



Maricopa County

Clint Hickman, Chairman
Board of Supervisors, District 4

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April 11, 2016

AZPB Limited Partnership
AZPB FM Limited Partnership
Chase Field
401 East Jefferson
Phoenix, AZ 85004
Attention: Derrick M. Hall

Re: Team Letters of March 24, 2016

Dear Derrick:

The Stadium District certainly recognizes and appreciates the many tangible and intangible benefits the Diamondbacks have brought to the residents and business communities of Maricopa County and the City of Phoenix. The Chase Field location in the core of the downtown Phoenix area has been a key catalyst to the phenomenal growth and synergy that the City has benefitted from since the ballpark opened. We would also like to recognize that the relationship between the Diamondbacks and the Stadium District up until recently, and from our perspective, is a rare example of a positive and constructive public/private partnership for others to follow.

With that said, we are very concerned by the recent dissatisfaction expressed by the Team with its home at Chase Field. Also of concern are the Team's statements of wanting to explore relocating from Chase Field before the Team's contractual commitment is fulfilled. In the Team's letter of March 16, 2016, you requested that the District waive an important provision in the Facility Use Agreement ("FUA"), section 11.2.1.2, that prohibits the Team from exploring relocating the Team from Chase Field until the last four years of the FUA, that is, in 2024. The Team's March 16, 2016 letter states: *"Specifically, we are requesting that the Maricopa County Stadium District allow AZPB Limited Partnership the right to take such actions as it deems necessary in order to move and play Diamondbacks' baseball games in a location other than Chase Field."*

In our March 23, 2016 response letter, we declined to waive that key term of the FUA, pointing out that the provision was so important in the original negotiations that all the cities and towns in Maricopa County were made third party beneficiaries of that section to ensure that the \$253 Million in public funding to build the stadium for

the Diamondbacks would be protected by the Team obligation to play there for at least thirty years. I note that if the District had been inclined to waive the FUA section 11.2.1.2 restriction, at a minimum, notice would need to be given to all those cities and towns granted third party beneficiary rights.

On March 24, 2016, the day after the District delivered our response, the Team delivered two letters to the District--a two page letter dated March 24 and a fifteen page letter dated January 12, 2016. In the two page letter, the Team stated its desire to continue to play its games in Phoenix, and it wanted to seek "*economically sound alternatives (including consideration of staying in the current location)*". In the fifteen page letter, however, the Team states that even assuming funds are available to pay for the \$187 Million in costs projected in the 2013 Facility Assessment Study over the remaining twelve years of the FUA, "*it makes no economic sense to invest them in what will be a 30-year old facility that is far from being 'state-of-the-art.'*" Later in the letter, the Team says "we would very much like to remain in downtown Phoenix" and holds out the possibility that the Team would consider a retrofit of Chase Field: "*This should not rule out the possibility of retrofitting Chase Field if it is determined to be the best option.*" These conflicting statements, along with the Team's statement in its March 16, 2016 letter that it wanted the right to take actions to move and play its baseball games elsewhere, leave us decidedly unclear as to the Team's end goal here. We invite the Team to clarify its intentions.

We were surprised at the Team's recent allegations concerning the condition of the Facility. In discussions over recent years, the Team has said it would like to reduce seating capacity at the stadium, and has requested a greatly reduced "rent" payment to the District, but the Team has not previously complained about the condition of the Facility. As you are aware, the Facility condition is, in fact rated "excellent" in the 2013 Facility Assessment Study. We note that the Related Use Agreements were structured so that Team payments to the District are to be the primary funding source for most Capital Repairs at the Facility; thus, agreeing to a reduction in these payments would jeopardize necessary funding to perform current and potential future Capital Repairs. As discussed in the attachment to this letter, sufficient funds are projected to be available to meet estimated concrete and steel Capital Repair needs identified in the 2013 Facility Assessment Study.

On this topic of necessary Capital Repairs, please be advised that you will shortly be receiving a letter from the Stadium District Executive Director Representative urging you to reconsider and grant the Team's customary approval for proceeding with the next phase of the continuing program of concrete and steel repairs and waterproofing that has been planned for the upcoming off-season. It is imperative that this remediation and repair program continue expeditiously to avoid further damage and increased cost to repair. It is important to recognize that it is this type of program that will be of the most future value to the Team, the District, and the taxpayer because

such programs ensure structural viability, provide options, and mitigate the incremental future costs associated with the possibility of retro-fitting Chase Field. As per the 2013 Facility Assessment Study, the Engineer of Record for Chase Field has identified water infiltration from the power washing cleaning method as the reason for the accelerated structural corrosion and concrete damage.

Attached to this letter is a review and discussion of the relevant Related Use Agreements as they pertain to the respective responsibilities and obligations of the Team, the Facility Manager and the District relating to the stadium. This "Related Use Agreements Summary and Discussion" shows that, contrary to the allegations in your fifteen page letter, the Team and Facility Manager, not the Stadium District, have almost total responsibility for the maintenance, operation and repair of Chase Field. Further, although the Facility was rated to be in "excellent" condition in the most recent Facility Assessment Study, the agreements do not establish any contractual requirement to provide the Team a "state-of-the-art" ballpark. On the contrary, the documents are structured to place that obligation on the Team if, in its business judgment, it chooses to do so. The District has not breached any provisions or obligations under the agreements, and if it had, FUA section 21.4.1 makes alternative dispute resolution the Team's exclusive means to resolve such dispute, not litigation.

With that said, and as indicated in our March 23, 2016 letter, we welcome any efforts with the aim of making Chase Field an attractive place for the Team to play, now, and beyond the current term of the FUA. The District again acknowledges that our agreements allow for discussions with the City of Phoenix and any other entities with the purpose of keeping the Team at Chase Field. We encourage such discussions and are happy to continue participating in them with the Team and any other party the Team feels would be helpful.

Sincerely,

MARICOPA COUNTY STADIUM DISTRICT

A handwritten signature in black ink, appearing to read 'Clint Hickman', is written over a horizontal line.

Clint Hickman
Chairman

Attachment: Related Use Agreements Summary and Discussion

cc: Denny Barney, Director, District 1, MCSD
Steve Chucri, Director, District 2, MCSD
Andy Kunasek, Director, District 3, MCSD
Steve Gallardo, Director, District 5, MCSD
Fran McCarroll, Official Record Keeper, MCSD
Tom Manos, Executive Director, MCSD
Daren Frank, Executive Director Representative, MCSD

RELATED USE AGREEMENTS SUMMARY AND DISCUSSION

The “Related Use Agreements” are the interrelated series of contracts governing the rights responsibilities and obligations of the Stadium District, the Team and its affiliates relating to Chase Field. Those contracts were carefully negotiated and entered into in 1996 and clearly place the responsibility to ensure that the Facility is properly operated, maintained and repaired on the Facility Manager, AZPB FM Limited Partnership, a Team affiliate. Virtually all operational and maintenance costs of the Facility are a Team responsibility. Furthermore, the Related Use Agreements do not establish a “state-of-the-art” standard for the Facility. Provisions of the Related Use Agreements relevant to these issues are discussed below.

Facility Manager Responsibility for Annual Budget and Team Payment Obligation

Facility Management Agreement (“FMA”) section 9.1 requires the Facility Manager, i.e. AZPB FM Limited Partnership, to produce an annual “Facility Operating Budget.” This budget is comprised of specified components, including the Base O&M Component of which FMA section 9.1(i) states:

*This Component includes all Facility Non-Use Period operating, maintenance and repair costs incurred pursuant to Articles 10 and 11 and shall also include all the non-incremental and indirect costs (inclusive of Facility Manager overhead and markups) incurred by the Facility Manager in connection with District Events, Tour Activities and Real Estate Manager and Stadium Garage activities, **which costs are deemed to be Team Operating Expenses.** The Base O&M Component is subject to the Team's approval.*

(Emphasis added).

Two other budget components specified in section 9.1 include the “Home Game Component,” which encompasses all operating, maintenance and repair costs relating to Home Games, and the “BTAL Component” which includes all such costs relating to the “Baseball Team Area Lease” (a Related Use Agreement governing the Team offices, locker rooms, Team Store and other areas that are under exclusive control of the Team). These components are also identified in FMA section 9.1 as Team Operating Expenses.

Pursuant to the Facility Use Agreement (“FUA”), Team Operating Expenses are all the responsibility of the Team to pay. FUA section 8.1 states: “The Team shall pay all Team Operating Expenses as provided in the FMA.” The three budget components discussed above, all Team costs, encompass almost all operating, maintenance and repair costs of the Facility other than the “actual, incremental, direct costs” incurred during other activities such as District Events, Day Uses, Tenant Area uses, or Parking Garage revenue generating activities at the Facility. Tenant Area costs and Parking Garage costs are the responsibility of the Real Estate Manager and the Facility Manager, both Team affiliates, as discussed below. The one significant exception to the Team’s obligation to pay for Facility expenses is for repairs meeting the FMA definition of Capital Repair, also discussed below.

The Capital Repairs Component is to be included in the annual budget as provided in FMA section 9.1(viii). That component is to include costs for Capital Repairs as defined in FMA section 17.1. The Capital Repairs Component is subject to both Team and District approval because those costs are to be paid from the Facility Reserve Accounts as defined in the FMA. There is no requirement that either Team or District fund the Facility Reserve Accounts beyond the revenues that flow into those accounts pursuant to the Related Use Agreements, the source of which is primarily the Team payments to the District, and secondarily, revenues from District Events in accordance with section 8.1 of the Activities Agreement, another of the Related Use Agreements.

The REMA Component of the budget is established in FMA section 9.1(vi) and includes all actual, incremental, direct costs incurred by the Real Estate Manager, AZPB REM Limited Partnership, another Team affiliate with Derrick Hall listed as President and CEO. The Stadium Garage Component is established in FMA section 9.1(vii), and is comprised of the actual, incremental, direct costs of operating the parking garage, which the Facility Manager is responsible for as provided in FMA section 19.1.5.

The District Event Component is the only budget component the District is solely responsible for funding, and is comprised of the “*actual, incremental, direct costs exclusive of Facility Manager overhead and markups*” that are incurred in connection with District Events at the Facility. This District Event Component is not prepared annually, but rather it is submitted in conjunction with booking each District Event. This budget component is the only component the District has sole approval authority over because it is the only one the District is required to pay for.

Facility Manager Maintenance Responsibility and Performance Standard

The responsibility for ensuring that the Facility is maintained to a high level is that of the Facility Manager, a Team affiliate. Article 10 of the FMA, entitled “General Standards for Operations and Maintenance of the Facility,” establishes the performance standard which the Facility Manager, is required to meet. FMA section 10.2 provides:

General Performance Standard. At all time, the Facility Manager shall:

- (i) operate, maintain, repair and clean the Facility as necessary to preserve and keep the Facility in good repair, order and condition;*
- (ii) operate, maintain, repair and clean the Facility so that it is safe and can readily be made available for the playing of Home Games and the conducting of District Events, Days Uses and Tour Activities; and*
- (iii) operate, maintain, repair, and clean the Facility in compliance with all applicable governmental requirements.*

The Facility Manager shall discharge such duties in a manner customary for an entity experienced in operating, maintaining, repairing and cleaning comparable (taking into account the age of the structure, the presence or absence of a retractable roof and the

climate controlled nature of the Stadium) MLB facilities. The Facility Manager's obligations pursuant to this Section 10.2 shall not be deemed satisfactorily discharged simply because it has expended the funds provided in the Base O&M Component, the Home Games Component, the BTAL Component, the REMA Component or the Stadium Garage Component.

These listed budget components--the Base O&M Component, the Home Games Component, the BTAL Component, the REMA Component and the Stadium Garage Component--are all the responsibility of the Team or a Team affiliate, all entities for which Derrick Hall is listed as President and CEO. The General Performance Standard requires the Facility Manager to keep the Facility compliant with all governing code requirements, and this obligation and all other performance standard obligations are "*not deemed satisfactorily discharged simply because the Facility Manager has expended the funds provided...*" in the listed budget components. Thus, the Team and/or Team affiliates are financially responsible for virtually all costs of keeping the stadium in "good repair, order and condition" and this obligation is not met or limited simply because the budgeted funds are insufficient.

Capital Repairs

The FMA also explicitly makes the Facility Manager responsible for Capital Repairs. Section 10.4.2 provides: "*The Facility Manager shall maintain and repair the Facility and shall undertake Capital Repairs.*" Capital Repairs are to be funded from Facility Reserve Accounts as stated in FMA section 17.2.2. What qualifies as a Capital Repair under the FMA is important to understanding how the FMA and the other Related Use Agreements structure responsibility for the cost of operating, maintaining and repairing the stadium as well as the cost of enhancing the Facility to keep up to standards in the Major League Baseball world.

FMA section 17.1.1(i) establishes basic requirements for a project to be included in the definition of Capital Repair:

The actual, incremental, direct costs of any necessary repairs, replacements or improvements to any part of the Facility that are in excess of Fifty Thousand Dollars (\$50,000.00) (which amount shall be adjusted each year by a percentage equal to the percentage adjustment in the Minimum License Fee as provided in Section 10.1.1 of the FUA) either individually or, in the case of similar work done contemporaneously, in the aggregate and are (A) necessary in order for the Facility Manager to be able to satisfy the standard set forth in Section 10.2 or (B) required to address public health and safety concerns; provided, however, that the cost and nature of such repairs, replacements or improvements is of a type which under generally accepted accounting principles is to be capitalized or depreciated.

FMA sections 17.1.1(ii), (iii) and (iv) list other specific projects that would qualify as a Capital Repair, including the cost of work undertaken to satisfy MLB requirements related to a health or safety concern, but only if the project also meets the basic Capital Repair requirements in FMA section 17.1.1(i) above.

Currently, the threshold amount to qualify as a Capital Repair, if the other requirements of the definition are met, is \$88,525.58. If a Facility repair or maintenance cost does not meet this threshold amount, as well as the other Capital Repair definition requirements, then the project generally will belong in the Base O&M budget component category, and is a Team Operating Expense as provided in FMA section 9.1(i).

As noted earlier, the Stadium District never undertook, and the Related Use Agreements do not create, an obligation to provide a “state-of-the-art” Facility for the Team. The absence of a “state-of-the-art” standard anywhere in the Related Use Agreements was purposeful and is evident in the Capital Repairs definition above. The Facility Reserve Accounts are to be accessed only for “necessary repairs, replacements or improvements” that meet the other criteria in the Capital Repair definition. This is reflected in the specific exclusion from the definition of Capital Repairs in FMA section 17.1.2(x) of: “*Any repairs, replacements or improvements that are solely the result of Functional Obsolescence.*” The FMA defines Functional Obsolescence as follows: “*Functional Obsolescence means, with respect to any portion of the Facility, that it is not physically obsolete (e.g., dysfunctional due to ordinary wear and tear), but is no longer optimal for its original intended purpose.*”

This specific exclusion from the Capital Repairs definition of projects merely to update an aspect of the Facility that is “no longer optimal for its original intended purpose” underscores that the Related Use Agreements intended that the determination regarding what upgrades the Team might desire to keep up in the Major League Baseball world, and the funding for such upgrades, are a Team responsibility. The Facility Reserve Accounts, other than the Non-Obsolescence Account discussed below, are not to be dissipated for mere upgrades to still functional Facility features.

Non-Obsolescence Account

The only Facility Reserve Account intended to be accessed for projects not qualifying as Capital Repairs, but rather are for the purpose of updating or refurbishing the stadium, is the Non-Obsolescence Account. This account was established, funded and may be accessed in accordance with FMA section 17.3.4, Activities Agreement section 8.2, and FUA section 3.4. The Non-Obsolescence Account was created recognizing that the Team would likely require some incentive to extend their use of the Facility beyond 2027. This account can be used for the type of enhancements and updating of the Facility that the Team might want, which likely do not qualify as a Capital Repair because of the Functional Obsolescence exclusion in FMA section 17.1.2(x). In accordance with FMA section 17.3, the Non-Obsolescence Account is the only Facility Reserve Account that can be accessed for projects that do not qualify as a Capital Repair. The Team’s rights to access the funds in the Non-Obsolescence Account are set forth in section 8.2.3 of the Activities Agreement and are tied to the Team exercising FUA extension options as provided in FUA section 3.4.

In contrast, the District can access the Non-Obsolescence Account “*throughout the term and after the expiration of the FUA . . . solely for updating, refurbishing, repairing or otherwise improving the Facility*” as provided in the Activities Agreement, section 8.2.3. FMA section

17.3.4 states that use of funds in the Non-Obsolescence account is subject to the reasonable approval of both the Team and the District.

2013 Facility Assessment Study

The Team has focused on the 2013 Facility Assessment Study in its complaints about the District. This study was the most recent of many such reviews which the Team and Facility Manager have fully participated in. The Steering Committee for the Facility Assessment Study is comprised of two members from the Team/Facility Manager and two District staff members. The study takes a long view of future costs of maintaining, repairing and upgrading the stadium. These costs and categories are all lumped into the \$187 Million figure that the Team mischaracterizes as a Stadium District unfunded obligation.

In breaking out these costs, approximately \$55 Million is part of the annual Team obligation for the cost of operation, repair and maintenance of the stadium throughout the remaining term of the FUA. Approximately \$90 Million is for multiple cycles of continuing updates and refurbishing of fan amenities such as remodeling suites and new LED scoreboards, which are not likely to qualify as Capital Repairs payable from the Facility Reserve Accounts because of the "Functional Obsolescence" exclusion in FMA section 17.1.2 (x). Thus, those costs also are a Team responsibility to the extent the Team chooses to make those upgrades, or with District consent, the Team can access funds in the Non-Obsolescence Account in conjunction with exercising FUA extension options in accordance with FUA section 3.4.

The Facility Assessment Study did identify costs of approximately \$35 Million for structural, steel and concrete repairs that the District, Facility Manager and Team have been addressing over the past several off-seasons, with a plan to complete over the next several years. This work qualifies as a Capital Repair to be paid from Facility Reserve Account funds per FMA section 17.2.2. Projections show that there will be sufficient funds available to pay for those repairs as they are scheduled--or if there is a shortfall in the Facility Reserve Accounts, the District has demonstrated a willingness to contribute District Operational Account funds towards this type of repair, although there is no contractual obligation to do so.

Team Complaints Are Subject To Mandatory ADR, Not Litigation

Even if the Team's allegations against the District were true, the Team's remedy would be to submit the matter to alternative dispute resolution pursuant to FUA Article 21, not litigation. FUA section 21.4.1 makes alternative dispute resolution the exclusive means available to the Team for resolution of disputes relating to the FUA, except for very limited exceptions specified in FUA section 21.3, not applicable to the Teams allegations.

This review of the relevant provisions of the Related Use Agreements, the contracts governing the respective obligations of the Team, Facility Manager and District regarding operating, maintaining, repairing and funding the Facility, shows that the Team and its affiliate, the Facility Manager, not the District, are obligated for virtually all operations, management and repairs to the Facility, with the exception of paying for Capital Repairs which are to be paid from the Facility Reserve Accounts.