

DONATION AGREEMENT

1. **PARTIES.** This Donation Agreement (the "Agreement") is made and entered into this _____ day of _____, 2020, by and between The Greeley Independence Stampede Inc., a Colorado Non-Profit Corporation located at 600 N 14th Avenue, Greeley, Colorado ("the Stampede"), Friends of Island Grove, Inc., a Colorado Non-Profit Corporation created by the Stampede to benefit capital improvements in Island Grove Regional Park, located at 600 N 14th Avenue, Greeley, Colorado ("FIG"), the City of Greeley, Colorado, a home rule municipality of the State of Colorado, located at 1000 10th Street, Greeley, Colorado 80631 ("Greeley") (the Stampede, FIG and Greeley will be referred to collectively as "Donees"), and JBS USA Food Company, a Delaware corporation located at 1770 Promontory Circle, Greeley, Colorado ("Donor") (each a "Party," collectively, the "Parties").

2. RECITALS AND PURPOSE.

2.1. The Donor commits to provide FIG with the Donation Funds set forth in **Exhibit A** for sole purpose set forth in **Exhibit A**; and

2.2. Greeley, as owner in fee simple of Island Grove Regional Park Arena and all improvements thereon (including the future JBS Stage contemplated in Exhibit A), wishes to approve this donation as an indirect beneficiary of the transaction.

Accordingly, in consideration of the mutual promises set forth in this Agreement, the parties covenant and agree to the terms and conditions set forth in the following paragraphs.

3. **FUNDS.** The Donor agrees to disburse to FIG those funds indicated on the attached **Exhibit A** ("Donation Funds" or "Gift") in accordance with the Fund Disbursement Schedule set forth therein. The Donation Funds shall be used for the sole purpose(s) set forth in **Exhibit A**.

4. **RECEIPT.** Within five (5) business days of receiving the Donation Funds or Gift listed in Exhibit A FIG shall provide the Donor with a receipt. The receipt must be written on the official letterhead of FIG and contain the following information: a) the name of the FIG as listed in Section 1 of this Agreement, b) the date the Donation Funds or Gift was given, c) the amount of the Donation Funds as set forth in Exhibit A, d) a description of any non-monetary Gift set forth in Exhibit A, and e) either a statement that no goods or services were provided by the Donees in exchange for the Donation Funds or the Gift, or description and good faith estimate (no estimate is needed for naming rights) of the value of goods or services received by Donor from Donees.

5. **NAMING RIGHTS TO STAGE.** In recognition of the Donor's commitment set forth in Section 3 above, Greeley shall grant Donor naming rights to the stage contemplated in Exhibit A from the date of this Agreement through December 31, 2039. If the Stampede extends the Lease of Island Grove Regional Park beyond this date, then Donor's naming rights to the stage shall continue through December 31, 2049 or the end of the Lease, whichever is the first to occur. If, at any time, Donor requests an update to the name(s) or logo(s) set forth in Exhibit B and subsequently used in or on the JBS Stage, Donees shall work with Donor, at Donor's cost, to effectuate such change. If Donor desires to extend the term of the naming rights for the stage beyond the term described above, Greeley shall negotiate in good faith with Donor to extend the naming rights term.

6. **DONEE TAX STATUS.** FIG IS / IS NOT organized under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Parties desire that the Gift made by this Agreement to be made in compliance with all of the applicable

provisions of the Code, and accompanying Treasury Regulations governing charitable organizations formed in accordance with the Code, as interpreted and applied by the Internal Revenue Service, as applicable.

- 7. LICENSE.** The Donor grants to the Donees a nonexclusive, non-transferable, non-sublicensable license to use certain "Donor Trademarks" owned by the Donor solely in connection with this Agreement. "Donor Trademarks" shall mean solely the Donor trade names, marks and logos specified in **Exhibit B** hereto; provided, however, that the Donor in its sole discretion from time to time, may change the appearance and/or style of the Donor Trademarks or add or subtract from the list in **Exhibit B**, provided that, unless required earlier by a court order or to avoid potential infringement liability, Donees shall have 30 days' notice to implement any such changes. Donees hereby acknowledge and agree that, (i) the Donor has represented to Donees that the Donor Trademarks are owned solely and exclusively by the Donor, (ii) except as set forth herein, the Donees have no rights, title or interest in or to the Donor Trademarks and (iii) all use of the Donor Trademarks by the Donees shall inure to the benefit of the Donor. Donees agree not to apply for registration of the Donor Trademarks (or any mark confusingly similar thereto) anywhere in the world. Notwithstanding the foregoing, any use of the Donor Trademarks pursuant to this license shall require the prior consent of the Donor.

 - 7.1 Ownership.** Donees acknowledge and agree that the presentation and image of the Donor Trademarks should be uniform and consistent with respect to all services, activities and products associated with the Donor Trademarks. Accordingly, Donees agree to use the Donor Trademarks solely in the manner that the Donor shall specify from time to time in the Donor's sole discretion. All usage by Donees of the Donor Trademarks shall include the appropriate trademark symbol. No use of the Donor Trademarks shall be permitted without the prior consent of the Donor.
- 8. TERMINATION.** Donor may immediately terminate this Agreement with no further liability to Donees if Donees at any time breach their obligations under this Agreement, and Donees do not cure such failure within thirty (30) days after receipt of written notice from the Donor.
- 9. RELATIONSHIP.** Notwithstanding any provision to the contrary in this Donation Agreement, the Parties agree that their relationship with respect to the Gift contemplated herein is one of donor and donees only, and no provision of this Donation Agreement shall be construed to create any other type of status or relationship between the Parties with respect to such Gift. Neither Party nor its agents or employees are the representatives of the other Party for any purpose and neither Party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.
- 10. LIMITATION OF LIABILITY.** Neither Party shall be liable to the other or any third party for any consequential, indirect, incidental, special, or punitive damages. The aggregate liability of each Party under this agreement shall be one-thousand dollars (\$1,000).
- 11. FORCE MAJEURE.** Neither Party shall be deemed to have defaulted or failed to perform under this Agreement if that Party's ability to perform or default shall have been caused by an event or events beyond the control and without the fault of that Party, including fire, flood, explosion, act of God or a public enemy, strike, labor dispute, civil riot, pandemic, or the ability of Donor to provide the Gift is impacted by any of the foregoing ("Force Majeure Event"). Upon the occurrence of the Force Majeure Event, the Party claiming the Force Majeure Event shall promptly notify the other Party in writing of such event. Notwithstanding the foregoing, in the event of a Force Majeure Event, each Party agrees to make a good faith effort to perform its obligations hereunder.
- 12. ASSIGNMENT.** The provisions of this Agreement will be binding on the Parties' successors and

assigns. Upon notice to the other party, either party may assign this Agreement in whole or in part to any affiliate or subsidiary, or any party acquiring substantially all of the stock or assets of that party. Any other assignment shall require the prior written consent of the other party. Such consent not to be unreasonably withheld.

13. **GREELEY / STAMPEDE LEASE.** The Parties acknowledge and affirm that certain separate agreement between Greeley and the Stampede which includes a Twenty Year Lease Agreement dated June 19th, 2019 (the "Lease"). The JBS Stage contemplated in Exhibit A of this Agreement will constitute an improvement upon the Island Grove Regional Park Arena and shall therefore be owned in fee simple by Greeley subject to the terms of the Lease. The Stampede and FIG expressly disclaim any property interest in the JBS Stage other than those leasehold rights created by the Lease to the Stampede. Pursuant to Paragraph 18(e) of the Lease, this Agreement shall be incorporated as Exhibit D of the Lease. The Parties will work in good faith to provide one (1) additional day under the Lease for Donor to hold a springtime employee appreciation concert in the Stampede Arena on the JBS Stage on which the Stampede will assist Donor with producing.
14. **NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth in Section 1 of this Agreement. Such notice shall be deemed to have been given when deposited in the U.S. Mail.
15. **EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.
16. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
17. **ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
18. **INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.
19. **WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
20. **GOVERNING LAW.** The construction and interpretation of this Agreement and any disputes arising hereunder (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving reference to its conflict of laws principles. In the event any suit, action or proceeding is brought by either party with respect to this Agreement or the matters contemplated herein, such action, suit or proceeding shall be brought in the state courts located in Weld County, Colorado and both Parties hereby accept, consent and submit to the exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
21. **SEVERABILITY.** If any provision of this Agreement is declared to be invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.

22. AUTHORITY. The Donees represent that they have full power and authority to execute this Agreement and to carry out the transactions contemplated hereby, and that all corporate action on the part of the Donees, their officers, directors, shareholders, and City Council, and all consents, approvals, orders, authorizations or filings with any federal or state governmental agency necessary for the authorization, execution, delivery and performance of this Agreement by the Donees and the consummation of the transactions contemplated herein by the Donees have been taken or obtained, and that this Agreement constitutes the legal, valid and binding obligation of such entity.

23. ELECTRONIC SIGNATURE & COPIES. Electronic signatures shall constitute original signatures for all purposes of this Agreement. Any and all electronic copies of the Agreement shall be treated as an original version.

Donor:

JBS USA Food Company

By: _____

Name: _____

Title: _____

Donees:

Greeley Stampede

By: _____

Name: Justin Watada

Title: General Manager

Friend of Island Grove

By: _____

Name: _____

Title: _____

City of Greeley, Colorado

Mayor

APPROVED AS TO SUBSTANCE:

City Manager

APPROVED AS TO AVAILABILITY OF FUNDS:

Director of Finance

APPROVED AS TO LEGAL FORM:

City Attorney

ATTEST:

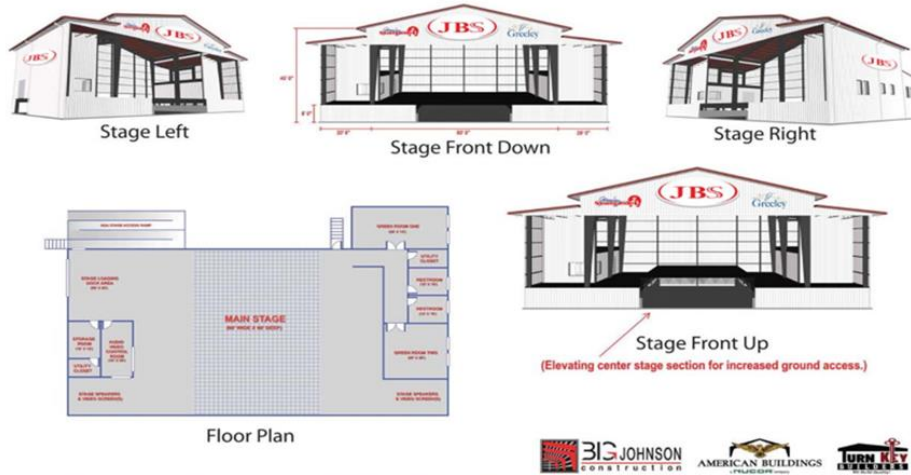
City Clerk

EXHIBIT A

Donation Fund Amount: One Million Dollars (\$1,000,000)

Fund Disbursement Schedule: Lump sum, to be disbursed within forty-five (45) days after the date of this Agreement.

Sole Purpose of the Funds: The funds set forth in this Exhibit A shall be used solely for the construction of the stage at the Island Grove Regional Park Arena in Greeley, CO (the “JBS Stage”), or as otherwise mutually agreed upon between the Parties.



**East Arena
Expansion Project**
- Island Grove Regional Park



EXHIBIT B

Donor Trademarks:



JBS USA Food Company

JBS