

**AMENDMENT #1 TO AIRPORT ADVERTISING AGREEMENT
BETWEEN THE CITY OF YAKIMA
AND
BBOLD ADVERTISING AND MARKETING**

THIS AMENDMENT TO THE AIRPORT ADVERTISING AGREEMENT is made and entered into by and between the City of Yakima, the owner and operator of Yakima Air Terminal-McAllister Field, hereinafter referred to for purposes of this Amendment and the underlying Agreement as the "Airport", and BBold Advertising and Marketing, a corporation which is, or shall be prior to initiation of the contract term, registered with and qualified to do business in the State of Washington, hereinafter referred to as the "Contractor".

WHEREAS, the City of Yakima and Contractor entered into an Airport Advertising Agreement effective July 1, 2018; and

WHEREAS, that Agreement is being renewed for an additional term; and

WHEREAS, the parties wish to amend that agreement with mutually acceptable changes;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the Airport and the Contractor as follows:

Section 1. Article I, Term, subsection 1.1 of the Airport Advertising Agreement, dated July 1, 2018, shall be replaced with the following language:

1.1 This Agreement shall become effective at execution. The term of this Agreement shall commence on September 5, 2023, and continue for five (5) years thereafter. The term of this agreement may be extended at the sole discretion of the Airport for one additional five (5) year term. The Airport shall notify Contractor at least 30 days before the end of the term if it intends to extend this Agreement. If the Airport does not notify the Contractor, this Agreement shall terminate at the end of the term or the extension. In the Airport's determination as to whether to exercise its option to extend the Agreement, Contractor must at a minimum meet the following operational standards, though if these standards are met the Airport retains the option to not extend the Agreement:

- a. Contractor will continue to invest and update the advertising methods to reflect modern age displays with a professional look;
- b. Contractor will actively pursue businesses and industries that showcase what the Yakima Valley offers to its visitors. (Subject to availability of displays for sale),
- c. Contractor will begin the replacing backlit display units with video screens with the priority being the baggage claim area followed by the eastside wall of the secured gate area.
- d. Contractor will ensure that at least 75% of advertisers at the Airport are local and regional advertisers, with regional advertisers being defined as advertisements for services or goods located in Washington, Oregon, Idaho or British

- Columbia;
- e. Contractor will provide architect-approved engineering drawings of improvements installed in the facility;
 - f. Contractor will provide its personnel sufficient time for display case relocation to be completed within 14 days of Airport request;
 - g. Contractor will provide maintenance staff and scheduling, with onsite availability within 48 hours upon Airport or Advertiser request for service;
 - h. Contractor will provide graphic guidance to advertisers and obtain written Airport approval of all graphic renditions prior to install; and
 - i. Contractor will assist Airport staff in public relations efforts including media release support.

Section 2. Article I, Term, subsection 1.2 of the Airport Advertising Agreement, dated July 1, 2018, shall be deleted from the Agreement.

Section 3. Article II, Privileges and Obligations of the Contractor, subsection 2.3 of the Airport Advertising Agreement, dated July 1, 2018, shall be replaced with the following language:

- 2.3 All installations shall be approved by Airport Management by prior written approval, which may be by electronic mail, and shall be in good taste, professionally developed, and of such high caliber as to contribute to the establishment of the Facility as a prestigious location for commercial advertising media.

Section 4. Article IX, Compliance, subsection 9.2, of the Airport Advertising Agreement, dated July 1, 2018, shall be replaced with the following language:

- 9.2 Except as otherwise provided herein, on or before their respective due dates Contractor shall pay to the appropriate authority all federal, state and local taxes which may be levied on account of the business being conducted in the Assigned Areas, or in good faith timely contest the same. It is the expressed intent of the parties that this Agreement grant no real property rights to Contractor. Contractor's advertising displays and equipment shall not be viewed as Contractor's real property. The Airport shall not assess or bill Contractor for any property, real estate, or lease tax. Provided, however, if it should be determined that a leasehold excise tax is owed for the rights granted to Contractor under this Agreement, Contractor shall remit any and all such taxes owed to the Airport within 30 days of written notice of the tax liability. Contractor shall maintain in current status all federal, state, and local licenses and permits required for the operations of the business conducted by Contractor.

Section 5. Article XI, Insurance and Indemnification, subsection 11.1, of the Airport Advertising Agreement, dated July 1, 2018, shall be replaced with the following language:

11.1 Indemnification and Hold Harmless

- a. Contractor shall take all necessary precautions in performing the Services to prevent injury to persons or property. The Contractor agrees to release, indemnify, defend, and hold harmless the City of Yakima, its elected and appointed officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration

actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of the Contractor, or any Contractor's agent or subcontractor, in performance of this Agreement.

- b. **Industrial Insurance Act Waiver.** It is specifically and expressly understood that the Contractor waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW, solely for the purposes of this indemnification. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. Contractor shall require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.
- c. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City of Yakima, the Contractor's liability, including the duty and cost to defend, shall be only to the extent of the Contractor's negligence.
- d. Nothing contained in this Section or this Contract shall be construed to create a liability or a right of indemnification in any third party.
- e. The terms of this section shall survive any expiration or termination of this Contract.

Section 6. Article XI, Insurance and Indemnification, subsection 11.2, of the Airport Advertising Agreement, dated July 1, 2018, shall be replaced with the following language:

- 11.2 At all times during performance of the Services and this Contract, Contractor shall secure and maintain in effect insurance to protect the City of Yakima and Contractor from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance of this Contract.

Contractor shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City of Yakima reserves the right to require higher limits should it deem it necessary in the best interest of the public. Contractor will provide a Certificate of Insurance to the City of Yakima as evidence of coverage for each of the policies and outlined herein. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the City of Yakima, prior to commencement of work.

Failure of City of Yakima to demand such verification of coverage with these insurance requirements or failure of City of Yakima to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Contractor's insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this Contract. Any insurance, self-insurance or insurance pool coverage maintained by the City of Yakima shall be in excess of the Contractor's insurance and neither the City of Yakima nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by Contractor's insurance. All additional insured endorsements required by this Section shall include an explicit waiver of subrogation.

If at any time during the life of the Contract, or any extension, Contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City of Yakima to terminate the Contract.

11.2.1 **Commercial General Liability Insurance.** Before this Agreement is fully executed by the parties, Contractor shall provide the Airport with a certificate of insurance as proof of commercial liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City of Yakima and Airport, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the Airport thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

11.2.2 **Automobile Liability Insurance.**

(a) If Contractor owns any vehicles, before this Agreement is fully executed by the parties, Contractor shall provide the Airport with a certificate of insurance as proof of automobile liability insurance and personal umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate.

(b) If Contractor does not own any vehicles, only "Non-owned and Hired Automobile Liability" will be required and may be added to the commercial liability coverage at the same limits as required in that section of this Agreement, which is the Section entitled "Commercial General Liability Insurance".

(c) Under either situation described above, the required certificate of insurance shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the City of Yakima, the Airport, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the Airport thirty (30) calendar days prior written

notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

11.2.3 Statutory workers' compensation and employer's liability insurance as required by state law.

Failure of either or all of the additional insureds to report a claim under such insurance shall not prejudice the rights of the City of Yakima, the Airport, its officers, employees, agents, and representatives there under. The Airport, the City of Yakima, and its elected officials, officers, principals, employees, representatives, and agents shall have no obligation for payment of premiums because of being named as additional insureds under such insurance. None of the policies issued pursuant to the requirements contained herein shall be canceled, allowed to expire, or changed in any manner that affects the rights of the City of Yakima and Airport until thirty (30) days after written notice to the Airport of such intended cancellation, expiration or change.

Section 7. Article XII, Termination by Airport, subsection 12.4, of the Airport Advertising Agreement dated July 1, 2018, shall be added to read as follows:

12.4 The Airport may terminate this Agreement for its convenience, in whole or in part, provided the Contractor upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, of its intent to terminate.

Section 8. Article XX, General Provisions, subsection 20.4, of the Airport Advertising Agreement dated July 1, 2018, shall be amended to reflect that the new person to which Notice should be provided to the City is Robert Hodgman, Airport Director. Mr. Hodgman's email address is robert.hodgman@yakimawa.gov. All other contact information listed remains the same.

CITY OF YAKIMA

By: _____
Robert Harrison, City Manager

Date: _____


ATTEST:

By: _____
Rosalinda Ibarra, City Clerk

BBOLD ADVERTISING AND MARKETING

By:  _____
Shane G. Pierone

Date: 8/23/2023

By:  _____
DeNard Jones

Date: 8.23.23

STATE OF WASHINGTON)

County of Yakima)

) ss
)

I certify that I know or have satisfactory evidence that Shane G. Pierone, BBold Advertising and Marketing Partner, signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Date 8/23/23

By: Shelby M. Barrett

Notary Public for the State of Washington

Residing at: Yakima WA

Appointment Expires April 18, 2026

STATE OF WASHINGTON)

County of Yakima)

) ss
)

I certify that I know or have satisfactory evidence that DeNard Jones, BBold Advertising and Marketing Partner, signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Date 8/18/23

By: Shelby M. Barrett

Notary Public for the State of Washington

Residing at: Yakima WA

Appointment Expires April 18, 2026

STATE OF WASHINGTON)

County of Yakima)

) ss
)

I certify that I know or have satisfactory evidence that Robert Harrison signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Yakima, Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

By: _____

Notary Public for the State of Washington

Residing at: _____

Appointment Expires _____