

**USE AGREEMENT BETWEEN THE UNIVERSITY OF WEST FLORIDA
BOARD OF TRUSTEES AND THE CITY OF PENSACOLA**

THIS NON-EXCLUSIVE USE AGREEMENT (“Agreement”) is made and entered into this 1st day of February 2021, by and between the University of West Florida Board of Trustees, a public body corporate (hereinafter referred to as “UWF” or “University”), and CITY OF PENSACOLA (hereinafter referred to as the “CITY”).

WITNESSETH

WHEREAS, CITY is the owner of the Vince Whibbs, Sr. Community Maritime Park, which is a multi-use, public-private development located on the waterfront in Pensacola, Florida (the “Community Maritime Park”); and

WHEREAS, the Community Maritime Park includes private development parcels, a Multi-Use Facility, the Amphitheater, Festival Grounds, Exhibition Grounds, and Parking Areas, as those terms are further defined in Section 1, which are all available for use by members of the public, private entities, or public entities upon execution of a written use agreement with CITY; and

WHEREAS, UWF desires to use the non-leased private parcels, the Multi-Use Facility, the Amphitheater, the Festival Grounds, the Exhibition Grounds and the Parking areas for purposes related to UWF Intercollegiate Football Home Games and possibly for the playoffs or post-season play; and

WHEREAS, UWF and the CITY believe the presence of UWF home football games at the Community Maritime Park will encourage the development of the private development parcels of the park and will encourage economic development in Pensacola and the surrounding area;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises, herein contained, UWF and the CITY agree as follows:

SECTION 1 - DEFINITIONS

The following terms for purposes of this Agreement shall have the meaning set forth in this section:

“Advertising” shall mean all announcements, acknowledgments, promotions, messages, displays, banners, sponsor signs, and other advertising methods.

“Amphitheater” shall mean the Hunter Amphitheater, including the green space area used for seating in front of the structure as shown on Exhibit B.

“CMPA” shall refer to Community Maritime Park Associates, Inc.

“Community Maritime Park” shall mean the City park known as the “Vince Whibbs, Sr. Community Maritime Park”, a 32-acre, multi-use, public-private development located on Pensacola Bay in downtown Pensacola, Florida as further reflected in Exhibit A to this Agreement and incorporated herein.

“Exhibition Grounds” shall mean the parcel west of Museum Lane as shown on Exhibit B.

“Festival Grounds” shall mean the parcel south of Museum Lane and the cul-de-sac as shown on Exhibit B.

“Game” or “Games” shall mean college football contests between the UWF football team and any other college football team.

“Home Games” shall mean those Games during UWF’s regular season schedule for which UWF is the host team responsible for procuring the playing site.

“Media Rights” shall mean, with respect to radio, television, Internet or World Wide Web (including by video streaming), audio-visual program transmission or retransmission, satellite, and any and all other communications media, whether presently existing or hereafter developed and regardless of the method of transmission or retransmission, the following exclusive rights: (a) the broadcasting, transmission, retransmission or other dissemination of all or any part of all Games and all activities related thereto; (b) the broadcasting, transmission, retransmission or other dissemination of Games and by any means of VHF, UHF, Internet, or any other method of transmission, retransmission or other dissemination whether presently existing or hereafter developed (whether broadcast, cable, microwave, satellite, over the air, fiber optics or otherwise), of television, audio, visual or other sensory signals, and shall be deemed to include, without limitation, premium and basic television service, cable television, over the air pay television, broadcast network, weblet, multipoint and multichannel distribution system television, direct broadcast satellite television, subscription television, pay-per view television, master antenna and satellite master antenna television, low power television, closed circuit television and any other electronic or digital media such as computer distribution or

computer on-line application; (c) the right (i) to display banners in camera visible and other locations as any broadcaster of Games shall determine, in and around the Multi-Use Facility, advertising such broadcaster, and (ii) unfettered electronic insertion and deletion rights with respect to the broadcast, transmission, retransmission or other dissemination of Games; and (d) subject to any specific provision of this Agreement to the contrary, the right to select and control all production facilities and personnel necessary to exercise the rights enumerated in clauses (a), (b), and (c) hereof. Media Rights shall also include the exclusive right to photographing, filming, television taping, radio broadcasting and recoding in analog, digital or other forms or recording, whether presently existing or hereafter developed. The exclusivity of these Media Rights does not apply to the City, which will have the right to utilize UWF's photographs, film, television footage, radio broadcasts, and other forms of recordings – at no cost to the City - for the purpose of promoting the City, the Multi-Use Facility, and the Community Maritime Park.

“Multi-Use Facility” shall mean the stadium and all areas within the stadium's dripline as further reflected in Exhibit B to this Agreement and incorporated herein. It is the intention of the Parties that this definition describes the same facility as the term in the NFPB Use Agreement.

“NFPB” shall refer to Northwest Florida Professional Baseball, LLC.

“Parking Areas” shall mean those areas under the control of the CITY in the areas adjacent to the Multi-Use Facility that are designated by the CITY from time to time for the parking of vehicles during the Games and as further reflected in Exhibit C to this Agreement and incorporated herein.

“Playoff Home Game(s)” shall mean those Games outside of UWF's regular football season schedule for which the Home Team is the host team responsible for procuring the playing site.

“Ticket(s)” shall mean the certificate, license, badge, pass or other indicia by which admission to the Multi-Use Facility is permitted and controlled.

SECTION 2 – TERM AND TERMINATION

A. The “Term” of this Agreement shall commence on the date indicated in the first paragraph of this Agreement and shall terminate three (3) years thereafter and expiring unless sooner terminated. UWF shall have the right to renew this Agreement for one (1) three-year term by giving written notice to CITY of UWF's

election to so renew, such notice to be given at least one (1) year prior to the expiration of the then-existing term. Such renewal shall be on the same terms and conditions as are contained in this Agreement. Further renewal, if any, shall be upon a new written use agreement to be negotiated in full between the parties.

- B. Either party shall have the right to elect to terminate this Agreement in the event of a breach of the terms or conditions herein, if the breach remains uncured for sixty (60) days after delivery of a written notice of the alleged breach to the breaching party. Upon termination, both parties retain all of their legal remedies against the other party
- C. At any time during the term of this Agreement, UWF or the CITY may unilaterally terminate the Agreement without cause by giving the other party 180 days' notice in writing of its intention to do so by registered or certified mail.
- D. It is expressly understood by all parties that should UWF construct facilities to host football games on the UWF campus, upon one (1) year written notice to CITY, this Agreement may be terminated, effective as of the 366th day after delivery of the written notice. No refund of any fees contained herein shall be provided should UWF exercise the election to terminate as set forth in this clause. Upon such termination by UWF, both parties shall retain all of their legal remedies for the period of the Term that occurred prior to termination.
- E. Notwithstanding any other provision of this Agreement, UWF shall, in its sole discretion, unilaterally terminate the Agreement in the event any directive from any authoritative agent requires UWF to cancel games due to COVID-19 or any other reason.
- E. All parties acknowledge that a "Multi-Use Facility Non-Exclusive Use Agreement" between the Community Maritime Park Associates, Inc. ("CMPA") and the Northwest Florida Professional Baseball, LLC ("NFPB") dated July 20, 2011, and all amendments thereto, has been assigned and assumed by the CITY (hereinafter referred to as the "NFPB Use Agreement").
- F. The NFPB Use Agreement details certain rights and responsibilities of the CITY and NFPB. UWF acknowledges and agrees that all UWF events that use the Community Maritime Park shall be Community Events as defined in the NFPB Use Agreement.

- G. Pursuant to the requirements of Florida law, the State of Florida's and UWF's performance and obligation to fund this Agreement shall be contingent upon an annual appropriation by the Florida legislature. Any failure to pay according to the terms herein will be considered a material breach and either party may terminate this Agreement pursuant to the terms of Section 2.B.

SECTION 3 - OWNERSHIP

UWF shall not have any ownership or leasehold interest in any area of the Community Maritime Park. Notwithstanding the foregoing, UWF shall have the right, with prior written CITY approval, and, if within the Multi-Use Facility, with prior written NFPB approval, to make improvements to the areas that are the subject of this Agreement that enhance UWF's activities at the Community Maritime Park. It is understood that any permanent improvements made by UWF shall become the property of the CITY upon termination of this Agreement.

SECTION 4 – RIGHT TO USE PREMISES

- A. UWF shall have the right to use the Community Maritime Park to exhibit, promote, schedule, and play all UWF Football Home Games, including Playoff Home Games, if any. This right shall commence at 8:00 a.m. CT on Saturday Home Game days and shall terminate at 11:59 p.m. the same day. The right shall commence at 12:00 p.m. CT on weekday Home Game days and shall terminate at 11:59 p.m. the same day, with the exception of the Parking Area, which will not be available until 5:30 p.m. CT. UWF may elect to have other UWF events at the Community Maritime Park on Home Game days at UWF's sole discretion and UWF acknowledges that CITY has advised that such events shall also be Community Events as defined in the NFPB Use Agreement. UWF agrees to abide by the terms of the NFPB Use Agreement with relation to Community Events.
- B. Further, UWF shall have access to the Multi-Use Facility for at least eight (8) hours the day prior to all Home Games for the purpose of team walk-through, team meals, UWF football sponsor events, other pre-game activities, installation of equipment, and other preparation activities including without limitation, placement of advertising signs and hospitality and/or sponsor tents and access and parking for television and radio production vehicles. UWF will coordinate these activities with the CITY and NFPB to ensure there are no scheduling conflicts. CITY agrees that such UWF events are Community Events as defined in the NFPB Use Agreement.

- C. UWF shall have the exclusive right and license to use the Community Maritime Park except for any privately developed parcel to conduct Home Games on such dates during the term of this Agreement as UWF may reserve, and to reserve same for use for a NCAA Division II Playoff Home Game(s). The CITY shall reserve the Community Maritime Park for the exclusive use of UWF for such purpose on each such scheduled date. Nothing herein shall be construed to require UWF to utilize the Community Maritime Park for all Home Games or Playoff Home Game(s). UWF football season begins the Thursday preceding September 6th each year.
- D. Ancillary Uses. In addition to those uses contained in this Agreement, UWF may use the Community Maritime Park during and after Home Games or Playoff Home Game(s), including but not limited to ancillary-type events and uses; stage events on field and in Parking Areas; tailgate parties in Parking Areas and other hospitality events; pre-game, half-time and post-game events; sponsor representation and presence; and pyrotechnics. UWF will obtain any authorizations and permits necessary for special events and pyrotechnics.
- E. Game Day Entertainment. UWF shall have the right to provide, or permit others to provide, at the sole cost and expense of UWF, pre-game, half-time and post-game entertainment in connection with Home Games and Playoff Home Games; provided, however, that UWF shall notify the CITY of the nature of such entertainment at least thirty (30) calendar days prior to the date of each Home Game and Playoff Home Game and such entertainment shall be subject to the approval of the CITY, such approval not to be unreasonably withheld.
- F. Scheduling of UWF Home Games.
1. In cooperation with the CITY and NFPB, UWF will schedule UWF Home Games and Playoff Home Game(s) in such a manner as to not conflict with any scheduled NFPB home baseball game. In the event of a conflict, the NFPB Home Game shall prevail. It is expressly understood by all parties that UWF Home Games and Playoff Home Game(s), in general, will be held at the Community Maritime Park following the conclusion of NFPB's regular season and post season, if any. Following the conclusion of the NFPB season, UWF Home Games shall supersede any other event.
 2. UWF Home Games will generally be held on Saturdays. Certain Home Games may be held on weekdays. If the opportunity arises for a weekday

Home Game, UWF will contact the CITY and NFPB prior to accepting the opportunity to ensure availability of the Community Maritime Park. In the event a Saturday Home Game must be rescheduled, all parties agree to utilize their best efforts to accommodate the request. However, availability of the Community Maritime Park in the event of rescheduling a scheduled Saturday Home Game to a weekday is not guaranteed. Rescheduling a Game will be subject to the provisions of subsection 4.G. below.

3. As soon as the UWF home game schedule is prepared and UWF chooses the games it wishes to hold at the Community Maritime Park, UWF shall submit the schedule for the football season to commence in September of the following year to CITY and NFPB.

G. Schedule Changes. In the event UWF desires to change the date reserved by UWF for the conduct of any reserved Home Games or Playoff Home Game(s), including any such change made to accommodate a television broadcast of such game, UWF shall have the exclusive right and license to use the Community Maritime Park to conduct such Home Game or Playoff Home Game on the date to which such Game is to be changed unless the CITY or NFPB has previously reserved the Community Maritime Park on such date for any other purpose. In the event the date reserved by UWF for the conduct of any Home Game or Playoff Home Game is changed pursuant to this paragraph, then subject to the provisions of the immediately preceding sentence, the CITY shall have no duty to continue to reserve the Multi-Use Facility and Parking Area for the exclusive use of UWF on the date previously reserved. UWF shall notify the CITY of any change in date of a Home Game or Playoff Home Game, within 72 hours, if practical, of the decision to change the date.

H. Emergency Cancellation. In case of emergency or for reasons beyond the NFPB's, CITY's or UWF's control, UWF and/or the CITY reserve the right to cancel or reschedule a Home Game prior to scheduled use without liability. Examples of such instances include but are not limited to: Acts of God, force majeure, severe weather, COVID-19 and other pandemics, fire, damage/destruction of the facility, local/state/national state of emergency, and all government and NCAA directives.

I. Notwithstanding any other language in this Agreement, UWF acknowledges and agrees that Parcels 4, 5, 6, 7, 9, and the Exhibition Grounds, all as shown in Exhibit B, are subject to future development, and thus UWF's use of these spaces

may be restricted or prohibited during the initial term or any renewal term of this Agreement at the sole discretion of the CITY.

SECTION 5 – CITY OF PENSACOLA OBLIGATIONS

- A. On each Home Game day, the CITY shall furnish and make available to UWF the stadium fully equipped and operational subject to the NFPB Use Agreement. This obligation does not include provisions of disposable or consumable items.
- B. Parking. UWF shall have the exclusive right to use the Parking Areas in designated spaces marked on Exhibit C to this Agreement during all Home Games and Playoff Home Game(s) and retain any and all revenue generated therein with the exception of 20% of the revenue generated from the City Hall parking lot going to the CITY. UWF may provide parking services directly or contract with the CITY to provide parking services. Notwithstanding any other language in this Agreement, City employees will be permitted to park in the City Hall parking lot free of charge so long as parking space is available.

No vehicles may be parked on grass areas except in designated areas for tailgating, walkways, promenades, or at the loading docks during Home Game days without the express written permission from CITY.

- C. Utilities. CITY shall provide or cause to be provided to the Community Maritime Park all utilities necessary for UWF's use of the facilities.

It is expressly understood by all parties that the Multi-Use Facility's field lighting is designed and configured to standards required for professional baseball. Any adjustment to the field lighting will be carried out by UWF or its authorized agents as necessary with prior CITY and NFPB approval. The field lighting will be returned to CITY at the conclusion of each football season in the same configuration as it was provided to UWF at no cost to the CITY. Any additional temporary lighting required by NCAA regulations for football shall be provided by UWF at UWF's sole cost and expense.

- D. Equipment and Storage.

1. Equipment. CITY shall store the facility specific football equipment including, but not limited to goal posts, field goal catch nets, and end-zone play clocks purchased by UWF for the University's Home Games. All other necessary equipment, including, but not limited to, additional temporary

seating shall be provided by UWF. CITY shall also allow UWF use of utility vehicle(s) and barricades provided by CITY at no cost to UWF during UWF home football games. The utility vehicles used by UWF shall be driven only on Community Maritime Park property.

2. Storage. CITY shall provide, at no charge to UWF, a secure lockable storage area as currently provided in the Multi-Use Facility assessable only to UWF during the term of the Agreement.
3. Netting. UWF is solely responsible for removal and installation of the protective netting utilized by NFPB and solely responsible for any costs related thereto.

SECTION 6 – RENT, USE FEE, TICKETS

A. Use Fee. UWF will be charged \$5,000.00 rent per Home Game, Playoff Home Game, or for any other event that falls under the purview of this Agreement for use of the Community Maritime Park.

B. Tickets.

1. Sales Surcharge. UWF shall pay CITY during the terms of the Agreement a surcharge of two dollars (\$2.00) per ticket sold for all UWF events at the Multi-Use Facility, excluding the following: (a) all tickets sold for regular or post-season games to active duty military and their families; (b) youth under the age of 12; (c) all tickets provided to UWF students free of charge; and (d) complimentary tickets given away by UWF. The ticket sales surcharge shall be paid to CITY within thirty (30) days after the last Home Game of the UWF football season. The ticket sales surcharge may, in UWF's discretion, be separately charged and identified on each ticket as a "surcharge," "facilities surcharge," or other identifying language. UWF shall provide attendance and ticket sales reports to CITY's Finance Department within one week following each Game.
2. The parties acknowledge that NFPB has the exclusive right to provide on-site ticketing services and operate the ticket office for all events at the Multi-Use Facility. UWF shall contract with NFPB for on-site ticketing for Home Games through a separate written agreement.

3. UWF will select the location and number of tickets to be sold on a season ticket basis. UWF will also select the number and location of tickets to be sold to the general public. UWF will also select the number of complimentary tickets given to UWF employees, officers, agents, and patrons.

C. Revenue Streams. Notwithstanding anything in the NFPB Use Agreement to the contrary, UWF shall retain any and all other revenue streams that may be generated through its use of the Community Maritime Park hereunder, including, but not limited to: ticket sales and entry fees (except for the ticket sales surcharge detailed in Section 6(b)), Media Rights, Advertising and signage, concessions (excluding the CITY share of concessions detailed in Section 7), parking (excluding the CITY share of parking in the City Hall parking lot), and merchandising.

SECTION 7 – CONCESSIONS AND MERCHANDISE SALES

A. Concessions.

1. UWF acknowledges and agrees that NFPB holds exclusive rights to food and beverage (including alcoholic and non-alcoholic drinks) concession sales at all events held within the dripline of the Multi-Use Facility, subject to the terms of the NFPB Use Agreement. NFPB will provide concession services at UWF Home Games within the dripline of the Multi-Use Facility pursuant to the same terms as provided in the NFPB Use Agreement, section 8.2(c).
2. UWF hereby acknowledges that all participants associated with UWF Home Games are prohibited from bringing any food, beverage, alcohol, beverage containers, or other food stuffs inside the Multi-Use Facility. However, this prohibition does not apply to water, sports drinks, and food provided to coaches, athletic trainers, cheerleaders, officials, and student athletes during games, pre-game activities, and post-game activities.
3. If UWF chooses to allow food vendors outside of the dripline of the Multi-Use Facility, the CITY shall receive 20% of all net revenue generated. All food vendors that prepare foods with an open flame are required to have on site two (2) 10 lb. ABC fire extinguishers. If hot oil or grease is to be used in food preparation, one (1) 6 liter or 2.5-gallon class K fire extinguisher is required. Food vendor tents and their extinguishers will be inspected by the Fire Department prior to event start. If cooking oils or charcoal are used, all waste products must be properly disposed of and may not be disposed of

anywhere on Community Maritime Park property. Outside food vendors may not pour used oils down the drainage systems. Outside food vendors may not pour hot coals on the grass. UWF will be charged a fee equal to the repair or replacement cost for damage to grass or other surfaces damaged by grease, oil, or hot coals. Vendors using extension cords must ensure that they are outdoor heavy duty 13-15amp cords, are in good working condition (not frayed or repaired) and are secured to prevent tripping.

4. Food vendors will comply with all laws of the United States, the State of Florida, City of Pensacola, Police and Fire Departments, or any other applicable laws, codes, and regulations. Vendors should display both a City of Pensacola business tax receipt and a state license.

- B. Merchandise/Novelty Sales. The right to sell and/or distribute UWF Game programs and novelty concessions, including but not limited to clothing, in the Community Maritime Park shall belong exclusively to UWF. UWF may provide directly for the sale of merchandise at the Community Maritime Park or may contract with NFPB to provide services. UWF shall be entitled to receive all revenue collected for Merchandise Sales. UWF's exclusive novelty and program sales rights shall include the entire Community Maritime Park before, during and after, games during the times described in Section 4. A.

SECTION 8 – INSURANCE AND LIABILITY

- A. UWF, as a state of Florida public body corporate, maintains general liability and workers' compensation coverage pursuant to the provisions and limitations of Chapter 284, Part II, and Section 768.28, Florida Statutes. UWF shall, upon request, submit certificates of insurance to CITY evidencing such insurance at the time of the execution of this Agreement and at any renewals thereafter.
- B. UWF shall not be responsible for personal injury or property damage or loss, except that resulting from its own negligence or the negligence of its employees or others for whom it is legally responsible. UWF does not indemnify any person, party or entity under this Agreement.
- C. UWF and CITY agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida, UWF or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida or UWF beyond the waiver provided in Section 768.28,

Florida Statutes. However, CITY and UWF acknowledge and agree that solely as between CITY and UWF, the signing parties have full and complete legal authority to bind UWF and CITY to the contractual terms contained herein. CITY and UWF expressly deny that this Agreement creates any rights to any third party who may claim to be a third-party beneficiary hereto. UWF or CITY do not indemnify any person, party or entity under this Agreement.

- D. UWF agrees to require all vendors allowed by UWF outside of the Multi-Use Facility dripline to obtain and maintain commercial general liability insurance for the vendor's activities. Required minimum limits of insurance for the vendors will be at least \$1,000,000 per occurrence and in the aggregate. Fire legal liability, if applicable, must have minimum limits of at least \$100,000 per occurrence. Statutory Workers' Compensation insurance, including \$100,000 employer liability each person – accident, \$100,000 each person – disease, and \$100,000 aggregate disease, is required for each vendor. UWF agrees to maintain on file current certificates of insurance evidencing the required coverage from each vendor utilized by UWF under this Agreement.
- E. UWF agrees to maintain participant accident insurance that meets or exceeds the minimum coverage and limits required by NCAA regulations.
- F. If alcohol is being sold, given away, or furnished, UWF shall require NFPB or the vendor providing the liquor service to maintain Liquor Liability or Host Liquor Liability Insurance (as applicable) with minimum limits of at least \$1,000,000 each common cause and in aggregate. The CITY must be listed as an "additional insured". For the time period UWF utilizes the Multi-use Facility, UWF shall also be listed as an "additional insured." UWF shall maintain on file a copy of the vendor's current certificate of insurance evidencing the required coverage. UWF shall provide copies of any or all certificates of insurance required under this Agreement to CITY.

SECTION 9 – ADVERTISING AND SIGNAGE

A. Advertising and Signage.

- 1. All Advertising and signage utilized by UWF shall be of a non-permanent nature and can stay up for the entire football season to include the post season. It is expressly understood and agreed that NFPB retains certain Advertising rights at the Multi-Use Facility year-round and shall be consulted by UWF prior to entering into any Advertising or signage agreement. All parties agree

to utilize best efforts to allow UWF consideration for areas created for sponsors during football season. Any disagreements between UWF and NFPB regarding Advertising and signage shall be resolved between those two entities.

2. At all times during UWF's Home Games, UWF shall have the sole and exclusive control of all announcements, acknowledgments, promotions, messages, displays, banners, sponsor signs, and advertising (collectively "Advertising") on the scoreboard(s) and elsewhere in the Multi-Use Facility. In no event will UWF display, promote, or advertise in any form or manner advertisement that conflicts with prior sponsorship agreements between the CITY and NFPB.
 3. UWF agrees that no signage or Advertising used at the Community Maritime Park shall advertise, promote, contain, depict, or suggest illegal activity, sexually suggestive conduct, obscene or pornographic materials, or otherwise be inconsistent with the best interests of the residents of the City as reasonably determined by CITY. All signage utilized by UWF at the Community Maritime Park must conform to all federal, state, and local laws and ordinances.
 4. All parties acknowledge that the NCAA may require all sponsorship signage to be removed or covered for NCAA playoff or post-season competitions.
- B. Revenue for Sponsorships. UWF shall be entitled to all of the revenue from sponsorships or Advertising solicited by UWF for display as fixed or temporary signage, all announcements on the message center, video display system, or public address system immediately before, during and after the Games, and all other sponsorship activities that occur during UWF Games.

SECTION 10 – MEDIA RIGHTS

- A. All Media Rights are hereby reserved to and shall be the property of UWF. The CITY shall cooperate fully and coordinate its efforts with media representatives so as to permit such media representatives to fulfill their contractual obligations and duties. At all reasonable times during the term of this Agreement, the CITY shall provide reasonable access to the Multi-Use Facility to broadcasters designated by UWF for the purpose of broadcasting the Games or UWF football events. Notwithstanding any other language in this Agreement, UWF agrees to

work in good faith with the CITY regarding Media Rights to provide the CITY with marketing material it may request from time to time.

- B. Subject to the prior approval and inspection of the CITY, authorized broadcasters may, without additional charge, operate, maintain, and remove such broadcast and associated production equipment as they may require (including cameras, cables, platforms, announcer booths, sound equipment, graphic units, microphones, and lighting) and shall have the right to utilize their own employees or employees of their contractors for such activities without being required to utilize or pay any employees, agents or contractors of the CITY in connection with such work; provided that the CITY shall be reimbursed for all reasonable costs and expenses associated with work that it performs at UWF's request in connection therewith.

SECTION 11 – MUTUAL DEFAULT

If either party fails to observe or perform any of the provisions of this Agreement and such failure is not cured within thirty (30) calendar days after notice by the other party, then the breaching party shall be in default and without further notice, the other party may at any time thereafter: (i) terminate this Agreement; or (ii) continue this Agreement and recover damages resulting from the default.

SECTION 12 – NOTICE

Addresses for Payments and Notices. All notices and payments hereunder shall be in writing and shall be deemed to be duly given, upon receipt, if given by personal delivery, nationally recognized overnight courier, or certified mail, return receipt requested and postage prepaid, to the parties at their respective addresses set forth below or at such other address or addresses as may be designated by any party by like notice.

(1) Notices to CITY: City Administrator
222 W. Main Street
Pensacola, Florida 32502

With a copy to: City Attorney
433 E. Government St.
Pensacola, Florida 32502

Payments to CITY: Finance Department

222 W. Main Street
Pensacola, Florida 32502

(2) Notices to UWF: University of West Florida
Department of Intercollegiate Athletics
Attention: David L. Scott – Director
11000 University Parkway
Bldg. 54, Room 157
Pensacola, FL 32514

With a copy to: Office of the General Counsel
11000 University Parkway
Bldg. 10
Pensacola, FL 32514

SECTION 13 – SEVERABILITY

If any term or provision of this Agreement is contrary to or is determined to be invalid or unenforceable by applicable laws or regulations, then said provisions shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of the Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, or by an administrative hearing officer in accordance with Chapter 120, Florida Statutes, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 14 – FORCE MAJEURE

If either party shall be unable to perform hereunder as a result of acts of God, war, national disasters, health epidemic or pandemics including COVID-19, or strikes or other work stoppage, fire and other comparable events, or as a result of any lawful or emergency action issued by the United States Government, any official of the State of Florida, the University or other emergency action by a governmental entity, the NCAA or the Gulf South Conference or for any reason beyond the reasonable control of the parties, then this Agreement shall be suspended during such period and for as long as such conditions shall exist. Even if a court determines that disruptions of performance or frustrations of purpose were foreseeable at the time the Contract was signed, the parties agree that UWF will not be held liable for a failure to perform if that failure is caused by prohibitions resulting from executive

orders, laws, regulations, or oral or written directives from a state or local governmental entity that has authority over UWF.

If the force majeure only affects UWF's performance, the CITY shall have the right to use the Community Maritime Park for any other purposes during the period of the force majeure. If as a consequence of such force majeure, the Multi-Use Facility should be destroyed or rendered unfit or unavailable for the purpose of this Agreement, UWF shall have the right to play its Games in any other stadium during the term such conditions continue to exist. Any sums incurred by UWF prior to the suspension of this Agreement due to a force majeure, shall be paid to the CITY by UWF when due, but no additional fees shall be incurred during the suspension period.

SECTION 15 – INTERPRETATION

This Agreement is an integrated contract which contains the complete understanding of the parties as to all matters herein. There are no oral or written statements, representations, agreements, understandings, or surrounding circumstances that modify, amend or vary, or purport to modify, amend or vary, any of the provisions hereof. All prior and contemporaneous representations, negotiations and agreements are superseded and replaced hereby. All exhibits and schedules referenced herein and attached hereto shall be deemed to have been incorporated herein so as to become a part of this Agreement. This Agreement may be altered, amended or revoked only by an instrument in writing duly executed by all parties hereto. No waiver by either party of a provision hereof, nor the failure of the aggrieved party to seek redress for a violation, shall be considered to be a waiver of such provision or of any subsequent breach thereof. The parties hereto mutually understand and declare that time is of the essence in this Agreement. The provisions for default and termination shall operate promptly upon the expiration of the time limits specified herein.

SECTION 16 – MAINTENANCE AND REPAIR

A. Maintenance and repair of the Facilities.

1. Except for the playing field area, the facilities shall be returned to the CITY following every Home Game and Playoff Home Game in the same condition as provided to UWF. Trash pick-up and disposal outside the stadium following each Home Game is the sole responsibility of UWF.

2. UWF shall not affix any signs or objects on any roof or any portion of the exterior of any facility at the park; make any changes to or paint the exterior of any facility; install any exterior lighting, paintings, signs, or displays; install any sign or display on fences, sidewalks, parking lots, or driveways without the written permission of CITY. Staking of tents, inflatables, or other equipment is not allowed by UWF at the Community Maritime Park without advance written permission from the CITY. Permanent anchors have been installed in various locations, which can be provided upon request. If UWF installs any stakes, with or without the CITY's permission, and damages any aspects of the irrigation system, hardscaping, landscaping, or other component of the Community Maritime Park, then UWF will be responsible for payment of the costs, including labor costs if incurred by the CITY, to repair the damage.

B. Inspections.

1. Immediately prior to the first Home Game of each season, representatives from the CITY, NFPB and UWF shall conduct a preseason inspection of the entire Community Maritime Park. The purpose of this walk-through is to identify the current state of repair of the Community Maritime Park facilities prior to commencement of UWF events at the Community Maritime Park. Video documentation of the inspection and findings is encouraged, but not required. Any findings of damage or disrepair during the preseason inspection will not be the responsibility of UWF.
2. Within three (3) days after the conclusion of the UWF football season including Playoff Homes Games, representatives from the CITY, NFPB and UWF shall conduct a post-season inspection of the Community Maritime Park. The purpose of this inspection is to identify any damage or disrepair that occurred during the football season as a result of UWF's use of the Community Maritime Park. It is expressly understood by the CITY, NFPB and UWF that the CITY, NFPB and others may undertake events at the Multi-Use Facility, on the playing field, and on the surrounding grounds during football season. All events that take place on the playing field must have prior approval from UWF. All parties agree that the party that undertakes the event will be required to return the facilities in the same condition as received. The parties agree to document the condition of the facilities following each of such events. UWF shall not be held responsible for documented damage or disrepair occurring during the football season by non-UWF events.

C. Field Maintenance.

1. All parties agree that only NCAA collegiate football field markings are on the playing surface during the UWF football season. UWF shall make every attempt and use every precaution to protect the field turf at all times under the supervision of NFPB's head grounds keeper. UWF shall only utilize a field crew approved by NFPB for preparation and maintenance of the playing field under separate agreement. The current agreement is the agreement between NFPB and UWF dated August 26, 2014, as amended by the first and second amendments. UWF shall provide all necessary field and grounds crews at its expense.
2. UWF has the right, but not the obligation, to fill in the infield baseball diamond and mound with turf, if so desired by NFPB, under the supervision of NFPB's head grounds keeper. At the conclusion of each football season, UWF shall return the playing field to CITY in substantially the same condition and state (baseball configuration) as it was provided to UWF.

- D. Rigging System/Sound and Lights. UWF is responsible for providing all sound, light, and backline equipment for any UWF event at the Amphitheater, Festival Grounds, or other area outside the stadium during Game Days and all associated costs.

SECTION 17 – RECORDS

- A. Public Records. UWF and CITY are subject to the Florida Public Records law. This Agreement and any later amendments are public records and, except to the extent they are exempt from public disclosure under applicable law, are not Confidential Information. If UWF or CITY believes any material it provides to the other pursuant to this Agreement is exempt from the public record, then UWF or the CITY must notify the other of the basis for the claim of trade secret or public record exemption, allowable by law, at the time of disclosing the material and mark the documents in accordance with Florida law. Confidential information shall not include information that is a public record pursuant to Florida law (Florida Statutes Chapter 119), and the University or CITY will respond to public records request without any duty to give the other prior notice.
- B. IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CITY'S DUTY TO

PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF RECORDS FOR THE OTHER PARTY AT: 1) for University at the Office of General Counsel: (850) 474-3420, gcfrofrontdesk@uwf.edu, Building 10, 11000 University Parkway, Pensacola, FL 32514; 2) for CITY at the City Clerk's Office, (850) 435-1715, publicrecords@cityofpensacola.com, 222 West Main Street, Pensacola, FL 32502.

C. BOTH PARTIES MUST:

1. Keep and maintain public records required to perform the service.
2. Upon request from either Party's custodian of public records, provide the other Party with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement.
4. Upon completion of the Agreement, each Party shall keep and maintain public records required by that Party to perform the service.

D. Accounting, Audit and Inspection. CITY and UWF must submit invoices in sufficient detail to allow for a proper pre-audit and post-audit. UWF or the CITY may cause, upon reasonable notice, an audit to be made of the records and accounts as such records and accounts relate to the calculation of the amounts payable to UWF or the CITY.

SECTION 18 – MISCELLANEOUS PROVISIONS

A. Governing Law and Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. The parties hereby submit to the jurisdiction of the United States District Court for the Northern District of Florida or of any Florida state court sitting in Escambia County, Florida, for the purposes of all legal proceedings arising out of or relating to this Agreement, and the parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such proceeding which is brought in such a court.

- B. Naming Rights. If the Multi-Use Facility is named, UWF agrees to utilize the name of the purchasing sponsor in all promotional materials. Until such time, UWF will utilize “Blue Wahoos Stadium” when identifying the stadium.
- C. Security, Traffic Control and EMS. UWF shall provide security, traffic control and Emergency Medical Services at the Community Maritime Park for UWF events held there. UWF shall contract with the CITY to provide security and traffic control services. UWF may, upon written approval of the CITY, provide security services directly, utilizing sworn law enforcement officers, if such officers have full authority and jurisdiction within the City Limits.
- D. Usher, Hospitality, Restroom Attendants, A/V/Scoreboard and other staff. UWF may provide directly the staff necessary to safely, effectively and efficiently carry out the operations on Game days or may contract with NFPB to provide such services.
- E. Accessibility. UWF shall make Game days accessible to people with disabilities in compliance with the requirements of the Americans with Disabilities Act (ADA). For activities conducted directly by or authorized by UWF outside of the Multi-Use Facility, UWF shall provide portable bathroom facilities, five percent (5%) of the total number of portable bathroom facilities and at least one in each grouping of the facilities must be accessible to people with disabilities. Accessible parking is provided and available at the Community Maritime Park. UWF must honor those spaces and follow applicable Florida law in selling or assigning of those spaces.
- F. Election by the Parties Not Exclusive. The exercise by a party of any right or remedy to collect fees or enforce its rights under this Agreement will not be a waiver or preclude the exercise of any other right or remedy afforded the party by this Agreement or by statute or law. The failure of a party in one or more instances to insist on strict performance or observations of one or more of the covenants or conditions of this Agreement or to exercise any remedy, privilege, or option conferred by this Agreement on or reserved to the party shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that privilege, option, or remedy; that right shall continue in full force and effect. The receipt by a party of fees or any other payment or partial payment required to be made by a party shall not act to waive any other additional fee or payment then due. Even with the knowledge of the breach of any covenant or condition of this Agreement, receipt will not operate as or be deemed to be a waiver of this breach, and no waiver by a party of any of

the provisions of this Agreement, or any of the party's rights, remedies, privileges, or options under this Agreement, will be deemed to have been made unless made by the party in writing.

- G. Non-Discrimination. UWF and the CITY, its employees, staff, agents, or volunteers shall 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, ancestry, gender, sex, sexual orientation, or disability. Moreover, these regulations require that the parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.
- H. Headings. Headings used in the Agreement are for reference purposes only and shall not be considered to be a substantive part of the Agreement.
- I. Meetings. The parties shall conduct at least one pre-season meeting just before the start of the season and at least one post-season meeting immediately after the season ends, at which they should discuss all pending issues that could significantly affect the other party. This obligation is in addition to the meetings that occur before, during, and after the season for inspections. The parties intend to include NFPB in these meetings.
- J. Assignment. UWF may not assign this Agreement without the consent of the CITY in its sole and absolute discretion.

(The remainder of this page is intentionally left blank)

SIGNATURE PAGE

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first given above.

CITY OF PENSACOLA

By: _____

Mayor, Grover C. Robinson, IV

Date: _____

Attest:

City Clerk, Ericka L. Burnett

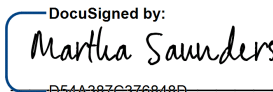
Approved As To Substance:

Legal in form and execution:

Department Director/Division Head

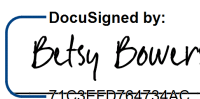
City Attorney

THE UNIVERSITY OF WEST FLORIDA BOARD OF TRUSTEES

By: 
Dr. Martha D. Saunders, President

Date: 01/26/2021


40C10B2F0D994D7...

By: 
Betsy Bowers, Vice President
Finance & Administration

Date: 01/22/2021