

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Convention and Visitors Bureau

AGENDA DATE: November 16, 2010

CONTACT PERSON NAME AND PHONE NUMBER: William Blaziek, 915-534-0600

DISTRICT(S) AFFECTED:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action to approve the 2011 Conference USA Men's and Women's Basketball Tournament support agreement between the City, County, El Paso Sports Commission and University of Texas at El Paso.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City and County jointly agreed to financially support the University of Texas at El Paso's bid to host the 2011 Conference USA Men's and Women's Basketball Tournament March 9 – 12, 2011 in El Paso. Conference USA requires a minimum financial guarantee of \$1,000,000 in net tournament revenue. This agreement outlines the understanding between the City, County, El Paso Sports Commission and UTEP. Per the agreement, if the net tournament revenue to Conference USA is not \$1,000,000 or greater, El Paso Sports Commission will contribute up to the first \$50,000 and the City and County shall equally contribute additional funds to achieve the minimum net tournament revenue of \$1,000,000 to Conference USA of up to \$475,000 each. The tournament pro forma anticipates \$1,400,000 in revenue and \$375,000 in tournament expenses equaling \$1,025,000 in net tournament revenue to Conference USA.

The tournament historically draws over 2,000 participants and guests to the host city over a 5-day period generating an economic impact of \$3,500,000.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

City Council approved a joint resolution with El Paso County to support the financial guarantee to secure the Conference USA - 2011 Men's and Women's Basketball Championship Tournament on February 23, 2010.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Hotel Occupancy Tax Reserve funds will be used to support the City's financial obligations related to this agreement if per the agreement funds are due to the University of Texas at El Paso.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Agreement among the City of El Paso, the County of El Paso, the University of Texas at El Paso (“UTEP”) and the El Paso Sports Commission in support of the 2011 Conference USA’s Men’s and Women’s Postseason Basketball Tournaments at the Don Haskins Center and Memorial Gymnasium at UTEP and for payment of specified portions of any revenue shortfall that will be owed to Conference USA, Inc., and that the City Manager report back to City Council on the outcome of this Agreement and the tournament.

Dated this _____ day of _____, 2010.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM

APPROVED AS TO CONTENT

Kristen L. Choi
Assistant City Attorney

Deborah Hamlyn
Deputy City Manager

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

AGREEMENT

This Agreement (the "Agreement") is entered into this ____ day of _____ 2010, between the City of El Paso, Texas, a Texas Municipal Corporation, (hereinafter referred to as "the CITY"), the County of El Paso, Texas (hereinafter referred to as "the COUNTY"), the University of Texas at El Paso (hereinafter referred to as "UTEP") and the El Paso Sports Commission (hereinafter referred to as "the Sports Commission") collectively referred to as "the Parties."

RECITALS

WHEREAS, the Parties believe that this cooperative agreement will provide a mutual benefit to both entities, those persons served by each entity, and serve a governmental purpose of providing tourism and economic impact for the benefit of the taxpayers of both the City and the County by providing promotion of El Paso, revenues to from the Hotel Occupancy Tax, and national television and media exposure;

WHEREAS, UTEP, the City through its Convention and Visitors Bureau, the County and the Sports Commission jointly bid for and have been selected to host the Conference USA's Men's and Women's Postseason Basketball Tournaments at the Don Haskins Center and Memorial Gymnasium (hereinafter referred to as "the Tournament") in March, 2011;

WHEREAS, Conference USA is a collegiate athletic league which includes the University of Texas at El Paso as one of its 12 member schools;

WHEREAS, Conference USA sponsors an annual Basketball Tournament that historically draws roughly 2,000 participants and guests over a 5-day period generating an economic impact of \$3.5 million;

WHEREAS, it is anticipated that the 2011 Conference USA Basketball Tournament will generate approximately \$1.4 million in ticket sales while the expenses are expected to be \$1,000,000 for tournament participant members and \$375,000 in fixed expenses or approximately \$1.375 million in total tournament expenses;

WHEREAS, on February 23, 2010, the City Council of the City passed a Joint Resolution with the County supporting the bid and stating the willingness to each pay half of any revenue shortfall remaining after the Sports Commission pays the first \$50,000.00; and

WHEREAS, UTEP will contract with Conference USA, Inc. (hereinafter referred to as "CUSA"), to provide for the Tournament, which includes an obligation that UTEP guarantee to CUSA \$1,000,000 a net revenue from the Tournament. The Sports Commission, the County and the City wish to hereby agree to assist UTEP in meeting this obligation.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1.0 Contractual Relationship; Nature of Agreement

1.1 The parties to this Agreement are each independent contractors. No partnership, joint venture, or joint enterprise is intended to be created by this Agreement, nor any principal, agent, or employer/employee relationship..

1.2 The Parties acknowledge and agree that they do not have, and will not attempt to assert, the authority to make commitments for or to bind each other to any obligation other than the obligations set forth in this Agreement. The Parties also acknowledge and agree that they do not have, and will not attempt to assert, the authority to make commitments for or to bind the other Parties to any obligation other than the obligations set forth in this Agreement.

2.0 Description of Services:

2.1 UTEP shall serve as the lead agency on this agreement and will contract with the Conference USA to provide the local connection and other contractual requirements. A copy of the contract between CUSA and UTEP is attached hereto as Exhibit "A" and incorporated by this reference as if fully set forth herein. Conference USA requires that the net revenue for the Tournament be equal to \$1,000,000.00. If there is a revenue shortfall, the Sports Commission agrees that it will pay up to the first \$50,000.00. If there is a revenue shortfall of more than \$50,000.00, the City and the County agree to each pay 50% of the remaining amount, not to exceed \$475,000.00 from each entity, after the payment by the Sports Commission.

2.2 Upon a reasonable time after the end of the Tournament, UTEP shall provide the parties with copies of all accounting documentation showing the gross revenues, the expenses and the allowable deductions under paragraph 15 the agreement with the Conference USA and the net revenues. UTEP shall provide the Parties with a final accounting showing any revenue shortfall and a copy of the financial settlement documentation agreed upon CUSA under this agreement paragraph 16 (see Exhibit "A").

2.3 If there is a revenue shortfall of \$50,000.00 or less, the Sports Commission shall pay to UTEP the amount of the shortfall within 30 days of its receipt of the documentation from UTEP. UTEP shall then pay this amount to the Conference USA.

2.4 If there is a revenue shortfall of more than \$50,000.00, the Sports Commission shall pay to UTEP the amount of \$50,000.00 within 30 days of its receipt of the documentation from UTEP. The City and the County shall each pay 50% of the remaining shortfall within 30 days of their receipt of the documentation from UTEP. UTEP shall then pay the total amount to the Conference USA.

2.5 UTEP shall provide final documentation to the Parties showing either that there is no

revenue shortfall or that final payment has been made to Conference USA.

3.0 TERM.

3.1 This Agreement shall commence upon approval by the last in time governing body which date shall at this time be written onto the first page of this Agreement, and shall continue until there is a determination that there was no revenue shortfall, all payments have been made and documentation of payment to CUSA is received by all parties or until terminated by either party in accordance with the provisions of this agreement or until such time as both parties mutually agree to terminate this agreement.

4.0 TERMINATION

4.1 This agreement shall be terminated only in the event that the agreement between UTEP and CUSA (Exhibit "A") is terminated or the Tournament does not take place at UTEP.

4.2 The obligations of the Parties for all costs incurred under this Agreement prior to such termination notice, shall survive such termination, as well as any other obligation incurred under this Agreement, until performed.

5.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

5.1 Governmental Function. The Parties expressly agree that, in all things relating to this Agreement, the City, the County and UTEP enter into this Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

5.2 Sovereign Immunity. The Parties reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that no party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

6.0 RISK ALLOCATION – LIMITATION OF LIABILITY

6.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

6.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind -

including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

6.1.2 Intentional Risk Allocation. The Parties each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

6.1.3 No Indemnification. The Parties expressly agree that, except as provided herein, no Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

6.1.4. Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

7.0 GENERAL PROVISIONS

7.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

7.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the CITY.

7.3 Venue. The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

7.4 Current Revenues. Pursuant to Section 791.001(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party. Any payment made by the City under this agreement shall be paid out of the City's Hotel Occupancy Tax fund.

7.5 No Waiver. The failure of any party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this

Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or the provision itself, or a waiver of any right under this Agreement.

7.6 Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

7.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

7.8 Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

7.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

7.10 Notices. Any notice, demand, request, consent or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via United States Postal Service certified mail return receipt requested, addressed to the other party at the following address(es) provided below:

CITY: City of El Paso
Office of the Mayor
#2 Civic Center Plaza
El Paso, Texas 79901-1196

With a copy to: City of El Paso, Convention and Visitors Bureau
One Civic Center Plaza
El Paso, Texas 79901

COUNTY: County of El Paso
Office of the County Judge
Room 301, County Courthouse
500 E. San Antonio
El Paso, Texas 79901

SPORTS COMMISSION: El Paso Sports Commission
4100 E. Paisano Drive

El Paso, Texas 79905

UTEP:

University of Texas at El Paso
Administration Building, Room 500
500 W. University Avenue
El Paso, Texas 79968-0500

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

7.11 Execution and Counterparts. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

7.12 Complete Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Agreement, together with any Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

7.13 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement and all the terms and conditions contained herein.

IN WITNESS WHEREOF, this Agreement has been executed by the parties named hereinabove as of the date, month and year first written above.

CITY OF EL PASO

Joyce A. Wilson
City Manager

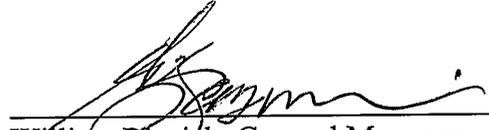
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:



William Blaziek, General Manager
El Paso Convention and Visitors Bureau

COUNTY OF EL PASO

Honorable Anthony Cobos
County Judge

ATTEST:

Delia Briones
County Clerk

APPROVED AS TO FORM:

Assistant County Attorney

APPROVED AS TO SUBSTANCE:

EL PASO SPORTS COMMISSION

Brian Kennedy
President/CEO

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

UNIVERSITY OF TEXAS AT EL PASO

Dr. Diana Natalicio
President

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

EXHIBIT " A "

MEMORANDUM OF AGREEMENT

This memorandum of agreement ("Memorandum of Agreement"), dated as of August 27, 2010, will set forth the material terms of the agreement by and between **CONFERENCE USA, INC.**, an Illinois nonprofit corporation ("Conference USA"), with its office at 5201 N. O'Connor Blvd., Suite 300, Dallas, Texas 75039, and **THE UNIVERSITY OF TEXAS AT EL PASO**, ("UTEP"), 500 W. University Ave., Administration Building, Room 500, El Paso, TX 79968-0500; to stage Conference USA's Men's and Women's Postseason Basketball Tournaments at the Don Haskins Center and Memorial Gymnasium, in 2011 (the "Tournament") and related hospitality and publicity events. Conference USA and UTEP hereby confirm the terms of the parties' agreement set forth on Schedule 1 (attached hereto and incorporated by reference).

This Memorandum of Agreement shall be binding on the parties and may be signed in counterparts, each of which when assembled shall be deemed a single original document. The signature of each of the authorized officers below constitutes a representation and warranty that such officer is authorized to execute this Memorandum of Agreement on behalf of Conference USA or UTEP, as the case may be.

UTEP

CONFERENCE USA, INC.

By: _____
Name: Dr. Diana Natalicio
Title: President

By: _____
Name: Britton Banowsky
Title: Commissioner

SCHEDULE 1

Conference USA and UTEP have agreed to the following material terms and the Agreement will more specifically describe the following terms, among others:

(1) **Grant of Rights.** Subject to the terms of this Memorandum of Agreement, Conference USA hereby grants to UTEP the right to host the Tournament and related hospitality events. The participants in the Tournament shall be the varsity men's and women's basketball teams of Conference USA member institutions. UTEP accepts the right to host the Tournament and related hospitality events in accordance with and subject to the terms of this Memorandum of Agreement.

(2) **Term.** UTEP will host the Tournament in the Don Haskins Center and Memorial Gymnasium following the 2010 basketball season. The Tournament is currently scheduled to be played on March 9-12, 2011.

(3) **Format.** The anticipated format for the tournament will involve 11 men's games in 6 sessions and 11 women's games in 6 sessions as set forth below:

Men's Games

Wednesday	Session I	(Haskins)
Wednesday	Session II	(Haskins)
Thursday	Session III	(Haskins)
Thursday	Session IV	(Haskins)
Friday	Session V	(Haskins)
Saturday	Session VI	(Haskins)

Women's Games

Wednesday	Session I	(Memorial)
Wednesday	Session II	(Memorial)
Thursday	Session II	(Memorial)
Thursday	Session IV	(Memorial)
Friday	Session V	(Haskins)
Saturday	Session VI	(Haskins)

Conference USA reserves the right to adjust dates and formats and agrees to notify UTEP of any such adjustments no later than 6 months prior to the event. UTEP shall provide Conference USA with exclusive access to the Don Haskins Center and Memorial Gymnasium at least 48 hours prior to the start of the first sessions.

(4) **Tickets/Ticket Revenue.** Conference USA shall control all ticketing to the Tournament and distribute, free of fees and sales tax, complimentary passes for players, spirit squads, sponsors, media and other officials. UTEP shall be responsible for the sales of tickets to the general public as directed by Conference USA. Ticket pricing shall be at an amount mutually agreeable to Conference USA and UTEP and there shall be no sales tax charged on any tickets. Conference USA members shall be responsible for purchasing a minimum of \$306,000 worth of men's tickets (approximately 150 tickets @ \$170 each) and a minimum of \$30,000 worth of women's tickets (approximately 50 tickets @ \$50 each). UTEP shall be responsible for expenses associated with the printing of tickets. All ticket revenue from the Tournament shall be included in gross revenue for the Tournament and shall be paid to Conference USA. Conference

USA shall retain all ticket revenue from the Tournament, which portion of gross revenue will remain subject to approved expense deductions to determine net revenue from the Tournament pursuant to Section 15 hereof.

(5) **Attendance.** UTEP and Conference USA shall develop a mutually agreed upon plan of ensuring attendance at the Tournament.

(6) **Parking.** UTEP shall provide, at its expense, Conference USA with 270 parking passes for automobiles at the Don Haskins Center/Memorial Gymnasium. Further, UTEP will provide, at its expense, ample parking spaces for buses and television trucks.

(7) **Ground Transportation.** UTEP shall provide, at its expense, Conference USA with the use of 57 automobiles and, if necessary, will maintain a shuttle system for VIPs and media from the official hotels to the Don Haskin Center and Memorial Gymnasium.

(8) **Hotel Rooms and Suites.** UTEP shall assist Conference USA in negotiating attractive rates for all official properties selected by Conference USA.

(9) **Hospitality.**

(a) **Hospitality at Facility.** UTEP shall provide, at its expense, complimentary beverages (including beer, soft drinks, wine and mixed drinks) and snacks in the VIP dining area for each session of the Tournament. Further, UTEP shall arrange for food to be served between sessions to the groups listed below, which catering expense shall be included in the settlement and shall not to exceed \$60,000.

Wednesday (Lunch and Dinner)

- i. VIPs – 100
- ii. Game Workers/Media – 250

Thursday (Lunch and Dinner)

- i. VIPs – 125
- ii. Game Workers/Media – 250

Friday (Breakfast and Lunch)

- i. VIPs – 115
- ii. Game Workers/Media – 150

Saturday (Breakfast and Dinner)

- i. VIPs – 90
- ii. Game Workers/Media – 125

(b) **Event Reception.** UTEP shall host, at its expense, a major social event reception at a mutually agreeable time and location with complimentary invitations for up to 300 guests.

(c) **Headquarters Hotels.** UTEP shall provide, at its expense, two (C-USA and media) complimentary hospitality suites with a fully operable color television set that is cable-connected to the network airing the Tournament games offering complimentary beverages (including beer, soft drinks, wine and mixed drinks), pizza and snacks each evening from Tuesday through Saturday of Tournament Week (50 persons per event day) at the men's headquarters hotel and women's headquarters hotel.

(10) **Promotional and Marketing Support.**

(a) **Sponsorships.** The parties agree that Conference USA has the exclusive right to sell sponsorships to the Tournament without restriction and convey rights to sponsors including, but not limited to, access to tickets, hospitality, signage and media. Revenue generated by sponsorship sales shall not be included in gross revenue for the Tournament.

(b) **Local Hospitality.** Conference USA and UTEP shall work cooperatively to sell local host hospitality packages. Conference USA and UTEP shall retain the revenue from these sponsorships and will be responsible for fulfillment costs. Revenue generated by local hospitality package sales shall be included in gross revenue for the Tournament.

(c) **Marketing Plan.** Conference USA and UTEP shall develop a mutually agreed upon marketing plan for the Tournament (the "Marketing Plan"). The Marketing Plan may contain provisions regarding airport signage, street banners, outdoor billboard advertising and newspaper advertising. This expense shall not exceed \$40,000 and shall be included in the final financial settlement as an approved expense.

(d) **Video Boards, Message Boards and Signage.**

(i) UTEP shall provide, at its expense, Conference USA with: (A) the use of all game time on the video boards (game time is defined as when the clock is running) during the Tournament in the Don Haskins Center and Memorial Gymnasium; (B) the use of all non-game time on the video boards in connection with the Tournament; (C) the use of 100% of the time on the interior message boards; and (D) the use of the exterior marquee at the Don Haskins Center for a minimum period beginning one week prior to the Tournament.

(ii) Conference USA may affix, at UTEP's expense, temporary signage at all locations (including concourses, walls, fascia, sidelines and end zones) in the interior and exterior of the Don Haskins Center and Memorial Gymnasium. Size, location, and signage material must be in accordance with building policy and city ordinances.

(e) **Tournament Logo.** Conference USA shall design, at its expense, Conference USA Tournament logos. Conference USA shall be the exclusive owner of the logos and all goodwill attached thereto. UTEP may only use the championship logo in the promotion of the Tournament and with the prior written consent of Conference USA.

(11) **Participant, VIP and Media Gifts.** UTEP shall provide 300 participant gifts (25 per team participating in Tournament), and gifts for VIP/C-USA guests and credentialed media. Total cost should approximate but not exceed \$55,000, which cost shall be included in the final financial settlement as an approved expense. The specific nature of the gifts shall be subject to the mutual agreement of the parties.

(12) **Interview and Working Press Areas.** UTEP shall provide, at its expense, Conference USA with sufficient space as determined by Conference USA for interviews and working press in connection with the Tournament at the Don Haskins Center and Memorial Gymnasium.

(13) **Merchandise.** Conference USA or its agent shall have the exclusive right to produce and to market and sell novelties licensed by Conference USA and its member institutions within and around the Tournaments, provided, however, unless otherwise agreed to by the parties, Conference USA will market and sell such novelties within the Don Haskins Center and Memorial Gymnasium exclusively through the concessionaire selected by UTEP. A selected concessionaire will retain twenty percent (20%) of gross revenues derived from the sale of novelties, after taxes (which taxes the selected concessionaire will collect and pay), as a sales and vendor commission and shall remit the balance of such gross revenues to Conference USA or its agent not later than the second business day after the Tournament, which revenues shall not be included in gross revenue for the Tournament. In the event any novelties not sold are not returned to Conference USA or its agent, the selected concessionaire will pay Conference USA or its agent the net price (retail prices less twenty percent (20%)) for any shortage.

(14) **Game Management and Expenses.**

(a) **Court and Court Markings.** UTEP shall provide the court and all basketball related equipment and will place court markings as determined by Conference USA on the court at the Don Haskins Center and Memorial Gymnasium, all at UTEP's expense.

(b) **Event Services and Event Staffing.** UTEP shall arrange for event services and operating personnel directly associated with the staging of the Tournament, not to exceed \$200,000 as outlined in UTEP's Championship proposal, including, without limitation, the following event services: utilities, media rooms, hospitality rooms, dressing rooms, staging areas, lighting, decorations, pipe and drape, telephone systems, telephone lines for radio, in arena communications systems, scoreboard, interview room, tables, chairs, statistical control area, public address system, towel service, equipment and training room, seating for band members, street banners, copy machines, comprehensive medical personnel, ushers, ticket sellers, ticket takers, security, city police, firemen, scorers, timers, practice coordinators, public address announcers, statisticians, trainers, floor managers, maintenance and clean-up crews. All persons engaged by UTEP to work in the Don Haskins Center and Memorial Gymnasium in connection with the Tournament shall be employees or contractors of UTEP, and Conference USA shall not be deemed to be employers of any such persons.

(c) **Enhancements to Memorial Gymnasium.** UTEP shall be responsible for enhancements to Memorial Gymnasium to ensure a quality competition for the first two rounds of the women's tournament. The enhancements will include, but are not limited to the following: quality basketball court, two basketball goals, video boards, and sound system; remove overhead baskets; pipe and drape the arena; carpet areas of the arena; install additional power lines and phone lines if necessary; and any other enhancements agreed upon by UTEP and Conference USA. All costs associated with Memorial Gymnasium enhancements shall be separate from the Tournament expenses and shall be paid for by UTEP, as outlined by UTEP and the El Paso Sports Commission.

(d) **Additional Expenses.** Unless otherwise provided herein, all expenses associated with the Tournament, including expenses incurred by UTEP for items to be provided by UTEP at its expense, shall not be included as approved expenses for purposes of calculating net revenue from the Tournament in the final financial settlement payable to Conference USA pursuant to Section 16 hereof unless such expenses have been approved in writing in advance by Conference USA for inclusion in the final financial settlement.

(15) **Net Revenues.** For purposes of calculating net revenues from the Tournament, only expenses set forth in Paragraphs 9(a), 10(c), 10(d)(ii), 11, and 14(b), and any additional expenses approved in accordance with Paragraph 14(d), shall be deducted from gross revenues to determine net revenues from the Tournament. UTEP shall guarantee through a method satisfactory to Conference USA, \$1,000,000 in net revenue from the Tournament. All net revenue shall be paid to Conference USA in accordance with Section 16 hereof.

(16) **Financial Settlement.** On or before May 15, 2011, UTEP and Conference USA shall agree on the financial settlement and all net revenues shall be immediately remitted to Conference USA pursuant to the agreed upon formula, but in no event shall the net revenues paid to Conference USA be less than \$1,000,000.

(17) **Facilities.** UTEP shall provide Conference USA with facilities suitable for the staging of the Tournament, as determined by Conference USA in its sole discretion. In the event the Don Haskins Center and/or Memorial Gymnasium is deemed unsuitable by Conference USA for the staging of the Tournament, Conference USA shall promptly notify UTEP of the specific nature of any deficiencies and UTEP shall be afforded a commercially reasonable opportunity to cure the deficiencies. In the event the deficiencies are not cured or are not curable within a commercially reasonable time after Conference USA delivers notice thereof, as determined by Conference USA in its sole discretion, Conference USA shall have the right to terminate the Agreement.

(18) **Insurance.** Conference USA shall maintain liability insurance and shall name the city of El Paso, SMG, El Paso County, El Paso Sports Commission and UTEP as an additional insured. UTEP shall secure a general liability insurance policy for the event, with limits not less

than \$1,000,000 per occurrence for the benefit of Conference USA and name Conference USA as an additional insured.

(19) **Entire Agreement; No conflict.** This Memorandum of Agreement, together with the Exhibits hereto, are considered by the parties to be binding and contains the entire understandings of the parties with respect to the subject matter hereof and supersedes all prior understandings with respect to the subject matter hereof. If any conflict shall arise between the time of this Memorandum of Agreement and the terms of the Exhibits, this Memorandum of Agreement shall govern with respect to the matters described herein.

(20) **Definitive Agreement.** Conference USA and UTEP will proceed diligently and in good faith to negotiate, execute and deliver the Agreement. The Agreement will contain, among other items, such standard terms and conditions for agreements of this kind as are mutually agreeable, such as representations and warranties, agreements and covenants, and conditions and indemnifications.

(21) **Ratification.** Conference USA and UTEP acknowledge that the terms of this Memorandum of Agreement are subject to ratification by the Board of Directors of Conference USA.