

FIELD DONATION AGREEMENT

This **FIELD DONATION AGREEMENT** (“Agreement”) is made and entered into by and between Fiesta Events, Inc., an Arizona nonprofit corporation (“Foundation”) and the **CITY OF GLENDALE** (“Recipient”). Foundation and Recipient are sometimes hereinafter individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, as part of its charitable mission, the Foundation assists and supports the greater Phoenix metropolitan community by, among other things, donating football fields to community based organizations, such as Recipient.

WHEREAS, the Parties enter into this Agreement to memorialize the donation described herein, for use by Recipient for community youth and amateur sports and recreational activities.

WHEREAS, Recipient acknowledges and agrees Foundation will have no further or ongoing obligations or liabilities with respect to the donation described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge to be adequate and satisfactory, the Parties hereto agree as follows:

COVENANTS

1. Accuracy and Incorporation of Recitals. The accuracy of the Recitals is hereby acknowledged and such Recitals are incorporated herein by this reference. The Recitals are a material consideration to the Foundation in entering into this Agreement. Recipient acknowledges, confirms, and agrees that the Recitals set forth above are true, accurate and correct, and the Recitals are incorporated into these Covenants without any difference or distinction between the two (2) segments of this Agreement.

2. Term. This Agreement shall commence on the date of execution and shall expire on March 31, 2028, unless sooner terminated in accordance with the terms of this Agreement (the “Term”).

3. Donation. Foundation will donate to Recipient its 2022-2023 Cactus Bowl (currently known as the “Guaranteed Rate Bowl”) Field (the “Field”), a scoreboard (the “Scoreboard”) and other sports equipment (at Foundation’s sole discretion), as well as applicable installation of the same (all collectively, the “Donation”). At Foundation’s sole discretion, the Scoreboard may contain the Foundation’s name and/or logo. The approximate value of the Donation is \$175,000.00. The Donation shall be called the “Fiesta Bowl Field”.

4. Donation Location. The Field will be installed at O’Neil Park located at 6448 West Missouri Avenue, Glendale, Arizona 85301 (the “Location”).

5. Installation and Dedication Dates. The installation of the Field will begin and be completed in January 2023 (exact dates TBD). The Field dedication ceremony will be mutually agreed to in writing (anticipated in March of 2023).

6. Recipient's Acknowledgements, Representations, and Warranties. Recipient acknowledges, represents and warrants to Foundation, with the express understanding that, but for the truth of such acknowledgement, representations and warranties, Foundation would not enter into this Agreement, which representations, warranties and covenants shall continue in full force and effect through and following the Term of this Agreement, that:

- a. Foundation's Limited Responsibility. The Foundation's sole responsibility related to this Donation shall be the Donation and installation of the Donation, as applicable at the Location. The Foundation shall have no other or further responsibility, obligation, and/or liabilities related to the Donation, including without limitation no obligation for or related to the management, maintenance, and/or use of the Donation.
- b. Field Maintenance, Management, and Repair. The Parties agree and understand that the City of Glendale through the City of Glendale's Public Facilities, Recreation and Special Events at its sole cost and expense, shall manage, operate, maintain, repair and insure (or cause to be managed, operated, maintained, repaired and insured) the Donation (including, but not limited to the Field and Scoreboard) in such a manner as to be and remain in compliance with any and all applicable laws, regulations, and good operating practices over the course of the useful life of the Donation. Recipient acknowledges and agrees that the Field has a minimum useful life of five (5) years. Foundation shall have no obligation, financial or otherwise, to manage, maintain, repair, or insure the Donation (including, but not limited to the Field or Scoreboard) in any way.

Further, during the Term, Recipient shall provide (or cause to be provided) Foundation with an annual recap as to the sustainability of the Donation, including any relevant updates, impact and photos.

- c. No Warranty. The Donation, including the Field, but with the exception of the Scoreboard, and any and all related materials/equipment, are not covered by any maintenance plans or warranties. The Scoreboard is warranted by Daktronics for a maximum period of five (5) years, but Foundation shall have no responsibility for or concerning any claim(s) that may be made to Daktronics.
- d. Insurance. Recipient, as appropriate shall maintain appropriate types and amounts of insurance, including liability insurance, and with the terms and conditions sufficient to fully cover all losses related to or in any way arising out of the Donation (including but not limited to the Field and Scoreboard). The Recipient shall name the Arizona Sports Foundation, Valley of the Sun

Bowl Foundation, Fiesta Events, Inc. and The Arizona College Football Championship Foundation as additional insureds and notice parties for all such insurance policies, which insurance policies must include a Waiver of Subrogation.

- e. Foundation Logos. Recipient may use the Foundation's Charity logo and/or Foundation's likeness with Foundation's prior written consent.

7. Indemnification/Release of the Foundation. Recipient and City of Glendale Public Facilities, Recreation and Special Events and its respective agents, officers, directors, members, predecessors, successors and assigns (individually and collectively "Releasor"), hereby voluntarily, knowingly, unconditionally, and irrevocably, with specific and express intent, agrees to fully indemnify, defend, hold harmless, discharge, waive and release Arizona Sports Foundation, Valley of the Sun Bowl Foundation, Fiesta Events, Inc. and The Arizona College Football Championship Foundation and each of its parents, partners, affiliates, subsidiaries, and each of their respective partners, affiliates, subsidiaries, directors, officers, members, managers, employees, shareholders, agents, representatives, predecessors, successors and assigns, as well as any sponsors or promoters of the Donation (collectively "Indemnified and/or Released Parties"), for, from, and against any and all claims, liens, demands, lawsuits, causes of actions, damages, controversies, offsets, obligations, losses, and liabilities (including costs and expenses for defense) of every kind and character whatsoever, in law or equity, whether known or unknown, and whether contingent or matured, liquidated or unliquidated, vested or contingent, choate or inchoate, including, without limitation, any action, omission, misrepresentation or other basis of liability founded either in tort or contract and duties arising thereunder, that the Releasors, or any one or more of them, has had in the past, or now has, or may have in the future, by reason of any matter, cause or thing set forth in, related to or arising out of or in any way connected with this Agreement, the Donation (including, but not limited to the Field and Scoreboard), or the installation of same, including the personal injury or death, or damage to or loss of property in connection with the Donation and/or the use of the Field and/or the Scoreboard. Recipient acknowledge and agrees that the foregoing release is a material inducement to the Foundation's decision to make the Donation and enter into this Agreement and has been relied upon by the Foundation. This indemnity and release provision shall survive the execution and termination and/or expiration of this Agreement.

8. Assignment. Recipient shall not assign or otherwise transfer any portion of this Agreement without the Foundation's express prior written consent. The rights and obligations of the Foundation may be assigned to any successor and specifically assumes all obligations of the Foundation under this Agreement. The Foundation shall be released from all obligations under this Agreement if such an assignment occurs.

9. Licenses/Permits. Recipient, as appropriate, shall be responsible for procuring all required licenses and permits as governed by the State of Arizona and federal law, as relates to the installation and/or use of the Donation.

10. Compliance with Laws. Recipient agrees to comply with all applicable city, state, or federal statutes, rules, and regulations with respect to the use of the Donation as contemplated in this Agreement.

11. No Hazardous Conditions. Recipient represents and warrants that the Location shall be free of asbestos, hazardous materials, and hazardous waste materials, and that the Location does not pose any unusual or hidden risks or hazards. Recipient further agrees to indemnify and hold the Indemnified and/or Released Parties (as described above) harmless from any and all liability associated with any exposure to such hazardous materials or damages resulting from any hazardous or harmful conditions.

12. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona pertaining to the contracts made and to be performed entirely in the State of Arizona without regard to any otherwise applicable principles of conflicts of laws. Recipient hereby submits to the jurisdiction and venue in Maricopa County, Arizona and agrees that any and all pending and future litigation, arbitration or bankruptcy proceedings arising out of or related to this Agreement shall be commenced and litigated in the Superior Court of the State of Arizona in and for the County of Maricopa, or the Arizona Federal District Court, as appropriate. The parties irrevocably consent to jurisdiction and venue in such court for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

13. Confidentiality. Foundation and Recipient agree that all of the terms of this Agreement shall be kept confidential and will not be disclosed to any individual or entity, excluding the parties' respective parents, general partners, limited partners, subsidiaries, successors, assigns, joint venturers, officers, directors, employees, and agents in their individual and representative capacities and all persons acting by, through, under, or in concert with any of them, unless required by law.

14. Consent. Whenever the consent or approval of the Foundation is requested, such consent may be granted or withheld in the Foundation's sole discretion, unless otherwise specifically stated.

15. Relationship of Parties. Nothing contained in this Agreement shall be construed or deemed to constitute or create a partnership or joint venture between the Foundation and Recipient. No Party shall hold itself out contrary to the terms of this provision and the Parties shall be liable for any representation, act, or omission of the other party(ies) contrary to the provisions hereof.

16. Entire Agreement. This Agreement constitutes the entire agreement between the Foundation and Recipient with respect to its subject matter and the transaction(s) contemplated herein and supersedes all prior and /or contemporaneous agreements, understandings, and representations relating to the same subject matter, whether written or verbal and this Agreement is intended to be the final expression of the agreement with respect to the terms and conditions set forth herein and as the complete and exclusive statement of the terms agreed to by the Parties.

17. Amendment. This Agreement may only be amended, modified, or supplemented by a written agreement between the Parties.

18. No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the Parties, and their permitted successors and assigns.

19. Counterparts. This Agreement and any attached consents or exhibits requiring signatures may be executed in as many counterparts as necessary or convenient, and by the different Parties on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same agreement.

20. Invalidity. If any court of competent jurisdiction determines any provision of this Agreement or any of the other documents executed in connection herewith (together with this Agreement, the "Additional Documents") to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable portion had never been a part of this Agreement or the Additional Documents.

21. Survival. The representations, warranties, acknowledgements and agreements set forth in this Agreement shall survive the date of this Agreement.

22. No Waiver. No failure to exercise and no delay in exercising any right, power or remedy hereunder shall impair any right, power or remedy that the Foundation may have, nor shall such delay be construed to be a waiver of any of such rights, powers or remedies. No waiver of any breach or default of Recipient shall be a waiver of any other breach or default or any breach or default subsequently occurring. Foundation shall not be deemed to have waived any right, power or remedy except in writing signed by an officer of the Foundation expressly stating that it is a waiver of a right, power or remedy.

23. Mutual Agreement. The Parties hereto agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and provisions are not to be construed more liberally in favor, or more strictly against, any Party. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if it had been prepared by all of the Parties.

24. Time is of the Essence. Time is of the essence to this Agreement.

25. Notices. Unless otherwise expressly provided, any notice, request, demand, waiver or other communication required or permitted to be given under this Agreement shall be by (i) First Class U.S., prepaid mail, (ii) registered or certified mail, (iii) overnight courier or (iv) electronic mail, if receipt is confirmed, to the receiving party at the address and/or e-mail address below:

TO FOUNDATION:

Fiesta Bowl
7135 East Camelback Road, Suite 190
Scottsdale, Arizona 85251
Attention: Community Relations
jmoreno@fiestabowl.org

WITH COPY TO:

Fiesta Bowl
7135 East Camelback Road, Suite 190
Scottsdale, Arizona 85251
Attention: Legal Compliance Department
gavisar@fiestabowl.org

TO RECIPIENT:

City of Glendale
Public Facilities, Recreation, and Special Events
5959 West Brown Street
Glendale, Arizona 85302
John Kennedy, Assistant Director
jkennedy@glendaleaz.com

By signing below, the parties by their duly authorized representatives acknowledge and agree to in its entirety the terms and conditions set forth herein.

FIESTA EVENTS, INC.

CITY OF GLENDALE
(Signatures on following page)

By: Jim Hatfield
Its: Interim Executive Director
Date: 11/02/2022

By: _____
Its: _____
Date: _____

**Field Donation Agreement with Fiesta Events, Inc. as part of
Fiesta Bowl Charities Project**

CITY OF GLENDALE SIGNATURE PAGE

CITY OF GLENDALE, an Arizona
municipal corporation

Kevin R. Phelps
City Manager

ATTEST:

Julie K. Bower, (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey,
City Attorney