

## SPONSORSHIP SALES CONSULTANT AGREEMENT

This Agreement (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Premier Sports Management, Inc., (“Premier”) and the City of Overland Park (“Overland Park”).

### RECITALS

WHEREAS, Overland Park is building the Overland Park Soccer Complex (“Facility”) and wishes to engage Premier for Sponsorship and Sales Consultation Services to provide funding for Facility;

WHEREAS, Premier wishes to serve as the Sponsorship and Sales Consultation Services company to handle such sponsorship activity; and

WHEREAS, the acquisition and construction of the Facility has been financed with proceeds of Overland Park’s [name of bonds] (the “Bonds”); and

WHEREAS, Premier and Overland Park wish to set out their agreement regarding their respective rights and responsibilities in the development and execution of this consulting arrangement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term of Agreement. This Agreement shall commence on the date hereof and shall continue for a term of three (3) years (“Initial Term”), unless earlier terminated in accordance with its terms. At the end of said Initial Term, this Agreement shall automatically renew for successive subsequent one (1) year terms thereafter unless either party notifies the other thirty (30) days before the end of the existing term that the party does not intent to renew or unless otherwise terminated in accordance with the terms and conditions of this Agreement.

2. Termination of the Agreement. This Agreement shall terminate upon any one or more of the following events:

(a) the mutual agreement by the parties in writing setting forth the effective date of termination;

(b) either party becoming insolvent, or the subject of bankruptcy, receivership, reorganization, dissolution, liquidation or other similar proceedings, which proceedings are not dismissed within sixty (60) days of their commencement;

(c) Premier fails to provide an initial prospect list, weekly progress updates and sales tracking log or a six-month progress review;

(d) if Premier has not signed sponsorship agreements totaling a minimum of Two hundred thousand dollars (\$200,000.00) within eighteen (18) months of the initial signing of Agreement;

(e) a material breach by either party of any term or condition set forth in this Agreement; provided, however, the non-breaching party must provide written notice of the breach to the other party and allow for a cure period of not less than thirty (30) days in which event, if the cure is effected within the time set forth, the Agreement shall continue or, in the event that the breaching party does not cure within the stated time, the Agreement shall terminate at the end of the stated cure period.

(f) Overland Park fails to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year as provided in Section 7, below.

(g) The City elects at its convenience to terminate the agreement with thirty (30) days written notice to Premier; provided, however, if the City elects to terminate the agreement pursuant to this subsection (g) the City shall pay Premier the sum of ten thousand (\$10,000.00) dollars as a severance payment and in full settlement of any claims that Premier may allege for commissions on sponsorship agreements that are not fully executed before the termination of the agreement.

3. Independent Contractor Status. It is mutually understood and agreed that Premier and Overland Park shall act as independent contractors in their respective performances under this Agreement. No provision herein shall be deemed or construed to create a joint venture, partnership or employment relationship between Premier and Overland Park. None of the provisions of this Agreement are intended to create nor shall be construed to create any relationship between Premier and Overland Park other than that of independent contractors.

4. Obligations, Rights and Representations of Premier.

(a) Marketing and Sponsorship Sales of Facility. Except as otherwise provided in this Agreement, Premier shall have the exclusive right to market and sell sponsorships for Facility subject to the limitations provided herein. As part of Premier's right to market the Facility, Premier shall have the right to establish a corporate marketing program and offer for sale a Naming Rights Sponsor and other sponsorship packages as mutually agreed upon by Premier and Overland Park. Any sales shall be subject to City approval and the limits caused by the tax-exempt bonds. All sales shall be compatible with youth soccer and will not include incompatible products or services including but in no way limited to alcohol and tobacco. Premier acknowledges that Overland Park has the right to allow additional sponsorships relating to tournaments held at the Facility and that the approval of those sponsorships shall be within the sole discretion of Overland Park: provided, however, Overland Park will keep Premier informed about said tournament sponsorships and will, on request, meet and confer with Premier concerning those sponsorships, and will make a good faith effort to avoid or mitigate potential conflicts between tournament sponsorships and sponsorships obtained by Premier.

(b) Confidentiality. Premier agrees to maintain confidentiality of any proprietary information prepared or developed by Overland Park and which information Overland Park identifies in writing to Premier as proprietary information. Upon termination of this Agreement, all documents, records, notebooks, or other similar repositories of or documents containing any confidential information, including all existing copies or extractions thereof, then in Premier's possession or control, whether prepared by Premier or others, shall be the sole property of Overland Park and shall promptly be returned to Overland Park. Proprietary information, as used herein, does not include (i) information which is generally available to the public through no act or failure to act of Premier, (ii) information which was known to the party prior to this Agreement being executed or becomes known after execution of this Agreement through a third party not previously known to Premier to be prohibited from making such disclosure or (iii) information that is required by law or legal process to be made available to third parties.

(c) Services. Premier shall be responsible for the strategic development of the sponsorship program and the sales process of seeking corporate sponsorships for the Facility. Premier agrees to appoint a Project Manager and provide additional staff to help execute the sponsorship process. Premier shall provide Overland Park with an initial prospect list, with weekly progress updates and sales tracking log, and a six-month progress review. Premier shall also provide Overland Park with signed contracts from successful sales to corporate sponsors in such Overland Park may execute contract terms and send invoices to said companies.

(d) Notification. Premier shall provide notice to Overland Park of receipt of any notice, whether oral or written, of any action proposed to be taken, or being taken, against Premier by or on behalf of any governmental agency, vendor of services or supplies, individual, association, corporation, or other person which action would result in Premier being unable to fulfill its obligations pursuant to this Agreement. Premier shall provide written notice of such proposed or actual action to be taken within three (3) business days of its receipt of such notification.

(e) Compliance. Premier shall agree to and comply with all other applicable terms and conditions of this Agreement in order to implement the intent of the parties in executing this Agreement.

(f) Hold Harmless and Indemnification.

(i) Definition

For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury,

including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this contract whether arising before or after the completion of the work required hereunder.

(ii) Indemnity

For purposes of this Agreement, Premier hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the City, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Premier's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of Premier, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Premier, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Premier's obligations under this section for work performed pursuant to this Agreement shall survive the termination or expiration of this Agreement.

(g) Non-Discrimination and Other Laws

(i) Premier agrees that:

Premier 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 Agreement because of race, religion, color, sex, disability, national origin, ancestry or age.

In all solicitations or advertisements for employees, Premier shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission).

If Premier fails to comply with the manner in which Premier reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Premier shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City.

If Premier is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Premier shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City.

Premier shall include all of the above provisions in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or Premier.

The provisions of this section shall not apply to an Agreement entered into if Premier:

- (A) employs fewer than four employees during the term of such Agreement; or
- (B) Agreements with the City cumulatively total \$5,000 or less during the fiscal year of the City.

(ii) Premier further agrees that Premier shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

(h) Premier warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Premier, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement. For the breach or violation of the foregoing provision, the City shall have the right to terminate the Agreement without liability and, at its discretion to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

5. Obligations, Rights and Representations of Overland Park.

(a) Rights and Ownership. Overland Park is the rightful owner of Facility and has taken all steps reasonably necessary to file a trade name or trademark and otherwise protect the Facility and its name. Premier agrees that the Facility and all intellectual property rights relating to the Facility, its name and logo, shall be and remain the sole property of Overland Park. Premier expressly agrees that neither it nor its agents, including sponsors, will assert any rights to any ideas, inventions, discoveries, concepts or methods, or improvements thereof, relating to the Facility during or related to the term of this Agreement. All such ideas, inventions, discoveries, concepts and methods, or improvements thereof, shall be automatically the sole and absolute property of Overland Park.

(b) Services. Overland Park shall provide Premier with all necessary information, including but not limited to, building details, renderings, construction timelines and any other reasonable information about Facility requested by Premier to allow for accurate presentation to potential corporate sponsors.

(c) Confidentiality. Overland Park agrees to maintain confidentiality of any proprietary information related to sponsorship procurement prepared or developed by Premier and which information Premier identifies in writing to Overland Park as proprietary information. Upon termination of this Agreement, all documents, records, notebooks, or other similar repositories of or documents containing any confidential information, including all existing copies or extractions thereof, then in Overland Park's possession or control, shall be the sole property of Premier, and shall be promptly returned to Premier. Proprietary information, as used herein, does not include (i) information which is generally available to the public through no act or failure to act of Overland Park, (ii) information which was known to the party prior to this Agreement being executed, or becomes known after execution of this Agreement through a third party, not previously known to Overland Park to be prohibited from making such disclosure, or (iii) information that is required by law, including but not limited to the Kansas Open Records Act, or legal process to be made available to third parties.

(d) Notification. Overland Park shall provide notice to Premier of receipt of any notice, whether oral or written, of any action proposed to be taken, or being taken, against Overland Park by or on behalf of any governmental agency, vendor of services or supplies, individual, association, corporation, or other person which action would result in Overland Park being unable to fulfill its obligations pursuant to this Agreement. Overland Park shall provide written notice of such proposed or actual action to be taken within three (3) business days of its receipt of such notification.

(e) Compliance. Overland Park shall agree to and comply with all other applicable terms and conditions of this Agreement in order to implement the intent of the parties in executing this Agreement.

6. Compensation. Overland Park shall pay to Premier a compensation package to include commission based on gross sales revenue as well as an initial consulting fee to cover initial project development and project expenses:

(a) Consulting Retainer. Premier shall receive a monthly retainer of ten thousand dollars (\$10,000.00) per month for the first three months of the contract covering February, March and April, 2009 for development services and fulfillment expenses. Development services include, but not limited to, creating the strategic plan of action for the sponsorship program for Facility, formulation of sponsorship packages, research and target market analysis. Fulfillment expenses include artwork design, production and printing of sales materials, postage and delivery charges, and meeting expenses.

(b) Sales Commission. Premier shall receive a commission of twenty-five (25) percent of all gross sales revenue generated from sponsorships of Facility. Premier shall receive commission payments within thirty (30) days of the receipt of said sponsorship revenue by Overland Park. Commissions on multi-year sponsorship contracts signed while this contract is in force shall continue to be paid to Premier following termination of contract; however, Premier will not be compensated for renewals signed after the date of termination. .

(c) Value-in-Kind. Premier shall receive a non-cash commission on sponsorship agreements commonly referred to as Value-in-Kind. Products, goods and services provided to Facility in exchange for sponsorship benefits shall be eligible for the same twenty-five (25) percent commission, but no cash shall be paid to Premier by Overland Park for such Value-in-Kind. As an example, if Premier sells a sponsorship package to a company or brand that includes an agreed upon dollar amount of said company's products, Overland Park shall receive seventy-five (75) percent of product allotment and Premier shall receive twenty-five (25) percent of product allotment. If product or services have no value to Premier, then Premier may elect to waive its share of the sponsorship agreement.

7. Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that Overland Park is obligated only to pay periodic payments or monthly installments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during Overland Park's then current budget year (i.e. January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should Overland Park fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to Overland Park of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have been appropriated and budgeted or are otherwise made available. Overland Park agrees to notify Premier of such termination, which shall not constitute a default under the Agreement, at least sixty (60) days prior to the end of Overland Park's then current budget year.

8. Miscellaneous.

(a) Non-Assignability. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns. This Agreement shall not be assigned by either party without the prior written consent of the other party. Except as provided otherwise herein, neither Premier nor Overland Park shall subcontract or delegate all or substantially all of its duties and obligations hereunder without the prior written consent of the other party.

(b) Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other terms or provisions.

(c) Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties hereto and supersedes all other agreements, oral or otherwise, regarding the subject matter of the parties hereto. This Agreement may be amended only by mutual agreement of the parties in writing and signed by both parties.

(d) Headings. The headings of the various sections of the Agreement are inserted merely for the purpose of convenience and do not, expressly or implicitly, limit or define or extend the specific terms of the sections so designated.

(e) Jurisdiction. The validity, enforceability and interpretation of any of the provisions of this Agreement shall be determined and governed by the applicable laws and regulations of the State of Kansas. The parties hereto agree that appropriate jurisdiction and venue in connection with this Agreement and the subject matter hereof shall be in the District Courts of Johnson County, Kansas.

(f) Waiver. Waiver of a term, condition or breach of any provision of this Agreement shall not be deemed a waiver of any other term, condition or breach of the same or different provision.

(g) Notices. Any notice required to be given hereunder shall be sufficient and deemed given when in writing, and sent by certified or registered mail, return receipt requested, first class postage prepaid, or by courier service, to the parties' principal offices, Attention: President.

(h) Remedies Cumulative. The parties agree that any and all remedies of either party for the breach of the Agreement shall be cumulative, and pursuing one remedy shall not be deemed to exclude any and all other remedies with respect to the subject matter hereof.

(i) Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF, this Agreement is executed by the parties as of the day and year first above written.**



**Premier Sports Management, Inc.**

**City of Overland Park**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Carl Gerlach

Title: \_\_\_\_\_

Title: Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
J. Bart Budetti  
Senior Assistant City Attorney