

DONATION AGREEMENT CITY OF FRESNO, CALIFORNIA

This AGREEMENT is made and entered into effective on _____ (Effective Date), by and between the CITY OF FRESNO, a California municipal corporation (City), and Fresno/Clovis Convention & Visitors Bureau, a California Non-Profit Corporation (Donor).

RECITALS

- A. Donor desires to contribute funds for the replacement of the scoreboard at the Selland Arena (Project).
- B. By this agreement, the Parties set forth the terms under which Donor will donate funds for the Project, and the City will accept the Donation.

AGREEMENT

- 1. Donation. Donor agrees to contribute Six Hundred Five Thousand Dollars (\$605,000) to the City for the Project. The Donation is a voluntary contribution and does not grant Donor any ownership interest in the scoreboard, Selland Arena, or any related property.
- 2. Advertising Rights and Revenue Share. The City shall have sole and absolute discretion over all advertising sales, contracts, content, pricing, scheduling and use of the scoreboard. As recognition of Donor's contribution, the City shall remit to Donor fifty percent (50%) of net revenues actually received and collected by the City from scoreboard advertising sales, after deduction of all costs of sales, maintenance, operation, and administration (Revenue Share).

The City shall provide Donor with an annual statement of advertising revenues and expenses. Revenue Share payments, if any, shall be made within ninety (90) days after the end of each fiscal year.

Nothing in this Agreement obligates the City to secure or guarantee any advertising revenues and Donor acknowledges that advertising revenues may fluctuate or be nonexistent.

Cap on Payments. In no event shall the total amount of Revenue Share payments made to Donor under this Section 2, together with any Repayment Amount paid under Section 3, exceed Six Hundred Five Thousand Dollars (\$605,000) in the aggregate.

Sunset of Revenue Share. Donor's right to receive Revenue Share payments shall automatically expire and terminate five (5) years from the Effective Date of this Agreement, regardless of whether advertising revenues continue thereafter.

- 3. Conditional Repayment Obligation. If, and only, if the City sells or conveys fee title to Selland Arena within five (5) years from the Effective Date of this Agreement, the City will refund Donor an amount equal to Three Hundred Two Thousand Five Hundred Dollars (\$302,500) (Repayment Amount); subject to the proration set forth in this Section.

The Repayment Amount shall be reduced, dollar-for-dollar, by the total amount of Revenue Share payments previously made to Donor under Section 2, so that in no event shall the combined total of (a) all Revenue Share payments and (b) the Repayment Amount exceed Six Hundred Five Thousand Dollars (\$605,000).

The prorated Repayment Amount shall be due and payable within one hundred eighty (180) days of the closing of any such sale of the Selland Arena.

No repayment obligation shall arise if (a) the City enters into any lease, license, or management contract for Selland Arena, or (b) Selland Arena is not sold within the five-year period.

4. Ownership and Control. The scoreboard and all improvements constructed with the Donation are and shall remain the sole property of the City. Donor shall have no rights to access, control, or decision-making authority regarding the scoreboard, Selland Arena or related operations.

Non-Interference. Donor expressly agrees not to interfere with, attempt to influence, or challenge the City's or the City's designee decisions regarding advertising sales, content, pricing, or the use of the scoreboard or Selland Arena. All such decisions shall rest exclusively with the City or the City's designee in its sole discretion.

Waiver of Claims. Donor hereby waives, releases, and discharges any and all claims, demands, causes of action, or rights to damages against the City, its officers, employees, or agents, arising out of or related to (a) advertising revenues or lack thereof; (b) the City's advertising or operational decisions, or (c) the use, content or management of the scoreboard or Selland Arena. This waiver does not apply to the City's express obligations to make payments under Sections 2 or 3 of this Agreement.

5. Indemnification. Donor shall indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all claims, liabilities, damages, losses, costs, or expenses (including reasonable attorneys' fees) arising out of or related to (a) Donor's participation in or receipt of payments under this Agreement, (b) any third-party claims relating to advertising arrangements, revenue share rights, or repayment obligations, or (c) any act or omission of Donor, its employees, contractors, or agents in connection with this Agreement.
6. Term and Termination. This Agreement shall terminate automatically upon the earlier of: (a) five (5) years from the Effective Date, or (b) satisfaction of the City's obligations under Sections 2 and 3.

Termination shall not affect accrued rights or obligations of either party prior to termination.

7. Installation. The Project shall be installed by City forces or by forces hired by the City to perform such work. This document shall not be effective until it is fully executed, and the Project has been installed by the City. The City will make every effort to complete installation within 12 months of the execution of this Agreement.

8. Removal and Modification. The City reserves the right to remove and/or modify the scoreboard for any reason it deems appropriate, including, but not limited to, if the scoreboard is damaged, defective, or defaced, if it is necessary for safety, environmental or land management reasons.
9. Replacement. The City will not be responsible for replacement of the Project in the event of loss due to vandalism, acts of God, or for any other reason. Donor reserves the right to replace the scoreboard at Donor's expense by submitting a written request to the City.
10. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
11. No Partnership or Agency. Nothing in this Agreement creates a partnership, joint venture, or agency relationship between the City and Donor.
12. Binding. Subject to the assignment provisions set forth hereinbelow, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.
13. Assignment. This Agreement is personal to Donor and there shall be no assignment by Donor of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by Donor, its successors, or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.
14. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
15. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
16. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

17. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
18. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
19. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
20. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
21. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
22. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
23. No Third-Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
24. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Donor.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Georgeanne A. White
City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Angela M. Karst 10/9/2025
Angela M. Karst
Senior Deputy City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Deputy _____ Date _____

Addresses:
CITY:
City of Fresno
Attention: Ruth F. Quinto, CPA
Assistant City Manager
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-7779
E-mail: Ruthie.Quinto@fresno.gov

Fresno/Clovis Convention & Visitors
Bureau, a California Non-Profit
Corporation

By: Lisa Oliveira
C2FA5289A7AC417...
Name: Lisa Oliveira

Title: President/CEO
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: Shawn Miller
298C8B47E723425...
Name: Shawn Miller

Title: Treasurer
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

REVIEWED BY:

DONOR:
Fresno Convention & Visitors Bureau
Attention: Lisa Oliveira, CDME
President/CEO
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Fresno, CA 93710
Phone: 559-981-5510
E-mail: Lisa.Oliveira@fresnocvb.org