

## A G R E E M E N T

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE SUPERLATIVE GROUP, INC.**, a Colorado corporation, located at 26600 Detroit Road, Suite 250, Cleveland, Ohio 44145 (“Contractor”).

### R E C I T A L S

**A.** The City desires to procure and Contractor desires to provide the sponsorship sales and related services as set forth in this Agreement.

**NOW, THEREFORE**, the parties agree as follows:

**1. COORDINATION AND LIAISON:** Contractor shall fully coordinate all services under this Agreement with the Director of Denver Arts and Venues Denver (“DAV”), or his or her designee (the “Director”), and, as directed by the Director, with a designated supervisory manager or director for the City agency or agencies directly responsible for the affected City asset.

**2. SERVICES TO BE PERFORMED:**

**a.** Contractor shall diligently undertake and perform the sponsorship sales services as set forth on **Exhibit A** (the “Scope of Work”) to the City’s satisfaction; provided, however, that any exclusive rights provided to Contractor within the Scope of Work shall be subject to the City’s right to seek and obtain sponsorship opportunities and sales directly from potential sponsors. Further, notwithstanding anything to the contrary contained in this Agreement, Contractor shall not be compensated for sponsorship opportunities and sales which originate within or are directly obtained by the City.

**b.** Sponsorship opportunities that are obtained by Contractor shall be memorialized in a written contract in the form provided and pre-approved by the City, which contracts shall be executed by the City, Contractor, and the applicable sponsor in accordance with the City’s Charter and the Denver Revised Municipal Code. Notwithstanding the foregoing, the City and Contractor acknowledge that certain sponsorship arrangements, in particular media sponsorships, require more expeditious processing than the standard sponsorship contract. Therefore, for sponsorship contracts with a term of six months or less (“Short Term Sponsorships”), Contractor

may secure such sponsorships pursuant to a written contract, approved as to form and executed by the Director, between Contractor and the sponsor. No Short Term Sponsorship amount will equal or exceed \$500,000.00. In addition, Contractor shall not enter into Short Term Sponsorship agreements with the same sponsor in two consecutive years, it being the parties' intent that multi-year agreements be processed as agreements to which the City is a party. Further, the City reserves the right to determine in its sole discretion that a given Short Term Sponsorship or, upon prior written notice to Contractor, that all Short Term Sponsorships shall be processed as agreements to which the City is a party in accordance with the City's Charter and the Denver Revised Municipal Code.

c. Contractor shall not arrange a sponsorship that would violate other City obligations or any law, rule, policy, or executive order of the City. Further, Contractor shall not do anything in the performance of the services contemplated hereunder that would tend to discredit, dishonor, reflect adversely upon, or in any way injure the good name, reputation, or business of the City.

d. The City reserves the absolute right in its sole discretion to refuse any sponsorship opportunity presented by Contractor and the City shall not be liable for any fee in the event of such refusal.

e. Contractor is ready, willing, and able to provide the services required by this Agreement.

f. Contractor shall faithfully perform the services required by this Agreement in accordance with the terms of this Agreement and the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature.

3. **TERM:** This Agreement shall commence on the date set forth on the City's signature page below (the "Effective Date") and shall expire on August 31, 2016 (the "Term"); provided, however, that the Term shall continue until February 28, 2017 solely for purposes of allowing time for the parties to comply with Section 4 of Exhibit B. For purposes of this Agreement, a "Contract Year" shall mean each period during the Term that commences on September 1st and ends on August 31<sup>st</sup>, except that the first Contract Year ("Contract Year 1") shall mean the period of time from the Effective Date through and including August 31, 2014. For the avoidance of "Contract Year 2" shall mean the period of time from September 1, 2014 through

and including August 31, 2015, and “Contract Year 3” shall mean the period of time from September 1, 2015 through and including August 31, 2016.

**4. COMPENSATION AND PAYMENT:**

**a. Fees:** The City shall pay and Contractor shall accept as the sole compensation for services rendered and costs incurred under this Agreement no more than SEVEN MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND NO/DOLLARS (\$7,725,000.00) in accordance with the payment terms and rate and schedule set forth on **Exhibit B**.

**b. Reimbursable Expenses:** Contractor will be reimbursed for certain activation expenses as provided in Exhibit B. There shall be no other reimbursable expenses allowed under this Agreement.

**c. Invoicing:** Contractor shall provide the City with invoices as provided in Exhibit B; such invoices shall be in a format and with a level of detail acceptable to the City, including all supporting documentation required by the City. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

**d. Maximum Contract Amount:**

(1) Notwithstanding any other provision of this Agreement, the City’s maximum payment obligation will not exceed SEVEN MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND NO/DOLLARS (\$7,725,000.00). The City is not obligated to execute an agreement or any amendments to this Agreement for any further services, including any services performed by Contractor beyond that specifically described in the Scope of Work. Any services performed beyond those in the Scope of Work are performed at Contractor’s risk and without authorization under this Agreement.

(2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**5. STATUS OF CONTRACTOR:** Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither Contractor nor any of its employees or subcontractors is an employee or officer of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**6. TERMINATION:**

**a.** The City has the right to terminate this Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to Contractor. However, nothing gives Contractor the right to perform services under this Agreement beyond the time when its services become unsatisfactory to the Director.

**b.** Notwithstanding the preceding paragraph, the City may terminate this Agreement if Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**c.** Upon termination of this Agreement, with or without cause, Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in this Agreement.

**d.** If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in Contractor's possession, custody, or control by whatever method the City deems expedient. Contractor shall deliver to the City all documents in any form that were prepared under this Agreement and all other items, materials and documents that have been paid for by the City. These documents and materials are the property of the City. Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

**7. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related

to this Agreement (“Records”) until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. Contractor agrees to keep and preserve for at least three (3) years its Records as set forth herein.

Contractor shall keep true and complete records and shall, on an annual basis, furnish to the City an accurate statement for the preceding calendar year of all business transactions under this Agreement. This annual statement shall be certified as correct by an authorized representative of Contractor. Contractor agrees to establish and maintain a system of bookkeeping satisfactory to the City Auditor. Without limiting the foregoing, Contractor shall allow the City to review any of the procedures used by Contractor in performing the services contemplated by this Agreement and shall make available for inspections all notes and other documents used in performing such services.

The City Auditor, and his or her authorized representatives, shall have a right at any time, and from time to time, to audit all Records and Contractor, upon request, shall make all such Records available for such audit. The City’s right to audit with respect to any year, and Contractor’s obligation to retain its Records for such year, shall expire three (3) years after Contractor’s annual statement for such year has been delivered to the City.

Contractor further agrees that the City Auditor, and his or her authorized representatives, may inspect any sales tax return or report and accompanying schedules and data which Contractor may file with the City pursuant to the City Retail Sales Tax Article, and Contractor waives any claim of confidentiality which it may have in connection therewith.

**8. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

**9. INSURANCE:**

**a. General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in

force at all times during the Term of this Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of this Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**b. Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office

may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds**: For Commercial General Liability and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation**: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

e. **Subcontractors**: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Contractor. Contractor shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. **Workers' Compensation/Employer's Liability Insurance**: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

g. **Commercial General Liability**: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**h. Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**i. Commercial Crime:** Contractor shall maintain \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by Contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

**j. Additional Provisions:**

(a) For Commercial General Liability, the policy must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage: The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**10. DEFENSE AND INDEMNIFICATION**

**a.** Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from, and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of Contractor or its subcontractors either passive or



active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

b. Contractor's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether claimant has filed suit on the Claim. Contractor's duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**11. USES AND PROTECTION OF TRADEMARKS/SERVICE MARKS AND OTHER INTELLECTUAL PROPERTY.** Contractor acknowledges that the City owns certain names, trademarks, service marks, copyrights and other intellectual property associated with its business (hereinafter collectively referred to as "Marks"), and owns certain merchandising rights in and to the Marks, and all goodwill associated with or symbolized by the Marks. It is agreed and understood that in marketing and promoting the City in furtherance of performing the Scope of Work and activities associated therewith, Contractor may make various references to the City and may display the Marks of the City. The City grants to Contractor a non-exclusive, non-transferable license to use its Marks during the Term of this Agreement, subject to the terms and conditions hereafter set forth, solely in connection with performing the Scope of Work and activities incidental thereto. The City shall agree in writing as to the form

and content of any promotional or advertising materials which bear the Marks, and the media in which such materials are to be used, prior to their use. Such use may be subject to such conditions as the City may impose in its sole discretion. Upon termination or expiration of this Agreement, Contractor shall cease all use of the Marks as soon as practicable, but, in any event, within 30 days, unless the particular media which has been approved requires a longer lead time, but in no event longer than 90 days. Contractor shall not challenge or assist in a challenge to the validity of the Marks, any registrations thereof or the ownership thereof. Contractor is not granted any right or license under this Agreement to sell or otherwise distribute for sale, any of the promotional advertising material or items related thereto, unless specifically approved by the City. If a party desires to sell or distribute for sale any of such materials or other merchandising or novelty items bearing the Marks, then it shall request permission to do so from the City and, if granted, the parties shall negotiate a separate licensing agreement covering such materials or items before they may be sold or distributed for sale.

**12. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* Contractor shall promptly pay when due all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

**13. ASSIGNMENT; SUBCONTRACTING:** Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, subcontractor or assign.

14. **INUREMENT**: The rights and obligations of the parties to this Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.

15. **NO THIRD PARTY BENEFICIARY**: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Contractor receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

16. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

17. **SEVERABILITY**: Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

18. **CONFLICT OF INTEREST**:

a. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event it

determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**19. NOTICES:** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Director of DAV  
144 W. Colfax Ave.  
Denver, Colorado 80202

With a copy to:  
Finance Director of DAV  
1345 Champa Street, First Floor  
Denver, Colorado 80204

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail via United States mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**20. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

**a.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

**b.** Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**c.** Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. Contractor will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

**d.** Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated,

Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

**21. DISPUTES:** All disputes between the City and Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Director as defined in this Agreement.

**22. GOVERNING LAW; VENUE:** This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, the Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District.

**23. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Contractor shall insert the foregoing provision in all subcontracts.

**24. COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, Revised Municipal Code, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**25. LEGAL AUTHORITY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Contractor represents and warrants that he or she has been fully authorized by

Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Contractor or the person signing this Agreement to enter into this Agreement.

**26. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

**27. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.

**28. INTELLECTUAL PROPERTY RIGHTS:** The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, specifications, and any other work or recorded information created by Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not "work made for hire," Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

**29. SURVIVAL OF CERTAIN PROVISIONS:** The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period

equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**30. ADVERTISING AND PUBLIC DISCLOSURE:** Contractor shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of Contractor's advertising or public relations materials without first obtaining the written approval of the Director. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**31. CITY EXECUTION OF AGREEMENT:** This Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**32. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the parties as to the subject matter of this Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

**33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

**34. COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

**35. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the



manner specified by the City. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[Remainder of this page intentionally left blank; signature pages follow]**

**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 \_\_\_\_\_



**Contract Control Number:**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



## **EXHIBIT A**

### **SCOPE OF WORK**

Contractor will provide exclusive sponsorship sales and management services for:

1. DAV theatre, concert, auditorium, convention, event, and arena venues,
2. DAV cultural events and programs,
3. Assets and programs of the Denver International Airport,
4. Assets and programs of the Denver Public Library system, and
5. Assets and programs of the Office of Economic Development's City employee-services marketing.

For purposes of this Agreement, DAV, Denver International Airport, Denver Public Library, and the Office of Economic Development shall be collectively referred to herein as the "Participating Agencies."

Notwithstanding the foregoing, any exclusive rights provided to Contractor within this Scope of Work shall be subject to the City's right to seek and obtain sponsorship opportunities and sales directly from potential sponsors.

Sponsorship opportunities may include, but are not limited to, on-site promotions, year-round presence at venues, sampling, product sales, product display & signage, hospitality, special events, licensing venue names and marks, supply of equipment, media and City-employee promotions and special offers. Sponsorship opportunities will, however, be subject to and limited by applicable law, governance structures, contractual relationships, and the rules, policies, and guidelines of the City (including the rules, policies, and guidelines of the Participating Agencies), as the same may be amended from time to time.

Contractor duties shall include, but shall not be limited to:

- Identifying and valuing current sponsorship assets and potential new sponsorship assets. The initial draft of such assets and valuations shall be due to DAV on or before February 1, 2014; however, for the avoidance of doubt, this shall be an ongoing obligation of Contractor.
- Preparing and soliciting responses for Requests for Sponsorships (RFS).
- Securing, writing and pricing sponsorship opportunities.
- Assessing and securing naming rights.
- Securing licensing opportunities (such as, by way of example only, Nike obtaining a license to produce and promote a line of Red Rocks running shoes).
- Securing sponsorship for events.
- Participating in necessary closing of sales in conjunction with the Participating Agencies.
- Negotiating trade agreements (e.g. product, services, media) when inventory is budget relieving to sponsorship fulfillment (such as, by way of example only, American

Furniture Warehouse providing new office furniture to the City in exchange for exposure on marquees).

- Conducting sponsorship activation consistent with individual sponsorship agreements originated by Contractor and for which Contractor is a party. Contractor will not be responsible for sponsorship activation of individual sponsorship agreements which originate within or are directly obtained by the City or for sponsorship agreements for which Contractor is not a party.. Sponsorship activation duties may include, without limitation, on-site representation and support (e.g., hanging banners, acting as point of contact for sponsors, etc.), coordinating graphic design and print projects, coordinating online promotions and ticket requests, responding to sponsor inquires, etc.
- Providing annual, customized written post-sale analysis for sponsors. Post-sale analysis shall include, without limitation, publishing data provided by the City into a sponsor-friendly report consisting of impressions, a return on investment model, and sponsor's receipt of contract specified details, among other matters requested by the City.
- Providing written monthly reports containing the number of hours expended on the City's behalf and details of the work performed, including a description of the work and time spent related to contract negotiations and implementation, sponsorship activities, activation, and results achieved.
- Providing other duties set forth in individual sponsorship agreements.

## EXHIBIT B

### PAY RATE AND SCHEDULE

The City agrees to pay Contractor, and Contractor agrees to accept as the total compensation for the cost it incurs and the services it renders during the term of this Agreement the following:

1. Annual Payment. The City will pay Contractor a \$75,000 professional services fee each Contract Year; the first annual payment will be paid to Contractor upon execution of this agreement after receipt of an invoice from Contractor for the annual payment in accordance with the City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C. Subsequent payments will be made every twelve months thereafter after receipt by the City of an invoice from Contractor for the annual payment in accordance with the City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C.
2. Commission Payment. Except with respect to Short Term Sponsorships which are addressed below, sponsorship fees shall be paid by sponsors directly to the City. The City will pay Contractor 10% of monies actually received by the City from sponsorship agreements originated by Contractor and for which Contractor is a party. Contractor will not be compensated for sponsorship opportunities and sales which originate within or are directly obtained by the City or for sponsorship agreements for which Contractor is not a party; provided, however, that the City will pay Contractor a partial commission with respect to such sponsorship agreements if the City pre-approves in writing (i) the amount of the partial commission and (ii) the services to be provided by Contractor in exchange for the partial commission. Any and all services to be provided by Contractor for a partial commission shall be documented in writing to the City as a condition precedent to Contractor's receipt of such partial commission. Commission fees will be paid after sponsorship revenue is received by City and on the terms such fees are paid to the City; i.e., if a sponsor pays the City monthly, Contractor shall be paid a monthly commission equal to 10% of the monthly amount received by the City, if the sponsor pays the City quarterly, Contractor shall be paid a quarterly commission equal to 10% of the quarterly amount received by the City. Contractor shall not be paid a percentage of monies owed to the City by a sponsor but not actually paid by the sponsor.

With respect to Short Term Sponsorships only, sponsorship fees shall be paid by sponsors directly to Contractor. Within fifteen (15) business days of receipt of such fees, Contractor shall remit to the City the sponsorship fees net of Contractor's 10% commission payment. If funds are not timely remitted to the City by Contractor, unpaid amounts shall accrue interest at the rate of eighteen percent (18%) per annum, commencing upon the fifth calendar date after the date they are due until paid. Notwithstanding the foregoing, if the City exercises its reserved right (see Section 2.b of the Agreement) to require that a given or all Short Term Sponsorships shall be processed

as agreements to which the City is a party in accordance with the City's Charter and the Denver Revised Municipal Code, then in such event sponsorship fees shall be paid by sponsors directly to the City.

3. Activation Expenses. The City agrees to reimburse Contractor for expenses it incurs in providing (also referred to in the industry as "activating" or "activation of") the marketing and sponsorship benefits provided to a sponsor under the sponsor's particular sponsorship agreement. Such activation expenses could include, without limitation, providing signage, maps, other printing costs, and trade display booths. In order for activation expenses to be reimbursable by the City, the expenses must be reasonable and necessary, approved in writing in advance by the Director, charged to the City at actual cost, and substantiated by supporting documentation satisfactory to the Director. The activation expenses shall not exceed 15% of the funds to be received by the City under the subject sponsorship agreement. In addition, Contractor's staff time shall not be a reimbursable activation expense unless it is determined by the Director, in his or her sole discretion, that reimbursement of Contractor's staff time is appropriate in a given situation; however, the parties acknowledge that the presumption shall be that staff time is not an appropriate reimbursable activation expense and reimbursement of the same shall be allowed, if at all, only in very limited and unique situations. In the event Director determines that reimbursement of Contractor's staff time is appropriate, the parties shall agree in writing in advance to the rate at which staff time will be reimbursed.
  
4. End of Term Payment. As to sponsorship agreements which have been fully executed (signed by Sponsor and required City officials) on or prior to August 31, 2016 (the "Termination Date"), Contractor will be paid a lump sum equal to 10% of monies to be paid to the City under such sponsorship agreements originated by Contractor and for which Contractor is a party and which have terms exceeding the term of this Agreement. Lump sum payments shall not include renewal or extension periods unless such renewal or extension periods have been fully executed (signed by Sponsor and required City officials) by the Termination Date. As to sponsorship agreements which are fully executed (signed by Sponsor and required City officials) on or before ninety (90) days immediately following the Termination Date, Contractor will be paid a lump sum equal to 10% of monies to be paid to the City under such sponsorship agreements if and only if such sponsorship agreements were originated by Contractor; for these purposes Contractor will within fourteen (14) business days following the Termination Date submit to the City a written list of all those potential Sponsors to whom representatives of Contractor made a sales presentation prior to the Termination Date (and such potential Sponsors shall be considered to have been "originated" by Contractor). Contractor's obligation to provide said written list shall survive termination of this Agreement.

**EXHIBIT C**

**CERTIFICATE OF INSURANCE**

**(ATTACHED)**





### Certificate of Premium Payment

This certifies the employer listed below has paid into the Ohio State Insurance Fund as required by law. Therefore, the employer is entitled to the rights and benefits of the fund for the period specified. For more information, call 1-800-OHIOBWC.

This certificate must be conspicuously posted.

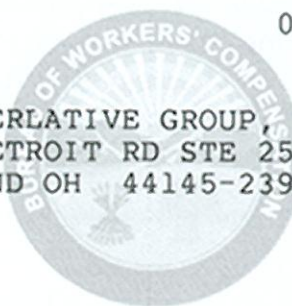
Policy No. and Employer

Period Specified Below

1175449

07/01/2013 THRU 02/28/2014

THE SUPERLATIVE GROUP, INC.  
26600 DETROIT RD STE 250  
CLEVELAND OH 44145-2397



*Stephen Bucher*  
Administrator/CEO

ohio**bc**.com

You can reproduce this certificate as needed.

### Ohio Bureau of Workers' Compensation

#### Required Posting

Effective Oct. 13, 2004, Section 4123.54 of the Ohio Revised Code requires notice of rebuttable presumption. Rebuttable presumption means an employee may dispute or prove untrue the presumption (or belief) that alcohol or a controlled substance not prescribed by the employee's physician is the proximate cause (main reason) of the work-related injury.

The burden of proof is on the employee to prove the presence of alcohol or a controlled substance was not the proximate cause of the work-related injury. An employee who tests positive or refuses to submit to chemical testing may be disqualified for compensation and benefits under the Workers' Compensation Act.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/19/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

360 Insurance LLC 6909 Engle Road Suite C-31 Middleburg Heights, Ohio 44130	CONTACT NAME: Matthew Clodwick	
	PHONE (A/C. No. Ext): (567) 303-8387	FAX (A/C. No):
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: AMCO Insurance Company / Nationwide Insurance		19100
INSURER B: Travelers Insurance		25666
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

**INSURED**  
The Superlative Group Inc.  
26600 Detroit Road  
Westlake, Ohio 44145

**COVERAGES****REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			ACP3006418445	11/8/2013	11/8/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			ACP3006418445	11/8/2013	11/8/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ None			ACP3006418445	11/8/2013	11/8/2014	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	ACP3006418445	11/8/2013	11/8/2014	<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Commercial Crime			Binder	11/19/2013	11/19/2014	\$1,000,000

City and County of Denver, its elected and appointed officials, employees and volunteers are listed as additional insured, if required per written contract / agreement

City and County of Denver are listed as loss payee on commercial Crime policy as its interest may appear.

**CERTIFICATE HOLDER****CANCELLATION**

City and County of Denver  201 West Colfax Ave.  Denver, CO 80201	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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