

**USE AGREEMENT BY AND BETWEEN THE CITY OF MEMPHIS
AND
LIBERTY BOWL FESTIVAL ASSOCIATION**

THIS AGREEMENT, entered into this _____ day of _____, by and between the **CITY OF MEMPHIS**, a duly incorporated municipal corporation, hereinafter referred to as "CITY," and **LIBERTY BOWL FESTIVAL ASSOCIATION**, Memphis, Tennessee, 38118, a non profit corporation, hereinafter referred to as "FESTIVAL."

WITNESSETH:

WHEREAS, CITY at all necessary times owns and operates a Stadium and parking area in Memphis, Tennessee, being more particularly described as the Liberty Bowl Memorial Stadium; and

WHEREAS, CITY and FESTIVAL desire to enter into an Agreement specifying the terms and conditions under which FESTIVAL will use the Stadium and parking area for the AutoZone Liberty Bowl game (hereafter the "Game").

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

SECTION 1 - TERM

The term of this Agreement shall be for six games beginning in December 2009 and ending, unless sooner terminated, after the game scheduled for January 2015.

SECTION 2 - RIGHT TO USE PREMISES

- A. Game Day Entertainment. Subject to the provisions of this Agreement, FESTIVAL shall have the right to provide, or permit others to provide, at the sole cost and expense of the FESTIVAL, pre-game, half-time and post-game entertainment in connection with the Game; provided, however, that FESTIVAL shall notify the CITY of the nature of such entertainment at least ten (10) business days prior to the date of the Game and such entertainment shall be subject to the approval of the CITY with such approval not to be unreasonably withheld.

- B. Use of Stadium Prior to Day of Game. In connection with the use of the Stadium on Game Day, it is understood that both participating teams and half time producers shall have the non-exclusive right to use the Stadium for walk-throughs five (5) days prior to Game Day. FESTIVAL reserves the right to select the time for the walk-throughs and provide CITY forty-eight (48) hours notice of said time. In no event, shall the walk-throughs occur at night without FESTIVAL reimbursing the CITY for all actual costs and expenses related to lighting.

- C. Game Day Activities. On Game Day, and such additional times as may be requested by FESTIVAL and approved by the CITY (such approval not to be unreasonably withheld), FESTIVAL shall have the right to use the Stadium and the parking area for the installation of equipment and other preparation activities including, without limitation, advertising signs, etc. and "Sponsor Tents" and access and parking for television and radio production vehicles. All such requests must be submitted in writing not less than ten (10) business days prior to the game. FESTIVAL shall be responsible for the cost to repair any and all damage resulting from installation and removal of equipment.
- D. Ancillary Uses. In addition to those uses contained in this Agreement, FESTIVAL may use the Stadium and parking area before, during and after the Game (on Game Day), for the following ancillary-type events and uses: stage events on field and in parking areas; tailgate parties in parking area; pre-game, half-time and post-game events; sponsor representation and presence; and pyrotechnics. In no event shall CITY be responsible for any additional costs associated with an approved ancillary event. FESTIVAL shall be responsible for any resulting damages or costs associated with a Festival sponsored ancillary event.

SECTION 3 - CITY OF MEMPHIS OBLIGATIONS

- A. CITY of Memphis to Furnish Stadium. On Game Day, the CITY shall furnish and make available to FESTIVAL the Stadium fully equipped, operating and staffed for a football game. The CITY's obligation hereunder is to provide: (i) the playing field and surrounding areas maintained with proper line markings and numbers required for a collegiate football field; (ii) goal posts in position; (iii) reasonably adequate stadium signs; (iv) field benches; (v) such training rooms and locker rooms as shall exist in the stadium; (vi) complete and effective lighting system; (vii) public address and loud speaker systems; (viii) phone hook-up from each bench on field to respective coaches in the Press Box; (ix) adequate hookups for radio and television equipment as customarily provided at Liberty Bowl Stadium; (x) event staff that includes crowd security, ticket takers and ushers; (xi) the complete use of all scoreboards and video boards; and (xii) all other special equipment and facilities usually provided for the performance and exhibition of football games at Liberty Bowl Memorial Stadium.
- B. CITY of Memphis to Furnish Parking Area. On Game Day, CITY shall furnish and make available stadium parking lots for the use of spectators attending the game. All privileged parking in the portion of the parking area adjoining the Stadium and Armory shall be identified and marked by the CITY. CITY shall provide FESTIVAL the following passes ninety (90) days prior to the Game for the purpose of distribution:
1. five hundred-fifty (550) parking passes in the Armory Parking Lots immediately adjacent to and north of the Stadium; The handicap spaces in the Armory Lot will be reserved for use by the City;

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2. ninety-six (96) media parking passes in the Media Lot adjacent to the south of the Stadium. CITY will make available up to 20 additional spaces for Media in an adjacent lot to stadium
3. three hundred fifty (350) parking spaces for Lot A;
4. one hundred and forty (140) parking spaces for Lot B;
5. thirty-five (35) parking spaces for Lot C;
6. fifty (50) for stadium interior parking spaces
7. thirty-four (34) parking spaces in Lot D; and
8. one thousand (1,000) parking spaces for Coliseum Lot.

All parking and passes listed in Items 1 through 8 shall be provided at no additional charge to FESTIVAL. The CITY shall provide a parking schematic, which shall be attached hereto as Appendix A.

- C. CITY of Memphis to Furnish Game Day Towels. The CITY shall provide five hundred (500) towels per game at no additional cost to FESTIVAL with FESTIVAL having the obligation to return all towels following each game or make immediate payment (replacement cost) to the CITY therefore.
- D. Identified Group and Band Seating. FESTIVAL shall notify the CITY of their game day preference for identified group and band seating at least ten (10) business days prior to the game. Such seating shall be designated in accordance with Section 12 set forth below and the CITY will rope these areas off prior to the game.

SECTION 4 - RENT AND OTHER EXPENSES

- A. Game Day Expense. FESTIVAL agrees to pay to the CITY base rent in the amount of \$50,000 for use of the Stadium on Game Day and the services listed herein. Such fee is due and owing no later than thirty (30) calendar days after the Game.
- B. Suite License. FESTIVAL shall have an exclusive license to market, sell and retain all revenue generated from the sale of thirty-one (twelve-seat) suites and seven (sixteen-seat) suites designated by the CITY during the Game at no additional charge. CITY hereby retains for its use Suites 105 and 203.

- C. Ancillary Expenses. FESTIVAL shall be responsible for the cost of footballs used for the Game, two (2) ambulance standby service for spectators, concession items ordered by FESTIVAL to be provided in the Press Box, Levels 2, 3 and 4 designated for FESTIVAL use at cost, on-field chainmen and the officials' fees and expenses, and cost of all field decoration.. FESTIVAL shall also be responsible for expenses incurred setting up the Media Room. Any such ancillary expenses will be due thirty (30) calendar days after receipt of invoice.
- D. Interest. FESTIVAL agrees that if any sum it is obligated to pay to the CITY is not paid when due, it will pay the CITY interest on said sum from the date due until payment is received in an amount equal to the lesser of 1.5% per month, which is an annual charge of 18%, or the maximum rate of interest allowed by applicable law.

SECTION 5 – THIRD PARTY MANAGEMENT OF FACILITY

FESTIVAL hereby acknowledges that CITY has engaged the services of SMG, a private company specializing in management of public facilities, to promote, operate and manage the Stadium for the benefit of the CITY.

SECTION 6 – INSURANCE and INDEMNITY

FESTIVAL shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. FESTIVAL shall furnish the CITY's Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the CITY of Memphis and licensed in the state of Tennessee. The insurance provided hereunder shall be primary to any insurance (including self-insurance) maintained by the CITY and SMG and shall not contribute to the insurance required to be maintained by FESTIVAL.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the CITY. The CITY may pay the renewal premiums and withhold such payments from any monies due the FESTIVAL.

FESTIVAL shall indemnify, defend, save and hold harmless the CITY, its officers, employees, and agents, including SMG, CITY's management entity for the Stadium, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the use of the Stadium and related events, as well as the breach of this Agreement by FESTIVAL, its employees, subcontractors, or agents, or any negligent act or omission of FESTIVAL, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the CITY, its officers, employees and agents.

Each certificate or policy shall require and state in writing the following clauses:

“Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the CITY of Memphis Risk Manager” by registered mail, return receipt requested to the following address.

City of Memphis
Attn: Risk Management
2714 Union Extended, Suite 200
Memphis, TN 38112

“The CITY of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies.” The additional insured endorsements shall be attached to the Certificate of Insurance.

WORKERS COMPENSATION:

To the extent applicable, FESTIVAL shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employers Liability	
\$100,000	Each Accident
\$500,000	Disease – Policy Limit
\$100,000	Disease – Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned and hired vehicles with LIMITS OF:

\$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage.

\$3,000,000	General Aggregate
\$3,000,000	Products & Completed Operations
\$3,000,000	Personal & Advertising
\$3,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$50,000	Fire Damage any One Fire
\$5,000	Medical Expense any One Person

General Liability coverage shall also include **Liquor Liability** coverage with limits of not less than \$1,000,000 per occurrence if any alcoholic beverages are served.

PROPERTY INSURANCE:

FESTIVAL shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. FESTIVAL shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by FESTIVAL.

FESTIVAL MUST provide an Original Certificate of Insurance to the Stadium Manager at 335 South Hollywood, Memphis, TN 38104, thirty(30) calendar days prior to the game.

SECTION 7 - CONCESSIONS

- A. Novelty Concessions. The right to sell and/or distribute FESTIVAL game programs and novelty concessions shall belong exclusively to the FESTIVAL in the Stadium. FESTIVAL's exclusive novelty and program sales rights include the Stadium and all Fairgrounds parking area during games. No rights fees shall be paid on program or novelty sales by FESTIVAL to CITY. Further, FESTIVAL, itself or through any FESTIVAL sponsor, or designee, shall have the non-exclusive right to cater or provide a sponsor's product for non-public consumption at no additional fee or rental charge in the locker rooms, Stadium Club, Press Box rooms and suites.
- B. Game Day Food Concession. The CITY shall maintain and operate food and beverage concession operations at the AutoZone Liberty Bowl game and shall retain all revenue from such operations.

CITY shall engage Concessionaires to open and operate all public food and beverage service areas in the Stadium on Game Day and require that such Concessionaires provide only fresh, wholesome high quality food and beverages.

SECTION 8 - ADVERTISING

Stadium Fixed Signage. At all times during the Game, FESTIVAL 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 Stadium. FESTIVAL shall have the right to install panels on the video board during the Game as defined herein at its sole expense, which may be used for advertising. However, in no event, shall the FESTIVAL display, promote, advertise in any form or manner advertisement that conflicts with prior sponsorship agreements between the CITY and Coca-Cola or any other soda beverage company. FESTIVAL may serve a competitive beverage in a confined area to select groups, so long as FESTIVAL does not publicly promote such competitive beverage.

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- A. FESTIVAL is responsible for all costs incurred in the erection or removal of such signs, banners or advertising.
- B. Message Center. FESTIVAL may use the public address system, scoreboard message center and Stadium Video Display System, if any, during the Game. All advertising to be displayed or announced on message center, Stadium Video Display System or public address system shall be coordinated with Stadium management personnel and shall be subject to reasonable approval by the CITY to assure compliance with its policies. FESTIVAL shall be responsible for all costs associated with the production of videos displayed on the Video Display System.
- C. License Fee. For the rights and privileges set forth in this section, FESTIVAL agrees to pay to CITY a fee of twenty five thousand dollars (\$25,000.00).

SECTION 9 - PRESS BOX AND TICKETS

- A. Press Box. The Stadium Club (Level 1 of the Press Box) shall be furnished to FESTIVAL for its exclusive use at no additional charge. All seating on Level 2 of the Press Box (working press) shall be designated by FESTIVAL. All seating on Level 3 of the Press Box, with the exception of Box 6 and 7, which will be used by CITY, shall be used as designated by FESTIVAL. All booths on Level 4 of the Press Box, except Booth 4, which will be used by the CITY, shall be reserved for use by the FESTIVAL as working areas, i.e., radio, film, scouting, etc., or provided to the visiting team. The CITY will issue to the FESTIVAL passes for these boxes prior to the Game.
- B. Location and Number of Tickets. FESTIVAL will select the location and number of tickets to be sold to the general public. FESTIVAL shall print and bear the expense for tickets sold to the general public.
- C. Admission Passes. In addition to Press Box passes to be provided under this Agreement, CITY shall, at its expense, provide admission passes for all other persons to be admitted without a ticket, i.e., working employees, and all vendors (excluding concessions vendors), coaches, players, team doctors, managers and trainers. FESTIVAL shall not print any admission passes without prior written authorization from CITY. CITY shall administer distribution of such passes to its employees and vendors, including concessions vendors. FESTIVAL shall administer distribution of passes to its personnel consistent with its policies and procedures. CITY and FESTIVAL agree to distribute passes only to persons having a legitimate game related reason to be admitted without charge or without a ticket.
- D. Complimentary Tickets. FESTIVAL agrees to provide CITY thirty-six (36) complimentary tickets for the game for its own use, in addition to the press boxes and suites reserved for exclusive use by CITY.

SECTION 10 - MEDIA RIGHTS

All Media Rights are hereby reserved to, and shall be the property of FESTIVAL.

- A. CITY shall fully cooperate and coordinate its efforts with media representatives, so designated by FESTIVAL, as to permit such media representatives to fulfill their contractual obligations and duties. At all reasonable times during the term of this Agreement, CITY shall provide reasonable access to the Stadium to broadcasters designated by FESTIVAL for the purpose of broadcasting the Game.
- B. Subject to the prior approval and inspection of the CITY, authorized broadcasters may, without additional charge, install on or in the Stadium, 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 which it performs at FESTIVAL'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) 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; (ii) continue this Agreement and recover damages resulting from the default; or (iii) effect a cure on the breaching party's behalf, and reasonable costs and expenses so incurred by the other party together with interest at the rate of ten percent (10%) per annum (or such lower rate as may be the highest rate permitted by law) shall be due and payable by the breaching party on demand by the other party.

SECTION 12 – COMPLIANCE

FESTIVAL shall perform, and require any subcontractors or agents to perform, its obligations under this Agreement at all times in conformity with applicable federal, state and local laws. FESTIVAL specifically agrees to comply, and require any subcontractors or agents to comply, with the Americans with Disabilities Act (hereafter "ADA") in the coordination, organization, and operational activities of its Game at the Stadium.

SECTION 13 – MISCELLANEOUS

The CITY shall maintain documentation for all charges against FESTIVAL under this Agreement. The books, records and documents of the CITY, insofar as they relate to this Agreement, shall be

3767 New Getwell
Memphis, Tennessee 38118
Attention: Steve Ehrhart
Executive Director

SECTION 15 - SEVERABILITY

If any provision of this Agreement is determined to be illegal by a court of competent jurisdiction, this Agreement shall remain valid as if such provision had not been contained therein unless the omission of such provision materially changes the substance of this Agreement as a whole, in which event, either party may terminate this Agreement upon written notice to the other within thirty (30) calendar days after the determination that the provision is illegal.

SECTION 16 - FORCE MAJEURE

If either party shall be unable to perform hereunder as a result of acts of God, war, national disasters, strikes or other work stoppage, fire and other comparable events, or as a result of any lawful order issued by the United States Government or any official of the State of Tennessee, or for any reason beyond the reasonable control of parties (financial inability excluded), then this Agreement shall be suspended during such period and for as long as such conditions shall exist. In the event of such suspensions, the term hereof shall not be extended to take into account the period of such suspension.

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

SECTION 17 - 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 which 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 any 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 as made applicable to this Agreement. The provisions for default and/or termination shall operate promptly upon the expiration of the time limits specified herein. This Agreement shall be interpreted under the laws of the State of

Tennessee.

SECTION 18 - DEFINITIONS

In addition to other terms, which are defined elsewhere within this Agreement, the following terms for purposes of this Agreement, shall have the meanings set forth in this section:

“Complimentary Tickets” shall mean Tickets distributed by the FESTIVAL to CITY without charge or the expectation or actual receipt of any money therefore as described in Section 9, Paragraph D.

“Game” shall mean the college football contest sponsored by FESTIVAL between two designated opposing college football teams.

“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 (except in the case of clause (c) hereof) 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 non-exclusive, royalty-free license to use name, likeness and historical material of the Stadium solely in connection with the rights enumerated in clauses (a) and (b) hereof; (d) the right to display banners in camera visible and other locations as any broadcaster of Games shall determine, in and around the stadium and the playing field, advertising such broadcaster, and (ii) unfettered electronic insertion and deletion rights with respect to the broadcast, transmission, retransmission or other dissemination of Games; and (e) 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), (c) and (d) hereof. Media Rights shall also include the exclusive right to photographing, filming, television taping, radio broadcasting and recording in analog, digital or other forms or recording, whether presently existing or hereafter developed.

“Parking Area” shall mean those areas under the control of the CITY on the Fairgrounds site adjacent to the Stadium which may be designated by the CITY from time to time for the parking of vehicles during the Game and as further described in Section 3B.

“Suites” shall mean a private seating area that requires a pass accompanied by a ticket to gain

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admission.

“Stadium” shall mean with respect to the Liberty Bowl Memorial Stadium located in Memphis Tennessee, the playing field, stadium lighting, seats, stairs, walkways, ramps, public restrooms, Press Box, home and visiting team locker rooms, coaches offices, weight room, equipment room, training room, meeting room, skyboxes, suites, and such other areas, if any, as customarily are designated by the CITY from time to time for use at football games. Stadium lighting shall include, if necessary, the installation, replacement, refurbishment and/or the modification of existing lighting to provide the necessary candlepower for a college football game.

“Ticket” shall mean the certificate, license, badge, pass or other indicia by which admission to the Stadium is permitted and controlled.

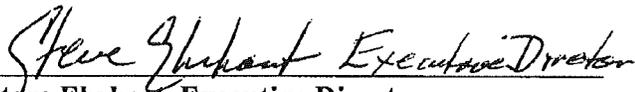
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IN WITNESS WHEREOF, this USE AGREEMENT BY AND BETWEEN THE
CITY OF MEMPHIS AND THE LIBERTY BOWL FESTIVAL ASSOCIATION has been
executed by the parties hereto by their duly authorized representative:

CITY OF MEMPHIS

LIBERTY BOWL FESTIVAL ASSOCIATION

Willie W. Herenton, Mayor



Steve Ehrhart, Executive Director

PARKS DIVISION

Cynthia Buchanan, Director

APPROVED AS TO FORM:

Elbert Jefferson, Jr.
City Attorney

APPROVED:

City Comptroller

**Park Services Division
Liberty Bowl Stadium
Tenant Contract Summary
Liberty Bowl Classic
July 6, 2009**

This contract is for the purpose of holding collegiate football games at the Liberty Bowl Stadium. Contracts are for the City to provide the Stadium facilities and parking on the Fairgrounds, as well as staff and handle operations for ticket entry, seating, security, concessions, and parking. Tenant provides all on-field game operations.

Term 6 games; 2009-2014

**Financial
Considerations**

Base Rent: \$50,000 includes Stadium & Suites, and pass parking

**Jumbotron Lease
Fee:** \$25,000 per game

**Parking & Food
Concessions:** City operates and retains all revenue.

**Novelty
Concessions:** Tenant operates and retains all revenue.

Use of Stadium: Liberty Bowl Classic & walk through.

**Park Services Division
Liberty Bowl Stadium
Tenant Contract Summary
Southern Heritage Classic
July 6, 2009**

This contract is for the purpose of holding collegiate football games at the Liberty Bowl Stadium. Contracts are for the City to provide the Stadium facilities and parking on the Fairgrounds, as well as staff and handle operations for ticket entry, seating, security, concessions, and parking. Tenant provides all on-field game operations.

Term 6 games; 2009-2014

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Considerations**

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