

## Tulane Stadium Agreement and Settlement Agreement

This Tulane Stadium Agreement and Settlement Agreement (this "**Agreement**") is entered into as of January 25, 2013 (the "**Effective Date**") by and between The Administrators of the Tulane Educational Fund, a Louisiana nonprofit corporation ("**Tulane**"), and the City of New Orleans, through its Mayor (the "**City**").

### **1. The Stadium**

1.1 Tulane has proposed to construct a stadium with an initial capacity of approximately 30,000, on the portion of its campus bounded by Willow Street, Audubon Boulevard, Claiborne Avenue and Calhoun Street (the "**Stadium**").

1.2 On May 3, 2012, the New Orleans City Council (the "**Council**") passed Motion M-12-150 (the "**IZD Motion**") proposing to create an interim zoning district (the "**IZD**") that would cover an area including Tulane's campus and that would prohibit construction of the Stadium. The IZD Motion further directed that all agencies of the City were immediately prohibited from accepting applications for permits or licenses that were in conflict with the intent of the IZD. On May 16, 2012, Tulane filed suit against the City (and the Council) in the Civil District Court for the Parish of Orleans seeking to enjoin implementation of the IZD Motion (the "**Litigation**"). On July 12, 2012, the Council passed Motion M-12-255, repealing the IZD Motion.

1.3 Tulane has asserted that it has sustained significant damages as a result of the IZD Motion. Absent a resolution of its dispute with the City concerning the IZD Motion, Tulane would have the right to amend its petition in the Litigation to seek damages from the City.

1.4 In recognition of the economic and other benefits to be derived by the City from the development, construction and operation of the Stadium, to address certain concerns raised by the City with respect to the operation of the Stadium, and in settlement of the Litigation, the Parties agree as follows.

1.5 Tulane recognizes that the construction and operation of the Stadium will be subject to all Applicable Laws, including Applicable Laws governing the issuance of building permits for the construction of the Stadium. In obtaining building permits for the Stadium, Tulane will be subject to the normal City processes and code review applicable thereto. The parties intend this Agreement to govern certain rights and obligations of the parties with respect to the Stadium that would not otherwise be governed by Applicable Laws in effect as of the Effective Date.

### **2. Definitions**

The following defined terms have the following meanings. Other terms are defined elsewhere in this Agreement.

2.1 The term "**Acoustics Performance Standards**" has the meaning given it in Section 7.

2.2 "**Applicable Laws**" are all federal, state, parish and municipal statutes, ordinances, rules, regulations, directives, citations, orders, decrees, reported decisions and other requirements of any Governmental Authority having jurisdiction over the Stadium, as in effect from time-to-time.

2.3 The term "**Building Integrated Lighting**" refers to all of the Light Systems of the Stadium, other than the High Mast Lights.

2.4 The term "**Camps**" has the meaning given it in Section 3.2(c).

2.5 The term "**Campus Security Plan**" has the meaning given it in Section 8.1.

2.6 The "**Collegiate Football Lighting Limit**" is 125 vertical footcandles (fc) average maintained. The Collegiate Football Lighting Limit applies to the High Mast Lights during collegiate football games in accordance with the provisions of Section 6.2.

2.7 The term "**Community Liaison**" has the meaning given it in Section 10.1.

2.8 A "**Facilities Agreement**" is an agreement between Tulane, on the one hand, and a third Person, on the other, governing the use of the Stadium by that third Person.

2.9 An event of "**Force Majeure**" is any fire, earthquake, named tropical storm or other act of God, strike, lockout, act of public enemy, riot, insurrection, or governmental regulation of the sale or transportation of materials, supplies or labor.

2.10 The "**High Mast Lights**" are the commonly referred to "high mast lights" that from time-to-time form a part of the Light Systems of the Stadium.

2.11 A "**Governmental Authority**" is any federal, state, local or municipal court, legislature, quasi-governmental, executive or regulatory authority, agency or commission, or other governmental entity, authority or instrumentality.

2.12 The term "**Interior Events**" has the meaning given it in Section 3.2(g).

2.13 The "**Janitorial Lighting Limit**" is 35 horizontal foot candles (fc) average maintained. The Janitorial Lighting Limit applies to the High Mast Lights during the times provided in Section 6.4.

2.14 The term "**Light Systems**" has the meaning given it in Section 6.1.

2.15 The term "**Lighting Performance Standards**" has the meaning given it in Section 6.1.

2.16 The term "**Lighting Stipulated Breach**" has the meaning given it in Section 12.3(b).

2.17 The term "**Litter Abatement Plan**" has the meaning given it in Section 9.1.

2.18 The term "**Litter Stipulated Breach**" has the meaning given it in Section 12.3(c).

2.19 A "**Major Event**" is: (a) any Tulane home football game or other collegiate football game played at the Stadium; or (b) an event which is to take place (and ultimately does in fact take place) in the Stadium that, based on (i) past experience, (ii) advance ticket sales 72 hours before the event or (iii) other reasonably accurate and publicly available information, is reasonably expected to attract attendees traveling to the event by way of more than 2,500 automotive vehicles.

2.20 A "**Non-Football Major Event**" is a Major Event other than (a) a Tulane home football game or (b) another football game that is a Permitted Use under Section 3.

2.21 The "**Operational Lighting Limit**" is 20 horizontal footcandles (fc) average maintained. The Operational Lighting Limit applies to the Building Integrated Lighting for exterior and open air spaces as provided in Section 6.1.

2.22 The term "**Party**" refers individually to the City or Tulane, and the term "**Parties**" refers collectively to the City and Tulane.

2.23 The term "**Permitted Uses**" has the meaning given it in Section 3.2.

2.24 A "**Person**" is any individual, partnership, limited partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

2.25 The "**Practice Field Lighting Limit**" is 70 horizontal footcandles (fc) average maintained. The Practice Field Lighting Limit applies to the High Mast Lights for uses other than collegiate football games as provided in Section 6.2.

2.26 The term "**Pre-Existing Uses**" has the meaning given it in Section 3.1.

2.27 The term "**Prohibited Uses**" has the meaning given it in Section 3.3.

2.28 The term "**Response Period**" has the meaning given it in Section 12.5.

2.29 The term "**Review Procedure**" has the meaning given it in Section 11.1.

2.30 The term "**Sound System**" has the meaning given it in Section 7.

2.31 The term "**Stadium Website**" has the meaning given it in Section 10.2.

2.32 The term "**Stipulated Breach**" has the meaning given it in Section 12.3.

2.33 The term "**Stipulated Breach Notice**" has the meaning given it in Section 12.5.

2.34 The term "**Stipulated Damages**" has the meaning given it in Section 12.4.

2.35 The term "**Traffic/Parking Plan**" has the meaning given it in Section 4.1.

2.36 The term "**Traffic/Parking Stipulated Breach**" has the meaning given it in Section 12.3(a).

2.37 The term "**Tulane Special Events**" has the meaning given it in Section 3.2(b).

2.38 The term "**Usage Policy**" refers, collectively, to any policy or policies maintained by Tulane governing the use of the Stadium by Tulane and other Persons.

2.39 A "**Week Day**", for purposes of this Agreement, is any Sunday, Monday, Tuesday, Wednesday or Thursday.

### 3. **Use of Stadium**

3.1 Tulane contemplates using the Stadium for a combination of purposes, including (a) the uses currently made of the football practice field existing as of the Effective Date (collectively, the "**Pre-Existing Uses**") and (b) additional uses made possible by the capabilities of the new Stadium, subject to the terms and conditions of this Agreement.

3.2 Tulane's use of the Stadium will be consistent with the university's mission, values and vision. Tulane's contemplated uses of the Stadium include the following (the uses described in this Section 3.2 being collectively referred to as the "**Permitted Uses**"):

(a) The following Pre-Existing Uses: (i) Tulane football team practices; (ii) Tulane club sports practices and games; (iii) Tulane band and cheerleading practices; (iv) community sports practices and games, subject to availability and the terms of the Facilities Agreement; and (v) a practice site for intercollegiate and professional bowl teams (such as for the Sugar Bowl and Super Bowl).

(b) Craw Fest and Tulane special events that are reasonably anticipated to be attended primarily by Tulane students, faculty, staff, officers, board members, supporters, donors and alumni and their respective family members and guests (such as Freshman Convocation, Commencement, Wave Goodbye, Faculty/Staff/Family Fun Fest and Movie Night) (collectively, "**Tulane Special Events**").

(c) The following camps and events (the camps and events described in this Section 3.2(c) being collectively referred to as "**Camps**"): (i) camps sponsored by Tulane; (ii) camps sponsored by another nonprofit Person; (iii) camps sponsored by a Tulane athletics coach or other Tulane employee; (iv) camps sponsored by an athletic league (such as the NCAA or the NFL); (v) athletics related events sponsored by a for-profit Person but targeted to underserved children and youth (such as the Converse shoe give away); (vi) athletic camps sponsored by a professional athlete or a for-profit promoter in conjunction with a professional athlete; and (vii) football training camps for collegiate teams other than Tulane or for professional teams. In each case, the use of the Stadium for a Camp that is not sponsored by Tulane will be subject to availability and the terms of the Facilities Agreement.

(d) Tulane home football games.

(e) High school regular season football games, subject to availability, the terms of the Facilities Agreement and the provisions of Section 3.3(b) and (c).

(f) High school playoff football games, subject to availability and the terms of the Facilities Agreement.

(g) Classes, lectures, meetings, conferences or similar events within the Stadium's interior spaces ("**Interior Events**").

(h) Post-regular season intercollegiate football bowl games.

(i) General community events that are consistent with uses on the remainder of Tulane's campuses as of the Effective Date (such as Presidential, Head-of-State or other dignitaries' speaking engagements, Special Olympics and the Maccabi Games), subject to availability and the terms of the Facilities Agreement.

(j) Musical performances that are part of the program for a Permitted Use enumerated in clauses (a) through (i) above (such as pre-game and half-time performances in conjunction with a permitted football game and musical performances during Craw Fest, Commencement, Wave Goodbye and other Tulane Special Events).

3.3 Notwithstanding the provisions of this Section 3 to the contrary, however, Tulane agrees that the Stadium may not be used for the following purposes (collectively, the "**Prohibited Uses**"):

(a) The use of the Stadium for rock, rap or country and western music or similar concerts (provided that nothing in this Section 3.3(a) will preclude classical (including symphonic and operatic) or similar concerts in the Stadium).

(b) Any high school football game on the same weekend as a Tulane home football game.

(c) More than one regular season high school football game in any calendar week.

(d) More than two post-regular season intercollegiate football bowl games during any academic year, neither of which may occur within seven days of the other.

(e) So-called "monster truck" shows or "super-cross" events.

(f) Circuses or rodeos.

(g) Commercial expositions, trade shows and similar events, such as a "boat show".

(h) More than 10 Non-Football Major Events in any calendar year.

3.4 The Parties recognize that potential uses may arise over the course of the Stadium's existence that are not expressly provided for as Permitted Use in Section 3.2, but are also not expressly precluded as a Prohibited Use under Section 3.3. Tulane's ability to use the Stadium for any potential use that is not a Permitted Use expressly provided for in Section 3.2 and that is not a Prohibited Use expressly precluded in Section 3.3 will be resolved by the Parties under the provisions of Sections 11.1 and 11.3.

3.5 Tulane agrees to maintain its then-current Usage Policy and its then-current standard form of Facilities Agreement posted on the Stadium Website. The Usage Policy shall at all times comply with the requirements of this Agreement; and the form of Facilities Agreement may not be inconsistent with the provisions of this Agreement or, as between Tulane and the City, relieve Tulane of any of its obligations under this Agreement. Each Facilities Agreement with a third Person will incorporate, by attachment or by reference (such as by reference to a link on the Stadium Website), the terms of this Agreement, including, in the case of a Facilities Agreement for a Major Event, the exhibits to this Agreement.

#### **4. Traffic and Parking**

4.1 It is Tulane's expectation to encourage multi-modal methods of transportation (such as shuttles, buses, taxis and bicycles) and appropriate access for these methods of transportation to the Stadium for Major Events. Attached to this Agreement as **Exhibit A** is the currently proposed traffic and parking plan for Major Events (as it may be modified, amended, supplemented or replaced in accordance with the provisions of this Agreement, the "**Traffic/Parking Plan**").

4.2 The Parties recognize that the current Traffic/Parking Plan is based on their expectations for the initial operation of the Stadium, but recognize that the Traffic/Parking Plan will require modifications or replacements over time as the Stadium is operated and changes occur in event attendance and traffic patterns, Applicable Laws, requirements of the New Orleans Police Department, changes in available public transportation, knowledge gained from the experience of operating the Stadium and other circumstances. Subject to the provisions of Section 11, Tulane will have the right to modify, amend, supplement or replace the Traffic/Parking Plan from time-to-time so long as the modified, amended, supplemented or replacement Traffic/Parking Plan is reasonable in light of anticipated traffic and parking patterns and consistent with traffic and parking plans for comparable facilities with comparable attendance. Any modified, amended, supplemented or replacement Traffic/Parking Plan will be delivered to the City, and Tulane shall maintain a copy of the then-current Traffic/Parking Plan posted on the Stadium Website.

4.3 The then-current Traffic/Parking Plan will be implemented by Tulane for each Major Event. For all other events, Tulane shall address traffic and parking in a manner that is reasonable, given the expected attendance and number of automotive vehicles used by attendees, requirements of Applicable Law, requirements of the New Orleans Police Department and practices on the remainder of Tulane's Uptown campus.

## 5. Hours of Use

5.1 Each Permitted Use described in Section 3.2(a) through (c) will end no later than 10:30 p.m. on each day of the week; provided, however, that janitorial and other cleanup activities may take place up to 11:00 p.m.

5.2 Each Permitted Use described in Section 3.2(i) that occurs on a Week Day will end no later than 10:30 p.m.; provided, however, that janitorial and other cleanup activities may take place up to 11:00 p.m. Each Permitted Use described in Section 3.2(i) that occurs other than on a Week Day will end no later than midnight; provided, however, that janitorial and other cleanup activities may take place up to 12:30 a.m. The ending time and janitorial and cleanup period for a musical performance under Section 3.2 (j) will be the same as the ending time and janitorial cleanup period for the Permitted Use of which it is a part.

5.3 Any high school football game that is a Permitted Use under Section 3.2(e) or (f) that occurs on a Week Day must be scheduled to begin no later than 6:30 p.m.

5.4 Any collegiate football game that is a Permitted Use under Section 3.2(d) or (h) that occurs on a Week Day will end no later than 10:30 p.m.; provided, however, that: (a) a night collegiate football game on a Week Day may extend beyond 10:30 p.m. due to weather delays or other events of Force Majeure, overtime and similar causes or to accommodate broadcast or conference requirements; (b) after the end of a night collegiate football game on a Week Day, a reasonable period of time may be allowed for patrons to exit the Stadium; and (c) the Stadium may be cleaned during a reasonable period of time after the end of a night collegiate football game on a Week Day, not to exceed 1.5 hours after the end of the game.

## 6. Lighting

6.1 The Stadium and its lighting systems (the "**Light Systems**") will be designed so that the maximum illumination to be produced by the High Mast Lights will not exceed the Collegiate Football Lighting Limit and the maximum illumination to be produced by the Building Integrated Lighting for exterior and open air spaces will not exceed the Operational Lighting Limit. For ease of reference, the standards for the Light Systems delineated in the preceding sentence are referred to as the "**Lighting Performance Standards**". Throughout the term of this Agreement, the Light Systems will be maintained, repaired and replaced so as to achieve the Lighting Performance Standards. Tulane will advise the City of any material changes to or replacements for the Light Systems that affect the High Mast Lights. Without the City's prior consent, Tulane may not alter or replace the Light Systems so that their design fails to meet the Lighting Performance Standards.

6.2 When the Stadium is in operation, Tulane will use its best efforts to prevent the High Mast Lights from exceeding: (a) the Collegiate Football Lighting Limit during any collegiate football game permitted by Section 3.2(d) and (h); or (b) the Practice Field Lighting Limit during any other Permitted Use.

6.3 Subject to the provisions of Section 6.4, Tulane will not allow the High Mast Lights to remain illuminated after 10:30 p.m. on any Week Day.

6.4 The Parties agree that: (a) the High Mast Lights may remain illuminated at the Janitorial Lighting Limit up to 11:00 p.m. on a Week Day so as to allow for janitorial and other cleanup activities as contemplated by Sections 5.1 and 5.2; (b) a night collegiate football game on a Week Day may extend beyond 10:30 p.m. due to weather delays or other events of Force Majeure, overtime and similar causes or to accommodate broadcast or conference requirements; (c) for a night collegiate football game on a Week Day, the High Mast Lights may remain illuminated at the Collegiate Football Lighting Limit through the end of the game and for a reasonable period of time after the end of the game so as to allow patrons to exit the Stadium; and (d) for a night collegiate football game on a Week Day, the High Mast Lights may remain illuminated at the Janitorial Lighting Limit for a reasonable period of time, not to exceed 1.5 hours after the end of the game, so as to allow the Stadium to be cleaned.

6.5 So long as the Light Systems are designed to meet the Lighting Performance Standards as to the Operational Lighting Limit, nothing in this Section 6 will limit the days or hours during which the Building Integrated Lighting may be illuminated, including, without limitation, for Interior Events and for janitorial and security purposes.

## 7. Acoustics

The Stadium and its seating bowl sound system (the "Sound System") will be designed so that the maximum sound levels to be produced by the Sound System as measured in the spectator seating will be no more than 90 dBA continuous. For ease of reference, the standards for the Sound System delineated in the preceding sentence are referred to as the "Acoustics Performance Standards". Throughout the term of this Agreement, the Sound System will be maintained, repaired and replaced so as to achieve the Acoustics Performance Standards. Tulane will advise the City of any material changes to or replacements for the Sound System. Without the City's prior consent, Tulane may not alter or replace the Sound System so that its design fails to meet the Acoustics Performance Standards. The Parties acknowledge that, in addition to sounds produced by the Sound System, there will be normal and expected sounds associated with Permitted Uses, such as crowd noises and musical instruments. Notwithstanding the foregoing, nothing contained in this Section 7 relieves Tulane of its responsibility to comply with any and all Applicable Laws.

## 8. Security

8.1 The "Campus Security Plan" is the security plan that Tulane maintains in effect for its Uptown campus, and as it may be modified from time to time, subject to the limits of this Section 8 as to the Stadium. Throughout the term of this Agreement, the Campus Security Plan will include operating and security protocols applicable to the Stadium and to areas surrounding Tulane's Uptown campus identified in the Campus Security Plan, including protocols for Tulane home football games and other Major Events, emergency evacuation plans for the Stadium, measures to protect the safety of event attendees and protocols for the varying Permitted Uses of the Stadium that do not rise to the level of a Major Event. The protocols applicable to the Stadium contained within the Campus Security Plan are based on Tulane's and the City's expectations for the operation of the Stadium, Applicable Laws, applicable requirements of the New Orleans Police Department, the New Orleans Fire Department, the New Orleans

Emergency Medical Services, the New Orleans Office of Security and Emergency Preparedness and the U.S. Department of Homeland Security, and current industry practices.

8.2 Tulane will have the right to modify, amend, supplement or replace the Campus Security Plan from time-to-time so long as any modifications, amendments, supplements or replacements relating to the Stadium: (a) are consistent with security plans for comparable facilities with comparable attendance and knowledge gained from the experience of operating the Stadium; (b) comply with Applicable Laws; and (c) comply with any applicable requirements of the New Orleans Police Department, the New Orleans Fire Department, the New Orleans Emergency Medical Services, the New Orleans Office of Security and Emergency Preparedness and the U.S. Department of Homeland Security. Consistent with their current practices, unless the Parties determine to defer review of the Campus Security Plan to the Review Procedure established under Section 11, Tulane will review its Campus Security Plan annually with the New Orleans Police Department and the City's Office of Security and Emergency Preparedness.

## 9. Litter

9.1 Attached to this Agreement as Exhibit B is the currently proposed litter abatement plan for Major Events (as it may be modified, amended, supplemented or replaced in accordance with the provisions of this Agreement, the "Litter Abatement Plan").

9.2 Tulane currently maintains in effect litter abatement practices for its Uptown campus, including litter pickup for certain areas surrounding Tulane's Uptown campus. The Litter Abatement Plan is intended to provide for services for Major Events that are in addition to Tulane's normal practices for its Uptown campus and surrounding areas. The Parties recognize that the Litter Abatement Plan attached as Exhibit B is based on their expectations for the initial operation of the Stadium, but recognize that the Litter Abatement Plan will require modifications or replacements over time as the Stadium is operated and changes occur in event attendance, knowledge gained from the experience of operating the Stadium and other circumstances. Subject to the provisions of Section 11, Tulane will have the right to modify, amend, supplement or replace the Litter Abatement Plan from time-to-time so long as the modified, amended, supplemented or replacement Litter Abatement Plan is reasonable in light of the anticipated Stadium operations and is consistent with litter abatement plans for comparable facilities with comparable attendance. Any modified, amended, supplemented or replacement Litter Abatement Plan will be delivered to the City, and Tulane shall maintain a copy of the then-current Litter Abatement Plan and post it on the Stadium Website.

9.3 Tulane will implement the Litter Abatement Plan for each Major Event. For all other events, Tulane shall address litter in a manner that is reasonable, given the expected attendance for the event, the concessions that are expected to be provided at the event and practices on the remainder of Tulane's Uptown campus.

## 10. Relationship With Neighbors

10.1 At all times that this Agreement is in effect, Tulane shall designate at least one of its employees with responsibility for neighborhood relations regarding the Stadium and its use (a "Community Liaison"). Tulane shall maintain a mechanism, taking into account evolving

technologies over the existence of the Stadium, for neighboring residents to communicate with the Community Liaison regarding the operation of the Stadium, upcoming events at the Stadium and complaints as to whether the Stadium is in compliance with this Agreement or Applicable Laws.

10.2 In addition, at all times that this Agreement is in effect, Tulane will maintain a website for the Stadium (the "**Stadium Website**") on which it will post the then-current Usage Policy, the then-current Facilities Agreement, the then-current Traffic/Parking Plan, the then-current Litter Abatement Plan and information about upcoming events at the Stadium other than strictly Interior Events. The Stadium Website may be established as a page or pages of Tulane's main website. In addition, the Stadium Website need not be limited to technology in existence on the Effective Date, and the Parties recognize that the method of maintaining information that will be available to the public may change over time, given evolution in technologies. In that case, the term "Stadium Website" will include any new or replacement technologies.

10.3 Consistent with its current practices, Tulane will either attend neighborhood association meetings, subject to availability of the Community Liaison or other Tulane personnel, or host up to two meetings per calendar year that are open to neighboring residents, so as to review then-current practices at the Stadium and to receive input from neighbors on the Stadium's operations. In addition, Tulane will host one meeting per calendar year with the presidents of the neighborhood associations for the neighborhoods immediately surrounding Tulane's Uptown campus. As of the Effective Date, Tulane holds its neighborhood meetings in person. The Parties recognize, however, that the form of these meetings (including whether they are or are not in person) may change over the existence of the Stadium, given the evolution of technologies.

## **11. Review Procedure**

11.1 After each of the first two academic years in which the Stadium is operating, and at the conclusion of each fifth academic year thereafter in which the Stadium is operating, the Parties will meet at a time reasonably acceptable to each of them to review: (a) Tulane's compliance with this Agreement; (b) any proposed uses of the Stadium that are not expressly provided for as Permitted Uses, that are not expressly precluded as Prohibited Uses and that Tulane would like to occur in the Stadium; (c) the most recent Traffic/Parking Plan and Litter Abatement Plan; and (d) any other concerns arising out of the operation of the Stadium. In addition, at any time, and from time-to-time, at either Party's request, and after reasonable notice, the Parties will meet to review the matters contemplated by this Section 11. For ease of reference, the procedure for meeting under this Section 11 will be referred to as the "**Review Procedure**".

11.2 Notwithstanding any other provision of this Agreement to the contrary, without the City's prior written consent, during the first two academic years in which the Stadium is operated, no modification may be made to the Traffic/Parking Plan or to the Litter Abatement Plan that would lessen the services to be provided by Tulane thereunder.

11.3 Without limiting the generality of the provisions of Section 11.1, as part of the Review Procedure, Tulane may from time-to-time: (a) update its then-current Traffic/Parking

Plan or Litter Abatement Plan; (b) request modifications to the Traffic/Parking Plan or Litter Abatement Plan pursuant to the provisions of Section 11.2; and (c) request that the City confirm whether or not a proposed use of the Stadium may be permitted under the provisions of Sections 3.2 and 3.4. If Tulane submits requested modifications to the City pursuant to clause (b) by written notice to the City, or requests that the City confirm a particular use of the Stadium pursuant to clause (c) by written notice to the City, then the Parties will be obligated to meet within 30 days after the date on which Tulane's notice to the City is given and to use good faith efforts to reach an agreement as to the requested modifications or proposed use. Unless the City stipulates otherwise as a part of any agreement under Section 11.1 or this Section 11.3, a use that is confirmed by the City under Section 11.1 or this Section 11.3 will be deemed a Permitted Use from that time forward for all purposes under this Agreement.

11.4 As for the City, the Review Procedure will be conducted through the office of the Mayor and such City personnel as the Mayor's office may designate.

## 12. **Enforcement**

12.1 Although this Agreement is made in settlement of litigation, this Agreement is intended by the Parties to establish a contractual relationship between the City, on the one hand, and Tulane, on the other. This Agreement is intended to remain in effect throughout the existence of the Stadium.

12.2 If either Party defaults in its obligations under this Agreement, the non-defaulting Party will be entitled to exercise all of its rights and remedies available as a matter of Applicable Law. In addition, as to certain breaches of this Agreement, the City will be entitled to recover Stipulated Damages from Tulane in accordance with the following provisions.

12.3 A "**Stipulated Breach**" will be deemed to occur if the conditions delineated in clause (a), (b) or (c) occur, as follows:

(a) **Traffic/Parking.** Tulane breaches this Agreement by failing to activate the then-current Traffic/Parking Plan for a Major Event (each, a "**Traffic/Parking Stipulated Breach**"); provided, however, that as long as Tulane activates the Traffic/Parking Plan for a Major Event (including taking all appropriate steps to activate the Traffic/Parking Plan and assuming responsibility for the costs of implementing the Traffic/Parking Plan), then a Traffic/Parking Stipulated Breach will not be deemed to have occurred. By way of example, if there are parking violators notwithstanding the activation of the Traffic/Parking Plan, a Traffic/Parking Stipulated Breach will not have occurred.

(b) **Lighting.** The High Mast Lights remain illuminated for more than 15 minutes after the applicable deadlines for the High Mast Lights to be turned off as set forth in Section 6, and as those deadlines may be extended pursuant to Section 6 (each, a "**Lighting Stipulated Breach**").

(c) **Litter.** Tulane breaches this Agreement by failing to activate the then-current Litter Abatement Plan for a Major Event as to the areas included within the Litter

Abatement Plan that are outside of Tulane's Uptown campus (each, a "**Litter Stipulated Breach**").

12.4 (a) For each Traffic/Parking Stipulated Breach, Tulane shall owe the City stipulated damages in the amount of \$5,000.00. For any Lighting Stipulated Breaches, Tulane shall owe the City stipulated damages in the following amounts: \$500 for the first Lighting Stipulated Breach in any calendar year; \$800 for the second Lighting Stipulated Breach in any calendar year; and \$1,000 for the third and any subsequent Lighting Stipulated Breach in any calendar year. For any Litter Stipulated Breaches, Tulane shall owe the City stipulated damages in the following amounts: \$500 for the first Litter Stipulated Breach in any calendar year; \$800 for the second Litter Stipulated Breach in any calendar year; and \$1,000 for the third and any subsequent Litter Stipulated Breach in any calendar year.

(b) The stipulated damages provided for in this Section 12.4 are collectively referred to as the "**Stipulated Damages**". The Stipulated Damages are designed to fix compensatory damages in an amount that reasonably approximates actual damages, alleviate the need to prove actual damages and act as a constraint to encourage performance.

12.5 To be entitled to Stipulated Damages for a Stipulated Breach, within 15 days of the occurrence of the alleged Stipulated Breach, the City must give Tulane a written notice (each, a "**Stipulated Breach Notice**") describing the alleged Stipulated Breach, setting forth the amount of Stipulated Damages owed by Tulane as a result of the Stipulated Breach and accompanied by evidence of the Stipulated Breach. Within 30 days of the date on which the City gives Tulane a Stipulated Breach Notice (the "**Response Period**"), Tulane shall either pay the Stipulated Damages set forth in the Stipulated Damages Notice or deliver evidence to the City that the Stipulated Breach has not occurred or that the amount of the alleged Stipulated Damages is incorrect. If the City does not accept Tulane's evidence, the Parties will meet in a good faith effort to resolve their differences within the 30-day period following the Response Period. If, within that 30-day period, they are unable to reach an agreement on whether or not a Stipulated Breach occurred and whether or not Stipulated Damages are due, then the dispute will be resolved by arbitration in accordance with the provisions of **Exhibit C** to this Agreement. Unless Tulane has elected to pay the Stipulated Damages that were in dispute and unless the City, at its option, has first elected to commence the arbitration procedure in accordance with **Exhibit C**, then the arbitration procedure will be initiated by Tulane no later than 15 days after the expiration of the 30-day period. If Tulane fails to pay Stipulated Damages to the City when due in accordance with the provisions of this Section 12, then the amount of Stipulated Damages will bear interest from their due date at the greater of the then-current legal rate or 5% per annum, until they are paid in full.

12.6 Consistent with the provisions of Section 15.9 below, the City will have the sole responsibility for determining whether a Stipulated Breach is alleged to have occurred and to enforce the right to collect Stipulated Damages in accordance with the provisions of this Section 12. Nothing in this Section 12 should be construed to prevent the City from proving and collecting actual damages related to the breach of any provision of this Agreement, from otherwise enforcing this Agreement, including to recover Stipulated Damages and interest as set forth above, or from enforcing any and all Applicable Laws.

**13. Dismissal of Litigation and Release of Damage Claim**

13.1 On execution of this Agreement, Tulane promptly will file a motion in the Litigation seeking the dismissal of Tulane's petition without prejudice.

13.2 Tulane hereby releases the City and the Council from liability for any claim for damages to Tulane resulting or arising from the Council's adoption of the IZD Motion.

**14. Hickory Street**

Tulane agrees that it will not seek an opening of Hickory Street between Audubon Boulevard and the Tulane property line so as to allow direct access from Audubon Boulevard, via Hickory Street, to Tulane's Uptown campus, including the Stadium.

**15. Miscellaneous**

15.1 **Notices.** The Parties' addresses for the giving of notices are as follows:

City: City of New Orleans  
1300 Perdido Street, 2nd Floor  
New Orleans, LA 70112  
Attention: Mayor

With a copy to: City of New Orleans, Law Department  
1300 Perdido Street, Suite 5E03  
New Orleans, Louisiana 70112  
Attention: City Attorney

Tulane: Tulane University  
218 Gibson Hall  
6823 St. Charles Avenue  
New Orleans, LA 70118-5684  
Attention: President

With a copy to Tulane University  
300 Gibson Hall  
6823 St. Charles Avenue  
New Orleans, LA 70118-5684  
Attention: General Counsel

All notices to be given under this Agreement will be in writing and sent by: (a) certified mail, return receipt requested, in which case notice will be deemed delivered 3 business days after deposit, postage prepaid in the United States Mail; (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered 1 business day after deposit with that courier; or (c) hand delivery, in which case notice will be deemed delivered on the date received. A Party may change its address by giving the other Party notice of the new address. The change of address will be effective on the date specified in the notice, provided that the effective date shall

be no sooner than 3 days or later than 3 days after the notice is delivered. For purposes of this Section 15.1, a "**business day**" is any day other than a Saturday, Sunday or legal holiday in which post offices and commercial banks in New Orleans, Louisiana are not generally open for the transaction of business.

15.2 **Zoning.** The City confirms that Tulane's campus zoning of RM-4 permits the Stadium as a use normally associated with a college or university.

15.3 **Governing Law.** This Agreement is to be construed, and the respective rights and duties of the Parties are to be determined, according to the internal law of the State of Louisiana.

15.4 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will remain in full force and effect.

15.5 **Entire Agreement.** This Agreement and the other written agreements referred to in this Agreement constitute the complete and exclusive statement of the terms of the agreement between the Parties as to the subject matter of this Agreement.

15.6 **Modification.** Any modification or amendment to this Agreement must be in writing and must be signed by both of the Parties. Notwithstanding that this Agreement is part of the settlement of litigation, court approval will not be required for any further modification or amendment to this Agreement. Modifications to the exhibits to this Agreement are addressed elsewhere in this Agreement, including the provisions of Section 11.

15.7 **Waiver.** No waiver of any default of or noncompliance with any obligation imposed by this Agreement that may be given or suffered by one Party to the other shall constitute a waiver of any subsequent default of or noncompliance with any such obligation or of any other default of or any noncompliance with any obligation imposed by this Agreement.

15.8 **Interpretation.** The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of meaning of this Agreement or any provision hereof. Whenever the singular number is used herein, the same shall include the plural where appropriate, and vice versa in any place in which the context so requires, and words of any gender shall include each other gender where appropriate.

15.9 **No Third-Party Beneficiaries.** Nothing contained in this Agreement will be deemed to be a dedication of any portion of any property to the general public, or for any public use or purpose whatsoever. In addition, nothing contained in this Agreement is intended to create rights in any Person other than the City and Tulane.

15.10 **Force Majeure.** If, due to an event of Force Majeure, a Party fails to perform any of its obligations under this Agreement, that failure will be excused and will not be a breach of this Agreement, but only to the extent and for the time occasioned by the event of Force Majeure.

15.11 **Consents.** Except as otherwise specifically provided in this Agreement, whenever the consent or approval of a Party is required, that consent or approval may not be unreasonably withheld, delayed or conditioned.

15.12 **Further Assurances.** (a) The Parties recognize that the Stadium, once constructed, will be used by Tulane over an extended period of time. Accordingly, the Parties will cooperate with one another in a commercially reasonable manner, and will execute such documents and take such actions as one another may reasonably request, to effectuate the intent of this Agreement.

(b) Within 15 days of request therefor by either Party, the other Party will execute a written statement, addressed to the other and its existing or any prospective lender, purchaser, assignee or sublessee of its rights under this Agreement: (i) certifying that this Agreement is in full force and effect and has not been modified (or if it has, stating the modifications); (ii) certifying that, to the best of its knowledge, the other Party is not in default under this Agreement, or if that is not true, describing the defaults then known to be in existence; and (iii) providing any further information as a Party may reasonably request.

15.13 **Time References.** All references to time in this Agreement are to New Orleans, Louisiana time.

15.14 **Counterparts.** This Agreement may be executed in one or more original or facsimile counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

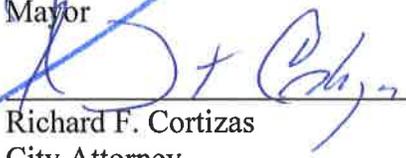
*[Signatures on following page]*

IN WITNESS WHEREOF, the City and Tulane have executed this Agreement as of the Effective Date.

**The City of New Orleans**

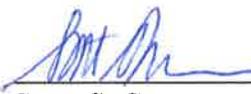
By: 

Mitchell J. Landrieu  
Mayor

By: 

Richard F. Cortizas  
City Attorney

**The Administrators of The Tulane  
Educational Fund**

By: 

Scott S. Cowen  
President

**Exhibits:**

- A -- Traffic/Parking Plan
- B -- Litter Abatement Plan
- C -- Arbitration Procedure