

FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the "Amendment") is made and entered into this 16TH day of November 2011 (the "Amendment Effective Date") by and between the CITY OF LAS VEGAS, NEVADA, a municipal corporation in the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101 (the "City") and THE ACTIVE NETWORK, INC., a Delaware corporation, having its principal office at 10182 Telesis Court, Ste. 300, San Diego, California 92121 (the "Contractor" or "Consultant").

RECITALS

WHEREAS, the City and Consultant entered into that certain Professional Services Agreement dated June 6, 2007 ("Agreement") for Contractor to provide certain marketing and promotional services;

WHEREAS, Contractor completed Phase I of the Agreement and, commencing on June 8, 2008, Consultant was performing services under Phase II; and

WHEREAS, the term of the Agreement expired and the parties desire to renew the Agreement and supplement and amend certain terms and conditions of the Agreement pursuant to the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants, recitals, and promises contained in this Amendment and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each party, the City and Consultant agree as follows:

1. TERM.

Section 1(b) of the Agreement shall be deleted in its entirety and replaced with the following:

"Phase II of this Agreement shall be extended for one (1) year, commencing on July 1, 2011 and shall expire on June 30, 2012 ("Extended Term"). The City has the option to renew the Extended Term of this Agreement, under the same terms and conditions contained herein, for one (1) additional one (1) year period."

2. SERVICES.

A. Section 2(b)(1) shall be deleted in its entirety and the following shall be inserted in its place:

(1.) The Consultant acknowledges that it has received the Notice to Proceed with Phase II Services. During Phase II, the Consultant shall implement the Services in accordance with the approved written strategic marketing plan (the "Strategic Marketing Plan"). These Services, include, but are not limited to the following:

- i. Creation of program sales and marketing materials that outline the goals of the City's marketing and advertising income program and emphasizing the potential value inherent in forging an association with the City. All materials shall be submitted to the City for written approval prior to dissemination.
- ii. Development and preparation of marketing initiative specific Request for Proposals which are targeted to achieve the specific elements of the Strategic Marketing Plan. This includes drafting agreements and related documents which memorialize revenue-producing promotional and/or marketing opportunities.
- iii. In coordination with the City, meeting with the leadership of targeted companies to discuss co-venture opportunities and explain the goals, policies and objectives of the City's program.
- iv. Maintaining the primary role of communicator and negotiator between the City and the targeted company(ies). This includes arranging follow up meetings and providing additional information as necessary in pursuing marketing and sponsorship agreements. The City shall have the absolute right, in its sole discretion to disapprove of any such business opportunities for any reason or no reason.
- v. Securing the sponsorship opportunities with the targeted companies and leading the negotiation of the financial and programmatic arrangements with the targeted companies. The City shall have the absolute right to reject any potential business venture or proposed marketing device or medium.
- vi. Presenting the proposed agreements to City officials, City Council, City staff, the media and constituent groups as requested.
- vii. Providing the City with training and resources to City staff on sponsorship and marketing as necessary.
- viii. Providing data, research and recommendations, in writing, to the City on opportunities to expand and increase revenues.
The City and Consultant agree that during the Extended Term, the Consultant will attempt to secure marketing and business agreements, whose gross receipts shall in the aggregate total \$500,000.00, which will be used solely as a benchmark for the Extended Term and has no bearing on compensation paid to the Consultant as per Section 3.a.(2) of the Agreement

B. Section 2(c). shall be added to the Agreement which shall read as follows:

2(c) Phase II – City's Responsibilities. The City agrees to provide the following services throughout the remainder of the Extended Term of this Agreement:

- i. Providing all available data to Consultant upon request.
- ii. Setting up meetings and facilitating discussion with appropriate City staff to ensure timely and beneficial access to resources.
- iii. Upon receipt of Consultant's recommendation(s), responding in writing with an opinion, determination or request for additional information.
- iv. Processing Consultant's recommendation(s) through the City Manager's Office.

3. PAYMENT.

Section 3(a)(2) of the Agreement shall be deleted in its entirety and replaced with the following:

(2) Phase II Compensation. Consultant agrees that payment for Phase II Services will be subject to Consultant successfully obtaining business agreements consummated between the City and any vendor identified to the City by the Consultant. If these requirements are satisfied, then Consultant's fees for the Phase II Services will be twelve percent (12%) of the gross receipts of any business agreements consummated between the City and vendor provided that such business agreements do not exceed a term of five (5) years.

The Consultant agrees that fees for the Phase II Services will not be considered earned by the Consultant until any and all business agreements have been approved and accepted by the City, including approval by the City Council of the City, in accordance with all applicable City laws, rules and procedures. Any fees to be paid to Consultant shall be deemed inclusive of all costs and expenses associated with providing the Phase II Services and shall be payable only upon actual receipt of funds by the City.

4. Except as hereinabove set forth, the Agreement shall remain valid and in full force and effect. If there are any inconsistencies between any provision of this Amendment and the Agreement, the provisions of this Amendment shall prevail. If any one or more of the provisions of this Amendment is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Amendment, and this Amendment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The captions used in this Amendment are for convenience and reference only and will not be deemed to limit, characterize or in any way affect any other provision contained herein. All provisions of this Amendment will be enforced and construed as if no caption had been used. This Amendment will be assigned automatically and only upon the assignment of the Agreement according to its terms.

5. The Agreement, this Amendment and any exhibits attached to each respectively constitute the entire agreement between the Parties with respect to the subject matter thereof and supersede all previous negotiations, comments and writings by the Parties with respect to the subject matter referenced in each. The Agreement and this Amendment may be changed only by a written agreement signed by both Parties. No oral agreement or conversation with any officer, agent or employee of Company, either before or after the execution of the Agreement or this Amendment, shall affect, alter or modify the obligations hereunder.

6. This Amendment may be executed by the Parties in separate counterparts, which counterparts when combined are hereby deemed to constitute a single document, and the Parties may execute this Amendment by facsimile and such facsimile(s) will have the same effect as an originally executed document.

IN WITNESS WHEREOF, the City and Consultant have duly executed this Amendment as of the Amendment Effective Date.

CITY OF LAS VEGAS

By: Carolyn Goodman
CAROLYN G. GOODMAN, Mayor

ATTEST:

Beverly K. Bridges
BEVERLY K. BRIDGES, MMC, City Clerk

APPROVED AS TO FORM:

V. Lombicello 11/1/11
Date

THE ACTIVE NETWORK, INC.

By: Matt G. Landry

Its: Matt G. Landry, President