



SPONSORSHIP AGREEMENT

THIS SPONSORSHIP AGREEMENT (“Agreement”) is made and entered as of the June 23, 2020 between City of Cheney (“Sponsor”) and Eagles Sports Properties, LLC, a Missouri limited liability company qualified to do business in the State of WA (“Provider”).

BACKGROUND

- A. Provider holds the exclusive marketing and sponsorship rights for Eastern Washington athletics (“University”).
- B. Sponsor wishes to provide its support for University by sponsoring University.

NOW, THEREFORE, in consideration of the foregoing Background and other valuable consideration, Sponsor and Provider (each, a “Party” and together, the “Parties”) agree as follows:

1. Term of Agreement. This Agreement shall begin as of the date hereof and continue through June 30, 2021 (the “Term”). Neither Party shall have any of the rights set forth in this Agreement after its expiration except for obligations which by their nature shall survive termination including Sponsor’s payment obligations to Provider under Paragraph 3 below.
2. Sponsorship Benefits. During the Term, provided that Sponsor fulfills all of its obligations to Provider, including, but not limited to its payment obligations, Sponsor will receive the benefits described on Exhibit A attached to this Agreement and made a part hereof and no others (the “Benefits”). Unless otherwise specifically stated in Exhibit A or elsewhere in this Agreement, all Benefits are for the regular season only.
 - a. **Sponsor Modification of Benefits**. If during the Term, Sponsor wishes to modify the Benefits in any manner, Sponsor must notify the Provider in writing and provide reasons for the modification but in no event shall Sponsor have the right to terminate this Agreement or reduce its sponsorship fee absent Provider’s written consent which may be granted or withheld in Provider’s sole discretion.
 - b. **University Notice**. If Provider is advised by University that Provider may no longer provide Sponsor with all of the material Benefits (“University Notice”), then Provider shall have the option of terminating this Agreement at the end of the Athletic Year for which the University Notice is applicable, with no further liability or obligations of either Party under this Agreement thereafter except for any payments still owed by Sponsor at the time of termination. If University requires Provider to terminate this Agreement prior to the end of the then Athletic Year of the Term for which the University Notice is applicable, then this Agreement shall terminate upon Provider’s notice to Sponsor and Sponsor will

receive a refund for any Benefits paid for and not yet received or pay Provider for any Benefits received but not yet paid for but in no event shall either Party have any further liability or obligation to the other under this Agreement. Notwithstanding anything contained in this Paragraph 2 to the contrary, in lieu of this Agreement terminating because of a University Notice, Provider and Sponsor shall negotiate in good faith for a period of thirty (30) days following Provider being advised of the University Notice in order to determine whether alternative benefits can be offered to Sponsor and if offered, whether they are acceptable to Sponsor (“Alternative Benefits”). If Alternative Benefits are offered and accepted, then this Agreement shall not terminate as a result of the University Notice but instead shall remain in full force and effect under the same terms and conditions set forth herein except that the Benefits shall be replaced with the Alternative Benefits. Upon Provider and Sponsor agreeing upon the Alternative Benefits, Exhibit A to this Agreement shall be replaced with a new Exhibit A to reflect the Alternative Benefits. If there are any other modifications to this Agreement as a result of the Alternative Benefits being substituted for the Benefits, the Parties will execute an amendment to this Agreement setting forth each such modification.

- c. **Alternative Make-Good Benefits.** If, for any reason other than (i) a Force Majeure condition described in Paragraph 5 of this Agreement, (ii) a University Notice or (iii) Sponsor’s fault, Provider is unable to provide Sponsor with a Benefit described in Exhibit A, Provider will notify Sponsor and offer Sponsor make-good benefits in lieu of the Benefit(s) Provider is unable to provide to Sponsor (“Alternative Make-Good Benefits”). The Alternative Make-Good Benefits will not, however, include tickets, hospitality, catering or similar benefits that involve an out-of-pocket cost to Provider. The Alternative Make-Good Benefits will be subject to Sponsor’s approval, which approval will not be unreasonably withheld, delayed or conditioned. Until such time as the Alternative Make-Good Benefits are agreed upon, Sponsor will continue to pay the full sponsorship fee to Provider as set forth below. If Alternative Make-Good Benefits are not agreed upon, this Agreement shall not terminate, but rather the sponsorship fee to be paid by Sponsor will be adjusted to reflect the Benefits which are not available to Sponsor.
3. Payment Obligations of Sponsor. In consideration of the Benefits to be provided to Sponsor by Provider, Sponsor will pay Provider in the amounts set forth below. Each payment shall be due by no later than thirty (30) days after the date of invoice applicable to such payment:

\$7,500 Total Payment Invoiced as Follows:

Athletic Year

2020-2021 \$7,500.00

\$0 product trade for athletics

Total Cash and Trade Due: \$7,500

Sponsor shall make all checks payable to Eagles Sports Properties, LLC. Sponsor will not engage with any third-party payment processor (e.g. Ariba, PayModeX, etc.) unless Sponsor has an existing contract in place with a third-party payment processor. In such case, Sponsor will be solely responsible for any costs and expenses associated with the third-party payment processor. All late payments shall incur a late payment fee of 2% per month (24% APR) or the highest rate allowed by law, whichever is less, together with all costs and expenses of collection including attorneys' fees and court costs. If any sales tax, use tax, gross receipts tax, service tax or other tax (other than Provider's income tax) is imposed in connection with any Benefits or payment hereunder, then Sponsor will pay such tax on or before the due date thereof, and, if not otherwise paid, any unpaid amount thereof will be added to the payment for the period that includes such due date.

Sponsor Billing Information

Contact Name: Steve Marx
Telephone Number: 509-498-9227
Mailing Address: 112 Anderson Road
Cheney, WA, 99004

4. Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond the non-performing party's control and without such party's fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, acts of terrorism, riots, insurrections, fires, explosions, earthquakes, floods, loss of power, strikes or lockouts ("Force Majeure"). For the avoidance of doubt and clarification, any changes in the global, national or local economy shall not under any circumstances be considered a Force Majeure condition and therefore not be a reason for Sponsor's failure to perform under this Agreement. If any Force Majeure condition affects Provider's ability to perform its obligations set forth hereunder, Provider will notify Sponsor, and Provider will offer mutually agreeable make-good benefits to Sponsor in lieu of the Benefit(s) not received by Sponsor due to the Force Majeure condition ("Make-Good Benefits"). The Make-Good Benefits will be subject to Sponsor's approval which approval will not be unreasonably withheld, conditioned or delayed. Until such time as the Make-Good Benefits are agreed upon, Sponsor will continue to pay the full sponsorship fee to Provider as set forth above. If Make-Good Benefits are not agreed upon, this Agreement shall not terminate, but rather the sponsorship fee to be paid by Sponsor will be adjusted to reflect the benefits which were not available to Sponsor.
5. University Marks. To the extent that any of the Benefits include the right to make use of University's logos or trademarks ("University Marks"), Sponsor agrees that its use of University Marks is non-exclusive, limited and non-transferable and must be approved by the Provider prior to its use. Sponsor further agrees that it may not make use of University Marks in any retail promotion of a product or sale of a product without the approval of the University or its authorized agent and the payment of any required license fee. All right, title and interest in and to the University Marks is and shall remain the sole and exclusive property of Provider.

6. Liability and Indemnification. Each Party agrees to indemnify, defend and hold the other party, including its members, officers, directors, employees, and other agents, harmless from any and all liability (including, without limitation, reasonable attorney's fees, costs and expenses) resulting from or related to any claim, complaint and/or judgment for any negligent acts or any acts of intentional misconduct of the indemnifying party. For the avoidance of doubt and clarification, Sponsor acknowledges and agrees that Provider has no control over any of the athletic events in which a University team participates or the athletic venues in which the event occurs beyond the provision of Benefits as provided for in this Agreement. Accordingly, Sponsor agrees that it has no right to bring a claim for indemnification against Provider or a claim directly against Provider arising out of or from any athletic event of the University or occurring in or about a University athletic venue beyond the provision of Benefits as provided for in this Agreement (each a "Sponsor Claim") under any theory of law and will not therefore bring or make any Sponsor Claim under any theory of law against Provider. EXCEPT FOR LIABILITY ARISING UNDER THIS PARAGRAPH 7, IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (TORT, CONTRACT OR OTHERWISE) SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING ANY LOST PROFITS, LOSS OF USE, OR LOSS OF OPPORTUNITY) SUFFERED BY THE OTHER PARTY ARISING IN CONNECTION WITH THIS AGREEMENT. THE AGGREGATE LIABILITY, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE, UNDER WARRANTY, UNDER STATUTE OR OTHERWISE) OF THE PARTIES UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE SPONSORSHIP FEE.

7. Termination and Survivability.

- a. **Breach.** In addition to all rights and remedies available under the law and this Agreement, each Party shall have the right but not the obligation to terminate the Agreement if the other Party breaches any provision of this Agreement and such breach is not cured within ten (10) days after notice for a payment breach and thirty (30) days after notice for any other breach. In addition to all rights and remedies available under the law and this Agreement, each Party shall have the automatic right, but not the obligation, to terminate this Agreement in its entirety and without providing any cure opportunity by providing written notice to the other Party in the event the other Party (i) fails to function as a going concern or to operate in the ordinary course of business; (ii) is dissolved or terminated; (iii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they come due; (iv) seeks or becomes subject to the appointment of a trustee, administrator, receiver, custodian or other similar official is appointed for it or for all or substantially all of its assets; (v) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (vi) makes a general assignment, arrangement or composition with or for the benefit of its

creditors; (vii) institutes or has instituted against it a bankruptcy, reorganization or insolvency proceeding under any federal or state bankruptcy, reorganization, insolvency or similar law of any country (an "Insolvency Proceeding"); provided, however, with respect to an involuntary Insolvency Proceeding, in the event such proceeding is not dismissed within thirty (30) days after filing; (viii) has a resolution passed for its winding-up, official management or liquidation; (ix) causes or is subject to any event with respect to it which, under applicable laws of any jurisdiction, has an analogous effect to any of the events specified above; or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence to, any of the foregoing acts.

b. **Termination.** In the event of a termination or expiration of this Agreement except as may be otherwise provided herein, immediately upon termination or expiration of this Agreement each Party shall cease displaying the other Party's Marks.

c. **Continuing Terms.** The Continuing Terms survive the expiration of the Term or earlier termination of this Agreement. "Continuing Terms" means the terms of this Agreement that by their nature survive the expiration of the Term or earlier termination of this Agreement, including the Paragraph titled "Payment Obligations of Sponsor," the Paragraph titled "Liability and Indemnification," and the Paragraph titled "Confidentiality".

8. **Arbitration.** Any claim arising out of or related to this Agreement or a breach hereof, is to be settled exclusively by arbitration in accordance with the procedures set forth in this Paragraph. The Parties agree that, in the event of a dispute between them relating to or arising out of this Agreement, the Parties will submit such dispute to binding arbitration as provided herein. All arbitrations will be conducted in Dallas, Texas, pursuant to the Commercial Arbitration Rules of the American Arbitration Association except as provided herein. The arbitrator used will be selected from arbitrators employed by the American Arbitration Association and the decisions of the arbitrator are final and binding upon the Parties. All arbitration will be undertaken pursuant to the Federal Arbitration Act. In any arbitration hereunder, the prevailing Party (as determined by the arbitrator) shall be awarded its legal fees and expenses and all other costs and expenses of the dispute, including court costs and arbitrator's, reasonable accountants' and expert witness fees, costs and expenses (including disbursements) incurred in connection with such proceedings. The arbitrator is directed by this Agreement to conduct the arbitration hearing no later than three months from the service of the statement of claim and demand for arbitration unless good cause is shown establishing that the hearing cannot fairly and practically be so convened. Depositions will be taken only as deemed appropriate by the arbitrator and only where good cause is shown. The Parties to the arbitration will be entitled to conduct document discovery by requesting production of documents. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with law in any court of competent jurisdiction. In the event any Party brings suit or institutes arbitration proceedings to construe or enforce the terms hereto or raises this Agreement as a defense in a suit or arbitration proceeding brought by another party, the prevailing party in such suit or arbitration proceeding is entitled to recover its

attorneys' fees and expenses. This Agreement shall be construed, interpreted and enforced under the laws of the State of Texas without regard to its principles of conflict or choice of laws.

9. Confidentiality. Sponsor acknowledges that the terms of this Agreement (the "Confidential Information") are strictly confidential, and Sponsor will not disclose any Confidential Information to any third party without the prior written consent of Provider. Failure to comply with this obligation shall be considered a material breach of this Agreement. This Section 11 shall survive any termination or expiration of this Agreement.

10. Miscellaneous.

- a. **Compliance**. Sponsor and Provider will comply with all federal, state and local laws as well as all rules of the conference to which the University belongs and NCAA rules and regulations in connection with their respective performance under this Agreement. To that end, Sponsor shall not make use of any student-athlete's name or likeness (as defined by the NCAA) without advance written approval of University's compliance officer and notwithstanding the granting of approval, Sponsor agrees to indemnify, save and hold Provider harmless from and against any claim of any kind made by an athlete against Provider or its affiliated companies related to any use by Sponsor of any student-athlete's name or likeness.
- b. **Notice**. All notices hereunder must be in writing and shall be deemed to have been given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt) (c) sent by certified mail, return receipt requested when received by the addressee; (d) sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth on the signature page below (or to such other addresses as a signatory may designate by notice to the other signatories) or (e) when received by the addressee, if sent by e-mail to the appropriate e-mail address of the addressee.
- c. **Assignment**. Sponsor shall not have the right to transfer or assign its rights or obligations under this Agreement without the express prior written consent of Provider. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns.
- d. **Entire Agreement; No Waiver; Relationship of Parties**. This Agreement and any exhibit attached to this Agreement constitutes and contains the entire agreement of the Parties relating to the subject matter hereof and supersedes any and all prior or contemporaneous written or oral understandings or agreements with respect thereto. No amendment to this Agreement shall be valid unless in writing signed by each of the Parties hereto. The failure of any Party to exercise any of its rights under this Agreement shall not be deemed a waiver of such right or any other rights. Sponsor and Provider are independent contracting parties and nothing in this Agreement shall be deemed to create a partnership, joint venture or agency relationship between them nor does it grant either Party any authority to assume or create any obligation on behalf of or in the name of the other Party.

The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises regarding this Agreement, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Sponsor represents and warrants that the person whose signature appears below for Sponsor is duly authorized to execute this Agreement and legally bind Sponsor under this Agreement. Sponsor further represents and warrants to Provider that any person employed by Sponsor and acting with apparent authority for Sponsor in connection with this Agreement both before and after it is fully executed is duly authorized by Sponsor to do so and bind Sponsor irrespective of whether that person is the person who executed this Agreement for Sponsor. Sponsor further agrees that any defense of non-authority by such person (or any similar defense) which Sponsor might raise in connection with this Agreement is hereby waived by Sponsor. This Agreement shall not be binding upon Provider until and unless it is executed by Provider's General Manager. Provider's Account Executive is not authorized to sign the Agreement on behalf of Provider. This Agreement may be executed in counterparts by facsimile or electronic signature, each of which shall be deemed an original and each counterpart together shall constitute one document.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

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Signature Page to Follow

ACCEPTED AND AGREED AS OF THE ABOVE DATE AND IF NO DATE IS INSERTED, THEN THE FIRST DAY OF THE ATHLETIC YEAR OF THE TERM SHALL BE THE DATE OF THIS AGREEMENT:

**City of Cheney
112 Anderson Rd
Cheney, WA, 99004**

**Eagles Sports Properties, LLC
207 Physical Education Building
Cheney Washington 99004**

By: _____
Signature

By: _____
Signature

Name: Chris Grover

Name: Tim Shustoff

Title: Mayor

Title: General Manager

Date: _____

Date: _____

EXHIBIT A

BENEFITS

Basketball

- Signage
 - 1 Mezzanine Backlit - 3' x 9' - North/South signage splitting upper/lower bowl

Football

- Promotions
 - 1 In-Game Promotion - On-field or video-board game or activation to engage fans
- Tickets/Suites/Parking
 - 4 Season Ticket - Reserved ticket for all home Football games

Men's Basketball

- Tickets/Suites/Parking
 - 4 Season Ticket - Reserved ticket for all home Men's Basketball games

Online Advertising

- Digital
 - 50 Geo/Demo Targeted Display Ad - Display ads targeted to specific demographics, geographies or in-market segments

Women's Basketball

- Tickets/Suites/Parking
 - 4 Season Ticket - Reserved ticket for all home Women's Basketball games