

**YOUTH AND AMATEUR SPORTS**

**FY 2020 BIENNIAL GRANT FUNDING AGREEMENT**

**By and Between**

**TOURISM AND SPORTS AUTHORITY d/b/a  
THE ARIZONA SPORTS AND TOURISM AUTHORITY,**

**and**

***City of Peoria, Arizona***

**Pertaining To**

***Parks, Recreation & Community Facilities Improvements***

**November 30, 2019**

THIS YOUTH AND AMATEUR SPORTS FY 2019 BIENNIAL GRANT FUNDING AGREEMENT (the "Agreement") is made to be effective as of the 20<sup>th</sup> day of November, 2019 (the "Effective Date") by and between Peoria, City of, a[n] Municipality (hereinafter called the "Recipient" or a "Party"), and the TOURISM AND SPORTS AUTHORITY d/b/a THE ARIZONA SPORTS AND TOURISM AUTHORITY, existing pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 5-801 et seq., as the same may be modified or amended (collectively, the "Act"), as a corporate and political body of the State of Arizona and, except as otherwise limited, modified or provided by the Act, as a tax levying public improvement district (hereinafter called the "Authority" or a "Party"). The Recipient and the Authority are sometimes hereinafter collectively called the "Parties."

#### RECITALS

A. Pursuant to A.R.S. § 5-804, the Authority is authorized to enter into contracts and agreements as necessary to carry out the purposes and requirements of the Authority.

B. Pursuant to A.R.S § 5-809(A), the Authority is authorized to: (i) provide funds to acquire land or construct, finance, furnish, improve, market or promote the use of community youth and amateur sports facilities, recreational facilities and other community facilities or programs in Maricopa County; and (ii) do all things necessary or convenient to accomplish those purposes.

C. The Recipient has agreed to Parks, Recreation & Community Facilities Improvements (hereinafter more particularly defined below as the "Project") to be used for community youth and amateur sports and recreation activities.

D. Pursuant to A.R.S. § 5-809(B), the Board of Directors of the Authority (the "Authority Board") must require that the Recipient contribute to the development of the Project that amount that is equal to a minimum of one-half of the funds to be contributed, spent or distributed by the Authority with respect to the Project.

E. The Authority Board has determined that the Authority will, pursuant to this Agreement, provide partial funding for the Project.

#### AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual obligations of the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties acknowledge and agree as set forth in this Agreement:

#### ARTICLE I DEFINITIONS

Section 1.1 Unless otherwise defined in this Agreement, following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

- (a) "Act" means A.R.S. Title 5, Chapter 8, as amended.

(b) “Authority Contribution” means a maximum of \$219,800.00 based on the Project Costs. This represents approximately 66.6061% of the total Project Costs \$330,000.00 with the remaining balance to be provided by the Recipient (see Recipient Contribution) provided, however, that the total Authority Contribution shall not exceed the dollar amount equal to two thirds (2/3) of the Project Costs (as defined below). A reduction in the Project Costs will reduce the Authority Contribution on a pro-rata basis. An increase in the Project Costs will not increase the Authority Contribution but will be an obligation of the Recipient. \_\_\_\_\_(Recipient’s Initials)

(c) “Authority Representative” means the person or persons designated by the Authority to act on its behalf.

(d) “Completion Date” means November 2020.

(e) “Contractor” means any person or entity entering into a Project Contract or other agreement associated with development of the Project.

(f) “Event of Default” means any one of the events described in Sections 9.1 and 9.2.

(g) “Project” means the project undertaken by the Recipient for or in connection with a youth and amateur sports and recreational facility consisting generally of 4-pole Musco field lighting system; new treadmills for Rio Vista Recreation Center; deck tables at three community partnership swimming pools; AEDs and pop-up soccer goals for the Peoria Youth Sports Program, all as more particularly set forth and described in the Project Scope.

(h) “Project Contract” means any agreement or agreements for the design, development, acquisition, installation, implementation and construction of all or a substantial part of the Project by and between a Contractor and the Recipient.

(i) “Project Costs” means the total costs for development, design, survey, land acquisition, installation, construction, engineering, construction administration and expenses directly related to the Project, all as set forth on Exhibit B attached hereto and made a part hereof together with such costs as may result from a change of plans pursuant to Section 4.2 of this Agreement.

(j) “Project Scope” means the plans and specifications or other descriptions for the Project, as set forth on Exhibit A attached hereto and made a part hereof, together with such other plans and specifications or other descriptions which are hereafter prepared by and for the Recipient and approved by the Authority pursuant to Section 4.2(a) of this Agreement.

(k) “Project Start Date” means the Effective Date.

(l) “Recipient Contribution” means the Project Costs less the Authority Contribution.

(m) “Recipient Representative” means the person or persons designated by the Recipient to act on its behalf.

(n) “YAS Account” means the youth and amateur sports facilities account created pursuant to A.R.S. § 5-838 and maintained by the Authority.

## ARTICLE II PURPOSE; TERM

Section 2.1 Purpose. The purpose of this Agreement is to provide for the following:

- (a) The design, development, acquisition, installation, implementation and construction of the Project; and
- (b) The respective rights and obligations of the Parties with respect to the Project.

Section 2.2 Term; Survival. This Agreement shall be in full force and effect upon the Effective Date and shall continue in full force and effect and shall be binding on the Parties until completion of the Project. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the rights and obligations of the Parties contained in Article 6 hereof shall survive termination of this Agreement.

Section 2.3 Notice of Award. The Recipient shall promptly notify the Authority in writing and provide written evidence of the award of the first Project Contract.

## ARTICLE III OBLIGATIONS OF THE PARTIES

Section 3.1 Recipient Contribution. The Recipient shall fully fund or cause to be funded the Recipient Contribution. The Recipient shall document and provide evidence as part of Exhibit C from all sources totaling the Recipient Contribution.

Section 3.2 Recipient Representative. The Recipient shall designate **Chris Calcaterra, Deputy Director of Parks, Recreation and Community Facilities; City of Peoria, Arizona; 8401 W Monroe Street, Peoria, AZ 85345; 623-773-8703; [chris.calcaterra@peoriaaz.gov](mailto:chris.calcaterra@peoriaaz.gov)** as the Recipient Representative.

Section 3.3 Authority Contribution; Payments.

(a) From funds lawfully deposited or to be deposited in the YAS Account the Authority shall deliver the Authority Contribution to the Recipient on a pro-rata, reimbursement basis as expenditures for Project Costs are incurred. The Recipient, prior to delivery of funds by the Authority, shall present to the Authority's satisfaction sufficient documentary evidence of all expenditures requiring reimbursement. The Recipient shall use the form "Project Cost Reimbursement Request Form" (set forth on Exhibit E) to create the reimbursement request. This form may also be available for download at [www.az-sta.com](http://www.az-sta.com).

(b) The Authority Contribution is restricted and shall not be used for expenditures related to fixed overhead/administrative expenses (e.g. salaries, rent, utilities, etc.), loans or endowments, conferences, individuals, golf tournaments or benefit tables, travel expenses, capital campaigns, funding to maintain the sustainability of an organization or program, or anything else deemed by the

Authority, in its sole and absolute discretion, as not serving the youth and amateur sports community within Maricopa County.

(c) Except as otherwise provided herein, no obligation of the Authority under or arising out of this Agreement or any document executed by the Authority in connection with the Project shall impose, give rise to or be construed to authorize or permit a debt or pecuniary liability, or a charge against the general credit of the Authority. After the Authority has delivered to the Recipient the Authority Contribution as required by Section 3.3(a) above, the Authority shall have no further obligation to contribute to payment of the Project Costs. The Authority makes no representation or warranty express or implied that sufficient funds will be deposited into the YAS Account to fund the Authority Contribution or that the Authority Contribution, together with the anticipated Recipient Contribution, will be sufficient to pay the Project Costs. The Recipient understands and agrees that it is responsible for funding all of the Projects Costs notwithstanding any Authority Contribution.

(d) A reduction in the Project Costs shall proportionately reduce the Authority Contribution. An increase in the Project Costs shall not increase the Authority Contribution but will be an obligation of the Recipient who must provide evidence to the Authority that these funds have been secured prior to the work related to the increase being undertaken. \_\_\_\_\_ (Recipient's Initials).

Section 3.4 Authority Representative. The Authority shall designate Heather Harris, Grants Program Coordinator, as the Authority Representative. Her contact information is One Cardinals Drive, Glendale, AZ 85305 or [heather@az-sta.com](mailto:heather@az-sta.com).

Section 3.5 Obligation of the Recipient to Complete the Project. The Recipient shall complete the Project in accordance with the Project Scope (as such Project Scope may be modified or amended pursuant to Section 4.2 hereof).

#### **ARTICLE IV PROJECT COSTS AND PROJECT SCOPE**

Section 4.1 Changes in Project Costs. Any increase in the Project Costs because of a change in Project Scope provided by Section 4.2 shall not increase the Authority's financial obligation beyond the Authority Contribution in any manner.

Section 4.2 Project Scope.

(a) Changes to Project Scope. As to any part of the Project Scope not finalized or completed as of the Effective Date and any change in the Project Scope after the Effective Date shall be submitted to the Authority for review and written approval of the Authority Representative. Notwithstanding the foregoing, changes to the Project Scope that are less than ten percent of the Project Costs or \$10,000, whichever is smaller, shall not require the approval of the Authority.

(b) Changes to Project Start and Completion Dates. The project must be completed by the Completion Date. Any change to the Project which will delay the Project Start Date or the Completion Date by more than thirty (30) days shall be submitted to the Authority for review and written approval by the Authority Representative. Included in the extension request should be the revised Project Start Date or Completion Date and explanation of the reason for the change. \_\_\_\_\_ (Recipient's Initials).

## **ARTICLE V DEVELOPMENT OF THE PROJECT**

Section 5.1 Development of the Project. The Recipient shall promptly commence and diligently pursue the Project to completion in accordance with the Project Start Date and the Completion Date. The Recipient shall perform such duties as may be necessary to complete development of the Project pursuant to the Project Scope and in a good and workmanlike manner and all in full compliance with all applicable laws, zoning ordinances, municipal ordinances, regulation and orders of federal, state, county, municipal and other local and regulatory authorities of every kind and with all covenants, conditions and restrictions affecting the Project.

Section 5.2 Acknowledgement of Authority Contribution. The Recipient will indicate or will cause to be indicated, on all construction and permanent signage at the Project, that the Authority has provided partial funding for construction of the Project. \_\_\_\_\_ (Recipient's Initials).

Section 5.3 Owner's Policy. The Recipient shall maintain an "Owners and Contractors Protective Liability" insurance policy or some other appropriate insurance policy with a coverage amount equal to the full amount of the estimated Project Costs (the "Recipient's Policy"). The Authority shall be named as an additional insured under the Recipient's Policy. \_\_\_\_\_ (Recipient's Initials).

## **ARTICLE VI MANAGEMENT, OPERATION AND MAINTENANCE**

Section 6.1 Management, Operation and Maintenance by the Recipient. The Recipient, at its own cost and expense, shall manage, operate, maintain and insure the Project in a manner in compliance with law and good operating practices over the course of the useful life of the Project. The Parties agree that the Project has a minimum useful life of **10** years.

Section 6.2 Reimbursement of the Authority Contribution. If the Authority reasonably determines that the Recipient has not or is not able to maintain and preserve the Project so that the minimum useful life is achieved, the Authority has the right to be reimbursed, on a straight-line, pro-rata basis, for its Authority Contribution. The Authority must notify the Recipient in writing of its determination and its request for reimbursement. The Recipient will be granted up to sixty (60) days to remedy the situation after which the Authority will reasonably determine whether or not a remedy has been implemented or to require reimbursement. If reimbursement is required, the reimbursement amount will be calculated by the Authority as the Authority Contribution less the Authority Contribution divided by the minimum useful life in years times the number of actual years of useful life achieved from the Completion Date. The Recipient shall deliver the reimbursement to the Authority within thirty (30) days of the Authority's final written decision to the Recipient.

Section 6.3 Maintenance of Required Insurance. The Recipient shall maintain insurance in an amount and with the terms and conditions sufficient to fully cover all losses related to the Project. The Recipient shall name the Authority as an additional insured for all such policies.

Section 6.4 Books and Records Maintained by the Recipient. Subject to applicable law, during development of the Project and for a period of five (5) years after the Completion Date,

Recipient shall at all times keep accurate and complete books, records and accounts with respect to all of Recipient's activities related to the Project, such books, records and accounts to be maintained at Recipient's principal place of business. Subject to applicable laws, during development of the Project and for a period of five (5) years after completion of the Project, Authority, or any persons designated by it, shall have the right, without hindrance or delay, but only upon three (3) days prior written notice and during normal business hours, to inspect, audit, check and make extracts from the Recipient's books, records and accounts, including, without limitation, all journals, orders, receipts and any correspondence and other data relating to the books, records and accounts related to the Project as may be maintained, generated or stored; provided, however, that at any time after such five (5) year period the Authority requests reasonable access to the Recipient's books, records and accounts, the Recipient shall not deny the Authority reasonable access. Recipient hereby irrevocably authorizes any person, including, without limitation, any of Recipient's employees or agents, having possession or control of any such books, records and accounts to make them available for the Authority's inspection upon Authority's request or, at the option of the Authority, make any computer programs or mechanical devices or program related thereto and related to the Project available to the Authority.

Section 6.5 No Assignments or Changes in Use. The Recipient shall not sell, convey, transfer, assign, dispose of or further encumber the Project or any part thereof or any interest therein or enter into any lease covering all or any portion thereof or an undivided interest therein, either voluntarily, involuntarily or otherwise, or enter into an agreement or contract to do so that would materially affect the Recipient's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement or operate and maintain the Project as a youth and amateur sports and recreational facility or that would materially affect the Authority's ability to exercise any of its rights set forth in this Agreement, without the prior consent of the Authority which consent shall be at the Authority's sole and absolute discretion. The Recipient shall give the Authority at least thirty (30) days prior written notice of any transaction that would require the consent of the Authority pursuant to this Section 6.5.

Section 6.6 No Liens on the Project. With the exception of liens which the Recipient is actively contesting or which allow periodic payments leading to their complete satisfaction so long as such payments are not in default, if any, the Recipient shall not create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any mortgage, lien (statutory, constitutional or contractual), pledge, security interest, encumbrance or charge or conditional sale or other title retention agreement on the property, either real or personal, comprising the Project other than liens, encumbrances or conveyances consented to by the Authority which consent shall be at the sole and absolute discretion of the Authority.

Section 6.7 Monitoring and Reporting Requirements. The Authority Representative, or a duly appointed agent of the Authority, shall monitor and inspect the progress of the Project during the course of development and construction as well as during the expected useful life of the Project.

(a) Monthly Report. The Recipient shall, during the course of development and construction and/or acquisition of the Project, provide the Authority with a monthly progress report (the "Monthly Reports"). The Monthly Report shall be provided to the Authority by no later than the fifteenth (15<sup>th</sup>) day of the following month. The Recipient shall use the Project Progress Reporting Form set forth on Exhibit D or as may be made available through the Authority's website ([www.az-sta.com](http://www.az-sta.com)) in order to provide the Authority with Project progress information as defined in the template in

addition to digital photographs. The Authority may withhold payment of reimbursement requests if complete and accurate Monthly Reports are not filed with the Authority as required. \_\_\_\_\_(Recipient's Initials).

(b) Wrap-Up Report. The Recipient shall provide to the Authority a final report using the Project Progress Reporting Form (Exhibit D) within thirty (30) days of the Completion Date, to coincide with the final reimbursement request to the Authority.

(c) Sending the Monthly and Wrap-Up Reports. The monthly and wrap-up reports shall be transmitted electronically to the Authority along with applicable digital photographs to the following email address: heather@az-sta.com or to such other address as is proscribed by the Authority.

## **ARTICLE VII WARRANTIES, REPRESENTATIONS AND COVENANTS**

Section 7.1 Representations, Warranties and Covenants by the Recipient. The Recipient represents and warrants to, and covenants with, the Authority that:

(a) The Recipient is a political subdivision of the State of Arizona, duly organized and existing under the laws of the State of Arizona, and has full legal right, power and authority to: (i) enter into this Agreement and (ii) carry out and consummate the transactions contemplated by this Agreement;

(b) The Recipient's Board of Directors (i) has duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement and (ii) has duly authorized and approved the consummation of all other transactions contemplated by this Agreement;

(c) This Agreement has been duly executed and delivered by the Recipient and is a legal, valid and binding agreement of the Recipient enforceable in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief;

(d) The consummation of the transactions contemplated in this Agreement does not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Recipient is a party or may be otherwise subject, to the extent that such conflict, breach or default would materially adversely affect or impact the terms or performance of this Agreement;

(e) The Recipient is not in material breach of or material default under any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Recipient is a party or may be otherwise subject and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice or both would constitute, a material breach of or a material default under any such agreement, to the extent that such conflict, breach or default would materially adversely affect or impact the terms or performance of this Agreement or any of the transactions contemplated by this Agreement;



(f) There are no events or conditions, either in any single case or in the aggregate, that materially adversely affect or in the future might materially affect the Recipient's condition, financial or otherwise, or materially affect the Recipient's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement; and

(g) The Recipient has made or will make all required filings with and has obtained all material approvals, consents and orders of any government authority, board, agency or commission having jurisdiction that would constitute a condition precedent to the performance by the Recipient of its obligations under this Agreement.

Section 7.2 Representations, Warranties and Covenants by the Authority. The Authority represents and warrants to, and covenants with, the Recipient as follows:

(a) Except as otherwise modified by the Act, the Authority is organized and existing under the laws of the State of Arizona as a corporate and political body having all the rights, powers and immunities of a municipal corporation, and has full legal right, power and authority to (i) enter into this Agreement and (ii) carry out and consummate the transactions contemplated by this Agreement;

(b) Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement have been held, enacted or granted and in the processing thereof all notice and hearing requirements under applicable law have been fully complied with, including, but not limited to, open meeting laws of the State of Arizona;

(c) The Authority Board (i) has duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement and (ii) has duly authorized and approved the consummation of all other transactions contemplated by this Agreement;

(d) This Agreement has been duly executed and delivered by the Authority and is a legal, valid and binding agreement of the Authority enforceable in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief;

(e) The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Authority is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, any of the transactions contemplated by this Agreement;

(f) The Authority is not in material breach of or default under any such provision, and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice or both would constitute, a breach of or a default under any such provisions, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement or any of the transactions contemplated by this Agreement;

(g) There are no events or conditions that, either in any single case or in the aggregate, materially adversely affect or in the future might (so far as can reasonably be foreseen) materially affect the Authority's condition, financial or otherwise, or materially affect the Authority's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement; and

(h) The Authority has made or will make all required filings with and has obtained all material approvals, consents and orders of any government authority, board, agency or commission having jurisdiction that would constitute a condition precedent to performance by the Authority of its obligations under this Agreement.

## **ARTICLE VIII ASSIGNMENT**

Section 8.1 This Agreement may not be assigned by the Authority or the Recipient without the prior written consent of the other Party.

## **ARTICLE IX EVENTS OF DEFAULT**

Section 9.1 Recipient Events of Default. The following shall be "Events of Default" by the Recipient under this Agreement:

(a) If any warranty or representation of the Recipient contained herein shall prove to be false, misleading, untrue or incorrect in any material respect;

(b) If the Recipient breaches or defaults in the performance or observance of any covenant, promise, undertaking or agreement contained in this Agreement and fails to cure the same or fails to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) days after written notice to the Recipient by the Authority of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the Authority may consent to an extension of such time if corrective action is instituted by the Recipient as appropriate, within the applicable period and diligently pursued until the default is corrected. In no event shall the cure period set forth in this Section 9.1(b) be longer than one hundred eighty (180) days from the Recipient's receipt of notice of default from the Authority;

(c) If the Recipient (i) files a voluntary petition in bankruptcy, (ii) fails to promptly lift any execution, garnishment or attachment, (iii) is adjudicated as a bankrupt, (iv) fails or is unable to pay its debts generally as they become due, (v) admits in writing its inability to pay its debts, (vi) makes a general assignment for the benefit of creditors, (vii) enters into an agreement of composition with creditors, or files a petition applicable to the Recipient in any proceedings instituted under the provisions of the federal bankruptcy statute, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) days after service on the Recipient; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the Recipient's property or assets; or if the Recipient has requested the appointment of such receiver, trustee or custodian; or if the Recipient is adjudged insolvent under any state insolvency law;

(d) If any suit or legal action materially affecting the Project, the construction of the Project or the operation and use of the Project is filed and the Recipient fails to take steps that the Authority, in its sole and absolute discretion, determines is satisfactory to defend or resolve such action within ninety (90) days after written notice to the Recipient by the Authority; or

(e) If the Project shall be damaged or destroyed by fire or other casualty, unless (i) the Recipient receives insurance proceeds or uses other funds sufficient to repair or restore the Project to its original condition and quality; and (ii) the Recipient promptly repairs or restores the Project no later than sixty (60) days after receipt of said funds.

Section 9.2 Authority Events of Default. The following shall be "Events of Default" by the Authority under this Agreement:

(a) If any warranty or representation of the Authority herein contained shall prove to be false, misleading, untrue or incorrect in any material respect;

(b) If the Authority breaches or defaults in the performance or observance of any of its covenants, promises, undertakings or agreements contained in this Agreement or fails to perform any requirements under the Act necessary to the satisfaction of its requirements hereunder and shall fail to cure the same or fails to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) days after written notice to the Authority by the Recipient of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the Recipient shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Authority, as appropriate, within the applicable period and diligently pursued until the default is corrected. In no event shall the cure period set forth in this Section 9.2(b) be longer than one hundred eighty (180) days from the Authority's receipt of notice of default from the Recipient; or

(c) If the Authority (i) files a voluntary petition in bankruptcy, (ii) fails promptly to lift any execution, garnishment or attachment, (iii) is adjudicated as a bankrupt, (iv) fails or is unable to pay its debts generally as they become due, (v) admits in writing its inability to pay its debts, (vi) makes a general assignment for the benefit of creditors, (vii) enters into an agreement of composition with creditors, or files of a petition applicable to the Authority in any proceedings instituted under the provisions of the federal bankruptcy statutes, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) days after service on the Authority; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the Authority's property or assets; or if the Authority has requested the appointment of such receiver, trustee or custodian; or if the Authority is adjudged insolvent under any state insolvency law.

Section 9.3 Termination Related to Severed Provision. If any action, rule, law or decision of any legislative or administrative body or of any court should materially impair or materially and adversely affect the enforceability of any term or provision of this Agreement, the Authority and the Recipient shall take all steps necessary to contest the same and, if not successful in such contest, to extent permissible under applicable law, shall amend this Agreement to further the purpose and intent hereof.

## **ARTICLE X MISCELLANEOUS**

Section 10.1 Waiver. In the event any covenant contained in this Agreement should be breached by any Party and thereafter waived by the other Party, such waiver shall be in writing and signed by an authorized representative of the Party granting the waiver and shall not be deemed to waive any other breach hereunder.

Section 10.2 Accuracy of Representations and Warranties. The Parties acknowledge that each and every representation and warranty in this Agreement shall be true and accurate as of the date of execution of this Agreement, shall constitute a material part of the consideration hereunder and shall survive the execution of this Agreement.

Section 10.3 Amendments. This Agreement may not be changed, modified or rescinded, except in writing, signed by the Parties hereto, and any attempt at oral modification of this Agreement shall be void.

Section 10.4 Notices.

(a) The Authority and the Recipient shall notify each other in writing:

(i) Promptly of any claim, demand, action, or dispute that involves the rights, interests, properties or obligations of the Parties, particularly those which involves the interpretation of any of the provision of, or the rights of the Parties under, this Agreement or any other claim, demand, action or dispute that may, directly or indirectly, materially affect the Project.

(ii) Immediately of the attachment or seizure, by process of law or otherwise, the Project or any monies held by either Party for the purpose of funding the Project.

(b) Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

As to the Authority: President, Chief Executive Officer  
Tourism and Sports Authority  
1 Cardinals Drive  
Glendale, Arizona 85305  
Attention: Thomas R. Sadler  
Facsimile: (623) 433.7510

With a copy to: General Counsel  
Tourism and Sports Authority  
c/o Fennemore Craig, P.C.  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016  
Attention: Sarah A. Strunk, Esq.  
Facsimile: (602) 916-5527

As to the Recipient: **Chris Calcaterra**  
**Parks, Recreation and Community Facilities Department**  
**City of Peoria, Arizona**  
**8401 W Monroe Street**  
**Peoria, AZ 85379**

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

Section 10.5 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement.

Section 10.6 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

Section 10.7 Time is of the Essence. Time is of the essence of this Agreement in each and all of its provisions.

Section 10.8 Governing Law. This Agreement shall be construed in accordance with the law of the State of Arizona.

Section 10.9 Disadvantaged Business Entities. The Authority has a strong desire and interest in encouraging disadvantaged business enterprises in the same manner and respect as for the multipurpose facility as contemplated by A.R.S. § 5-813. Therefore, the Authority strongly encourages the Recipient to consider implementing disadvantaged business enterprise participation goals for the design, engineering, construction and operation of the Project.

Section 10.10 Conflicts of Interest. The provisions of A.R.S. § 38-511 (cancellation of contracts with State or political subdivisions for conflict of interest) are applicable to this Agreement and the terms thereof are incorporated herein by this reference.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of this 20th day of November, 2019.

**"Recipient"**

**City of Peoria, Arizona**

By: \_\_\_\_\_  
Cathy Carlat, Mayor

**"Authority"**

**TOURISM AND SPORTS AUTHORITY  
d/b/a THE ARIZONA SPORTS AND  
TOURISM AUTHORITY**

\_\_\_\_\_

Name: Thomas R. Sadler  
Title: President, Chief Executive Officer

**APPROVED AS TO FORM AND IN  
ACCORDANCE WITH A.R.S. §11-952(D)**

\_\_\_\_\_

General Counsel

## **EXHIBIT A**

### **PROJECT SCOPE**

**Must be completed by Recipient**

**Estimated Project start date: May 2020**

**Estimated completion date: November 2020**

**Description (scope) of Project:** Peoria's parks, public pools, and recreational amenities are actively used by our residents and visitors. We have identified several parks/recreational related needs. We are requesting funds to install energy efficient field lights. Replace worn/broken treadmills inside the Rio Vista Recreation Center. Young adults, adults, and seniors all utilize the exercise equipment on a daily basis. New pop-up soccer goals and installation of AED's at neighborhood parks for the Youth Sports programs. Currently, we do not have the ability to provide our soccer participants (over 1,000 participants) the ability to practice with goals to help advance their skills. Our youth sports programs utilize neighborhood parks and the purchase of AEDs for the programs will allow our leagues to have access during practices and games and help with potential unforeseen health issues. Finally, replace the outside tables at our city pools for the Aquatics program, benefiting, children, adults, and seniors.



## EXHIBIT B

### PROJECT COSTS

**Must be completed by Recipient**

**Send Budget as Separate Attachment**

Arizona Sports and Tourism Authority							
Final Budget for Project Funding Agreement - Facility Construction/Renovation and/or Equipment							
NAME OF ORGANIZATION							
#	Project Item Description	Cost	Source of Funding - Applicant			AZSTA Funding	Total Funding
			Cash	In-Kind	Total		
	<b>Facility Construction/Renovation</b>						
	Land (____acres@\$_____/ac)				\$ -	\$ -	\$ -
	<b>Infrastructure and Parking</b>						
	On-site access roads and drives				-		-
	Electrical distribution				-		-
	Site utilities and storm drainage				-		-
					-		-
					-		-
					-		-
	<b>Subtotal:Infrastructure &amp; Parking</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>Site Work/Landscaping/Irrigation</b>						
					-		-
	<b>Subtotal:Site Work/Landscaping/Irrigation</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>Facility Construction/Renovation (hard costs)</b>						
	Lighting	230000	76700		76,700	153,300	230,000
					-		-
	<b>Subtotal:Facility Construction/Renovation (hard costs)</b>	\$ 230,000	\$ 76,700	\$ -	\$ 76,700	\$ 153,300	\$ 230,000
	<b>Equipment</b>						
	Fitness Equipment	58000	19400		19,400	38,600	58,000
	Soccer Goals	6000	2000		2,000	4,000	6,000
	AED's	22000	7400		7,400	14,600	22,000
	Tables	14000	4700		4,700	9,300	14,000
	<b>Subtotal:Equipment</b>	\$ 100,000	\$ 33,500	\$ -	\$ 33,500	\$ 66,500	\$ 100,000
	<b>Facility Construction/Renovation (soft costs)</b>						
	Architectural and engineering fees				-	-	-
	Project coordination/oversight services				-	-	-
	General conditions				-	-	-
	Permits & fees				-	-	-
	Construction contingency				-	-	-
	Owner contingency				-	-	-
	Insurance				-	-	-
	Performance and payment bond				-	-	-
	Contractor fee				-	-	-
	Testing and inspection				-	-	-
	Preconstruction services				-	-	-
	Taxes				-	-	-
	Other				-	-	-
	<b>Subtotal:Facility Construction/Renovation (soft costs)</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>PROJECT COST SUMMARY</b>						
	Land	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Infrastructure and Parking	-	-	-	-	-	-
	Site Work/Landscaping/Irrigation	-	-	-	-	-	-
	Facility Construction/Renovation (hard costs)	230,000	76,700	-	76,700	153,300	230,000
	Equipment	100,000	33,500	-	33,500	66,500	100,000
	Facility Construction/Renovation (soft costs)	-	-	-	-	-	-
	<b>Total Project Cost</b>	\$ 330,000	\$ 110,200	\$ -	\$ 110,200	\$ 219,800	\$ 330,000

**EXHIBIT C**

**RECIPIENT CONTRIBUTION SOURCES**

EXHIBIT D

**SAMPLE PROGRESS REPORTING FORM**



**ARIZONA SPORTS AND TOURISM AUTHORITY  
YOUTH AND AMATEUR SPORTS  
2020 BIENNIAL Grant Project Progress Reporting Form**

**NOTE:** This report is to be submitted to the Arizona Sports and Tourism Authority by the **1<sup>st</sup> day of each month** during the project's implementation phase (please keep your report to a maximum of two pages). This report and related digital photographs are to be transmitted electronically to the following email address:

[heather@az-sta.com](mailto:heather@az-sta.com)

If you have questions about the use of this form, please email Heather Harris at [heather@az-sta.com](mailto:heather@az-sta.com). *A current Project Progress Report must be submitted to the Authority prior to a Project Cost Reimbursement being fulfilled by AZSTA.*

Organization Name:	
Person Submitting the Report:	
Project Name and Brief Description:	
Period being Reported on:	
Project Start Date:	
Project Completion Date:	
Total Project \$ Value:	
Project \$ Value Completed:	
% of Project Value Completed:	
Describe the work that was completed/implemented during the reporting period:	
At project completion please describe how successful the project was in meeting the goals and objectives stated in the original grant application:	
Other comments:	
# of Photographs Submitted:	
Subject Matter of Photographs:	

## EXAMPLE ONLY

<b>Arizona Sports and Tourism Authority</b> <b>Youth and Amateur Sports</b> <b>2020 Biennial Grant - Project Cost Reimbursement Request Form</b>							
Reimbursements will not be paid without a current Project Progress Report and copies of receipts showing they have been paid. Proof of payment is also required. Proof can be copies of a credit card statement or copies of the front and back of checks. (Purchase Orders are not acceptable proof of payment)							
<b>Organization Name:</b>							
<b>Organization Mailing Address:</b>							
<b>Project Name:</b>							
<b>Date of Request:</b>							
<b>Instructions for completing this worksheet:</b> 1) Complete the information requested above (area highlighted in yellow). 2) Enter data from each invoice: including Vendor Name, a brief description of items purchased, the Invoice Number, and the total amount of the invoice. 3) Under the "%" column for Organization: enter your pro-rata percentage for the project; as per the funding agreement. The worksheet will calculate the pro-rata amount for the Organization. 4) Under the "%" column for AZSTA, enter the AZSTA pro-rata percentage for the project; as per the funding agreement. The worksheet will calculate the pro-rata amount for AZSTA. 5) Upon completion and review, this completed worksheet should be submitted in EXCEL format. Support documents can be submitted in PDF format. These should be emailed to <a href="mailto:heather@az-sta.com">heather@az-sta.com</a> .							
<b>List of Reimbursable Project Costs</b>							
Vendor Name	Description	Invoice No.	Amount	Organization		AZSTA	
				%	\$	%	\$
				33.3333%	\$ -	66.6667%	\$ -
				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
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				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
				33.3333%	-	66.6667%	-
<b>TOTAL</b>			\$ -		\$ -		\$ -
Approved Authority Contribution _____							
<b>Requested by:</b> _____				Return this form + copies of the invoices and/or checks / other support documents; which provide evidence of your payment of the invoice(s) to the vendor(s). Send all to: Arizona Sports and Tourism Authority Attention: Heather Harris One Cardinals Drive Glendale, AZ 85305			
Name and Title - _____ Date _____							
<b>Received</b> _____							
Date _____				Email your documentation to Heather Harris @: <a href="mailto:heather@az-sta.com">heather@az-sta.com</a>			
<b>AZSTA Approved by/Date</b> _____							
Name and Date _____							
<b>AZSTA Approved by CEO / Date</b> _____							
Name and Title _____							