

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("First Amendment"), is made and entered into as of the date stated on the City's signature page, by and for its Department of Aviation, a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado ("City"), and CACTUS COMMUNICATIONS, INC., a Colorado corporation located at 2128 15th Street, Denver, Colorado 80202 ("Sponsor") (collectively "Parties").

WITNESSETH:

WHEREAS, the Parties hereto entered into an Agreement (THTRS-201628326), dated August 16, 2016, ("Original Agreement") for certain sponsorship rights and benefits at the Denver International Airport ("DEN"); and

WHEREAS, after execution of the Agreement, City sponsorship operating structure has changed, and both City's Art's and Venues Department and the Superlative Group Inc., are no longer involved in the administration of sponsorship rights or benefits under the Original Agreement; and

WHEREAS, the Parties desire to make a Novation to the Superlative Group Inc., because of their mutual interests in continuing the contractual relationship existing between City and Sponsor without any obligations under the Original Agreement continuing to the Superlative Group Inc.; and

WHEREAS, due to the pendency of the Great Hall Redevelopment Project at DEN, certain sponsorship rights and benefits as contemplated in the Original Agreement must be adjusted; and

WHEREAS, based on different factors attributable to both City and Sponsor, design, construction, and place of certain sponsorship assets have been delayed and therefore in lieu of liquidated damages being assessed in accordance with the Original Agreement, the Parties agree additional time is required for the Parties to receive the benefits contemplated under the Original Agreement; and

NOW, THEREFORE, for the foregoing reasons and for other good and valuable consideration, the Parties hereby agree to amend the Original Agreement as follows:

1. Effective as of the date of execution stated herein, the preamble of the Original Agreement is hereby amended by deleting it entirely and replacing it with the following:

This STANDARD SPONSORSHIP AGREEMENT ("Agreement") is made and entered by and between the CITY AND COUNTY OF DENVER, by and for its Department of Aviation, a municipal corporation organized and existing under and by virtue of Article XX of the Constitution of the State of Colorado ("City"), and CACTUS COMMUNICATIONS, INC., a Colorado corporation located at 2128 15th Street, Denver, Colorado 80202 ("Sponsor") (collectively "Parties").

2. Effective as of the date of execution stated herein, Section 1 Term of the Original Agreement is hereby amended by deleting it entirely and replacing it with the following:

Term. The term of this Agreement shall commence as of July 1, 2016 (the “Effective Date”), and shall terminate on fourth anniversary of the Effective Date at 12 o'clock midnight (“Expiration Date”) (collectively “Term”).

3. Effective as of the date of execution stated herein, Section 24 Notice of the Original Agreement is hereby amended by deleting it entirely and replacing it with the following:

Notice. Any notice, request, approval or consent under this Agreement to be given by either party to the other shall be given in writing, and shall be considered served when delivered in person, or three (3) days after the date mailed by certified or registered mail, return receipt requested, addressed to the recipient at its address set forth below, or to such other address as the recipient may subsequently have furnished in writing to the sender.

CITY: ATTN: Chief Executive Officer
 Denver International Airport
 8500 Pena Boulevard
 Denver, Colorado 80249-6340

SPONSOR: Cactus Communications, Inc.
 ATTN: Kristina Byers, VP Business Operations
 2128 15th Street
 Denver, Colorado 80202

4. Effective as of the date of execution stated herein, EXHIBIT A (SPONSORSHIP RIGHTS AND BENEFITS) of the Original Agreement is hereby amended by deleting it entirely and replacing it with the attached Exhibit A.
5. Effective as of the date of execution stated herein, EXHIBIT B (SPONSORSHIP FEE) of the Original Agreement is hereby amended by deleting it entirely and replacing it with the attached Exhibit B.
6. Effective as of the date of execution stated herein, EXHIBIT D (ARTS & VENUES DENVER VENUE SPONSORSHIP POLICY) of the Original Agreement is hereby amended by deleting it entirely.
7. The Parties explicitly grant the Superlative Group Inc., a novation for any and all obligations required under the Original Agreement.
8. Except as modified or revised herein, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein.
9. This First Amendment is expressly subject to and shall not be or become effective or binding on City until approved by City Council, if required by City’s Charter, and fully executed by all signatories of the City and County of Denver. This Ninth Amendment may be executed in two or more counterparts, each of which will be deemed an original signature page to this Amendment and either Party in the manner specified by City may sign it electronically.

Contract Control Number: PLANE-201628326-01

Contractor Name: Cactus Communications Inc

By: *Kristina Byers*

Name: Kristina Byers
(please print)

Title: VP, Business Operations
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



EXHIBIT A

SPONSORSHIP RIGHTS AND BENEFITS

- I. Denver International Airport
 - a. On-site activation / Colorado Lottery POS / Concourse A
 - i. Sponsor will receive the opportunity to have TWO (2) POS locations within Concourse A at mutually determined locations
 - ii. All selling locations would contain 1-2 vending machines dependent upon space, traffic considerations, and DEN approval

- II. Denver International Airport
 - a. On-site activation / Colorado Lottery POS / Concourse B
 - i. Sponsor will receive the opportunity to have TWO (2) POS locations within Concourse B at mutually determined locations
 - ii. All selling locations would contain 1-2 vending machines dependent upon space, traffic considerations, and DEN approval

- III. Denver International Airport
 - a. On-site activation / Colorado Lottery POS / Concourse C
 - i. Sponsor will receive the opportunity to have TWO (2) POS locations within Concourse C at mutually determined locations
 - ii. All selling locations would contain 1-2 vending machines dependent upon space, traffic considerations, and DEN approval

- IV. Denver International Airport
 - a. On-site activation / Colorado Lottery POS / Jeppesen Terminal
 - i. Colorado Lottery will retain its current vending machine placement within the Jeppesen Terminal and at Airside Employee Parking Facility throughout the duration of this agreement. The Jeppesen Terminal location shall be removed upon commencement of the Great Hall redevelopment project. Thereafter, Sponsors obligations with respect to locations in the Jeppesen Terminal shall terminate.

- V. Denver International Airport
 - a. On-site activation / Colorado Lottery Redemption locations
 - i. Sponsor will receive ONE (1) Redemption Center location on each concourse for the purpose of cashing players' winning tickets
 - ii. This Colorado Lottery equipment would reside in an existing kiosk location on each concourse.

- VI. Denver International Airport – Directional Signage
 - a. Colorado Lottery playing locations

- i. Sponsor will receive ONE (1) advertising element in each terminal located on each concourse and in the Jeppesen Terminal for the purpose of directing potential players' to vending locations. Elements in the Jeppesen Terminal element are subject to the Great Hall Redevelopment project and DEN wayfinding projects.
- ii. All directional signage and locations will be mutually agreed upon by DEN and the Colorado Lottery.

VII. Denver International Airport

- a. Colorado Lottery Experience Zone / Concourse A (Or Other Mutually Agree Upon Location)
 - i. Sponsor will receive the opportunity to have ONE (1) Experience Zone for DEN traveler engagement – minimum of 900 square feet
 - ii. Sponsor will receive TWO (2) Colorado Lottery vending machines located within the Experience Zone
 - iii. All artwork, creative and build-outs, must be pre-approved by DEN
 - iv. Costs of design and production of signage is Sponsor's obligation but will be deducted from the first-year of the sponsorship fee

VIII. Denver International Airport

- a. On-site activation / Colorado Lottery POS / Ancillary locations
 - i. Sponsor will receive TWO (2) additional POS locations in other high-traffic placement areas within DEN
 - 1. Potential locations could include but are not limited to; Light Rail entrance/exit, regional jet concourse, baggage claims, Great Hall, etc.
 - ii. Exact locations will be mutually agreed upon by City and the Colorado Lottery

The specific location and placement of all items listed above are to be mutually agreed upon by the Parties. Costs of design, production and installation of graphics/signage used to promote POS locations in sections I., II. III., and VIII would be the obligation of the Sponsor. Any POS location build-out costs requiring infrastructure space additions/modifications would be the obligation of the Sponsor but these costs would be deducted from the first or second-year Sponsorship Fee. In the event changes at DEN change the desirability of Sponsor's physical locations within DEN, in Sponsor's sole discretion, Sponsor shall have the right to relocate POS to new locations as mutually agreed upon between the Parties. In such event, costs of design, production and installation of graphics/signage used to promote POS locations in sections I., II. III., and VIII would be the obligation of the Sponsor. Any POS location build-out costs requiring infrastructure space additions/modification will be the obligation of Sponsor, deductible from the following years Sponsorship Fee, except in the final year, where City shall have the option to either reimburse Sponsor the equivalent amount of pre-paid Sponsorship Fee or pay the expenses directly.

EXHIBIT B

SPONSORSHIP FEE

The Sponsorship Fee for each Contract Year (July 1st thru June 30th the following year) of the Agreement shall be a minimum of \$250,000.00. No Sponsorship Fee shall be paid for Term extension. The Sponsorship Fee shall be paid in accordance with the following:

- July 1, 2016 – June 30, 2017 Contract Year
 - Total investment of \$250,000 to be paid as follows:
 - \$250,000 due 30 days after signature of the agreement

- July 1, 2017 – June 30, 2018
 - Total investment of \$250,000 to be paid as follows:
 - \$250,000 due by July 15, 2017

- July 1, 2018 – June 30, 2019
 - Total investment of \$250,000 to be paid as follows:
\$250,000 due by July 15, 2018

- Denver International Airport – Sponsorship Fee Considerations
 - Colorado Lottery build-out costs for Experience Zone
 - i. Notwithstanding the foregoing, the costs of the experience zone paid for by Sponsor maybe deducted from second and third year annual fee(s), as approved by City.
 - 1. Those deduction items include the actual certified costs of :
 - a. Design
 - b. Production
 - c. Installation

 - ii. In lieu of making the second and third year Sponsorship Fee payments by July 15th in the respective Contract Years, after completion of the Experience Zone and Kiosk locations, Sponsor may deduct the costs of the Experience Zone as stated above and remit the remaining balance to City within thirty (30) days of completion of the Experience Zone.

 - iii. Cactus Communications will manage all aspects of activation, production, installation, vendor invoicing, for build-out purposes under this agreement.

Immediately upon the Sponsorship Fees becoming due under this Agreement, the fees belonging to City per this Agreement shall immediately vest in and become the property of City, except that all such Sponsorship Fees shall be refundable to the extent of Sponsor's rights to a refund of the Sponsorship Fees as set forth in this Agreement, including but not limited to all amounts prepaid for benefits and privileges that not been provided as of the date of termination. Sponsor understands, accepts, and agrees to be responsible as a trustee for said monies until the same are delivered to City. Sponsor also covenants to pay all compensation, damages, charges, and

fees under this Agreement independent of any obligation of City. No breach of this Agreement by City shall relieve Sponsor of its obligation and duty to pay all such obligations when due.

Sponsor shall deliver payments required by this Agreement through the Automated Clearing House ("ACH") or Electronic Fund Transfer ("EFT") systems. Instructions for payments are located at <https://www.denvergov.org/payments/dia/vendors>. During the Term, City may change the designated place of payment at any time by City upon ten (10) days' written notice to Sponsor. Sponsor assumes all risk of loss of payments. Sponsor must make all payments due under this Agreement in lawful money of the United States of America. City may accept payment without prejudice to its right to recover the balance of said amount due and to pursue any other remedies in this Agreement or otherwise.

Without waiving any other right or action available to City, in the event Sponsor is delinquent in the payment of fees, or charges hereunder or rightly due and owing, and in the event Sponsor is delinquent in paying to City any such fees, or charges for a period of five (5) business days after the payment is due, City reserves the right to charge Sponsor interest thereon, from the date such fees, or charges became due to the date of payment, at the Federal Reserve Bank of New York prime rate in effect on the date the fees, or charges became due plus four percent (FRBNY prime +4%) or 18% per annum, whichever is greater, to the maximum extent permitted by law.