

Staff Summary Report



Council Meeting Date: 02-07-08

Agenda Item Number: 18

SUBJECT: Request approval of the Second Amended Agreement between North America Sports, Inc., the Tempe Convention and Visitors Bureau, and the City of Tempe for the City to host the Ironman Arizona Triathlon, extending the Agreement for an additional five (5) years, and moving the date of the event after April 2008 to November of 2008 and each successive year.

DOCUMENT NAME: 20080207prtd01 **SPORTS ADMINISTRATION/POLICIES (0105-01-07)**

SUPPORTING DOCS: Yes

COMMENTS: The net fiscal impact to the City of Tempe is approximately \$100,000 annually and is comprised of a \$50,000 City cash contribution and the provision of in-kind City services of approximately \$50,000 for the 2008 Race. The parties can mutually agree to November dates, to stage the Race in the years following 2008.

PREPARED BY: Travis Dray, Deputy Parks and Recreation Deputy Manager, 480/350-5182

REVIEWED BY: Mark Richwine, Parks and Recreation Manager, 480-350-5325
Jerry Hart, Financial Services Manger, 480-350-8505

LEGAL REVIEW BY: David Park , Assistant City Attorney, 480-350-8907

FISCAL NOTE: Tempe and the TCVB will be sharing the costs associated with this amended agreement equally. Costs for Tempe and the TCVB are as follows:
Tempe and the TCVB agree to pay North America Sports, Inc. the amount of One Hundred Thousand Dollars (\$100,000) as follows:

- 2008 Race - \$25,000 each on or after March 1, 2008
- 2008 Race - \$25,000 each on or after April 1, 2008
- 2008 - 2009 November Race - \$25,000 each on August 1, 2008
- 2008 - 2009 November Race - \$25,000 each on October 1, 2008

In addition to the direct expenditure of funds, the City will also contribute services for the event valued at approximately \$50,000. Funds for the City's cash contribution of expenses related to this amended agreement will come from the City's contingency fund. In kind City Services are to be absorbed within the current budget of the participating departments.

RECOMMENDATION: Staff recommends approval of the amended agreement and the authorization for the Mayor to execute it.

ADDITIONAL INFO: In April of 2008, North America Sports, Inc. will stage in Tempe one of eight Ironman Triathlon Events held each year in North America. The prestigious

triathlon will attract 2,000 athletes and their friends/family members staying approximately four nights each. The TCVB has conservatively estimated the direct economic impact to Tempe would be approximately \$3.5 million. The City of Tempe will be the first community to host two (2) Ironman Triathlon's in one year. After 2008 the race will then transition to November. The 2008 November race sold out in three (3) weeks.

SECOND AMENDED NORTH AMERICA SPORTS TEMPE AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between North America Sports, Inc. ("NA Sports"), a Delaware corporation, the Tempe Convention and Visitors Bureau ("TCVB"), and the City of Tempe ("Tempe"), an Arizona municipal corporation.

WHEREAS, the World Triathlon Corporation ("WTC"), has granted NA Sports a license to stage Ironman Triathlons in the United States; and

WHEREAS, NA Sports, the TCVB and Tempe wish to stage an Ironman Triathlon ("Race") in and around Tempe, Arizona, on Sunday, April 13th, 2008 and November 23, 2008, thereafter during the month of November for 2009 ("Race Date"); and

WHEREAS, the TCVB and Tempe wish to have NA Sports stage the Race in and around Tempe, Arizona, upon the terms and conditions as provided for in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the parties agree as follows:

1. Term. This Agreement shall commence upon the date set out below and shall continue until the completion of the 2009 Race. NA Sports, TCVB and Tempe may extend this Agreement upon the mutual agreement of the parties hereto in writing within two (2) weeks following the Race as described herein. If this Agreement is continuously in effect, then the parties, upon their mutual agreement during the final year of this Agreement or earlier, may extend this Agreement for up to an additional five (5) years. It is agreed that the date for the holding of each additional Race, the venue to be used and the terms and conditions for each extension shall be mutually agreed upon by the parties.

2. Dates of Race: NA Sports shall stage the Race in full compliance with the Ironman Triathlon Event License Agreement to ensure the Race is a world-class sporting event. The Race shall be staged each year of the term of this Agreement on a mutually agreed Sunday in April and/or November, pursuant to the race schedule outlined in Schedule A, attached hereto and incorporated into this Agreement by this reference.

3. NA Sports Obligations: NA Sports, at its cost, shall provide the management staff for the Race, including the Race Director and Media Director, and shall provide such further administration and services as outlined in Schedule B, attached hereto and incorporated into this Agreement by this reference. NA Sports further agrees to supply the TCVB and Tempe two (2), thirty (30) second national television advertising spots at no costs to the City or to the TCVB, in all broadcasts as long as the television agreements exist.

4. Name, Sponsorships of the Race: The name of the Race shall include Tempe, for example: 'Ironman USA Tempe' or Ironman US Championships of Tempe. NA Sports shall have the exclusive right to sell sponsorships and, at its sole discretion, allow others to also sell sponsorships for the Race. If NA Sports delegates all or any portion of its exclusive right to sell sponsorships to any one entity it may also, at its sole discretion, allow subsequent entities to sell sponsorships for the Race, subject to prior approval by NA Sports or its delegate, which approval will not be unreasonably withheld. Tempe and the TCVB may provide NA Sports sales leads for NA Sports to sell sponsorships to the Race subject to the above approval restrictions. If the Tempe and/or the TCVB sales leads allow NA Sports to sell sponsorships for the Race, Tempe and the TCVB will receive a commission from NA Sports which shall be mutually acceptable to NA Sports, Tempe and TCVB but not less than Fifteen percent (15%) of the monies generated by said sales leads, provided the accounts are approved by NA Sports. In addition to the exclusive right to sell sponsorships, NA Sports shall also have exclusive merchandising and licensing rights in connection with the Race including, without limitation, the right to obtain sponsors and advertisers; to sell corporate V.I.P. packages; to sell reserved tickets; to produce and sell souvenir programs; to produce programming and sell radio, television, and filming opportunities; and to sell and/or license merchandise and food and beverage including, without limitation, beer concessions, provided NA Sports has obtained the appropriate permits to do so. NA Sports agrees to any reasonable restrictions as required by the Tempe Special Events Task Force or other applicable jurisdictions. NA Sports shall also have the exclusive right to provide exposure at the race for sponsors, including but not limited to signage and/or banners, inflatables, booths, hospitality areas and bleacher banners subject to reasonable restrictions as required by the Tempe Special Events Task Force. NA Sports shall be entitled to retain all revenue generated in connection with the Race including, without limitation, sponsorship, corporate package, ticketing, merchandising, concession and licensing revenue. NA Sports will not be allowed to exclude from the Race, either media personnel, and/or their equipment, or vendors who are presently under contract with Tempe. If NA Sports believes a vendor or member of the media should not be allowed into the Race or allowed to stay at the Race, NA Sports shall so notify Tempe. Tempe in its sole discretion will determine as expeditiously as possible whether the subject vendor or media member should be allowed entrance to the Race or allowed to stay at the Race. A list of vendors who are presently under contract with Tempe is attached as Schedule "E" and forms part of this Agreement.

5. Permits: In consideration of NA Sports agreeing to stage the Race in and around Tempe, Tempe agrees as follows:

- (a) Tempe shall waive any and all Tempe required permit, processing and park rental fees required in connection with the Race, except Tempe specifically will not waive any applicable transaction privilege, use or excise tax license(s) or fees. Tempe will assist NA Sports in obtaining Tempe required permits, licenses and/or approvals for the Race including, without limitation, the following: event permit; bleacher permit/approval; filming

permit/approval; tent permit/approval; electricity permit/approval; parking permit/approval; advertising permit/approval; food and beverage permit/approval; vending permit/approval; merchandise sales permit/approval; and Tempe Special Events Task Force approval.

- (b) Provided such activities shall not result in additional costs to Tempe, NA Sports shall have the right to conduct one or more ancillary events (e.g., musical concert, radio broadcast, party) during the week of the Race, subject to the reasonable approval of the Tempe Special Events Task Force. In connection with the foregoing, Tempe will provide NA Sports with all necessary Tempe controlled permits and/or approvals in connection with such ancillary events at no cost to NA Sports, except Tempe specifically will not waive any applicable transaction privilege, use or excise tax licenses or fees.
- (c) NA Sports shall have the right to charge admission for reserved seating to the Race and retain all revenue.
- (d) NA Sports shall have the exclusive vending and concession rights except for those vendors who are currently under contract with Tempe. Those Tempe vendors will retain their rights and responsibilities as described in their contracts with Tempe. None of such vendors shall have the exclusive vending and/or concession rights during the Race. In connection therewith, NA Sports or its designee shall have the right to sell beer in mutually approved designated areas during the Race, provided NA Sports or its designee has obtained the appropriate permits to do so and provided NA Sports agrees to reasonable restrictions as required by the Tempe Special Events Task Force or other applicable jurisdictions.
- (e) NA Sports or its designees shall have the exclusive right to conduct product and other sampling, other than beer sampling, unless the sampling conflicts with the rights of vendors under contract with Tempe in which case such product or other sampling is prohibited (it being acknowledged and agreed by Tempe that none of such vendors has vending rights which prohibit such sampling).
- (f) Tempe shall not permit or otherwise authorize any third party to conduct an Ironman or Ironman type distance event on Tempe controlled property during the term of this Agreement. NA Sports and Tempe recognize and agree that Tempe has held and will continue during the duration of this Agreement to hold triathlons of lesser distances than those of the Ironman type distance.

6. TCVB and Tempe Obligations: The TCVB and Tempe agree to provide the monies and hotel rebates as outlined in Schedule C, attached hereto and incorporated into this Agreement by this reference. The TCVB and Tempe agree to provide the

services outlined in Schedule D, attached hereto and incorporated into this Agreement by this reference.

7. Tempe and TCVB Marketing and Promotion Services: Tempe shall provide the following marketing and promotion services in connection with the Race at their sole cost and expense:

- (a) Tempe and the TCVB will include the Race in any Tempe marketing and advertising materials which are created after the date of this Agreement, including any national, regional and/or individual market television, radio, newspaper, magazine and website advertising. In addition, Tempe and the TCVB will give the Race preferred placement on the main page of their websites (which will include the date and place of the Race).
- (b) Tempe will arrange and be responsible for the cost of placement and removal of an NA Sports provided street banner at Fifth Street and Mill Avenue provided this location is available. Such street banner shall be erected no later than four weeks before the Race if the location is available. Tempe will notify NA Sports at least ninety (90) days before each year's Race if the location is available. No other street banner will be allowed at this location during the time that NA Sports's street banner is in place. NA Sports shall be responsible for the cost of creating the street banner.
- (c) Provided Tempe controlled pole banner locations are not committed to other entities and subject to current Tempe policies and guidelines, Tempe will grant permission for NA Sports to use Tempe-controlled pole banner locations in the downtown Tempe area. For such Tempe-controlled locations, Tempe will waive its rental fee. NA Sports shall be responsible for the cost of creation, installation and removal of such pole banners to be placed at these locations. NA Sports acknowledges that Tempe has informed NA Sports that an entity known as the Downtown Tempe Community, Inc. (DTC) controls most of the banner locations on Mill Avenue and on Fifth Street. Tempe will provide NA Sports with contact information for the DTC if NA Sports desires to make arrangements with the DTC for the use of its pole banner locations. No other pole banners will be allowed at such locations during the time that NA Sports's pole banners are in place.
- (d) Tempe will post fliers at Tempe public parks and recreational locations and the TCVB will post fliers at selected tourism locations. NA Sports will be responsible for the cost of creating and producing such fliers.
- (e) Tempe will run an appropriate NA Sports supplied videotape on Tempe's local cable television channel 11.

- (f) Tempe will coordinate and work with NA Sports in regard to press conferences upon the signing of this Agreement and again two weeks prior to the Race and shall arrange for local newspaper releases supplied by NA Sports concerning the Race.

8. Benefits to Tempe: NA Sports agrees to provide Tempe with the following benefits in connection with the Race and agrees to provide Tempe, within sixty (60) days after the conclusion of the Race, documents detailing the monetary value of each of the following benefits to Tempe:

- (a) Major Event; Accommodations: NA Sports agrees to hold the Race at the locations and at the times specified in this Agreement. In this regard, NA Sports agrees to work with the TCVB to find suitable hotel/resort accommodations in Tempe based upon mutually agreed upon criteria including price as detailed in Schedule C. NA Sports agrees to use its best efforts to house its staff and employees (including its contract employees) in Tempe hotels and resorts during the duration of the Race and during any time periods before or after the Race that the presence of such persons is required for the Race.
- (b) Top Athletes: NA Sports will use its best efforts to ensure it attracts the best competitive field for the Race.
- (c) Television Exposure: NA Sports shall televise the Race on a major cable television, such as Fox Sports Net or produce an internet broadcast offering an equivalent number of homes, and such broadcast shall include "beauty shots" of the City of Tempe. These beauty shots will show downtown Mill Avenue, Town Lake and other physical features of the City of Tempe as suggested by Tempe and the TCVB. The broadcast shall include numerous audio mentions of the City of Tempe by the announcers. NA Sports shall guarantee that the broadcast of the Race shall not be less than one (1) hour. NA Sports shall own all television/internet film, radio and other rights to the Race; provided, however, that Tempe shall have the right to use clips from such broadcast for marketing and promotional purposes without any charge to Tempe (other than out-of-pocket costs for editing, transferring, remixing or third party clearances). Any such usage shall be subject to the written approval of NA Sports, which approval shall not be unreasonably withheld.
- (d) Media Exposure: For local advertising that NA Sports creates for this Race, NA Sports shall include the Tempe name and/or logo on all paid print advertising including brochures, posters, banners, promotional items and literature, magazines, publications and media guides which contains the logos of any NA Sports sponsors other than the title sponsor(s) or umbrella sponsor of NA Sports. For local television and radio advertising NA Sports creates, NA Sports shall guarantee the mention of the City of Tempe in local

radio advertising and NA Sports shall guarantee the mention of the City of Tempe in local television advertising. NA Sports shall feature the City of Tempe and TCVB names and logos on the NA Sports web site and on any NA Sports official guides or programs for the Race.

- (e) On-Site Promotion: NA Sports will provide promotion for Tempe at the Race itself. Such promotion shall include public address announcements, a display/information booth at the Race to publicize city programs (e.g., recreation leagues) and signage opportunities.
- (f) Community Donation: NA Sports will donate funds from its Community Fund each year of this Agreement. Donations will be made from the NA Sports Community Fund via Aid Stations who will each designate a charity within Tempe to receive funds. Any remaining funds will be donated to the Tempe Community Council. The Tempe Community Council and NA Sports will consult with each other and designate these remaining funds to be donated to Tempe youth sports programs.
- (g) Audit and Records. Tempe may, at reasonable times and places, audit the books and records of any party to this Agreement, or any subcontractor, as related to this Agreement or the Race. Each party shall preserve and make available for inspection and audit by any other party all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for a period of three (3) years after the termination of this Agreement. This provision shall survive the termination of this Agreement.

9. Representations and Warranties: The parties hereto represent and warrant as follows:

- (a) Tempe represents and warrants to NA Sports that: (i) Tempe has the full right and authority to enter into and perform its obligation under this Agreement; (ii) the rights granted to NA Sports hereunder will not violate or otherwise infringe upon the rights of any third party; and (iii) the execution, delivery and performance of this Agreement will not violate the provision of any agreement to which Tempe is a party or by which it is bound.
- (b) NA Sports represents and warrants to Tempe that: (i) NA Sports has the full right and authority to enter into and perform its obligations under this Agreement; (ii) the rights granted to Tempe hereunder will not violate or otherwise infringe upon the rights of any third party; and (iii) the execution, delivery and performance of this Agreement will not violate the provision of any agreement to which NA Sports is a party or by which it is bound.

10. Insurance: NA Sports shall procure and maintain insurance for this event as specified by the Tempe Special Events Task Force.

11. Indemnification: Each party agrees to indemnify, defend and hold harmless the other party and its officers, officials, employees, agents and volunteers from and against any and all claims, losses, liability, costs or expenses of any nature, including reasonable attorney's fees (hereinafter collectively referred to as "Claims"), including Claims arising out of or in any way connected with the performance of this Agreement by the indemnifying party and including those Claims alleging bodily injury of any person, including death, or property damage arising out of or occurring during the Race described in this Agreement, which said Claims allegedly may result in vicarious/derivative liability to the non-indemnifying party or parties or their officers, officials, employees, agents, and/or volunteers and are due in whole or in part to the act, omission, negligence, misconduct or other fault of the indemnifying party, its officers, officials, agents, employees, contractors and/or volunteers. The amount and type of insurance coverage required by section 11 does not limit the scope of the indemnity in this paragraph.

12. Conflict of Interest: This Agreement is subject to cancellation under the provisions of Arizona Revised Statutes § 38-511.

13. Compliance with Laws: NA Sports in the performance of its activities under this Agreement shall comply with all applicable laws, statutes, ordinances, permits, rules and regulations relating to those activities.

14. Dispute Resolution: In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If the parties fail to resolve the dispute, then the parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing parties, the disputing parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

15. Default: If any party or parties should default in the performance of their respective obligations under this Agreement, the party or parties not in default shall provide written notice of the default and the party or parties in default shall have a reasonable time in which to cure the default. If a cure is not made, the party or parties not in default shall be entitled to remedy the default using any right or remedy at law or equity which would otherwise be available to such party or parties not in default, including bringing any suit or proceeding to enforce the provisions of this Agreement. The prevailing party or parties shall be entitled to their reasonable attorney fees and costs incurred in such action.

16. Termination: Any party may terminate this Agreement in whole or in part upon mutual agreement of the parties. Unless mutually terminated as provided for in this Agreement or unless terminated as provided in Schedule B, paragraph 8, any party or parties may terminate this Agreement by written notice to the other parties within Ninety

(90) days after the Race in November 2008 or within Ninety (90) days after the holding of the Race in any subsequent years.

17. Independent Contractor Relationship: The relationship between NA Sports, TCVB and Tempe is that of independent contractors and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture between NA Sports, the TCVB and Tempe.

18. Force Majeure: NA Sports, the TCVB and Tempe shall not be liable for any failure by them to conduct the Race by reason of fire, strike, war, insurrection, government restrictions, labor dispute, third party breach or other cause beyond their control.

19. Notices: All notices required or permitted hereunder shall be in writing and shall be either personally delivered, sent by registered or certified mail (return receipt requested) or sent by facsimile and in each case addressed as follows (or to such other address as the parties shall provide in writing to the other parties in accordance herewith):

If to NA Sports: NA Sports
 4999 Pearl East Circle, Suite 301
 Boulder, CO, 80301
 Attention: Graham Fraser

If to TCVB: TCVB
 51 West 3rd Street
 Suite 105
 Tempe, AZ 85281
 Attention: Stephanie Nowack

If to Tempe: City of Tempe
 31 East Fifth Street
 Tempe, AZ 85281
 Attention: City Manager

20. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same document.

21. Assignment: No party may assign this Agreement or any rights herein without the express written consent of the other parties.

22. Entire Agreement: This Agreement shall constitute the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements whether written or oral and cannot be modified or amended unless by a written instrument signed by the parties.

23. Amendments: Any amendments or alternative or supplementary provisions to this Agreement must be made in writing and duly executed by an authorized representative or agent of each of the parties hereto.

24. Severability: The invalidity of any provision contained herein or portion of a provision shall not affect the validity of any other provision contained herein or the remaining portion of the applicable provision.

25. Successors and Assigns: This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns. A waiver of any breach hereunder shall not be deemed a waiver of any subsequent breach.

26. Governing Law: This Agreement shall be governed by the laws of the State of Arizona and any litigation between the parties regarding this Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona.

27. Cooperation of the Parties: The parties agree to cooperate in good faith to reasonably complete the obligations set forth in this Agreement.

28. No Third Party Beneficiaries: This Agreement is solely for the benefit of the parties signing it and does not create nor shall it be construed to create rights in other parties. No parties outside of this Agreement may enforce the terms and conditions of this Agreement.

29. Adoption by Mayor and Council; Authority to Execute Minor Amendments: This Agreement is subject to adoption by Tempe's Mayor and City Council. Upon execution of this Agreement, the Mayor and Council authorize the Parks and Recreation Administrator of Tempe to sign other documents or amendments of this Agreement as may be necessary to effectuate this Agreement and further authorize the Administrator to act upon any other matters not presently contemplated but which may arise and require Tempe's action in order to effectuate the purpose of this Agreement.

30. Captions: The captions and headings of the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of the respective sections.

31. Confidentiality: Any other provision of this Agreement notwithstanding, the parties acknowledge that Tempe is a public institution, and as such is subject to the Arizona Public Records Act, Section 39-121 et seq., Arizona Revised Statutes. Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of state law. Tempe agrees to keep confidential any and all information or documents designated as confidential or proprietary by NA Sports to the fullest extent permitted by law. In the event a public records request is made for information or documents designated as confidential or proprietary, Tempe will notify NA Sports. It will

be NA Sports' responsibility to take whatever action it deems appropriate and necessary, including taking court action, to protect information or documents it considers confidential and not subject to disclosure by Tempe. NA Sports must take its action without causing delay, damages or expenses to Tempe as Tempe complies with its duties under the Arizona Public Records Act. NA Sports agrees to hold harmless and indemnify Tempe for any reasonable attorney fees (including its in-house attorneys), court costs or other expenses Tempe is required to expend and/or incur due to NA Sports' conduct in objecting to disclosure of information and/or documents pursuant to a public records request submitted to Tempe for NA Sports information and documents.

32. This Agreement is conditional upon NA Sports with the assistance of Tempe obtaining the necessary approvals for a bike route and run route including but not limited to the approval of the Town of Fountain Hills and the approval of the Salt River Pima-Maricopa Indian Community. If NA Sports is unable to obtain the approvals necessary to run the Race this Agreement will be null and void.

[SIGNATURE BLOCK ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of _____, 2008.

NORTH AMERICA SPORTS, INC.

By: _____
Name

Title: _____

TEMPE CONVENTION AND VISITORS
BUREAU

By: _____
Name

Title: _____

CITY OF TEMPE

By: _____

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SCHEDULE A
Race Dates

The Race will occur on a Sunday in April and November 2008 and on a mutually agreed upon Sunday in November of each year thereafter.

These race dates may be changed with the written consent of all parties. Provided, however, that any such change shall take place at least thirty (30) days prior to the Race Date for the previous race.

SCHEDULE B

NA Sports agrees to provide the following services for the implementation of the Race:

1. Race Administration.

NA Sports shall provide all administrative matters related to the implementation of the Race, including, but not limited to, the following items:

- (i) Providing Race Director, Media Director and key Race personnel as determined by NA Sports;
- (ii) Providing the volunteers, uniforms for volunteers and management of the volunteers;
- (iii) Preparation of all documentation for the Race, including, but not limited to, applications, brochures, all print materials.

2. Media.

NA Sports shall promote the Race as described in the main body of this Agreement. Such promotion shall also specifically include the following items at no cost to the TCVB or Tempe:

- (i) National and regional television or comparable international internet coverage of the Race.
- (ii) An advertising campaign in triathlon magazine publications including Sports Illustrated subject to the continuation of the sponsor deal by Sports Illustrated.
- (iii) The inclusion of Tempe promotions in all applications, brochures and print materials for the Race.
- (iv) The inclusion of the Ford Ironman Arizona Logo on all Race numbers, T-shirts, medals, plaques.
- (v) The inclusion of the Ford Ironman Arizona logo in all forms for the media campaign for the Race, including, press releases, both nationally and locally.
- (vi) Fifteen (15) on-site banners for the TCVB and Tempe. NA Sports will provide the space and the TCVB and Tempe will provide banners for display according to the specifications provided by NA Sports. The TCVB and Tempe will have the opportunity to work with NA Sports in the production of the banners.

3. Local Suppliers. NA Sports shall use its best efforts to use local Tempe suppliers for the implementation of the Race where it does not have contracts with national suppliers for its races.

4. Logo. Promoters will have the right to use the Ford Ironman Arizona logo in its print materials such as advertising, letterhead, and promotions, provided, however, that NA Sports must provide prior written authorization of such use, which authorization will not be unreasonably withheld.

5. Technical Duties.

- (i) Race equipment and manpower;
- (ii) Registrations - supplies and set up;
- (iii) Courses - Design, supplies, police coordination, volunteer coordination, start/finish course;
- (iv) Race Announcers;
- (v) TV crews;
- (vi) Aid Station - design and supplies;
- (vii) All manpower, educators, race manuals (race directors);
- (viii) Transition supplies/set up;
- (ix) Banquets - scripts, awards (presentations, videos);
- (x) Police coordination, security and parking plans
- (xi) Ordering race supplies;
- (xii) Finish line - design, supplies, set-up and tear-down; and
- (xiii) Media coordination.
- (xiv) Porta-Potties within the Park and along the race route
- (xv) All traffic control devices
- (xvi) Ambulances and crews

6. VIP Hosting. Provide thirty (30) VIP Packages and thirty (30) Race Day packages to TCVB. The VIP packages shall include banquet passes, gifts, and passes to the finish line and the VIP tent.

7. Ironman Festival. A three to four day festival running from the Tuesday/Wednesday to Friday prior to the Race which festival shall include an Athlete Village, Kid's Race, Adult Fun Run and optional Parade.

8. Guarantee. NA Sports guarantees a five-year license with the WTC and World Ironman Championship qualifying spots. If NA Sports no longer holds its license with WTC this Agreement is null and void, however the parties agree they shall enter into good faith negotiations to extend this Agreement. As part of the good faith negotiations NA Sports guarantees it will continue to stage a world class sporting event with a minimum of 2000 athletes and a minimum number of room nights for the Race.

Race, and within 75 days of the conclusion of the Race, the TCVB will forward to NA Sports \$10.00 of each \$12.00 per room night rebate.

- NA Sports may enter into separate contracts with the designated HOST HOTELS for services listed above such as catering, meeting space, and similar needs. NA Sports must identify which hotels they will consider as 'HOST HOTELS'.
- The TCVB will collect room night pick up information to compare with NA SPORTS figures on room pick up for each hotel. The method for tracking these room nights will be mutually agreed upon between the TCVB and NA SPORTS.
- The TCVB will develop and manage a dedicated website landing page containing hotel and other pertinent information for the racers and spectators.
- All hotel bookings will be done directly to each hotel via phone, fax or website by the racers and spectators. All hotels will be asked to use the booking code: Ironman Tempe.

NA Sports will guarantee a minimum of 6000 room nights in Tempe . If the minimum number of room nights is not met, then a portion of NA Sports's collected hotel commissions will be rebated to the TCVB using the following sliding scale model:

- If 6,000 room nights are met, then NA Sports USA keeps 100% of their portion of the collected hotel rebates.
- If 5,000-5,999 room nights are met, then NA Sports USA will refund to the Tempe CVB 25% of their TOTAL hotel commission collected.
- If 4,000 – 4,999 room nights are met, then NA Sports USA will refund to the Tempe CVB 50% of their TOTAL hotel commission collected.
- If less than 3,999 room nights are met, then NA Sports USA will refund to the Tempe CVB 75% of their TOTAL hotel commission collected.

The room night guarantee is contingent on all hotels agreeing to do the following:

- 1) Not raise the rates above the normal (rack) season rates
- 2.) Not raise the rates more than 5% per year or the Consumer Price Index-Urban (CPI-U) for western United States cities with populations between 50,000 and 1,500,000, whichever is greater.
- 3.) Not require more than a 5 night minimum stay.

SCHEDULE D

1. Facilities.

The TCVB and Tempe will facilitate, coordinate and assist NA Sports in obtaining the grounds and facilities necessary for the Race. The grounds and facilities of Tempe controlled areas will be provided at no cost to NA Sports, including but not limited to the following items for the following periods:

- (i) Tempe Beach Park for the swim course. One 2.4 mile loop. Set up Wednesday for morning practice swims. Race Day swim 7:00 a.m. until 9:20. Buoys will be removed starting a 9:30 a.m.;
- (ii) Appropriate transition area from Monday until Monday. Area near the Lake.
- (iii) Roads with City limits for the Bike route and Run route. NA Sports/Tempe to provide the barricades, cones, signage (only within the City limits). Tempe agrees to provide barricades, cones, and delineators where possible
- (iv) Banquet location for 100x300 tent. Location will be parking lot of ASU or ASU stadium or an equivalent location. Set up will occur Tuesday; tear down Tuesday following the event. NA Sports will need to work directly with ASU on this item.
- (v) Athlete village/registration in the Park from Monday through Monday; including the Parks Amphitheater, electric power, gazebo's and picnic areas.
- (vi) Finish line on Rio Salado. Set up will include a finish structure, bleachers, sound systems, and tents as provided by NA Sports. Set up will occur Tuesday evening; tear down will occur Monday a.m. Set up and tear down will be done by NA Sports.
- (vii) Parking lots – ASU. NA Sports will need to work directly with ASU on this item.
- (viii) Closed streets on Race Day in the City Area for the bike and run.
- (ix) Suitable roads within the City limits with permits to complete a portion of the 112 mile bike loop and 13.1 mile run (done two times).
- (x) Tempe Beach Park for morning practice swims from 7:00 a.m. until 10:00 a.m. on Wednesday through Friday. This will include six city lifeguards on the water in kayaks, surfboards and/or boats.
- (xi) Tempe will provide the beach and roads as needed for a kids Splash and Dash race and adult 5km on Wednesday evening or Friday or Race Day. (Will need a map for these functions and requirements)
- (xii) Tempe will provide assistance in obtaining all approvals necessary for a bike route for the Race.

2. Services. Tempe will provide the following services and assistance:

- (i) Police, Fire, Paramedic and Emergency Medical Technician services in coordination with NA Sports within the Tempe city limits wherein the Race will take place at no cost to NA Sports. NA Sports will coordinate with the other jurisdictions. Tempe agrees to provide search and rescue during the swim portion of the Race. One Tempe Fire Department boat will be provided by Tempe at the request of NA Sports. Tempe and NA Sports shall jointly coordinate parking and traffic control.
- (ii) Tempe will provide NA Sports the use of all Tempe controlled property/roads through which the Race is to be run in the City limits only.
- (iii) Permits and approval for a weeknight 5km run, kids Splash N Dash, and Concerts in the City limits as part of the NA Sports Festival. Permits for an NA Sports Village with Exposition for Wednesday through Sunday. (City of Tempe) including set up days Monday and Tuesday, except Tempe specifically will not waive any applicable transaction privilege, use or excise tax licenses or fees.

3. Supplies.

If Tempe owns the following supplies, and said supplies are reasonably available, Tempe will provide free of charge or at mutually agreed upon cost the following items:

Bleachers, tables and stages.

Traffic control supplies, including but not limited to, detour signs, barricades, "No Parking" signs and cones for ancillary events during week prior to race.

Road sweeper.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of _____, 2008. Deleted: 6

NORTH AMERICA SPORTS, INC

By: _____
Name

Title: _____

TEMPE CONVENTION AND VISITORS
BUREAU

By: Stephanie Nowack
Name

Title: President + CEO

*Jan. 29,
2008*

CITY OF TEMPE

By: _____

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of _____, 2008.

NORTH AMERICA SPORTS, INC.

By: [Signature]
Name

Title: PRESIDENT

TEMPE CONVENTION AND VISITORS BUREAU

By: _____
Name

Title: _____

CITY OF TEMPE

By: _____

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney