

SCOREBOARD AND ADVERTISING LEASE AGREEMENT

The following Scoreboard and Advertising Lease Agreement (“Agreement”) is entered into between the Spring Hill Independent School District (“District”), a Texas public school district with offices at 3101 Spring Hill Road, Longview, Texas 75605, and the Spring Hill ISD Athletic Booster Club (the “Booster Club” or “Lessee”), a Texas 501(c)(3) non-profit corporation with a principal place of business address at 3101 Spring Hill Rd., Longview, TX as follows:

RECITALS:

WHEREAS, the District wishes to purchase a new scoreboard (“Scoreboard”) for Panther Stadium to be installed prior to the 2017-2018 academic year, the cost currently projected to be approximately \$480,000.00; and

WHEREAS, the Booster Club wishes to make a financial contribution to the District in order to fund the full amount of the Scoreboard and desires to lease advertising space for the Scoreboard (the “Leased Space”) as outlined in Section 3 of this Agreement in exchange for such financial contribution; and

WHEREAS, the Board of Trustees for the District has determined that the District’s public educational mission will be furthered by entering into this Agreement and obtaining the funds contemplated, subject to the controls set forth herein.

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

1. **Term.**

The term of the lease for the Leased Space shall be for a period of five (5) years (“Term”) or until the scoreboard is paid off by the boosters (whichever is sooner) and shall commence on July 31, 2017.

2. Payment. In exchange for the lease of those portions of the Scoreboard set forth in this Agreement, the Booster Club agrees to make all payments owed to Nevco pursuant to Nevco’s Scoreboard contract with the District, dated May 16, 2017. The Booster Club shall pay the full purchase price of the Scoreboard, which is currently projected to be \$480,000.00. Notwithstanding the forgoing, the Booster Club agrees to pay any additional amounts over the projected purchase price, whether by change order or otherwise, charged by Nevco to the District for the Scoreboard and assumes all financial responsibility and agrees to indemnify the District for the full purchase price of the Scoreboard.

3. Leased Space.

A. Leased Space. During term of the Agreement, subject to the terms and conditions of this Agreement, including without limitation the revenue sharing obligations set forth in Paragraph 4 below, the Booster Club is leased all advertising space on the Scoreboard, known as the Leased Space, and may enter into subleases of the Leased Space, or any portions thereof, to other entities for advertising purposes. The term of any such subleases may not exceed the Term of Lease set forth in Paragraph 1 above. This grant does not include any other advertising space or naming or promotional rights within or around Panther Stadium or with respect to any other District property or facilities, all of which additional rights are expressly reserved by the District.

4. Revenue. The term “Revenue” as used herein shall mean all gross revenues received by the Booster Club or any of its agents, contractors or affiliates, pursuant to or in any way related to a sub-lease agreement of the Leased Space or other transaction arising from rights

granted under this Agreement. The Booster Club shall be entitled to retain Eighty-Eight-Percent (88%) of Revenues generated during the Term set forth in Paragraph 1 until such time as the amount of the Payment set forth in Paragraph 2 is recovered by the Booster Club (“Full Recovery”), if such amount is recovered at all. Prior to any Full Recovery, the District shall be entitled to receive Twelve-Percent (12%) of Revenue during the Term of this Agreement. Upon any Full Recovery, the District shall be entitled to receive all Revenue generated for any advertisements placed on the back of the Scoreboard (the non-digital portion), and the Booster Club shall be entitled to all Revenue generated for any advertisements placed on the front of the Scoreboard (the digital portion). Payments of all Revenues owed to the District shall be provided by the Booster Club to the District within sixty (60) days of receipt of the subject Revenue by the Booster Club. The District shall have the right to audit the Booster Club’s records upon reasonable notice during regular business hours to ensure that all funds owed to the District under this Agreement have been properly paid by the Booster Club. If it should be determined that any funds have not been paid pursuant to this Agreement, then the Booster Club shall be obligated to immediately pay the unpaid funds to the District and shall also pay to the District interest at a rate of one-percent (1%) a month or the highest legally permissible rate, whichever is lower. The obligations of the Booster Club under this Paragraph to pay funds to the District for funds received during the Term of the Agreement shall survive the termination of this Agreement.

5. Approval Rights/Disclaimer of Assurances.

The Booster Club shall require of all advertisers that their advertising must be of a certain technical quality, conform with generally accepted standards of good taste in the community, and not be in violation of the applicable laws, rules, regulations or District policies. Any advertisement to be displayed or selected by Lessee or any of its sub-lessees shall be subject to the prior written

approval of the District and shall not be displayed or selected without such written approval, which approval the District may withhold in its sole discretion, including without limitation any determination by the District that a proposed advertisement deal is not consistent with the District's educational mission. The District shall also inspect and approve sub-lease agreements prior to execution by the Booster Club so that the District in its sole discretion can ensure that adequate protections are in place, including that the District shall be named as a third-party beneficiary to such agreements as applicable. Any request to alter an advertisement is subject to the District's approval. Without limitation, the District reserves the right to remove or cover up any advertisement during such events as the District determines in its sole discretion. THE DISTRICT DOES NOT PROVIDE AND EXPRESSLY DISCLAIMS ANY GUARANTEES, WARRANTIES OR ASSURANCES REGARDING THE QUALITY, VISIBILITY, ILLUMINATION, FUNCTIONING, COMMERCIAL EFFECTIVENESS OR OTHER QUALITIES OF ANY ADVERTISING PURSUANT TO THIS AGREEMENT.

6. Expenses. All costs and expenses incurred in installing ads resulting from the rights granted to the Booster Club in this Agreement, including any costs associated with a change to such advertising after the initial installation, shall be borne solely by the Booster Club.

7. Maintenance. The District shall be responsible for all costs related to the maintenance and operation of the Scoreboard during the term of this Agreement, provided that the District shall determine in its sole discretion what maintenance is appropriate and reserves the right to not repair certain damages or wear and tear to the Scoreboard if the District determines in its sole discretion that doing so would be contrary to the District's interests. The District further reserves the right to remove, uninstall or cover up the Scoreboard or any portion of same if the District, in its sole discretion, determines that doing so would be in its best interests.

8. Scoreboard Replacement. In the event the District decides to replace the Scoreboard with an upgraded model (“Updated Scoreboard”) during the term of the Agreement, the Booster Club will, with regard to the Updated Scoreboard, be granted the same leasing rights granted herein for the remainder of the Term.

9. Termination.

A. Automatic Termination. This Agreement and any subleases of resulting from it herein will automatically terminate at the end of the 5-year Term described in Paragraph 1 of this Agreement.

B. Termination by the Booster Club. This Agreement may be terminated by the Booster Club by giving the District 180 days’ written notice of intent to terminate. Upon termination by the Booster Club for any reason, including any alleged breach of this Agreement by the District, the Booster Club shall not be entitled to any monetary damages of any kind, including without limitation that none of the Payment shall be returned to the Booster Club.

C. Termination by District:

1. The District may terminate or suspend this Agreement if the Scoreboard is damaged, destroyed or removed by any act of God, an action of a governmental body with authority over the District, or any other act, even if such act is the result of an act or omission of the District, and the Scoreboard is not replaced with an Updated Scoreboard.

2. The District may also terminate this Agreement if the Booster Club has violated this Agreement in a material way. Such termination shall be only after the District has given the Booster Club 30-day notice of such violation and an opportunity to cure such violation. In the event of cure, no termination shall take place.

3. The District may terminate this Agreement upon thirty (30) days notice if the Board of Trustees for the District determines in its sole discretion that the continuation of this Agreement is contrary to the educational mission of the District.

4. In the event of the District's termination prior to the end of the term of this Agreement for any reason, the Booster Club shall not be entitled to any monetary damages, including without limitation that none of the Payment shall be returned to the Booster Club.

D. Reversion of Rights. All rights granted to the Booster Club herein shall expire and revert back to the District upon the termination of this Agreement for any reason. Any advertising rights revenues still owed to any party pursuant to any sub-lease or other sub-agreement by the Booster Club shall be assigned to the District upon any such termination. The Booster Club must cooperate with the District upon termination of this Agreement for any reason to execute such documents as necessary to accomplish the before mentioned assignment of revenues. The obligations of the Booster Club to assign revenues pursuant to this Paragraph shall survive the termination of this Agreement.

7. Miscellaneous.

A. Intellectual Property/Indemnity. The Booster Club assumes all responsibility for satisfying the legal requirements of any and all applicable United States copyright, trademark and patent laws and shall not act in a way to violate the intellectual property rights of any third party. **THE BOOSTER CLUB SHALL AND HEREBY DOES INDEMNIFY AND HOLD DISTRICT, ITS TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS ("DISTRICT INDEMNITEES") HARMLESS FROM ANY AND ALL ALLEGED CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS RELATED TO THE ADVERTISEMENT. THE BOOSTER CLUB AGREES TO AND HEREBY DOES DEFEND, INDEMNIFY, AND HOLD DISTRICT INDEMNITEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE PREPARATION OR DISPLAY OF THE ADVERTISEMENT FURNISHED BY THE BOOSTER CLUB OR ANY PARTIES ADVERTISING RIGHTS HEREUNDER, INCLUDING ALL CLAIMS OF ANY KIND WHATSOEVER AGAINST DISTRICT BY REASON OF ANY SUCH DISPLAY OR OF ANY NAME OR PICTURE OF ANY INDIVIDUAL MENTIONED OR DISPLAYED THEREIN. DISTRICT AGREES TO**

GIVE BOOSTER CLUB PROMPT NOTICE OF ANY CLAIM OR SUIT GIVING RISE TO THE INDEMNITY OBLIGATIONS HEREUNDER, SHALL FURNISH ADVERTISER WITH ALL RELEVANT FACTS IN ITS POSSESSION OR UNDER ITS CONTROL, AND SHALL COOPERATE WITH ADVERTISER IN ITS DEFENSE OF ANY SUCH ACTIONS. THE BOOSTER CLUB SHALL SECURE SIMILAR INDEMNITY OBLIGATIONS AND PROMISES FROM ANY SUB-LESSEE OR PARTY BEING PROVIDED ADVERTISING RIGHTS PURSUANT TO THIS AGREEMENT.

B. Governing Law/Venue. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Texas without regard to its conflict of laws or choice of law principles, Texas law being the choice of law for this Agreement. Exclusive venue of any claim arising out of or relating to the subject of this Agreement shall lie in the District Court of Smith County, Texas. Before seeking to enforce its contractual rights under this Agreement, the Booster Club will first exhaust local administrative remedies by complying with the District's local grievance policies.

C. Severability. If any provision of this Agreement shall be deemed void or invalid, such provision shall be deemed severed from the remainder of the Agreement, which shall remain in full force and effect.

D. Waivers. Any failure by a party to comply with any covenant, Agreement, or condition herein or in any other Agreements or instruments executed and delivered hereunder may be waived in writing by the party in whose favor such obligation or condition runs; except that failure to insist upon strict compliance with any such covenant, Agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

E. Compliance with Laws, Rules and Regulations. The parties agree to comply with all applicable laws, ordinances, orders, rules, and regulations of State, Federal, municipal, or other agencies having jurisdiction over the parties.

F. Binding Effect; Assignment. This Agreement is binding on the parties. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.

G. Independent Contractor; Third Parties. The parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. No term or provision of this Agreement is for the benefit of any person or third-party entity who is not a party hereto and no third-party will have any rights or cause of action hereunder.

H. Further Assurances. Each Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

I. Entire Agreement. The terms and provisions of this Agreement constitute the entire Agreement between the District and the Booster Club, and no modifications of this Agreement shall be effective unless in writing and executed by an authorized officer of both parties, and attested to as provided by law.

J. Immunity/Deficiency Debt. Neither Party waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and/or agents as a result of its execution of the Agreement and performance of the functions or obligations described in the Agreement or herein. Furthermore, nothing in the Agreement shall be construed to create a claim or cause of action against either Party for which it is not otherwise liable, or to waive any immunity or defense to which either Party may be entitled, or to create an impermissible deficiency debt of either Party.

K. Relationship of the Parties. All operations by each Party under these terms and conditions shall be carried on by it as an independent contractor and not as an agent for the other.

L. Notices: Notice under this Agreement will not be effective unless forwarded in writing to and received by the following individuals at the contact information below, including a copy by

electronic mail if an email address is indicated. The parties may respectively designate a new individual and/or address in writing.

District:

Attn: Steven Snell, Superintendent
3101 Spring Hill Road,
Longview, Texas 75605
ssnell@shisd.net

Booster Club:

Attn:
SH Athletic Booster Club
3101 Spring Hill Road,
Longview, Texas 75605

WITNESS OUR HANDS as indicated below, effective May 16, 2017.

SPRING HILL INDEPENDENT SCHOOL
DISTRICT

By: _____
Steven Snell
Superintendent of Schools

By: _____
Mark White
President, Board of Trustees

SPRING HILL HIGH SCHOOL ATHLETIC
BOOSTER CLUB

By: _____

Title: _____