

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

THIS CONTRACT (this "Contract") is made and entered into as of this ____ day of _____ 2014, by and between DOWNTOWN OVERLAND PARK PARTNERSHIP, INC. (the "Contractor") and the CITY OF OVERLAND PARK, KANSAS (the "City").

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

WHEREAS, pursuant to the Business Improvement District Act (K.S.A. 17-1781 et. seq.), the City has established the Downtown Business Improvement District to further the goals of maintaining and redeveloping the Downtown Overland Park business area by providing services to the businesses in said area (codified in O.P.M.C. Chapter 2.14); and

WHEREAS the City also has a vested interest in the success of the Downtown Business Improvement District by operating and managing the City's Farmers' Market (the "Farmers' Market"); and

WHEREAS, pursuant to K.S.A. 12-1790 and O.P.M.C. Chapter 2.14, the City may contract with a not-for-profit corporation to provide specified services within an established business improvement district; and

WHEREAS, the Contractor, a not-for-profit corporation, represents businesses and property owners in the Downtown Business Improvement District who are significant private investors in the commercial structures, land, and businesses; and

WHEREAS, the Contractor desires to support and facilitate business activity and the retention of businesses in the Downtown Business Improvement District.

WITNESSETH, that in consideration of the mutual covenants and agreements herein made and contained and for good and valuable consideration, the City and the 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 for by the Business Improvement District Act and O.P.M.C. Chapter 2.14, with its sole purpose and mission being to restore or promote the economic vitality of the Downtown Business Improvement District by implementation of those services permitted by said Act and said City Code, and for which the City's Governing Body shall have previously approved a budget.

II. SCOPE OF SERVICES

The Contractor will provide the following services:

- A. Civic Promotion Events: Provide for advertising, support, material and entertainment for civic promotions and events open to the general public in the Downtown Business Improvement District. These primary civic promotions and events include, but are not limited to, The Mayor's Holiday Tree Lighting, Fall Festival Parade and the ongoing Farmers' Market. The above is not meant to limit the promotion of other events sponsored by the Contractor.
- B. Beautification: 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 or other signage that promote the Downtown Business Improvement District in locations approved by the City and in a manner consistent with City ordinances, codes, and regulations. All proposed signage shall be reviewed by the City before installation. Except for sponsorship banners or other signage subject to the provisions of Section II J.5 below, no such banners or other signage shall include a commercial message for any specific business or organization other than the City of Overland Park or the Downtown Partnership.
- E. Maintenance: Conduct the following maintenance activities within the Downtown Business Improvement District:
 - 1. Provide regular trash pickup and recycling in the Farmers' Market parking lot, the Clock Tower Plaza, and 80th Street.
 - 2. Maintain landscape beds and irrigation systems along the 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 a process to identify, recruit and retain businesses to promote the economic balance and well-being of the Downtown Business Improvement District. Working in

partnership, the Contractor has a desire to expand its role and expertise in this area. The Contractor shall provide specific training to its Executive Director to gain knowledge and expertise in performing economic development activities.

- H. Building Code and Zoning Ordinance Amendments: Participate in a comprehensive review of the building codes and zoning regulations resulting in recommendations for amendments to these codes to enhance development and redevelopment opportunities in the Downtown Business Improvement District.
- I. Coordination: Coordinate with the City, City staff, business owners, property owners and area residents, in the implementation of the Downtown Node of Vision Metcalf Plan and the Downtown Overland Park Form Based Code.
- J. Farmers' Market: Coordinate with the City's Recreation Services Department for the promotion and marketing of the Farmers' Market. Specifically:
 - 1. The Contractor shall develop an annual marketing/promotional plan for the Farmers' Market, subject to approval of the City's Recreation Services Department. The plan will be prepared in conjunction with the City's Recreation Services Department and completed by March 1 for implementation thereafter.
 - 2. The overriding and singular goal of the marketing/promotional plan shall be to demonstrate the means and methods and specific actions for promoting the sale of produce at the Farmers' Market.
 - 3. All correspondence, banners, other signage, social media, print media and other advertising material shall prominently promote the Farmers' Market and the Farmers' Market brand. A consistent and continual use of the Farmers' Market brand shall be utilized, subject to the provisions of this subsection J. Any such banner or other signage shall be consistent with City ordinances, codes, and regulations, and shall be reviewed by the City before installation.
 - 4. Official terms of the Farmers' Market brand that will be utilized in such promotional materials are: *The Overland Park Farmers' Market*; *The Farmers' Market*; and *The Overland Park Farmers' Market Pavilion*. The City retains all rights to these brand designations and hereby grants Contractor a license for their use only as provided for in this subsection J or as otherwise may be authorized by the City in writing.

Subject to the provisions of this subsection J, the Contractor shall

have a license for the right to utilize the Farmers' Market brand, in appropriate format, to promote the Farmers' Market. It is the goal to keep in the foremost consciousness of the businesses and the community that the Farmers' Market is a specific community event and a specific community place to be promoted, utilized and enhanced.

5. The Contractor may sell promotional sponsorship for the Farmers' Market, the Clocktower Plaza (on market days only), and for other downtown Civic Promotional Events. It is intended that a portion of this sponsorship revenue shall be applied to the promotion of the Farmers' Market. The Contractor shall provide a summary of the revenue generated for each year's sponsorship sales during discussion of the annual budget.

Sponsorship banners for the Farmers' Market sponsors shall prominently display the Farmers' Market brand using the terminology previously identified. Such banners may also include the corporate name, logo or slogan of the sponsor in a manner that is subordinate to the Farmers' Market brand. Such banners may be mounted on the Farmers' Market pavilion for the full duration of the Farmers' Market season. Sponsorship banners for the Clocktower Plaza shall include a reference to the educational or entertainment event being sponsored. Such banners may also include the corporate name, logo or slogan of the sponsor in a manner that is subordinate to the sponsored event. Such banners may be displayed within the Clocktower Plaza for the day of the sponsored event only.

The procurement process for sponsorships for both the Farmers' Market and the Clocktower Plaza (on market days) shall be designed to be open and competitive. The specifics of the process shall be approved by the Director of Planning and Development and the Director of Recreation Services (or their designees). Other types of event sponsorships may be sold in whatever manner the Contractor deems appropriate. Any banner or other signage under this subsection shall be subject to all applicable City ordinances, codes, and regulations, including any applicable Special Event Permit, and shall be reviewed by the City before installation.

6. The Contractor shall coordinate with the City's Parks and Recreation Staff to develop and administer an attendance survey at The Farmers' Market.
7. The marketing plan shall identify the specific methods for reaching an under 30 demographic, older demographic and a demographic utilizing the SNAP program.

8. The Contractor shall inform and coordinate, as possible, with the City to promote the Farmers' Market.
 9. The Contractor shall address and focus promotional efforts on Wednesdays and during early/late seasons.
 10. Execute objectives of the marketing/promotional plan to include providing marketing, media promotion, event entertainment, promotional signage, and advertising for the Farmers' Market.
- K. BID Service Fee: Support and assist City staff by:
1. Regularly compiling and helping City staff to keep a current list of all businesses in the Downtown Business Improvement District and determining each business' respective floor area or land area.
 2. Ensuring that the business improvement service fee assessment (the "BID service fee") calculations are updated and accurate.
 3. Assisting City staff in identifying and conducting enforcement visits for businesses and property owners who are in arrears for the payment of the annual BID service fee.
- L. Reports: Provide reports to the appropriate City Council Committee(s) on the activities and issues concerning the Downtown Business Improvement District. Such reports will be provided quarterly or as otherwise requested by the City.

III. DURATION

The services of the Contractor are to commence upon approval of this Contract by the City's Governing Body; and this Contract shall supersede and replace any preceding public service contract or other agreement between the parties. 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, 2015.

IV. BUDGET, COMPENSATION AND METHOD OF PAYMENT

- A. The Contractor shall, not later than March 15, or such later time as agreed to by the City, submit to the Downtown Business Improvement District Advisory Board (established under O.P.M.C. 2.14.040) an annual budget for the Contractor's operations and its performance of the Scope of Services and any other requirements under this Contract 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 City's Governing Body for amendment and/or

approval. Submission of the budget for review by the Business Improvement District Advisory Board and the Governing Body shall be in accordance with the City's budget development process and schedule.

- 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 2015 budget. The total compensation by the City shall be limited to the amount collected from the BID service fees and any grant determined to be appropriate. 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 upon written request by the Contractor, but no later than the 15th day of the above referenced month.
- C. The Contractor shall expend funds collected through the BID service fee in accordance with the 2015 budget, as submitted to and approved by the Governing Body.
- D. 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 BID service fees under the annual levy made upon those within the Downtown Business Improvement 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.
- E. The City may, upon approval of the Governing Body, also provide an annual grant to supplement the annual amount of BID service fees collected. This grant amount will be approved by the Governing Body during the City's annual budget process and may be increased or decreased. The total amount of the grant will be based on the proven need of the Contractor to fulfill its obligations and responsibilities under this Contract. The budgeted grant amount for 2015 is \$108,300.

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 the Contractor's performance under this Contract; and the Contractor 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 City's Chief Financial Officer shall determine there is a need for an audit, the City 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 written 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 City's 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, subcontractors, vendors, officers, and employees in the performance of this Contract. 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 its option to terminate this Contract 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 Contract.

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

Upon termination of this Contract, 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 BID 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 City's Governing Body, 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

During the performance of this contract, Contractor agrees to maintain insurance coverage of the types and minimum liability as set forth below. Contractor shall furnish to the City a Certificate of Insurance verifying such coverage, listing the certificate holder as an additional insured for the general liability coverage. Prior to any material change or cancellation, the Owner will be given thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

- A. Commercial General Liability insurance on an occurrence basis in amounts no less than \$500,000 bodily injury and property damage per occurrence, including personal and advertising injury; \$1,000,000 general aggregate.
- B. Workers' Compensation and Employers' Liability, protecting against all claims under applicable state Workers' Compensation laws. Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a Workers' Compensation law. The policy shall include "all states" insurance, and the liability limits shall not be less than Statutory (Workers' Compensation); \$100,000 / \$500,000 / \$100,000 (Employers Liability).

Industry Ratings – The City will only accept coverage from an insurance carrier who carries a Best's policyholder rating of A:-VIII or better; or is a company approved by the City.

XI. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

The Contractor agrees that:

- A. During the performance of this Contract or any subcontract resulting thereof, the Contractor, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Contract because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income.
- B. In all solicitations or advertisements for employees the Contractor, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.
- C. If the Contractor, a subcontractor or vendor fails to comply with the manner in which the Contractor, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor, subcontractor or vendor

shall be deemed to have breached this Contract, and it may be canceled, terminated or suspended, in whole or in part, by the City;

- D. If the Contractor, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, the Contractor, subcontractor or vendor shall be deemed to have breached this Contract, and this Contract may be cancelled, terminated or suspended in whole or in part by the City;
- E. The Contractor shall include the provisions of paragraphs A. through D. above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Contract and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

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. RESTRAINT OF TRADE

The Contractor shall not, in accordance with K.S.A. 50-101, K.S.A. 50-112 or any other Statute, engage in any activities or events that create a restraint of trade.

The Contractor shall include the provisions of paragraphs (a) thru (d) inclusively of K.S.A 50-101 in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor, if applicable.

XIV. COLLECTION OF SERVICE FEES

The City will lawfully collect the annual BID service fee(s) from those obligated to pay such fee(s) and who fail or refuse to do so; provided, however, the City reserves the right to exercise good business judgment to determine whether an obligation is or is not collectable. The City will make reasonable effort to collect delinquent fees in a timely fashion. Upon request, the Contractor will assist the City with its collection efforts.

XV. COOPERATION WITH DOWNTOWN BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD

The Contractor agrees to cooperate fully with the Downtown Business Improvement District Advisory Board, and shall consult said Board, when required or when requested by said Board, for its recommendations concerning the programs and expenditures to restore or promote the economic vitality of the Downtown Business Improvement District.

XVI. 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.

XVII. NOTICE

Any and all notices required to be given under this Contract or notices given in connection with this Contract 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.

XVIII. VERBAL STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Contract shall supersede all prior verbal statements of any and every official and/or other representative of the City and the Contractor, 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 Contract.

XIX. TITLES AND SUBHEADS

The titles or subheadings used in this Contract 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.

XX. PROVISIONS SEPARABLE

It is the intent of the parties, in the preparation and execution of this Contract, 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 that such provision shall have no force and effect, and the remainder of this Contract 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.

CITY OF OVERLAND PARK, KANSAS

**DOWNTOWN OVERLAND PARK
PARTNERSHIP, INC.**

Carl Gerlach, Mayor

Eric Kratty, President

ATTEST:

ATTEST:

Marian Cook, City Clerk

Robin Fish, Executive Director

APPROVED AS TO FORM:

Stephen B. Horner, Senior Assistant City Attorney