The City shall promptly reimburse The **Phillies** on demand for any amounts expended pursuant to this Section 9.7 (including interest at the Default Rate from the date that is 30 days after the date of demand until paid if such amount is not paid by the 45th

day following the date of demand). If the City disputes that the work was required to fulfill the City's obligations hereunder, Expedited ADR shall be convened to resolve the dispute.

(i) If and to the extent it is determined by Expedited ADR that work was not required to fulfill the City's obligations hereunder, then The **Phillies** shall not be entitled to any reimbursement for any sums expended by The **Phillies**.

(ii) If and to the extent it is determined by Expedited ADR that the work was required to fulfill the City's obligations hereunder, then the City shall immediately reimburse The **Phillies** for all sums expended by The **Phillies** on the work, plus interest at the Default Rate,

9.8 Surrender. At the termination of this Agreement, by lapse of time or otherwise, The **Phillies** shall surrender possession of the Sports Facility to the City and deliver all keys or such other access equipment or devices. In addition, The **Phillies** shall remove The **Phillies**' furniture, trade fixtures and other items of movable personal property of every kind and description from the Sports Facility and restore any damage caused thereby, such removal and restoration to be performed prior to the end of the Term or within sixty days following any earlier termination of this Agreement. If The **Phillies** fail to remove any such items, the City may do so, and The **Phillies** shall pay to the City upon demand the cost of removal and of restoring the Sports Facility. All obligations of The **Phillies** under this Section shall survive the expiration of the Term or sooner termination of this Agreement.

10. Alterations and Additions by The **Phillies**.

10.1 Minor Improvements. The **Phillies** shall have the right (following reasonable notice thereof to the City for its information only), but not the obligation, to make minor improvements to the **Phillies** Exclusive Use Areas without City's approval, consisting of any work, installation,

construction or the like which does not require a permit from any federal, state or local governmental agency (e.g., installation of additional shelving in the Office).

10.2 All Other Improvements. Except for the “minor improvements” described in Section 10.1, The **Phillies** shall not construct any improvements on or otherwise alter, change or improve any part of the Sports Facility, without the prior written consent of the Sports Facility Manager, upon such terms and conditions as he may reasonably deem necessary. Requests by The **Phillies** to construct any such improvements on or **otherwise** to alter, change or improve any part of the Sports Facility shall be presented to the Sports Facility Manager in written form and he shall act thereon within a reasonably prompt time. If the Sports Facility Manager gives his consent to The **Phillies**’ undertaking such work (which consent shall not be unreasonably withheld), the consent shall be deemed conditioned upon The **Phillies**’ acquiring any necessary permit to do so **from** applicable governmental agencies, furnishing a copy thereof to the Sports Facility Manager prior to the commencement of the work and complying with all conditions of said permit in a prompt and expeditious manner.

10.3 Ownership of Such Improvements. All improvements, alterations or other changes made by The **Phillies** to any part of the Sports Facility pursuant to this Agreement, other than that which is so affixed to the Sports Facility that it cannot be removed without material **damage** to it, shall remain the personal property or equipment of The **Phillies** and may be removed by The **Phillies** upon expiration or termination of this Agreement provided that The **Phillies** restore and repair any damage caused by the removal.

10.4 No Limitation. Nothing in this Section 10 shall in any way limit or reduce the obligation of the City to maintain the Sports Facility as provided in Section 9 and elsewhere in this Agreement.

11. Taxes.

11.1 Possessory Taxes. It is the intent of the parties that the Sports Facility (land and Improvements) shall be exempt from any and all real property ad **valorem** taxes and from payments in lieu of such taxes throughout the Term. However, should all or any part or parts of the Sports Facility become subject to any such taxes, then the parties shall each cooperate and use their respective best efforts (i) to cause Pinellas County to return its share of any such taxes and (ii) to secure legislation exempting the Sports Facility from such taxes. In the interim, The **Phillies** and the City shall each pay one-half of any such taxes, net of any City ad **valorem** real property taxes, which shall be paid by City. Any such payments by The **Phillies** are herein referred to as the “Phillies Possessory Tax Share.”

11.2 Tax Protection. The City shall throughout the Term hold The **Phillies** harmless from all other local (as opposed to Federal, State or County) taxes (except for income, sales and like taxes of general application), including without limitation amusement/ticket taxes, any increase in the sales tax rate applicable to tickets, use and occupancy taxes and surcharges on the Stadium or Sports Facility-derived revenues.

12. Insurance.

12.1 Liability Insurance.

12.1.1 Phillies Non-Property Coverage. The **Phillies** shall maintain at its expense during the Term of this Agreement the following insurance:

(i) Commercial general liability (including athletic participants coverage) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the use of the Sports Facility and all areas appurtenant to it. Such insurance shall be on an occurrence basis, providing coverage in an amount not less than \$5,000,000 per occurrence, and not less than \$5,000,000 general aggregate (per location), and not less than \$5,000,000 coverage for products and completed operations liability, and not less than \$5,000,000 coverage for personal and advertising injury, with deductibles of up to \$100,000 per person and \$200,000 per occurrence..

(ii) Statutory workers' compensation and employers' liability coverage in an amount no less than \$500,000 bodily injury each accident, \$500,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit.

(iii) Automobile liability for bodily injury and property damage arising from the use of The Phillies' owned, non-owned and hired vehicles, in an amount not less than \$5,000,000 per accident.

(iv) Garagekeepers legal liability coverage in the amount of \$1 ,000,000.

12.1.2 City's Non-Property Coverage. The City shall maintain at its expense during the Term of this Agreement the following non-property insurance:

(i) Auto Liability and General Liability: Self-Insured Level: \$100,000 per Person/\$200,000 per Occurrence self-insured retention with the statutory limits per Section 768.28

Florida Statutes. Excess Insurance: \$5,000,000 per occurrence excess insurance (no aggregate applicable) with self-insured retention of \$500,000.

(ii) Workers' Compensation: Statutory workers compensation coverage per occurrence with self-insured retention of \$500,000.

12.2 Property Coverage. The City shall maintain at its expense during the Term of this Agreement the following property related insurance:

12.2.1 Property insurance for 100% of full replacement value of the Sports Facility (including all improvements and personal property), with deductibles not exceeding \$50,000 per occurrence against loss by so-called "all risk" perils, including but not limited to fire, extended coverage, storm (including without limitation wind, flood and hurricane coverage), boiler and machinery, vandalism, malicious mischief, flood and earthquake. Such insurance is to contain a replacement cost endorsement, and endorsements eliminating any and all coinsurance provisions.

12.2.2 For any work of construction conducted on the Site by or at the direction of the City, builder's risk insurance with the same limits and coverages as set forth in Subsection 12.2.1, provided that at the City's election, such insurance may be maintained by the contractor(s) performing the construction work at the Sports Facility.

12.2.3 ~~City Property Self Insurance or Self-Funding.~~ o f t h i s Agreement to the contrary notwithstanding, while the City shall maintain insurance coverage and limits as provided for in this Agreement, parties hereto specifically agree that the City may do so by self-insurance and/or by purchase at the sole option of the City. To the extent required by the terms of this Agreement, insurance coverage and limits shall be evidenced by delivery to The Phillies of letters of self-insurance or self-funding executed by the City's Risk Manager, or by certificates of

insurance executed by either the agent for the insurers or the insurers or by copies of policy declaration pages. Such letters, certificates, and policy declaration pages shall list coverage (including the amount of insurance per claim and per occurrence, any gap in coverage, and the amount of the excess insurance) and policy limits with expiration dates and major policy terms and endorsements.

12.3 General. All insurance policies obtained pursuant to this Section 12 shall: (i) be with companies legally authorized to do business in the State of Florida and which possess a minimum rating of A- or better and a minimum class VIII financial size category (as listed at the time of issuance by A.M. Best Insurance Reports), which are reasonably acceptable to the other parties; and (ii) shall name as an additional insured each other party and such Affiliates of that party as it shall reasonably request. Upon commencement of the Term, each party shall furnish or cause to be furnished to the other party a certificate of insurance evidencing all such insurance policies. Renewal certificates shall be delivered by each party to the others at least ten days prior to the expiration of any policy of insurance. No such policy shall be cancelable or subject to reduction of coverage except after thirty days' prior written notice to all parties hereto.

12.4 Remedies. If any party fails to obtain, keep in force or provide evidence of any of the insurance policies or self-insurance coverage required by this Section 12, the other party may give written notice to the defaulting party, and the defaulting party shall have until the earlier of (i) five days after its receipt of such notice, or (ii) regardless of whether notice shall have been given, one day before the date the required insurance will lapse, to cure the default. If the default is not cured within such period, then the other parties shall have the remedies set forth in Section 17.

12.5 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 **an** incident to the perils covered by any insurance carried by the other party or which would have been carried had such other parties fulfilled their obligations hereunder to carry insurance, whether or not 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.

13. Indemnification. The indemnifications provided for in this Section 13 shall relate only to the extent that the liability in question has not produced insurance proceeds to the indemnitee.

13.1 By The Phillies. Subject to Section 12.5, The **Phillies** agrees to and will at all times defend, indemnify, save and hold the City and their Affiliates, and their respective elected officials, officers, agents, employees, 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 attorney's fees, costs of investigation and discovery, and **all** court costs, arising out of:

13.1 .1 Injury to or death of persons (including personnel or employees of the City or The Phillies), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of any willful and wanton or grossly negligent act or omission of The **Phillies** or any Affiliate of The **Phillies** or any of their respective agents, officers or employees, in connection with the operation or use of the Sports Facility.

13.1.2 Any breach or default in the performance of any obligation on The Phillies' part to be performed under the terms of this Agreement,

The foregoing indemnification obligations of The **Phillies** shall not extend to liabilities caused, in whole or in part, by any willful, wanton, or grossly negligent act or omission of the City or any of its agents, officers or employees to the extent such act or omission caused the liability and shall survive the termination of this Agreement for all acts committed or omissions made prior to the effective date of the termination of this Agreement.

13.2 By the City. Subject to Section 12.5, the City, to the extent permitted by applicable law, including, but not limited to Section 768.28, Florida Statutes, agrees to and will at all times defend, indemnify save and hold The **Phillies** and its Affiliates and their respective 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, costs of investigation and discovery, and all court costs, arising out of:

13.2.1 Injury to or death of persons (including personnel or employees of the City or The **Phillies**), 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 grossly negligent act or omission of the City or any Affiliate of City or any of their respective agents, officers or employees, in connection with the operation or use of the Sports Facility to the extent such act or omission caused the injury.

13.2.2 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 **Phillies** or any Affiliate of The **Phillies**

or any of their respective agents, officers or employees to the extent such act or omission caused the liability and shall survive the termination of this Agreement for all acts committed or omissions made prior to the effective date of the termination of this Agreement.

13.3 Procedure for Indemnification -- Third Party Claims.

13.3.1 Promptly after receipt by an indemnified party under Sections 12.1 or 12.2 of notice of a claim against it ("Claim"), such indemnified party shall, if a claim is to be made against an indemnifying party thereunder, give notice to the indemnifying party of such Claim, but the failure to notify the indemnifying party will not relieve the indemnifying party of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnified party's failure to give such notice.

13.3.2 If any Claim is made against an indemnified party and it gives notice to the indemnifying party of such Claim, the indemnifying party will be entitled to participate in the defense of such Claim and, to the extent that it wishes (unless (i) the indemnifying party is also a party to such Claim and the indemnified party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend such Claim and provide indemnification with respect to such Claim), to assume the defense of such Claim with counsel satisfactory to the indemnified party and its insurers and, after notice from the indemnifying party to the indemnified party of its election to assume the defense of such Claim, the indemnifying party will not, as long as it diligently conducts such defense, be liable to the indemnified party under such Section for any fees of other counsel or any other expenses with respect to the defense of such Claim in each case subsequently incurred by the indemnified party in connection with the defense of such Claim, other

than reasonable costs of investigation. If the indemnifying party assumes the defense of a Claim (i) no compromise or settlement of such claims may be effected by the indemnifying party without the indemnified **party's** consent unless (a) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other Claims that may be made against the indemnified party, and (b) the sole relief provided is monetary damages that are paid in full by the indemnifying party and (b) the indemnifying party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying party of a Claim and the indemnifying party does not, within thirty days after the indemnified party's notice is given (or such lesser period of time as may be necessary to avoid a Default on such Claim), give notice to the indemnified party of its election to assume the defense of such Claim, the indemnifying party will be bound by any determination with respect to said Claim or any compromise or settlement effected by the indemnified party.

13.3.3 **Notwithstanding** the foregoing, if an indemnified party determines in good faith that there is a reasonable probability that a Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle such Claim, but the indemnifying party will not be bound by any determination of a Claim so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

13.4 Procedure for Indemnification -- Other Claims. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought.

14. Damage or Destruction.

14.1 Decision to Rebuild. In the event that the **Sports Facility** or any part thereof is damaged or destroyed by fire, flood or other similar or dissimilar cause whatsoever, the City shall promptly commence and thereafter diligently proceed to repair and rebuild the Sports Facility to its condition immediately prior to such damage or destruction, provided, however, if such damage or destruction involves the entire Sports Facility or any substantial part thereof and occurs less than five years prior to the end of the Term, the City may elect to terminate this Agreement unless The **Phillies** agree to (i) exercise the option to renew provided for in Section 3.3 hereof (in which event, if necessary, the one-year notice period for exercising such option shall be waived), or (ii) if the option to renew has already been exercised, The **Phillies** and the City agree to extend the Term by at least five years. In the event that such damage or destruction is of such an extent as would substantially and adversely affect The **Phillies'** activities at the Sports Facility, the City shall use its best efforts to provide to The **Phillies** the use of alternate first class MLB spring training facilities, in reasonable proximity to the Sports Facility, on a basis that preserves to The **Phillies** the net benefit of the economic terms of this Agreement and that affords business interruption protection to The **Phillies** against lost revenues. If the City meets the requirements of the next preceding sentence and has been and remains in substantial compliance with its obligations under the first sentence of this Section 14.1, then The **Phillies** shall use those alternate facilities during the period of interruption and, for each full Spring Training Season during the initial **20-year** portion of the Term hereof that such use continues, that initial term shall be extended by one year.

14.2 Failure To Repair. If the City is obligated to repair or rebuild the Sports Facility under the provisions of this Section 14 and does not commence such repair or rebuilding within

ninety days after the occurrence of the damage or destruction, or if the City commences such repair or rebuilding but do not prosecute the same diligently to completion, then the City shall be deemed to be in **Default** under this Agreement and The **Phillies** shall have the rights and remedies set forth in Section 17.

14.3 Phillies Option to Rebuild or Repair. In the event the City fails to commence such repairs or rebuilding within 90 days of the occurrence of the casualty, The **Phillies** shall have the right, but not the obligation, to undertake such repairs or rebuilding. In the event The **Phillies** so undertake such repairs or rebuilding, The **Phillies** shall be entitled to reimbursement of the actual costs thereof by the City as incurred, within 45 days of all invoices therefor, with interest thereafter at the Default Rate.

15. Condemnation.

15.1 Total Taking. In the event the entire Sports Facility is appropriated or taken under the power of eminent domain, or sold under threat thereof (all of which will be referred to as a “condemnation”), by any public or quasi-public authority, The **Phillies** shall have the option to terminate this Agreement as of the date the condemning authority takes title or possession, whichever first occurs. The **Phillies** shall have no claim to the award in condemnation for the City’s interest in the Site and Sports Facility; provided, however, that The **Phillies** shall have a claim to the portion of the award in condemnation that represents compensation for the taking of the interest of The **Phillies** under this Agreement, including without limitation its right to retain net revenues from the operation thereof.

15.2 Partial Taking. In the event that only a portion of the Sports Facility is condemned, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes

title or possession, whichever first occurs; provided, however, that if so much of the Sports Facility is taken by such condemnation as would substantially and adversely affect The Phillies' operations at the Sports Facility, The Phillies shall have the option, to be exercised in writing within one hundred eighty days after the City shall have given The Phillies written notice of the condemnation (or in the absence of such notice, within one hundred eighty days after the condemning authority shall have taken possession), to terminate this Agreement as of the date the condemning authority takes such possession. If The Phillies does not give timely notice to terminate, this Agreement shall remain in full force and effect as to the remainder of the Sports Facility that is suitable for the use then being made of the Sports Facility by The Phillies; if and so long as The Phillies deem it advisable, The Phillies may utilize alternative facilities; and the City shall, to the extent of condemnation proceeds received by it, acquire or add adjacent property and construct additional Improvements with reasonable diligence, in order to restore the Sports Facility as nearly as possible to the condition immediately before the condemnation. Whether this Agreement terminates or continues in full force or effect, The Phillies shall have no claim to the award in condemnation for the City's interest in the Sports Facility; provided, however, that The Phillies shall have a claim to the portion of the award in condemnation that represents compensation for the taking of the interest of The Phillies under this Agreement, including without limitation its right to retain net revenues from the operation thereof.

15.3 Failure To Repair. If the City is obligated to make the Sports Facility suitable for use by The Phillies following a condemnation under the provisions of this Section 15 and does not commence to acquire or add adjacent property or construct additional Improvements necessary to do so within ninety days after the date of the condemnation, or if the City commences such

acquisition or construction but does not prosecute the **same** diligently to completion, the City shall be deemed in Default under this Agreement and The **Phillies** shall have the rights and remedies set forth in Section 17.

15.4 Phillies Option to Rebuild or Repair. In the event the City fails to commence such repairs or rebuilding within 90 days of the occurrence of the condemnation, The **Phillies** shall have the right, but not the obligation, to undertake such repairs or rebuilding. In the event The **Phillies** so undertake such repairs or rebuilding, The **Phillies** shall be entitled to reimbursement of the actual costs thereof by the City as incurred, within 45 days of all invoices therefor, with interest thereafter at the Default Rate.

16. Assignment.

16.1 Assignment by The Phillies. The **Phillies** shall not sell, assign, encumber, pledge, or otherwise transfer all or any portion of its interest in this Agreement without the prior written consent of the City, except as follows:

16.1.1 The **Phillies** shall have the right to transfer all of its rights and obligations under this Agreement to any Person that shall thereafter own the MLB franchise now held by The **Phillies**; provided, however, that such transferee shall assume the obligations of The **Phillies** under this Agreement; and provided, further, that MLB approves the transfer of such MLB franchise to such transferee and the City has been provided with satisfactory evidence of such assumption and approval.

16.1.2 The **Phillies** shall also have the right to transfer its interest in this Agreement freely to another MLB club; provided, however, that such transferee shall assume the obligations of The **Phillies** under this Agreement,

16.1.3 No transfer under this Section 16 shall release The **Phillies** from any pre-existing liabilities under this Agreement, including, but not limited to any indemnification obligations of The **Phillies** which arise prior to the date of such transfer.

16.2 Assignment by City. The City shall have the right to assign certain rights under this Agreement to a non-profit organization controlled by the City, provided that such assignment will not affect The **Phillies** rights and remedies against the City under this Agreement and the City shall at all times remain primarily liable for their obligations hereunder. Except as aforesaid, the City may not assign its rights and duties under this Agreement without the consent of The **Phillies**.

17. Default.

17.1 ~~Default.~~ party hereto (the “Defaulting Party”) shall fail to perform any of its obligations under this Agreement, then the Party not in default (the “Non-Defaulting Party”) shall provide notice of such failure to the Defaulting Party and afford the Defaulting Party a grace period to cure said failure, 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 not specifically provided for in any other section of this Agreement, the Defaulting Party shall afford the Non-Defaulting Party a grace period of: (i) five business days to cure monetary failure; and (ii) thirty days to cure any non-monetary default; provided, however, that if any non-monetary failure cannot be cured within such thirty day period, the Defaulting Party shall be afforded such additional time as shall be reasonably required to cure such failure, if the Defaulting Party has commenced the appropriate cure within said initial thirty day period and thereafter proceeds with reasonable diligence to cure said failure.

17.1.3 If any failure to perform shall not have been cured by the expiration of the applicable grace period, then a "Default" shall be deemed to have occurred and the Non-Defaulting Party shall have the rights and remedies set forth below,

17.1.4 Termination of this Agreement.

17.2 Non-Defaulting Party's Rights and Remedies. If a Default shall occur, the Non-Defaulting Party shall have the right (but not the obligation):

17.2.1 To cure such default on behalf of the Defaulting Party, in which event the Defaulting Party shall immediately reimburse Non-Defaulting Party for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

17.2.2 To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate, by set off against all sums next-to-become-due to the Defaulting Party under this Agreement.

17.3 Cumulative Rights. The remedies heretofore described in this Section 17 shall be in addition to any other remedy the Non-Defaulting Party may have at law and in equity in the event of a Default, including without limitation:

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

17.3.2 ~~An~~ action for specific performance of non-monetary covenants and agreements on the part of the Defaulting Party; and/or

17.3.3 An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the Defaulting Party in connection with the default.

17.4 Injunctive Relief. Without limiting any other remedies of the City on account of a Default by The **Phillies** hereunder, The **Phillies** further acknowledges that the City will be irreparably harmed if The **Phillies** violate this Agreement by the transfer, move or other relocation of The **Phillies'** spring training activities to, and/or the playing of Home Games at, any locations other than the Sports Facility during the Term otherwise than as provided or permitted by this Agreement. Accordingly, The **Phillies** hereby agree that in the event of such a violation or threatened violation of this Agreement, the City shall be entitled to seek and obtain, and The **Phillies** hereby consent to the entry of, a temporary restraining order, together with preliminary and permanent injunctive relief, from any court of competent relief to enjoin any such violation or threatened violation. The **Phillies** waive any requirement that the City post a bond or other security in connection with such injunctive relief. In the event of such attempted or actual transfer, move or other relocation of The **Phillies'** spring training activities to, or the playing of Home Games at, any location other than the Sports Facility, and City is not able to obtain the injunctive relief provided for in this Section 17.4, the City shall be entitled, at its option, to seek monetary damages.

17.5 Emergency. Nothing in this Section 17 shall be deemed to limit The **Phillies'** right to take action in emergencies pursuant to Section 9.7.

18. Legal Opinions.

18.1 By the City. Concurrently with the execution and delivery of this Agreement, the City has provided to The **Phillies** an opinion of its City Attorney advising The **Phillies** that (i) the City is a duly organized and existing municipal corporation of the State of Florida and is authorized to enter into and perform under this Agreement, (ii) execution of this Agreement by the City is duly authorized, (iii) all notices required by Florida law and all necessary action required for the execution

and delivery of this Agreement or otherwise required under **applicable** law have been obtained, and (iv) this Agreement is valid, binding and enforceable against the City in accordance with its terms, subject only to such exceptions as are set forth expressly in such opinion and are reasonably acceptable to The Phillies, as evidenced by its execution of this Agreement.

18.2 By The Phillies. Concurrently with the execution and delivery of this Agreement, The Phillies has provided to the City an opinion of its general counsel advising the City that (i) The Phillies is a duly organized and existing limited partnership of the Commonwealth of Pennsylvania and is authorized to enter into and perform under this Agreement, (ii) execution of this Agreement by The Phillies is duly authorized, and (iii) this Agreement is valid, binding and enforceable against The Phillies in accordance with its terms, subject only to such exceptions as are set forth expressly in such opinion and are reasonably acceptable to the City, as evidenced by its execution of this Agreement.

19. Miscellaneous.

19.1 Estoppel Certificates. Each party (as “responding party”) shall at any time within fifteen days after written request from the other party (“requesting party”) execute, acknowledge and deliver to the requesting party a statement in writing as of the date of such certification (i) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), (ii) acknowledging that there are not, to the responding party’s knowledge without inspection, audit or investigation, any uncured defaults on the part of the requesting party (or specifying such defaults, if any are claimed), and (iii) providing such other information regarding this Agreement as may reasonably be requested by the requesting party, Any such statements may be conclusively relied

upon by any prospective purchaser or encumbrancer of The Phillies or of its interests herein and by any bond holders, underwriters and financiers of the City.

19.2 Consents. Whenever a party's approval, permission, concurrence, consent or satisfaction is required under this Agreement, such approval, permission, concurrence, consent or satisfaction shall not be unreasonably withheld or delayed, except as and to the extent expressly provided to the contrary in this Agreement; provided, however that neither party shall be required to waive a Default hereunder.

19.3 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. In addition, as soon as practicable following the Commencement Date hereunder, the parties shall execute a written supplement to this Agreement setting forth such Commencement Date. With respect to the City, any obligations pursuant to this Section 19.3 shall be subject to obtaining any required governmental approvals,

19.4 Force Maieure. A party shall not be in Default under this Agreement if and to the extent it is unable to fulfill any of its obligations under this Agreement because it is prevented, hindered or delayed in doing so by reason of a strike, lockouts, labor dispute, boycott, material or energy shortage, casualty loss, weather conditions, acts of God, order of any government officer or court (but excluding, as to the City, orders promulgated by the City themselves), national emergency or war (collectively, "Force Majeure").

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 City:

City of Clear-water
112 South Osceola Avenue, 3rd Floor
Clearwater, Florida 33756
Attention: City Manager

With a copy to Counsel for City:

Pam Akin, Esquire
112 South Osceola Avenue, 3rd Floor
Clearwater, Florida 33756

If to The Phillies:

Veterans Stadium
P.O. Box 7575
Philadelphia, PA 19 101
Attention: David P. Montgomery,
President

and

Attention: William Y. Webb,
Vice President, General
Counsel and Secretary

Notices shall be deemed given when actually received or when delivery is refused, 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 and The Phillies do not intend by entering into this Agreement to create a partnership, joint venture or any relationship other than that of independent contractors and licensor and licensee. Nothing in this Agreement shall be construed to create such a partnership, joint venture or other relationship, nor shall it be construed to create any pledging of the credit of the City or the faith and credit of the City.

19.7 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, and the proper venue shall be in Pinellas County, Florida.

19.8 Construction of this Agreement. This Agreement shall not be construed for or against any party on the basis that such Party drafted any portion of this Agreement. In construing this Agreement, feminine or neuter pronouns shall be substituted for those 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. Subject to Section 16, 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 and the SFDA, together with the attached exhibits and simultaneous writings, contain the entire agreement and understanding between the parties relating to its subject matter, There are no oral understandings, terms or conditions, and

neither party has relied on any representation, express or implied, not contained in this Agreement or in 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. Without limiting the generality of the foregoing, this Agreement and the SFDA replace and supersede that certain Clear-water Stadium Project Term Sheet dated September 8, 2000 by and between the City and The Phillies in its entirety and such Term Sheet is hereby terminated.

19.11 Severability. 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 affect 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 the other party under this Agreement and not paid when due shall bear interest ~~from~~ and after the due date at the Default Rate until paid, provided however, that no such interest shall accrue on any City obligation to pay until the expiration of 45 days after the date such payment is due.

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 any 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 Right of Offset. Each party hereto, without waiving its rights under Section 17, shall be entitled to set off against sums due from it hereunder to any other party any amounts owing to it (including Default Interest if any) by such other party.

19.18 Attorneys' Fees. If an action or proceeding is brought to enforce the terms hereof or declare rights hereunder, including without limitation Expedited **ADR**, the prevailing party in any such action or appeal therefrom shall be entitled to its reasonable attorneys' fees and costs, which shall include the costs of consultants and experts, to be paid by the losing party as fixed by the court or arbitrator(s) in the same or a separate action or proceeding.

19.19 Amendment. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or The Phillies. This Agreement may not be changed, modified or rescinded except in writing by the City and The Phillies, and any attempt at oral modification of this Agreement shall be void and of no effect.

19.20 Authority. Each party hereto hereby represents and warrants to the other that it has the authority to enter into this Agreement and to undertake and perform its respective obligations hereunder.

19.21 Exhibits. Exhibit A is attached hereto and incorporated by this reference thereto.

19.22 Liability Limitation. Except as otherwise provided herein, no individual who is a general partner of The Phillies, or a member of the City Commission or an officer, employee or agent of any party hereto shall be liable to any other party, or any successor in interest thereto, for any default by a party hereunder.

19.23 Certain Disputes. Any dispute between the parties arising under Sections 9 and 10 of this Agreement shall be resolved by Expedited ADR.

20. Conditions.

20.1 Conditions Precedent to Parties' Rights and Obligations. All of the parties' respective rights and obligations under this Agreement are expressly conditioned **upon the** occurrence of the following, each by the date respectively indicated:

20.1.1 Issuance of Certification from the Florida Office of Tourism regarding a "retained spring training franchise facility" shall have issued by January 2, 2001.

20.1.2 The specific site for the Sports Complex shall by February 15, 2001 have been agreed to by the parties and reflected upon a detailed site plan initialed by the parties, which shall become Exhibit B to this Agreement.

20.1.3 The parties shall, within 15 days following satisfaction of the conditions in Section 20.1.2, have: (i) executed and delivered a definitive SFDA; (ii) have agreed upon a detailed Scope of Work, an initialed copy of which shall become Exhibit C to this Agreement; and (iii) have executed and delivered a definitive lease for the Carpenter Complex, which will terminate the existing lease dated September 26, 1966, as amended, and which: (x) shall be for a term coextensive with the Term; (y) shall conform to the relevant allocation provisions of this Agreement; and (z) call for fixed rent in arrears at the annual rate of \$204,000 for 20 years **from** the start of the Term.

20.2 Waiver. Each of the conditions precedent specified in Sections 20.1 and 20.4 may only be waived in a writing duly executed and delivered by both parties; provided, however, that The **Phillies** may, by written notice to City, extend from time to time each of the dates specified in Section 20.1.

20.3 Satisfaction Date. The date on which the last of all of the conditions precedent specified in Section 20.1 has been duly satisfied or duly waived is herein referred to as the "Satisfaction Date."

20.4 Further Condition Relating to Litigation. If on the Satisfaction Date any litigation other than bond validation proceedings is pending to restrain or enjoin the performance of this Agreement and/or of the SFDA and/or of any material aspect of either and/or to seek material damages in respect thereto and is neither withdrawn nor dismissed with prejudice by October 1, 2001, either party may (but need not) elect to terminate this Agreement by written notice given within 30 days thereafter,

21. Marketing Programs. The **Phillies** and the City hereby agree that The **Phillies** will provide trade out value in marketing programs to match the financial contributions made by Pinellas County toward the funding of the Sports Facility. These marketing trade out programs may include, but are not limited to destination advertising, tourism public relations campaigns, tourism direct sales activities and/or other marketing programs mutually agreed upon between the Pinellas County Convention and Visitors Bureau and The **Phillies**. Representatives of The **Phillies** and the Convention and Visitor's Bureau shall meet as often as they mutually determine to be needed (but at least annually) to agree to a specific program of destination marketing and/or ticket opportunities of the trade out program for the upcoming calendar year. This marketing trade out program shall be the sole responsibility of The **Phillies**.

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

THE CITY OF CLEARWATER, FLORIDA

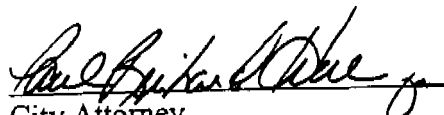
By: 
Brian Aungst, Mayor

By: 
City Manager

ATTEST:

 12/20/00
ASST. City Clerk

Approved as to form and
legal sufficiency


City Attorney

THE PHILLIES

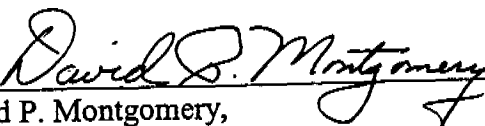
By: 
David P. Montgomery,
General Partner

EXHIBIT A

All claims, demands, disputes, controversies and differences that may arise under this Agreement between the parties, concerning any controversies under the Sections of this Agreement making reference to the use of Expedited ADR shall be resolved by Alternative Dispute Resolution as set forth below:

1. Disputes submitted to Expedited ADR hereunder will be conducted before a "Panel" designated in the manner provided in Section 2 below. The decision of the Panel will be final and binding upon the parties as to all matters in dispute and will be enforceable by a court of competent jurisdiction. The rules of the American Arbitration Association will be used for guidance in establishing procedures for the arbitration, but their use will not be mandatory unless the parties are unable to agree on an alternative body of rules.

2. In the case of disputes involving construction matters at the Sports Facility, the Panel will consist of three persons selected by the parties from a list of twenty-one persons with at least ten years experience in the construction business furnished by the Florida Chapter of the American Arbitration Association. In the case of disputes involving operations at the Sports Facility, the Panel will consist of three persons selected by the parties from a list of eleven persons, each of whom must have at least ten years of experience in the stadium/arena management business furnished by the Florida Chapter of the American Arbitration Association. The Panel of three will be selected from such list by the mutual agreement of the parties. If, within three days following the day on which the list is furnished to the parties, the parties are unable to agree on the composition of the Panel, then representatives of the parties will meet promptly and the following procedures will be used: The **Phillies** will strike the name of a person on the list. Within **fifteen** minutes thereafter, the Public Bodies will strike a name from the list, At fifteen minute intervals thereafter, each party will strike a name from the list. If a part-y fails to strike a name within the allotted time period, it will forego its turn to strike a name. The last three names on the list will constitute the Panel.

3. Within thirty days following the appointment the Panel as provided for above, the Panel shall hold a hearing which hearing shall be held at Tampa, Florida, or at any other place agreed to by the parties involved.

4. The Public Bodies or The **Phillies** may join any other party to the arbitration **which** is needed for just adjudication. The standard for joinder of any other party shall be that provided under Rule 19 of the Florida Rules of Civil Procedure.

5. If the Panel determines that either party's position in the dispute was without merit, such party will pay the other **party's** reasonable attorneys' fees and costs related to the arbitration, including the costs and fees of the Panel, fees to the American Arbitration Association and other costs of such arbitration otherwise payable by such party in the arbitration proceedings. In all other

cases, the parties will share equally the costs of such **arbitration** and will pay their **own** attorneys' fees.

6. At least ten 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, each party shall submit a memorandum not to exceed five pages outlining the relevant issues for the Panel. At the hearing, the laws of evidence of the State of Florida shall apply, and the Panel shall allow each party to present that party's case, evidence and witnesses and render its 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.

Appendix Part 3



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

Mayor & Comm
F4I
Bill
RECEIVED 1/8

cc: Keith

January 1, 2001

JAN - 1 2001

CITY MANAGER'S OFFICE

Mr. William B. Home, II
Interim City Manager.
City of Clearwater
112 South Osceola Avenue
Clearwater, FL 33756

Dear Mr. Home:

It is my pleasure to inform you that the City of Clearwater has been approved by the Office of Tourism, Trade, and Economic Development (OTTED) for certification as a Facility for a Retained Spring Training Franchise in accordance with Section 288, 1162, Florida Statutes.

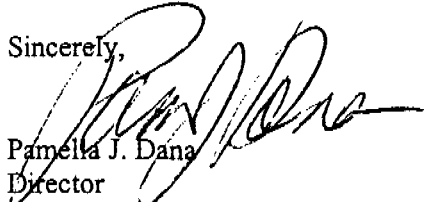
We received a total of seven applications, each thoroughly evaluated by an OTTED-led review panel. From this evaluation, five applications, to include that submitted by your community, were approved for certification. On whole, I am told the panel was quite impressed with the quality and comprehensiveness of all of the applications submitted for consideration.

Please find enclosed an official certification. This letter, along with the signed certification, serves as notice that the City of Clearwater is hereby certified as a Facility for a Retained Spring Training Franchise and, thus, eligible to receive specified funds pursuant to Section 212.20, Florida Statutes.

If you have any questions regarding this certification, please feel free to contact Ms. Jean Hartman, Senior Attorney for OTTED at (850) 487-2568, or Mr. Marshall Stranburg, Chief Assistant General Counsel, General Tax Administration within the Florida Department of Revenue at (850) 488-0712.

I offer you my sincere congratulations on this certification, and wish you much continued success on your spring training endeavors.

Sincerely,


Pamela J. Dana
Director

Office of Tourism, Trade, and Economic Development

cc: Jean Hartman, Senior Attorney
Larry Pendleton, President, Florida Sports Foundation
Marshall Stranburg, Chief Assistant General Counsel, Department of Revenue



Governor's Mentoring Initiative
BE A MENTOR. BE A BIG HELP.
1-800-825-3786



I hereby certify that this is a true and correct copy of the original as it appears in the files of the City of Clearwater. Witness my hand and official seal of the City of Clearwater.

The 1st day of January, 2001.
Lisa A. Stephenson
Deputy City Clerk

CERTIFICATION

WHEREAS, the Office of Tourism, Trade, and Economic Development is authorized pursuant to Section 288.1162, Florida Statutes, to certify applicants as a Facility for a Retained Spring Training Franchise; and

WHEREAS, the Office of Tourism, Trade, and Economic Development has received and reviewed the application from the City of Clearwater; and

WHEREAS, the Office of Tourism, Trade, and Economic Development has evaluated the application, and has found that the application complies with the requirements of Section 288.1162, Florida Statutes, and that the applicant should be certified.

NOW, THEREFORE, I, **Pamella Dana**, as Director of the Office of Tourism, Trade, and Economic Development, by virtue of the authority vested in me by the State of Florida, do hereby certify the City of Clearwater as a Facility for a Retained Spring Training Franchise, effective immediately, pursuant to Section 288.1162, Florida Statutes.

IN TESTIMONY WHEREOF, I have hereunder set my hand to be affixed at Tallahassee, 2001 The Capitol, on the 1st day of January, 2001.

Pamella J. Dana
PAMELLA J. DANA, DIRECTOR

Appendix Part 4



(Years 2001-2021)

INTERLOCAL AGREEMENT
BETWEEN
CITY OF CLEARWATER, FLORIDA
AND
PINELLAS COUNTY FLORIDA

Dated as of December 1, 2000

I hereby certify that this is a true and correct copy of the original as it appears in the files of thp City of Clearwater. Witness my hand and official seal of the City of Clearwater.
This 12 day of February, 2001
Susan Stephenson
Deputy City Clerk

HOLDOVER FOR BOARD RECORDS

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(This table of contents is not part of the
Interlocal Agreement and is only for the
convenience of reference.)

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INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** (the "Interlocal Agreement") is made as of this 1 st day of December, 2000, by and between PINELLAS COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") and the CITY OF CLEARWATER FLORIDA, a municipal corporation of the State of Florida (the "City").

WITNESSETH:

WHEREAS, it is the purpose and intent of this **Interlocal** Agreement, the parties hereto and the Florida Interlocal Cooperation **Act** of 1969 ("Cooperation Act"), to permit the City and the County to make the most **efficient** use of their respective powers, resources and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby to provide the facilities provided for herein in the manner that will best accord with the existing resources available to each of them and with geographic, economic, population and other factors influencing the needs and developments **within** their respective jurisdictions; and

WHEREAS, the purpose of the Cooperation Act is to provide for a means by **which the** City and the County may exercise the respective powers, privileges and authorities which they share in common and which each might exercise separately in a joint manner; and

WHEREAS, the parties further intend to enter into this Interlocal Agreement in order to show evidence of indebtedness of the County to the City; and

WHEREAS, the City has now entered into an Agreement (the "Baseball Agreement") for the use, management and operation of a retained spring **training** franchise facility consisting of spring **training** practice fields and a baseball stadium (the "Baseball Facility") with [The Phillies] (the "Team") pursuant to which the Team has agreed to retain its spring training program in the City and utilize the Baseball Facility and such Baseball Agreement and the location of the Team in the City will create beneficial economic development in the County; and

WHEREAS, the City intends on financing the cost of the Baseball Facility through the issuance of one or more series of revenue bonds to be issued by the City (the "City Bonds"), together with other funds of the City and the Team, and has requested that the County provide additional funds to support the repayment of the City Bonds; and

WHEREAS, the County is desirous of assisting the City by providing monthly payments to the City (the "County Payments") for the purpose of assisting the City in the repayment of **the City** Bonds

and otherwise **assisting** in the payment of the costs of the Baseball Facility; and

WHEREAS, the retention of the Team and the **construction** of the Baseball Facility in the City is designed to increase tourist-related business activities in the County and the Baseball Facility constitutes a facility which may be financed with the County's tourist development tax revenues in accordance with Section 125.0 104, Florida Statutes; and

WHEREAS, this beneficial economic impact arising from the Team is a material and necessary inducement to the County in its **decision** to make the County Payments for the purposes herein provided; and

WHEREAS, the County and the City desire to equitably determine and to contract and provide herein the manner in which the County Payments shall be paid to the City as additional funds for the payment of a portion of the debt service on the City Bonds for which the County shall be obligated to pay in the manner herein provided, and for which this **Interlocal** Agreement shall constitute the evidence of indebtedness of the County; and

WHEREAS, the County and the City desire to determine and to contract and provide herein the manner in which the County Payments shall be deposited in the County Payments Account and expended to pay the County Payments and further to be deposited for payment of the County indebtedness evidenced hereby to be utilized for payment of the debt service on the City Bonds; and

WHEREAS, the County has determined and agreed to budget and appropriate and to pay over to the City the County Payments;

NOW, THEREFORE, in consideration **of the** mutual covenants **of this Interlocal** Agreement, the City and County agree as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

SECTION 1.01. Authority.

This Agreement is entered into pursuant to the provisions of Section 163 .0 1, Florida Statutes; Article **VIII**, Sections 1 and 2 of the Constitution of the State **of Florida**; Chapter 166, Florida Statutes; Pinellas County Home Rule Charter; Section **125.0104(1)**, Florida Statutes; and other applicable provisions of law (collectively, the "Act").

SECTION 1.02. Definitions.

“Bond **Ordinance**” means that certain Ordinance No. 6675-0 1 of the City, as amended and supplemented, providing for the issuance of the City Bonds.

“Bond **Year**” means with respect to the City Bonds, the Bond Year as defined in the Bond Ordinance.

“City Bonds” means the City of **Clearwater**, Florida Revenue Bonds (Spring Training Facility), Series 2001, issued in one or more series pursuant to the Bond Ordinance.

“County Payments” means the payments to be made by the County as provided by Section 2.0 1 hereof, in the annual amount of **\$587,650.00**, payable in equal monthly payments of **\$48,970.83** (which amount is one-twelfth of the annual amount), commencing on the **first** County Payment Date, and continuing for a total of two hundred forty (240) months for a total of two hundred forty (240) monthly payments.

“County Payment Date” means the fifteenth calendar day of each month, commencing with the second month immediately following the month in which the City receives certification from the State of Florida that the Project constitutes a “facility for a retained spring **training** franchise” in accordance with Section **288.1162(5)**, Florida Statutes, on which dates an installment of County Payments is to be made to the City.

“County s Payment Account” means the account created within the Revenue Fund in the Bond Ordinance funded from payments made by the County constituting **County** Payments pursuant to this Interlocal Agreement.

“Debt Service Fund” means the fund designated in the Bond Ordinance from which the principal of, premium, if any, amortization payments and interest on the City Bonds are paid.

“Debt Service Payments” means the payments required to be made by the City for debt service on the City Bonds, in the manner provided in the Bond Ordinance.

“Won-Ad **Valorem** Revenues” shall mean all legally available non-ad **valorem** revenues or taxes of the County (including ad **valorem** taxes to the extent the use thereof for securing bonds or other debt obligations of the County has been approved by referendum), which are legally available to make the payments required by this Interlocal Agreement, but only after provision has been made by the County for payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the County or which are legally mandated by applicable law

ARTICLE II

FLOW OF FUNDS AND PAYMENTS

SECTION 2.01. Payments by the County to the City.

The County hereby covenants and agrees to pay on or before each County Payment Date, commencing with the first County Payment Date, an amount equal to the amount of the respective County Payment due on such date, to the City to assist the City in paying a portion of the costs of the construction and equipping of the Baseball Facility, and following the issuance of the City Bonds, for deposit into the County's Payment Account held by the City.

SECTION 2.02. Payments by the City to the Debt Service Fund.

The City hereby covenants and agrees as follows:

(a) The City shall accept the monies delivered by the County pursuant to Section 2.01 hereof to assist the City in paying a portion of the costs of the construction and equipping of the Baseball Facility, and following the issuance of the City Bonds, the City shall deposit all subsequent County Payments into the County's Payment Account held by the City under the Bond Ordinance.

(b) After the date on which the City Bonds are issued, the City shall, on or before the first business day prior to the date upon which the monies on deposit in the County's Payment **Account** are to be transferred to the Debt Service Fund, transfer and deposit all amounts received from the County representing County Payments into the Debt Service Fund.

(c) The City shall on each payment date for the City Bonds pay from and exhaust all monies in the Debt Service Fund so deposited from the proceeds of the County Payments paid by and received from the County for the Debt Service Payments prior to using any other revenues of the City which are pledged for the repayment of the City Bonds.

SECTION 2.03 Payments by the County.

The obligation of the County to pay over to the City the County Payments is indebtedness of the County and this **Interlocal** Agreement is hereby issued by the County as evidence of such indebtedness. The County shall keep accurate books and records, and shall record the amount the County has transferred pursuant to Section 2.01 hereof to the City.

ARTICLE III

TERM AND MISCELLANEOUS

SECTION 3.01 Term.

This Agreement shall commence on December 1, 2000 (but only in the event that the City receives certification that the Baseball Facility constitutes a "facility for a retained spring training franchise" in accordance with Section 288.1162(5), Florida Statutes), and shall terminate at midnight on the earliest date on which (i) the final County Payment is made in accordance with this Agreement, (ii) the Bonds are retired in full or legally defeased, or (iii) the City issues bonds to refund, in full, the City Bonds, and the County elects, at its option, to terminate any further County Payments hereunder. On the date that the City Bonds are retired in full or otherwise legally defeased in accordance with the Bond Ordinance, any County Payments not then paid or due shall thereafter be canceled, and no further County Payments by the County shall be required hereunder.

SECTION 3.02 Filing and Effective Date.

This Agreement shall become effective upon(i) the execution of this Agreement by the proper officers of the City and the County as of the date set forth above and (ii) upon the filing with the Clerk of the Circuit Court of Pinellas County, Florida as required by Section 163.0 1(1 1), Florida Statutes.

SECTION 3.03 Severability.

If any one or more of the covenants, agreements or provisions of this Agreement should be held contrary to any express provision of law or contrary to any policy of expressed law and held invalid, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement which shall remain fully enforceable.

SECTION 3.04 Controlling Law; Members of City and County Not Liable.

All covenants, stipulations, obligations and agreements of the City and the County contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City and the County, respectively, to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the City or the County in its, his or their individual capacity, and neither the members of the governing body of the City or the County nor any official executing this Agreement shall be liable personally or shall be subject to any accountability by reason of the execution by the City or the County of this Agreement or any act pertaining hereto.

SECTION 3.05 Miscellaneous,

A. Budget and Appropriation by the County. The County shall include in its annual budget and appropriate, sufficient legally available Non-Ad Valorem Revenues of the County, for the timely payment of all County Payments due to be made in each fiscal year at such times as shall be

required. In **no** event shall the County be required to make any payments required hereunder **except** from funds duly budgeted and appropriated in accordance with this Section 3.05. Such covenant and agreement on the part of the County shall be cumulative and shall continue until all County Payments shall have been budgeted, appropriated and actually paid. The County agrees that this covenant and agreement shall be deemed to be entered into for the benefit of the holders of the City Bonds and that this obligation may be enforced in a court of competent jurisdiction. Notwithstanding the foregoing or any provision of this Interlocal Agreement to the contrary, the County does not covenant to maintain any services or programs now maintained or provided by the County, including those programs and services which generate Non-Ad **Valorem** Revenues. This covenant and agreement shall not be construed as a limitation on the ability of the County to pledge all or a portion of such Non-Ad **Valorem** Revenues for other legally permissible purposes. Nothing herein shall be deemed to pledge ad **valorem** taxation revenues or to permit or constitute a mortgage upon any assets owned by the County and no person may compel the levy of ad **valorem** taxes on real or personal **property within the boundaries of the** County for the payment of the County's obligations hereunder. The City Bonds and the obligations of the County hereunder shall not be or constitute general obligations or indebtedness of the County as "bonds" within the meaning of the Constitution of the State of Florida, and no holder or holders of any City Bonds shall ever have the right to compel the exercise of the ad **valorem** taxing power of the County or taxation in any form of any real or personal property therein.

However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein, has the effect of making available for the payment of the obligations of the County the Non-Ad **Valorem** Revenues of the County in the manner provided herein and placing on the County a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of Chapter 125, Florida Statutes, which makes it unlawful for any county to expend moneys not appropriated and in excess of such county's current budgeted revenues. The obligation of the County to make such payments from its Non-Ad **Valorem** Revenues is subject to the availability of money in the treasury of the County and funding requirements for essential services of the County; however, such obligation is cumulative and would carry over from Fiscal Year to Fiscal Year. The County further covenants that this Interlocal Agreement shall be entered into for the benefit of the holders of the City Bonds and that the obligations of the County to pay the County Payments to the City may be enforced in a court of competent jurisdiction **in** accordance with the remedies set forth herein.

Notwithstanding the foregoing, the City recognizes that the County intends, but is not required, to utilize the County's tourist development tax revenues levied pursuant to Section 125.0104, Florida Statutes, to fund each year's appropriation for County Payments

B. Annual Budgets. The County shall prepare, approve and adopt each year, in the manner provided by law, a detailed **annual** budget pursuant to which it shall allocate, appropriate and provide for the deposits and payments of sufficient legally available Non-Ad **Valorem** Revenues of the County for the ensuing Fiscal Year required by this Agreement. The covenant and agreement by the County to

budget and appropriate such amount shall be cumulative and shall continue each Fiscal Year until all required County Payments have been budgeted, appropriated and actually paid by the County to the City for deposit as provided herein.

C. Reports and Annual Audits. The County shall, as soon as practicable after the end of each Fiscal Year, cause the books, records, accounts and the data relating to the County Payments for such Fiscal Year to be properly audited by an independent certified public accountant of recognized standing.

D. Enforcement of Collections. The County is **currently** authorized to receive sufficient legally available non ad-valorem revenues to enable it to budget and appropriate the County Payments, The County will diligently enforce its right to receive such revenues and will not take any action which will impair or adversely affect its right to receive such funds or impair or adversely affect in any manner its obligations hereunder. The County shall be unconditionally and irrevocably obligated to take all lawful action necessary or required to enable the County to receive **sufficient** revenues to so budget and appropriate the County Payments as now permitted or provided by law or as may later be authorized, and to make the transfers required by this Agreement.

E. Reduction of Non-Ad Valorem Revenues. During such time as the **obligations** of the County to make County Payments hereunder are outstanding, the County covenants that it will not reduce the rate or rates at which any Discretionary Non-Ad **Valorem** Revenues are charged or collected if such reduction, in and of itself, would cause, Non-Ad **Valorem** Revenues in such Fiscal Year to be less than 120% of the debt service in such year on debt payable from Non-Ad **Valorem** Revenues, including for this purpose, the County Payments. "Discretionary Non-Ad **Valorem** Revenues" means any component of the Non-Ad **Valorem** Revenues as to which the County has the authority to determine the rate or rates charged or collected. Notwithstanding the foregoing or any provision of this Interlocal Agreement to the contrary, the County shall not be prohibited **from** reducing Non-Ad **Valorem** Revenues if such reduction is required by the laws of the State of Florida or the United States of America.

F. City Covenant as to Use of Baseball Facility. The City and the County recognize that the Baseball Facility constitutes a facility for a retained spring training franchise and as such is a facility which may be financed, in whole or in part, with the proceeds of the County's tourist development tax. In the event the Baseball Facility ceases to be used by the Team, or another major league baseball club, as its spring training facility, the City will notify the County in writing of any proposed alternate use of the Baseball Facility, which use will be restricted to a use which may be financed with the proceeds of the tourist development tax as set forth in Section 125.0104, Florida Statutes; provided however, that prior to any change in the use of the Baseball **Facility**, the County will have provided written notice to the City either that (i) the County agrees that such alternate use is for a use that may be financed with tourist development taxes, (ii) the County agrees that the proposed alternate use is in the best interest of the City and the County and **will** utilize a funding source other than appropriations of tourist development **tax**

revenues to fund its **annual** appropriation of County Payments, or (iii) the County will require the City to retire or refund the City Bonds prior to **implementing any such proposed** change in use of the Baseball Facility. In the event the Baseball Facility ceases to be used for baseball spring training activities or an alternate use permitted by Section 125.0 104, Florida Statutes, and it is determined that the City's use of the Baseball Facility is not in accordance with the covenants of the City set forth **in** this Section **3.05(F)**, the County shall give the City written notice of such impermissible use, and the City shall have a period of sixty (60) days after receipt of such notice to change the use of the Baseball Facility to a permitted use, and if the City fails to conform the use of the Baseball Facility within such period to a use permitted by this Section **3.05(F)**, the County shall be entitled to enforce the City's covenant set forth in this section **3.05(F)**.

SECTION 3.06 Modification or Amendment.

This Agreement may be amended with the written consent of the County and the City.

SECTION 3.07 Fees, Costs and Expenses.

The City hereby agrees to pay or reimburse the County for all reasonable fees, costs and expenses incurred by the County with respect to the negotiation, execution and delivery of this Agreement, including, without limitation, fees and expenses **of bond** counsel or other outside counsel, its financial advisor, and all similar fees, costs and expenses, including the costs of validation.

SECTION 3.08 Marketing of Baseball Facility.

The County hereby agrees to assist, where feasible, the City in any and **all** efforts to market the Baseball Facility by the City to potential users thereof. The City hereby agrees to require, as part of any **licence**, use or similar agreement with the Team or any other major league baseball team for the use of the Baseball Facility, a provision that the Team or such other major league baseball team will be required to provide equivalent dollar value in the form of marketing trade out opportunities for each County Payment made hereunder. Marketing trade out opportunities may include, but are not limited to, destination advertising (both traditional and internet), tourism public relations campaigns, tourism direct sales activities and/or other programs mutually agreed upon between the Pinellas County Convention and Visitors Bureau and the Team or such other major **league** baseball team then using the Baseball Facility. The County acknowledges that the marketing program shall be the sole responsibility of the Team **or** such other major league baseball team then using the Baseball Facility.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

CITY OF CLEARWATER, FLORIDA

By: B. J. Amato
Mayor-Commissioner

By: William B. Home II
City Manager

(SEAL)

Approved as to form and
correctness:

ATTEST:

By: Cynthia E. Menden
City Clerk

B. [Signature]
City Attorney

PINELLAS COUNTY, FLORIDA

By: Calvin D. [Signature]
Chairman, Board of County
Commissioners, Pinellas County, Florida

ATTEST: KARLEEN F. De BLAKER, CLERK

By: [Signature]
Deputy Clerk, Board of County
Commissioners, Pinellas County, Florida

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By: [Signature]
Attorney

RECEIVED

JAN 25 2001

CITY ATTORNEY

NO. 38
B.C.C. 12/19/00
6:32 P.M. PENHALE/Groves

#38 INTERLOCAL AGREEMENT WITH CITY OF CLEARWATER RE COUNTY'S FINANCIAL COMMITMENT OF TOURIST DEVELOPMENT FUNDS TO SPRING TRAINING BASEBALL FACILITY - APPROVED FOR EXECUTION

Interim County Administrator D. Gay Lancaster recommended approval of an Interlocal Agreement with the City of Clearwater re the County's financial commitment of Tourist Development funds to the spring training baseball facility, as outlined in her agenda memorandum dated December 19, 2000.

Director of the Department of Management and Budget Mark Woodard presented an update of the agreement and in response to queries by the members, reviewed the financial obligations of the parties.

Responding to queries by the members, City of Clearwater General Services Administrator Keith Ashby reviewed the particulars of the contract and explained the site issues.

Commissioner Latvala moved, seconded by Commissioner Welch and carried, that the recommendation of the Interim County Administrator be approved.

01/08/01 Returned to Co. Atty's off. for corrections to document.
01/10/01 Per Della Wisoker, Co. Atty. Susan Churute advised as
agmt. is not County document, execute as is.
1-11-01 ^{agreement} 4 airt sent to Recording At+ Chris Beach, Recording services.