

FIELD BUILDING AGREEMENT

Falcon Park

This Field Building Agreement ("Agreement") is entered into as of this ____ day of January __, 2017, by and between Pimmex Contracting., the general contractor ("Contractor"); Arizona Diamondbacks Foundation, Inc. ("Diamondbacks Foundation"); and the City of Goodyear ("City"). This Agreement memorializes the intent and agreement of the parties with respect to the refurbishment of the Youth sized baseball/softball field at Falcon Park (the "Park"), located at 15050 W. Indian School Rd, Goodyear, Arizona (the "Project").

RECITALS

A. The Diamondbacks Foundation is a charitable organization that facilitates the donation of construction funds for the Project and arranges for Project construction. The Diamondbacks Foundation's role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor. The Diamondbacks Foundation has no role in design or construction of the Project.

B. The Contractor has agreed to provide charitable in-kind donation of services, in the manner described herein.

C. The City is the owner of the recreational land on which the Project will be constructed.

D. The City will be the donee of the Project upon completion.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. SCOPE OF THE PROJECT

The intent of the parties regarding the Project is for the refurbishment of the youth baseball/softball field at the Park, in accordance with Exhibit A, utilizing charitable donations. The Diamondbacks Foundation has agreed to arrange for and provide construction funds to the Contractor for the purpose of building the Project. The Contractor has agreed to donate profit and overhead for purposes of building the Project as general contractor. After the Project has been accepted by the City, the Project will be donated to the City as Owner. The Diamondbacks Foundations' role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor.

2. ROLES OF THE PARTIES.

A. THE CONTRACTOR.

The Contractor is an independent contractor that will comply with all applicable laws, statutes, ordinances, rules and/or regulations governing its work. The Contractor shall be solely responsible for all means and methods of project work, construction and any and all similar tasks on the Project. The Contractor represents and warrants that it is qualified to perform the undertaking that is the subject of this Agreement. The Contractor shall retain exclusive supervision

and control of the Project until final completion. The Contractor acknowledges that the Park will remain in use during construction of the Project, and Contractor agrees to protect the work as required to protect the safety of persons using the Park.

B. THE DIAMONDBACKS FOUNDATION.

The Diamondbacks Foundation will facilitate the donation of construction funds for the Project and will arrange for Project construction. The Diamondbacks Foundation's role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor. The Diamondbacks Foundation has no role in design or construction of the Project.

C. THE CITY.

The City is the Owner of the Park, and will be the donee of the Project upon completion ("Project Owner"). When the Project is completed and accepted, the City will assume ownership, maintenance, control and supervision of the Project and shall be responsible for maintaining and providing appropriate liability insurance or coverage through its self-insurance retention program.

3. CONSTRUCTION ACTIVITIES AND RESPONSIBILITIES.

A. THE CONTRACTOR.

The Contractor shall obtain all required zoning and use permits and approvals needed for the Project through the City of Goodyear Development Services and Engineering Office.

Upon execution and approval of this Agreement, the Contractor will make the necessary arrangements to begin scheduling Project Construction. Design and construction is to commence on or before February 1, 2017, and be completed on or before April 1st, 2017. Contractor shall provide the City with a construction schedule and estimated completion date.

The City hereby grants permission to the Contractor, its employees, agents and subcontractors, to enter upon a portion of the Park for purposes of ingress and egress and construction activities related to the construction of the Project for the benefit of the City. The permission granted by this Agreement shall begin on the Effective Date and continue in full force for one year, or until completion of the Project by the Contractor and acceptance of the Project by the City via a final walk-through with Goodyear Engineering and Development Services staff.

The Contractor shall maintain a record set of plans at the job site, which plans shall be kept legible and current and shall show all changes or work added in a contrasting, reproducible color. The Contractor, at completion of the work, shall provide the City with the original record drawing marked AS-BUILTS. The Contractor shall provide two sets of close out manuals to the Parks and Recreation Director, which manuals shall be a hard-backed, loose-leaf binder containing the following required submittals and other required sections, suitably typed, indexed and labeled for ready reference:

1. Subcontractors, major suppliers list with companies' names, addresses and telephone numbers.

2. Warranties and certifications.
3. Other items required by the specifications.
4. Electronic copy of documents on CD and /or DVD.
5. Date of commencement of warranties shall be the date of substantial completion and Certificate of substantial completion.

The Contractor agrees to keep the Park and all adjoining property free and clear of trash, debris and unauthorized materials and to restore the surface of the Park to its original state, to the satisfaction of the City, prior to Project completion. All tools, equipment, supplies and other personal property brought to the Park by the Contractor shall remain the property of Contractor and shall be removed by the Contractor at its sole expense upon completion of construction. The Contractor shall not store petroleum products, hazardous or toxic substances or flammable materials at the Park without the prior written consent of the Goodyear Parks and Recreation Director.

B. THE CITY.

The City shall be responsible for funding the required zoning and use permits and approvals needed for the Project.

4. NAMING OF PROJECT.

The Diamondbacks Foundation shall have the exclusive right to name the Project, including recognition of all parties donating money, labor and/or materials to the Project, and to install appropriate dedication/naming signs. Any such signs shall reasonably conform to applicable regulations, ordinances and laws. In the event that either the City or the Diamondbacks Foundation determines that the name of the Project is not in the best interest of the City, the Diamondbacks Foundation and/or any of its affiliates, subsidiaries, employees, representatives, sponsors, donors, charities and/or other similar entities or persons, such party may request a name change at the requesting party's expense. Such request shall be made and kept privileged and confidential to the extent permitted by Arizona law. A name change may be implemented only upon the express written consent of both the City and the Diamondbacks Foundation, which consent may not be unreasonably withheld, delayed or conditioned.

5. USE, OPERATION AND MAINTENANCE OF THE PROJECT.

The City shall take appropriate measures to ensure that the Project is appropriately, adequately and permanently maintained for the benefit of persons served by the City. The City covenants and acknowledges that the primary purpose of the Project is youth baseball and warrants that it shall take appropriate measures to supervise, protect and maintain the Project for such purpose.

Specifically, the City expressly covenants and agrees to repair, maintain and operate the Project in strict conformance with the maintenance guidelines attached as Exhibit B, subject to fiscal and legal authority of the City Council. The Diamondbacks Foundation shall have reasonable access to the Project for purposes of determining the City's compliance with its repair and maintenance obligations. If requested by the Diamondbacks Foundation, the City shall take such

steps as reasonably necessary to ensure the Project facilities are maintained adequately. This provision does not alter the City's independent obligations to maintain, repair and operate the Project and keep it in a habitable, safe and substantially good condition.

6. INSURANCE REQUIREMENTS

The Contractor and their respective subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, or their respective agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor or their respective agents, representatives, employees, or subcontractors. The Contractor is free to purchase such additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis. For purposes of this Section 6, the Contractor is referred to as "Consultant" where insurance requirements are applicable to the Contractor.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and explosion, collapse and underground exclusion ("XCU") coverage.

- | | |
|---|-------------|
| • General Aggregate | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000 |
| • Personal and Advertising Injury | \$1,000,000 |
| • Each Occurrence | \$1,000,000 |

a. The policy shall be endorsed to include the following additional insured language: "The City of Goodyear and the Arizona Diamondbacks Foundation shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including completed operations."

2. Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

- Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The City of Goodyear and the Arizona Diamondbacks Foundation shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Consultant, including automobiles owned, leased, hired or borrowed by the Consultant."

3. **Worker's Compensation and Employers' Liability**

- Workers' Compensation Statutory Employers' Liability
Each Accident \$100,000
- Disease - Each Employee \$100,000
- Disease - Policy Limit \$500,000

a. Policy shall contain a waiver of subrogation against the City of Goodyear.

b. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. **Builders' Risk Insurance or Installation Floater (Contractor Only)**

a. Coverage shall be in an amount equal to the estimated value of the Project.

b. The City of Goodyear, the Arizona Diamondbacks Foundation, the Contractor and subcontractors, shall be insured on the policy.

c. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs, flood and earth movement.

d. Policy shall be maintained until whichever of the following shall first occur: (1) final payment has been made to the insured and/or additional insured parties; or, (2) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

e. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the City.

f. Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

g. Policy shall contain a waiver of subrogation against the City.

h. The Contractor is responsible for the payment of all policy deductibles only in the event of Contractor's liability or in the absence of any other liable party.

B. ADDITIONAL INSURANCE REQUIREMENTS

The policies identified above shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City and the Diamondbacks Foundation are named as additional insureds, the City shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. NOTICE OF CANCELLATION

Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE

The Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) for all policies required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

F. SUBCONTRACTORS

Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor; however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

7. CONTRACTOR INDEMNITY OBLIGATIONS.

The Contractor (hereinafter referred to as Indemnitor) agrees to indemnify and save harmless the City and the Diamondbacks Foundation, their respective officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and employees (hereinafter referred to as Indemnitees) from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the performance of work done in fulfillment of the terms of this Agreement or on account of any negligent or improper act, claim or amount arising or recovered under workers' compensation law or arising out of the failure of the Indemnitor to conform to applicable statutes, ordinances, regulation, law or court decree. It is agreed that the Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this Agreement, the Indemnitor agrees to waive all rights of subrogation against the City and the Diamondbacks Foundation, their respective officers, officials, agents and employees for losses arising from the work performed by the Contractor (as applicable) for the City and the Diamondbacks Foundation.

8. CITY INDEMNITY OBLIGATIONS.

To the fullest extent permitted by law, the City shall indemnify and hold harmless the Diamondbacks Foundation, the Contractor and any and all of their respective affiliates, subsidiaries, employees, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, arising after acceptance of the Project by City and pertaining directly or indirectly to the City's maintenance of the Project and/or the City's role as the Project Owner, including any alleged safety violations by the City or the City's failure to comply with applicable safety laws, rules, regulations and/or ordinances. These indemnification obligations shall apply to the extent that the claim, damage, cause of action, loss, demand, judgment and/or liability is caused by any negligent or improper act or omission of the City or any of the City's agents, employees, or officers. These indemnification obligations shall not apply to the extent that the claim, damage, cause of action, loss, demand, judgment and/or liability is caused or alleged to be caused in whole or in part by any negligent or improper act or omission of the Contractor pertaining to design or construction.

9. CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING.

A. CONTRACT WORKER BACKGROUND SCREENING.

Contractor agrees that all contract workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnish to the City pursuant to this Agreement shall be subject to background and security checks and screening (collectively "Background Screening") at Contractor's respective sole cost and expense, as required by the City and as set forth in this Section. The Background Screening provided by Contractor shall comply with all applicable laws, rules and regulations. Contractor further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may

arise out of Contractor's respective services under this Agreement or Contractor's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Contractor and their Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement.

B. BACKGROUND SCREENING REQUIREMENTS AND CRITERIA.

Because of the varied types of services performed, the City has established three levels of risk and associated Background Screening. The risk level and Background Screening required for this Agreement is Minimum Risk and Background Screening ("Minimum Risk").

A Minimum Risk shall be performed when the Contract Worker: (i) will not have direct access to City facilities or information systems; or (ii) will not work with vulnerable adults or children; or (iii) when access to City facilities is escorted by City workers. The Background Screening for Minimum Risk shall consist of the screening required by Arizona Revised Statutes (A.R.S.) §§ 41-4401 and 23-214 to verify legal Arizona worker status. Contractor and each subcontractor they use warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

C. CONTRACTOR CERTIFICATION.

By executing this Agreement, Contractor certifies and warrants that they have read the Background Screening requirements and criteria in this Section, understand them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Agreement, Contractor further certifies and warrants that they have satisfied all such Background Screening requirements for the Minimum Risk Background Screenings as required.

D. TERMS OF THIS SECTION APPLICABLE TO ALL CONTRACTOR CONTRACTS AND SUBCONTRACTS.

Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.

E. MATERIALITY OF BACKGROUND SCREENING REQUIREMENTS; INDEMNITY.

The Background Screening requirements of this Section are material to City's entry into this Agreement and any breach of this Section by Contractor shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in Section 7 of this Agreement, Contractor shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 7) arising out of this Background Screening

Section including, but not limited to, the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.

F. CONTINUING DUTY; AUDIT.

Contractor's respective obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. Contractor respectively shall maintain all records and documents related to all Background Screenings and this Project. The City reserves the right to audit Contractor's compliance with this Section.

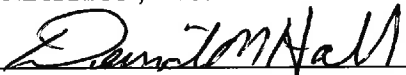
10. TERMINATION.

This Agreement may be terminated by the Diamondbacks Foundation, at its option, if the City fails to fulfill its obligations hereunder. In the event of any such termination, at the Diamondbacks Foundation's request (and at the City's expense), the City shall remove all signage that affiliates the Arizona Diamondbacks' Major League Baseball team or its player(s) with the Project (as well as any other signage installed pursuant to Section 4 hereof, if requested by the Diamondbacks Foundation).

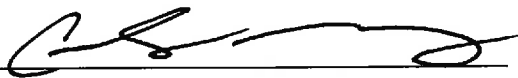
11. MISCELLANEOUS.

The parties to this Agreement understand that each party entered into this Agreement in reliance on the agreement of each of the other parties to perform its obligations hereunder. This Agreement is binding and enforceable with respect to the subject matter hereof, and may be modified or amended only by a writing signed by all parties. This Agreement shall be governed by and construed in accordance with Arizona law, and shall be subject to the provisions of A.R.S. § 38-511.

**ARIZONA DIAMONDBACKS
FOUNDATION, INC.**

By 
Title Pres. & CEO
Date 1-10-17

PIMMEX CONTRACTING

By 
Title President
Date 1/10/17

CITY OF GOODYEAR,

By _____
City Manager

ATTEST:

_____ City Clerk

APPROVED AS TO FORM

City Attorney

EXHIBIT A



ARIZONA DIAMONDBACK FOUNDATION **“DIAMONDS BACK” FIELD PROGRAM**

Scope of work:

- Field Layout: All Field layout including; grass areas, lighting, fencing, etc.
- Ball Field Fencing:
 - Chain link fencing, backstop and field access gate.
 - 6ft tall chain link fencing at dugouts (dugouts 30' x 6')
 - Dugouts to have a roof structure covering
 - Bullpens
 - Foul ball poles
 - Note: All fencing to be standard 9-gage chain link fencing with 2" mesh. Top rails to be 1 5/8" and terminal posts to be 2 3/8".
- Field Accessories:
 - Dugout benches (2 ea)
 - Bleachers (2 ea – 21' 3 row Type)
 - Bases and Anchors (3 ea.)
 - Youth Pitchers Plate (3 ea if Bullpens are included)
 - Home Plate (3 ea if Bullpens are included)
 - Fence Guard – Bright yellow decorative fence guard on outfield fencing.
 - Wind screening
 - Fiberglas Kickboard on Backstop fencing
- Scoreboard
 - One double-sided illuminated scoreboard
- Landscaping
 - Modifications for ball field sprinkler and irrigation system.
 - Sod –outfield (approximately 40,000sf – Sod to be BOBSOD)
 - Ball field Material
 - Warning Track Material – approximately 5,750sf (2" depth)
 - Home plate and Pitcher's mound clay – approximately 6 tons.
 - Infield Mix – approximately 50-60 tons.
- Finish Grade
 - Finish grade to be plus or minus 1/10th.
 - Top 6" of grade to be free of debris/rock (less than 1/2" size is acceptable.)

- Electrical
 - Conduit, wire and junction box to future scoreboard location
- Lighting
 - 4 ea light standards with spill and glare components

EXHIBIT B

Maintenance Guidelines **(Falcon Park)**

The Arizona Diamondbacks Foundation is proud to provide these fields for youth baseball. To ensure that the facility is continually and permanently maintained in a first class condition, the Arizona Diamondbacks Foundation has outlined these maintenance guidelines for owners/users of this facility. As reflected on the guidelines, the City agrees to the following maintenance obligations subject to fiscal and legal authority of its governing board.

Little League Grass Playing Field:

The "City" will mow and keep grass trimmed at fence lines, and other boundaries, on a regular basis.

The "City" will provide herbicide control for weeds as needed.

The "City" will water grass at regular intervals, outside of dormant period, to maintain healthy and green grass.

The "City" will treat grass with such additives as gypsum, fertilizer, and aerate as needed.

The "City" will replace or repair malfunctioned or dangerous irrigation equipment.

The "City" will control and remove overgrowth of grass on infield dirt, home plate area, pitcher's mound and warning track prior to start of each baseball season.

The "City" will regularly roll, rake, drag and tamp infield, mound and home plate area during each baseball season, to prevent erosion and promote safety and playability.

The "City" will inspect and repair or replace home plates, pitching rubbers, bases and base anchor supports as needed, on an on-going basis, particularly before each baseball season.

The "City" will maintain the foul pole, including painting the foul pole and repairing the fair screen, as needed.

Scoreboard:

The "City" will provide electricity for purposes of scoreboard operation and other electrical needs, installed by contractor.

The "City" will immediately clean or repaint any graffiti or other surface damage caused by vandalism.

The "City" will check scoreboard prior to each baseball season for proper operation. Burned out scoreboard bulbs should be replaced prior to each season, including digits, indicators and backlit bulbs. Scoreboard manufacturer will provide some additional bulbs upon completion of project.

The “City” will be responsible for repairs to the scoreboard. The “City” will report any malfunction of the scoreboard immediately to manufacturer/dealer.

The “City” will inspect and repair or replace immediately any locks, boxes or other items to protect scoreboard controls.

Fencing/Backstop:

The “City” will inspect and repair all fencing and backstop, as needed. Foul poles are to remain intact and straight.

The “City” must install, clean, repair or replace plastic guard rail and shade screens and tarps in case of any damage. In the event the replacement becomes a cost burden to the “City”, the City may request approval from Diamondbacks Foundation to discontinue use of one or all of these elements.

Flagpoles:

The “City” will maintain flagpoles upright and in good working order, including flagpole and flag maintenance, repair, raising and/or lowering.

Bleachers:

The “City” will inspect and repair bleachers, checking for loose benches, loose or exposed bolts or other potentially hazardous conditions. Bleachers and area under bleachers are to be cleaned at regular intervals.

Dugouts:

The “City” will maintain benches in a safe condition on an on-going basis.

The “City” will maintain dugout roof and dugout area in a safe and clean condition.

Shade tarps:

The City” will clean and maintain shade tarps, pads and screens on fencing. Tears and holes (other than wind holes) are to be repaired immediately.

Lights:

Light controls are to be locked and secured at all times. The “City” will routinely inspect, clean, re-lam and re-aim sports lighting as necessary