

**AN AGREEMENT BETWEEN THE CITY OF COLLEGE STATION  
AND THE 12TH MAN FOUNDATION**

This agreement is by and between the **City of College Station**, a Texas home-rule municipal corporation (the “City”), and the 12<sup>th</sup> Man Foundation, a non-profit corporation (“12<sup>th</sup> Man”), to allow the 12<sup>th</sup> Man Foundation to erect vertical banners along major thoroughfares within the City of College Station.

The City and the 12<sup>th</sup> Man agree that they will mutually benefit by the display of vertical street banners creating a positive community spirit. The terms contemplated herein shall be considered to be in the best interest of both parties and are as follows:

(1) The 12th Man is authorized to install street banners on City owned light poles located in the rights-of-way located between Texas Avenue and Wellborn Road along both George Bush Drive and University Drive and along Wellborn Road between George Bush Drive and University Drive subject to the following condition:

- (1) Banners shall be installed only on light pole locations approved by the Staff of the City of College Station pursuant to City ordinance. The timing and location of the proposed banners shall not conflict with City sponsored banners.
- (2) The installation and display of 12th Man banners shall be permitted for a period of no longer than three years, after which the program may be renewed by the City Council.
- (3) The 12th Man shall retain full responsibility for the maintenance of the banners as well as the hardware and other supporting equipment. The 12th Man shall be responsible for determining the structural adequacy of the poles due to the increased loads from the banners.
- (4) The banners shall not be placed so as to create a traffic hazard whether due to mounting height or possible color identification problems relative to traffic signal light recognition. Banners should not overhang the curb and should be mounted above the minimum vehicle clearance height of 14'-0”.
- (5) The 12<sup>th</sup> Man shall comply with all federal, state and local regulations that govern the placement of banners as contemplated in this agreement.

It is further agreed that the 12th Man (separately and collectively the "Indemnitee") shall indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the 12th Man under this Agreement, including the installation, inspection and maintenance of the banners, their associated hardware, and any other supporting equipment. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the 12th Man, or any third party.

The 12th Man assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the 12th Man's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

**Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

**Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

**CITY OF COLLEGE STATION**

Attn: David Massey,  
Asst. Public Utility Dir.  
Post Office Box 9960  
1101 Texas Avenue  
College Station, Texas 77842-9960

**12TH MAN FOUNDATION**

Attn: W. Miles marks  
Exec. Dir. & CEO  
P.O. Drawer L-1  
College Station, TX 77844-9101

**Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements,

arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

**Amendment.** No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

**Choice of Law and Place of Performance.** This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas.

**Authority to do business.** The 12th Man represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this contract.

**Authority to Contract.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

**Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

**Agreement Read.** The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

**Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

**CITY OF COLLEGE STATION**

**12TH MAN FOUNDATION**

BY: \_\_\_\_\_  
RON SILVIA, Mayor

BY: W. Miles Marks  
W. MILES MARKS, Exec. Dir. & CEO

Date: \_\_\_\_\_

Date: 12-1-04

**ATTEST:**

\_\_\_\_\_  
CONNIE HOOKS, City Secretary

**APPROVED:**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeff Kersten, Finance and Strategic  
Planning Director

\_\_\_\_\_  
Date

STATE OF TEXAS       §  
                                  §  
COUNTY OF BRAZOS   §

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on the 1st day of December, 2004, by **W. Miles Marks** in his capacity as Executive Director and CEO of **The 12th Man Foundation**, a Texas non-profit corporation, on behalf of said corporation.



Judy G. Crockett  
Notary Public in and for the State of Texas

STATE OF TEXAS           §  
  §       **ACKNOWLEDGMENT**  
COUNTY OF BRAZOS       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, by **RON SILVIA**, in his capacity as Mayor of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the State of Texas