

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **SWIRE PACIFIC HOLDINGS INC.**, a Delaware corporation, located at 12634 South 265 West, Draper, Utah 84020.

W I T N E S S E T H:

WHEREAS, the City and the Sponsor previously entered into an Agreement dated January 22, 2018 relating to exclusive sponsorship services (collectively, the "Agreement"); and

WHEREAS, the parties have determined to extend the services for an additional period;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. The Sponsorship Rights Fee schedule is attached hereto and incorporated herein as **Exhibit B-1** and all references to "**Exhibit B**", as applicable" are hereby amended to read "**Exhibits B and B-1**, as applicable".

2. Paragraph 2.1 of the Agreement, entitled "Term," is amended to read as follows:

2.1. Term. The term of this Agreement shall commence as of July 1, 2017 (the "Effective Date"), and shall end at 12 o'clock midnight on June 30, 2023 (the "Term"). For purposes of this Agreement, a "Contract Year" shall mean each period commencing on July 1 and ending on the following June 30 throughout the Term. The Term may not be increased further without approval of Bond Counsel.

3. Paragraph 2.5 of the Agreement, entitled "Requirements of the Financings," is amended to read as follows:

2.5 Requirements of the Financings. The parties agree that due to the Financings of the City Venues that this Sponsorship Agreement must be and has been approved by Bond Counsel Kutak Rock, 1801 California Street, Suite 3000, Denver, Colorado 80202. It is understood that the use of City Venues is restricted by the Bond Ordinances, and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the City Venues. The parties agree that, the Bond Ordinances permit the terms of the Sponsorship Agreement as written and that Sponsor shall comply with all IRS regulations and take no action that would jeopardize the tax exempt status of the Bonds. This Sponsorship Agreement has been approved by Bond Counsel, attached hereto as **Exhibit D and D-1**, as applicable. The Sponsor

agrees that in its activities and occupancy hereunder it will comply with all of the terms and conditions of the Financings as those requirements are stated in this Agreement and that it will take no action, nor omit to act in any manner, which would cause the City to breach or be in default under the Financings.

4. The additional approval of bond counsel is attached hereto and incorporated herein as **Exhibit D-1** and all references to “**Exhibit D**” are hereby amended to read “**Exhibits D and D-1**”.

5. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

Remainder of page left intentionally blank.

Contract Control Number: THTRS-202057008-01 THTRS-201735492-01
Contractor Name: SWIRE PACIFIC HOLDINGS, INC.

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

THTRS-202057008-01 THTRS-201735492-01
SWIRE PACIFIC HOLDINGS, INC.

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

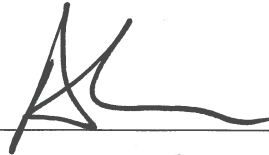
Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

THTRS-202057008-01 THTRS-201735492-01
SWIRE PACIFIC HOLDINGS, INC.

By: _____



Name: _____

(please print)

Randy Majors

Title: _____

(please print)

SVP FSOP

ATTEST: [if required]

By: _____

Name: _____

(please print)

Title: _____

(please print)

Exhibit B-1 - Fee Schedule

Invoice Schedule

Sponsor will pay an annual sponsorship fee as outlined below. Payment will be made within 30 days of the start of the Term, subsequent Term years will be paid within 30 days after the beginning of that Term year.

Year 1- \$400,000 (\$300,000 + \$100,000 signing bonus) * Due upon execution of agreement

Year 2- \$315,000 Due August 1, 2018

Year 3- \$330,000 Due August 1, 2019

Year 4- \$55,000 Due August 1, 2020

Year 5- \$345,000 Due August 1, 2021

Year 6- \$330,000 Due August 1, 2022

TOTAL SPONSORSHIP FEES: \$1,775,000

EXHIBIT D-1

(exhibit follows)

From: [Edrich, Matthias M.](#)
To: [Heydman, Laurie J. - CAO Asst City Attorney - Sr](#)
Subject: [EXTERNAL] RE: Swire Coke Amendment
Date: Monday, October 26, 2020 12:58:22 PM

Hello Laurie,

Thank you for your email. I reviewed the Sponsorship Agreement (Non-Alcoholic Beverage Sponsor) dated January 22, 2018 with Swire Pacific Holdings, Inc. I also reviewed correspondence from Darren McHugh of November 21, 2017, concluding that the agreement will create less than 1% private business use of the affected facilities and will not adversely affect the tax status of the obligations the proceeds of which were used to finance the affected facilities. (The affected facilities are the facilities at which the sponsorship benefits are provided to the sponsor: Red Rocks Amphitheatre, Denver Performing Arts Complex, the Denver Coliseum and the Colorado Convention Center. The agreement does not cover the McNichols Civic Center.)

Under the proposed amendment, the sponsorship payment for year 4 (which covers 2020) is reduced from \$330,000 to \$55,000. It looks like \$55,000 represents the annual fee for the first two months of 2020. I assume no fee is paid for the remainder of the year because the facilities have been closed since March. The fee for year 5 remains unchanged. A fee of \$330,000 is paid for use in year 6. Year 6 is proposed to be added to the contract.

The proposed amendment will continue the existing private business use at approximately the same level as described by Darren in the November 21, 2017 correspondence (less than 1%). For that reason, the proposed amendment itself is approved (for purposes of the bond counsel approval required under the sponsorship agreement) and will not adversely affect the tax-exempt status of the obligations the proceeds of which were used to finance the affected facilities.

Please let me know if you have any questions.

Sincerely,

Matthias

Matthias M. Edrich

Partner

Kutak Rock LLP

1801 California Street, Suite 3000, Denver, CO 80202

matthias.edrich@kutakrock.com

office: 303.297.2400 direct: 303.292.7887 cell: 720.253.2466

From: Heydman, Laurie J. - CAO Asst City Attorney - Sr <Laurie.Heydman@denvergov.org>

Sent: Thursday, October 22, 2020 2:57 PM

To: Edrich, Matthias M. <Matthias.Edrich@KutakRock.com>

Subject: FW: Swire Coke Amendment

[CAUTION - EXTERNAL SENDER]

Hello Matthias – we have another amendment due to the inability to operate venues due to Covid-19. the proposed revision to the payment schedule is below. This one is to an exclusive pouring deal with Coca Cola that I have attached and the revisions below would be made in an exhibit B-1 (which I don't have yet). It cuts across several venues so hopefully you have some record from Darren McHugh on his conclusion because I don't appear to have any other documentation.

Laurie J. Heydman | Assistant City Attorney
Municipal Operations Section, City Attorney's Office | City and County of Denver
p: (720) 913-3278 | laurie.heydman@denvergov.org



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From: Lindley, Andrew - AVD CA3253 Revenue Development Partner Manager
<Andrew.Lindley@denvergov.org>
Sent: Thursday, October 15, 2020 5:46 PM
To: Heydman, Laurie J. - CAO Asst City Attorney - Sr <Laurie.Heydman@denvergov.org>
Subject: Coke Amendment

Hi Laurie,

Following up on the Swire Coca Cola amendment, the revised agreement would expire on November 1, 2023. The proposed restructuring of the payment schedule would be as follows:

Year 1 \$400,000
Year 2 \$315,000
Year 3 \$330,000
Year 4 \$55,000
Year 5 \$345,000 (paid August 1, 2021)
Year 6 \$330,000 (paid August 1, 2022)
Total Sponsorship Fees: \$1,775,000

Let me know if you need any additional information for Bond Counsel. Thank you for your help on this and all the other contracts we are revising. It is greatly appreciated.

Thanks,

Drew

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