

**AGREEMENT AMONG THE CITY OF TEMPE,
THE TEMPE CONVENTION AND VISITOR'S BUREAU AND
ARIZONA STATE UNIVERSITY SUN DEVIL ATHLETICS**

C2016-

This Agreement ("Agreement") is made and entered into by and between the Arizona Board of Regents for and on behalf of Arizona State University and its Department of Sun Devil Athletics ("ASU"), the Tempe Convention and Visitors Bureau ("TCVB"), and the City of Tempe ("Tempe"), an Arizona municipal corporation.

- A. WHEREAS, ASU wishes to stage the Kajikawa Softball Tournament ("Tournament") in and around Tempe, Arizona, on February 9-12 for the year 2017, on four days in February 2018 (the precise days to be determined at a later date), and on four days in February 2019 (the precise days to be determined at a later date) (collectively, the "Tournament Dates"); and
- B. WHEREAS, the TCVB and Tempe wish to have ASU stage the Tournament in the years 2017, 2018 and 2019 in and around Tempe, Arizona, upon the terms and conditions as provided for in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the parties agree as follows:

1. Term. This Agreement shall commence upon the date set forth on the signature page below and shall continue until the completion of the 2019 Tournament and the related obligations associated with the conclusion of such Tournament.

2. Dates of Tournament. The 2017 Tournament shall be staged on February 9, 10, 11, and 12, 2017. The parties will mutually agree upon the Tournament Dates at a future time for the 2018 Tournament and the 2019 Tournament.

3. The Parties' Mutual Obligations. ASU and Tempe have developed a spreadsheet, attached as Exhibit A, which outlines their respective responsibilities with respect to pre-Tournament labor, supplies, materials and services and game-day Tournament requirements. Based on the success of Tournaments held in prior years, Tempe and ASU agree to be responsible for providing the materials or service(s) assigned to each party in Exhibit A.

4. Tempe's Obligations. In addition to the responsibilities outlined in Exhibit A, Tempe agrees as follows:

- (a) Upon ASU's timely provision of the materials, as outlined in Exhibit A, by mid-November each year during the term of this Agreement, Tempe shall provide four (4) softball fields at the Tempe Sports Complex (located at Warner and Hardy roads in Tempe, Arizona) ("TSC") which shall be "play ready" for each Tournament by no later than February 1st of each year of this Agreement. In the event that ASU fails to provide such materials, Tempe may, at its option: i) purchase such materials and bill ASU for its costs (which shall be payable by

ASU upon Tempe's presentation of an invoice); or ii) choose not to oversee or prepare fields for the Tournament play.

- (b) "Play ready" shall include the services designated in Exhibit A to be provided by Tempe.
- (c) Tempe will prepare an accounting of the value of all Tempe resources/services provided during the Tournament for ASU no later than sixty (60) days after the conclusion of each year's Tournament.

5. TCVB's Obligations.

- (a) Upon receiving ASU's list of selected hotels for use by Tournament participants, TCVB shall send a lead to those hotels requesting room blocks and pricing information. Within fifteen (15) days following each year's Tournament, TCVB will contact the hotels to request information on the total number or room nights attributed to the Tournament. TCVB will then provide that information to all parties.
- (b) At the request of ASU, TCVB will coordinate hotel site inspections for the ASU staff.
- (c) TCVB will support each year's Tournament with a \$2500 sponsorship, contingent upon ASU providing TCVB with the list of hotels ASU has selected. This list should be received by TCVB no later than December 31 of the year preceding each year's Tournament.

6. ASU's Obligations. In addition to the responsibilities outlined in Exhibit A, ASU agrees as follows:

- (a) By a mutually agreed upon date, ASU shall have performed all the pre-Tournament prep work related to field preparation set forth in Exhibit A, including: scalp, verticut, sweep fields of grass clippings, removal of all grass from TSC softball fields, and provide seed for overseeding of TSC.
- (b) ASU will provide adequate grounds crew to maintain and prepare the fields for Tournament play prior to each game including, as necessary, watering and lining of the fields and maintenance of the batter's boxes and pitcher's mounds.
- (c) ASU will pay Tempe the amount of \$2,510 for tournament expenses. In addition, ASU will pay for Tempe Fire personnel (EMT) on site during all Tournament games.
- (d) ASU will make commercially reasonable efforts to ensure that each year's Tournament generates a minimum of 600 hotel room night reservations in Tempe as outlined below. Accordingly, ASU shall:

- Prior to each year's Tournament, ASU shall provide to TCVB a list of hotels that ASU has selected for use by Tournament participants, and set up room blocks with individual hotels; and
 - ASU will present the room night totals to the TCVB Board of Directors at each year's April board meeting.
- (e) ASU's contribution to the expenses incurred by Tempe each year during the term of this Agreement for the services provided hereunder will be reduced in proportion to the number of hotel room nights attributable to that year's Tournament as follows:
- If at least 600 room nights are generated, then ASU's contribution will be zero.
 - If 500-599 room nights are generated, ASU's contribution will be \$2,500.
 - If 400-499 room nights are generated, then ASU's contribution will be \$5,000.
 - If 300-399 room nights are generated, then ASU's contribution will be \$7,500.
 - If less than 300 room nights are generated, ASU's contribution will be \$10,000.
- (f) The agreement and understanding of the parties hereunder is contingent on all participating hotels agreeing to do the following during the term of this Agreement:
- Not raise the rates above the normal (rack) season rates
 - Not require more than a 2 night minimum stay.
- (g) ASU's contributions pursuant to Section 6(e) of this Agreement shall be made no later than thirty (30) days after receipt of the final hotel room night reservation figures from the TCVB as set forth in Section 5.

7. [Intentionally deleted].

8. Insurance. ASU, its officers, agents and employees are covered against liability, workers' compensation and property damage through the State of Arizona, Arizona Department of Administration, Risk Management Section's program of self-insurance for acts or omissions while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization. Such coverage is provided in accordance with and subject to the provisions of Arizona Revised Statutes ("A.R.S.") Section 41-621 *et seq.*

ASU acknowledges and agrees that Tempe is self-insured.

9. Indemnification. To the extent permitted by law, each party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless each other party and its respective officers, agents, employees and authorized volunteers (as “Indemnitee”) from and against any and all claims, losses, liability, costs, damages or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “Claims”) resulting from the conduct of the Indemnitor and its employees, authorized volunteers or agents with regard to the Tournament, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor. The amount and type of insurance coverage required by section 8 does not limit the scope of the indemnity in this paragraph.

10. Conflict of Interest. This Agreement is subject to cancellation under the provisions of A.R.S. § 38-511.

11. Compliance with Laws. Each party in the performance of its activities under this Agreement shall comply with all applicable laws, statutes, ordinances, permits, rules and regulations relating to those activities.

12. Default. If any party or parties should default in the performance of their respective obligations under this Agreement, the party or parties not in default shall provide written notice of the default and the party or parties in default shall have a reasonable time in which to cure the default. If a cure is not made, the party or parties not in default shall be entitled to remedy the default using any right or remedy at law or equity which would otherwise be available to such party or parties not in default, including bringing any suit or proceeding to enforce the provisions of this Agreement. The prevailing party or parties shall be entitled to their reasonable attorney fees and costs incurred in such action to the extent awarded by a court of competent jurisdiction.

13. Termination. Any party may terminate this Agreement in whole or in part upon mutual agreement of the parties. Unless mutually terminated as provided for in this Agreement or as provided for in Section 10, any party or parties may terminate this Agreement by written notice to the other parties within ninety (90) days after the Tournament in February 2017.

14. Independent Contractor Relationship. The relationship between ASU, TCVB and Tempe is that of independent contractors and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture between or among ASU, the TCVB and Tempe.

15. Force Majeure. ASU, the TCVB and Tempe shall not be liable for any failure by them to conduct the Tournament by reason of fire, strike, war, insurrection, government restrictions, labor dispute, third party breach or other cause beyond their control.

16. Notices. All notices required or permitted hereunder shall be in writing and shall be either personally delivered, sent by registered or certified mail (return receipt requested) or sent by facsimile and in each case addressed as follows (or to such other address as the parties shall provide in writing to the other parties in accordance herewith):

If to ASU: Arizona State University

Sun Devil Athletics
P.O. Box 872505
Tempe, AZ 85287-2505
Attention: Athletic Director

If to TCVB: TCVB
51 West 3rd Street
Suite 105
Tempe, AZ 85281
Attention: Stephanie Nowack

If to Tempe: City of Tempe
31 East Fifth Street
Tempe, AZ 85281
Attention: City Manager

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same document. Photocopy, facsimile, electronic and other copies of this Agreement will have the same effect for all purposes as an ink-signed original.

18. Assignment. No party may assign this Agreement or any rights herein without the express written consent of the other parties.

19. Entire Agreement. This Agreement shall constitute the entire understanding among the parties with respect to the subject matter hereof and supersedes all prior agreements whether written or oral and cannot be modified or amended unless by a written instrument signed by the parties.

20. Amendments. Any amendments or alternative or supplementary provisions to this Agreement must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

21. Severability. The invalidity of any provision contained herein or portion of a provision shall not affect the validity of any other provision contained herein or the remaining portion of the applicable provision.

22. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns. A waiver of any breach hereunder shall not be deemed a waiver of any subsequent breach.

23. Governing Law; Arbitration in Superior Court. This Agreement shall be governed by the laws of the State of Arizona and any litigation by or among the parties regarding this Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona. As required by A.R.S. § 12-1518, the parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

24. Cooperation of the Parties. The parties agree to cooperate in good faith to reasonably complete the obligations set forth in this Agreement.

25. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties signing it and does not create nor shall it be construed to create rights in other parties. No parties outside of this Agreement may enforce the terms and conditions of this Agreement.

26. Adoption by Mayor and Council; Authority to Execute Minor Amendments. This Agreement is subject to adoption by Tempe's Mayor and City Council. Upon execution of this Agreement, the Mayor and Council authorize the Parks and Recreation Administrator of Tempe to sign other documents or amendments of this Agreement as may be necessary to effectuate this Agreement and further authorize the Administrator to act upon any other matters not presently contemplated but which may arise and require Tempe's action in order to effectuate the purpose of this Agreement.

27. Captions. The captions and headings of the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of the respective sections.

28. Nondiscrimination. The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** Further, the City of Tempe Municipal Code prohibits discrimination against individuals on the basis of gender identity, sexual orientation, familial status or age.

29. Records. To the extent required by A.R.S. § 35-214, each party will retain all records relating to this Agreement. Each party will make those records available at all reasonable times for inspection and audit by the other parties or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five years after the completion of this Agreement. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU on reasonable notice to the other parties.

30. Failure of Legislature to appropriate. In accordance with A.R.S. § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to the other parties and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

31. Use of Names or Logos. No party will use any names, service marks, trademarks, trade names, logos or other identifying names, domain names or identifying marks of any other party ("Marks"), or the name of any representative or employee of any other party in any sales

promotion work or advertising, or any form of publicity, without the prior written permission of the party that owns the Marks in each instance. Use of any party's Marks must comply with the owning party's requirements, including using the "®" indication of a registered trademark where applicable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of _____, 2016.

**THE ARIZONA BOARD OF REGENTS FOR AND
ON BEHALF OF ARIZONA STATE UNIVERSITY
AND SUN DEVIL ATHLETICS**

By: _____
Ray Anderson
Vice President for University Athletics

TEMPE CONVENTION AND VISITORS BUREAU

By: _____
Stephanie Nowack
President and CEO

CITY OF TEMPE

By: _____
Mark W. Mitchell
Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

EXHIBIT A

(Attached hereto)