

PUBLIC SERVICES CONTRACT
BY AND BETWEEN
DOWNTOWN OVERLAND PARK PARTNERSHIP, INC.
AND
THE CITY OF OVERLAND PARK

THIS CONTRACT is made and entered into as of this 14th day of December 2009, by and between Downtown Overland Park Partnership, Inc., (hereinafter referred to as the "Contractor") and the City of Overland Park, Kansas (hereinafter referred to as the "City").

WHEREAS, K.S.A. 12-1790 provides that a city may contract with a not-for-profit corporation to provide specified services within an established Business Improvement District; and

WHEREAS, the Contractor is such a not-for-profit corporation; and

WHEREAS, the City is a major investor in the Downtown area because of the public improvements such as streets, sidewalks, lighting, parking lots, and storm water drainage facilities; and

WHEREAS, the Contractor represents business and property owners in the Downtown business area who are significant private investors in the commercial structures, land, and businesses; and

WHEREAS, the City has established the Downtown Business Improvement District [BID] to further the goals of maintaining and redeveloping the Downtown business area by providing services to the businesses in the District; and

WHEREAS, the Contractor desires to support and facilitate business activity and the maintenance of businesses in the Downtown business area of the City of Overland Park.

WITNESSETH, that in consideration of the mutual covenants and agreements herein made and contained and for good and valuable consideration, the City and Contractor hereby contract according to the following terms and conditions, to wit:

I. PURPOSE

The Contractor shall serve and act as the not-for-profit corporation provided by the Business Improvement District Act, with its sole purpose and mission being to restore or promote the economic vitality of the Downtown Business Improvement District of Overland Park, Kansas, by implementation of those services permitted by K.S.A. 12-1784, and for which the Governing Body of the City of Overland Park, Kansas, shall have previously approved a budget.

II. SCOPE OF SERVICES

The Contractor will provide the following services and improvements:

- A. Civic Promotion Events: Provide for advertising, support material and the provision of entertainment for civic promotions and events open to the general public in the Downtown Business Improvement District.
- B. Beautification Project: Provide for projects to improve the aesthetic quality of the Downtown Business Improvement District.
- C. Downtown Image Promotion: Provide for advertising to promote the image of the Downtown Business Improvement District, both locally and regionally, by various media.
- D. Signage: Provide banners and brackets that promote the Downtown area in locations approved by the Downtown Business Improvement District Advisory Board and in a manner consistent with City ordinances, codes, and regulations.
- E. Maintenance: Conduct the following maintenance activities:
 - 1. Provide regular trash pickup in the Farmers Market parking lot, the Clock Tower Plaza, and 80th Street.
 - 2. Provide maintenance to landscape beds and irrigation systems along roads and streets.
 - 3. Work with property and business owners to maintain vegetation and unwanted weeds in the sidewalks.
 - 4. Make minor repairs to city-provided street furniture as required.
- F. Contract Administration: Provide for the reasonable and prudent administration of this Contract.
- G. Business Recruitment and Retention Process: Provide process to identify, recruit and retain businesses to promote the economic balance and well-being of Downtown Overland Park.
- H. Building Code and Zoning Ordinance Amendments: Participate in a comprehensive review of the building codes and zoning regulations resulting in recommendations to these codes to enhance development and redevelopment opportunities in Downtown Overland Park.
- I. Coordinate with the City, City staff, business owners, property owners and

area residents, the implementation of appropriate recommendations adopted as part of the Destination Downtown Overland Park Master Plan and as part of the Downtown Overland Park Form Based Code when adopted.

- J. Farmer's Market: Provide for the operation, promotion and administration of the Overland Park Farmer's Market.
- K. Support City staff in ensuring that Business Improvement District (BID) fee assessment calculations are updated and accurate.

III. DURATION

The services of the Contractor are to commence upon approval of this Contract by the Governing Body of the City. All tasks defined in the Scope of Services shall be undertaken and completed in such sequences as to assure the expeditious completion in light of the purposes of this Contract; but, in any event, all of the services required shall be completed by December 31, 2010.

IV. COMPENSATION AND METHOD OF PAYMENT

- A. The Contractor shall, not later than March 15 of each year, or such later time as agreed to by the City, submit to the Downtown Business Improvement District Advisory Board, as established under O.P.M.C. 2.14.050, an annual budget in the format used by the City for the following calendar year. Said budget shall be reviewed and amended or approved by the Downtown Business Improvement District Advisory Board prior to submission to the Governing Body of the City for amendment and/or approval.

The Contractor shall expend funds collected through the business service fee in accordance with the Suggested Budget Detail for Calendar Year 2010 as submitted to and approved by the Governing Body, a copy of which is attached to this Contract. Any individual or cumulative deviation in excess of ten (10) percent from the budget for 2009 shall require prior approval of the Governing Body.

The budget shall not be amended in a manner that imposes the obligation upon the Contractor to provide other services than those proposed in the budget submitted by the Contractor. Submission to the Governing Body shall not be later than April 15 of each year.

- B. The City hereby agrees to compensate the Contractor in an amount equal to the reasonable and prudent costs of the services described in the approved budget. The total compensation by the City shall be limited to the amount collected from the Downtown Business Improvement District. Payments shall be made in a minimum of three (3) increments [usually in March, July, and December] in amounts corresponding to those monies

collected by the City in the previous three-month period. Payments will be made no later than the 15th day of the above referenced month.

- C. It is expressly understood and agreed that notwithstanding any budget which may be approved for the Contractor, the City is under no obligation to provide the full amount of such budgeted funds to the Contractor.

The City is only obligated to pay to the Contractor those funds which are received by the City as service fees under the annual levy made upon those within the District. Any excess amount shall not be paid over to the City's general fund but shall be held in a separate account by the Contractor for future use hereunder. The Contractor shall be responsible for payments of all costs and expenses exceeding the amount of the service fees actually collected by the City.

V. AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit authorized representatives of the City to inspect and audit all data and records of the Contractor related to their performance under this Contract and may be required to submit a financial report of all expenditures to the City's Governing Body.

If a preliminary inspection indicates the need for a complete, independent certified audit, or if for any reason the Finance Director shall determine there is a need for an audit, the City Finance Director may direct the City auditors to perform such work, and the costs and expenses of such audit shall be paid out of the Contractor's budget.

VI. SUBCONTRACTS

The Contractor agrees that this Contract shall not be transferred, assigned, conveyed, or otherwise disposed of without the prior consent of the City. To accomplish the purposes of this Contract, the Contractor may subcontract for professional services. Notification of any subcontract must be made to the Director of Planning and Development Services and a copy of all subcontracts must be provided to the City.

VII. INDEPENDENT CONTRACTOR

The Contractor is engaged and retained as an independent contractor and not as an officer, agent, servant, or employee of the City. The Contractor shall be responsible for hiring its employees and shall provide all necessary worker's compensation insurance, all liability insurance for the wrongful or negligent acts of its employees, and for all other items incidental to the employment of said persons, such as but not limited to, federal and state withholding taxes and FICA. It is expressly agreed by the parties that the Contractor shall save and hold harmless the City from any and all claims and liability of any kind whatever arising from the conduct of the Contractor, its agents, servants, officers, and employees in the performance of this agreement. The Contractor cannot and will not obligate the City in any manner in the performance or attempted performance of its duties hereunder.

VIII. TERMINATION

The City shall have the right at it's option to terminate this agreement and be free of all obligations hereunder in the event that the Contractor is in default or violates the terms, conditions, assurances or certifications of this agreement.

In addition, either party may terminate this agreement by giving to the other party 90 (ninety) days written notice.

Upon termination of this Agreement, the Contractor shall deliver to the City all funds received by the Contractor from the City and representing sums collected by the City from the Business Improvement District service fees then remaining in the possession of the Contractor after the Contractor's payment of all allowable expenses. Additionally, this Contract shall automatically terminate by any act of law or by a court order.

IX. INTEREST OF LOCAL PUBLIC OFFICIALS

No member of the Governing Body of the City of Overland Park, or any officers, employee, or agent of the City who exercises any functions or responsibilities in connection with review or approval of the work to which this Contract pertains shall have any personal interest, direct or indirect, in this Contract or the proceeds thereof, except as permitted by state statute.

X. LIABILITY INSURANCE

The Contractor shall hold the City free and harmless from any liability or obligation which shall arise by reason of any action of the Contractor or subcontractor or employee performing under the provisions of the Contract. The Contractor shall maintain a proof of insurance which covers it for loss, damage, or injury to persons or property in a minimum amount of \$500,000, and such policy shall be available for inspection by the City at any time.

XI. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

- A. The Contractor shall be an equal opportunity employer as defined by Section 2000(e) of Chapter 21, Title 42, of the United States Code Annotated.
- B. The Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Contract because of race, religion, color, sex, disability, national origin, or ancestry unrelated to such person's ability to engage in the particular work.

- C. In all solicitations or advertisements for employees, the Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.
- D. If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1030, as amended, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting party.
- E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting party.

The Contractor shall include the provisions of paragraphs A through E inclusively of this subsection in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

XII. SEXUAL HARASSMENT

- A. Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964. Any such proven harassment of employees or of other persons shall be deemed a breach of the present Contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency.
- B. Applying general Title VII principles, the Contractor is responsible for the acts of its agents, employees, and subcontractors with respect to sexual harassment regardless of whether the specific acts complained of were authorized or were forbidden by the Contractor and regardless of whether the Contractor knew or should have known of their occurrence.

XIII. COLLECTION OF SERVICE FEES

The City will use all lawful means to collect the annual service fee(s) from those obligated to pay such fee(s) and who fail or refuse to do so. The City will make reasonable effort to collect delinquent fees in a timely fashion.

XIV. COOPERATION WITH DOWNTOWN BUSINESS IMPROVEMENT ADVISORY BOARD

The Contractor agrees to cooperate fully with the Downtown Business Improvement District Advisory Board as established in O.P.M.C. 2.14.040 and shall consult said Board at least quarterly, if not more frequently as requested by the Board, for its recommendations concerning the programs and expenditures to restore or promote the economic vitality of the District.

XV. WAIVER

The failure of the City or the Contractor to insist on strict performance of any of the terms and conditions herein shall not be deemed a waiver of the right to demand strict performance of that or any other provision herein at any time thereafter.

XVI. NOTICE

Any and all notices required to be given under this Agreement or notices given in connection with this Agreement shall be given in writing, addressed as follows:

CITY: City Clerk
8500 Santa Fe Drive
Overland Park, KS 66212

CONTRACTOR: Downtown Overland Park Partnership, Inc.
7315 West 79th Street
Overland Park, KS 66204

Either party may change the address to which notices to such party are transmitted by so notifying the other party hereto.

XVII. VERBAL STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the City and District, and such statements shall not be effective or construed as entering into, or forming a part of, or altering in any way whatsoever, the written agreement.

XVIII. TITLES AND SUBHEADS

The titles or subheadings used in this Agreement and in the attachments hereto are understood to be for convenience or reference only, and shall not be taken or considered as being a part thereof, or as having any bearing on the interpretation thereof.

XIX. PROVISIONS SEPARABLE

It is the intent of the parties hereto, in the preparation and execution of this Agreement, to avoid a conflict with the applicable laws or regulations of the State of Kansas, and if any provision herein is found to be in conflict with the State Cash Basis or Budget Law, or any other state law or regulation, it is the intent of the parties hereto that such provision shall have no force and effect, and the remainder of the Agreement shall be valid as though such conflicting provision had not been written or made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

Carl Gerlach
Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

J. Bart Budetti
Senior Assistant City Attorney

DOWNTOWN OVERLAND PARK PARTNERSHIP, INC.

John Miller
President

ATTEST:

Robin Fish
Executive Director