

AGREEMENT FOR SERVICES  
FOR  
OVERLAND PARK ARTS AND RECREATION FOUNDATION, INC.

THIS AGREEMENT made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF OVERLAND PARK, Kansas (the "City"), and the OVERLAND PARK ARTS AND RECREATION FOUNDATION, INC. ("ARFOP").

WITNESSETH:

WHEREAS, the City fully supports the development of cultural arts and recreational activities within the City of Overland Park; and

WHEREAS, the City created ARFOP in 1996 to promote and support public parks, public recreation activities, and public art programs of the City; and

WHEREAS, ARFOP is a not-for-profit corporation with public charity status and classified by the Internal Revenue Service as a 501 (c) (3) corporation; and

WHEREAS, ARFOP is the fiscal sponsor of Friends of the Arboretum ("FOTA"), Friends of the Farmstead ("FOF"), and Friends of the Arts ("FOA") that respectively focus on the promotion, support and development of the Overland Park Arboretum and Botanical Gardens, Deanna Rose Children's Farmstead and art within the City; and

WHEREAS, the parties deem it in their best interest to enter into an agreement providing for mutual understanding of the relationships, roles and responsibilities between ARFOP and the City.

IT IS THEREFORE AGREED BETWEEN THE PARTIES AS FOLLOWS:

ARFOP Covenants:

1. ARFOP agrees to work collaboratively with the City to promote the development of cultural arts and recreational activities within the City of Overland Park.
2. The function and responsibilities of ARFOP will be to:
  - a. Define its broad objectives;
  - b. Establish by-laws and structure;
  - c. Develop and execute action plans to fulfill those objectives;
  - d. Develop an annual budget to support their programs, projects and events;
  - e. Conduct fundraising, public awareness and donor-cultivation activities; and
  - f. Enter into agreements with the City for specific programs, projects and events.
3. Membership of the ARFOP Board of Directors shall be confirmed by the City Council (as provided for in Article Ten of the Foundation's Articles of Incorporation). Membership for the FOTA, FOF, and FOA Executive Committees shall be approved by the ARFOP Board of Directors.
4. The City shall be represented on the ARFOP Board of Directors and on the FOTA, FOF and FOA Executive Committees.

5. ARFOP shall, report to the City Council and the City at least semi-annually on programs, projects and event expenditures developed in accordance with the terms of this Agreement or any separate individual contractual agreement regarding the same.
6. ARFOP shall consult, cooperate, coordinate and communicate fully with the City in making decisions concerning programs, projects and events to be implemented.
7. Proceeds from fundraising and membership activities conducted by ARFOP, FOTA, FOF and FOA shall be donated to the City upon execution of individual contractual agreements for funding of specific staff positions, capital improvements, and programs, projects and event expenses. Contractual agreements for specific staff positions shall cover one year and may be renewed annually on the anniversary of the original agreement in accordance with the terms of the agreement.
8. Funds expended from ARFOP , FOTA, FOF and FOA proceeds, except for ARFOP fund-development and operating costs, shall be for programs, projects or events that have a direct correlation with the City or provide cultural opportunities for the residents of and visitors to the City.
9. ARFOP shall make available to the City copies of its Independent Auditor's Reports and Financial Statements and ARFOP's public copy of its federal tax return for the preceding year.
10. ARFOP agrees to indemnify and save harmless the City from all claims, causes of action and damage of any kind whatsoever arising from the operation of ARFOP, FOTA, FOF, FOA and their respective officers, agents and employees.
11. ARFOP agrees to maintain for the duration of the Agreement insurance coverage of the types and minimum liability as set forth below. ARFOP agrees to name City as an additional insured under its commercial general liability (or equivalent) insurance policy and provide a certificate of insurance.
  - 1) 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; \$500,000 general aggregate including products and completed operations.
  - 2) Workers' Compensation and Employers' Liability, protecting against all claims under applicable state Workers' Compensation laws. ARFOP 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 liability limits shall not be less than Statutory (Workers' Compensation); \$100,000 / \$500,000 / \$100,000 (Employers Liability).

Industry Ratings – City will only accept coverage from an insurance carrier who carries a Best’s policyholder rating of A-:VII or better; or is a company mutually agreed upon by the City and ARFOP.

City Covenants:

12. The City agrees to provide, as is practical and reasonable and at no cost, the use of facilities for the promotion of ARFOP’s mission and objectives and raising funds and donations, provided the funds raised are used to support programs, projects and events offered by the City or those programs, projects and events supported by the City that provide cultural arts opportunities and recreational activities for the residents of and visitors to the City.
13. The City agrees to make available at no cost office space for the ARFOP staff.
14. The City shall pay ARFOP the equivalent value for a Worker’s Compensation policy for ARFOP staff and volunteers. ARFOP shall be required to separately contract for and purchase said policy.
15. The City shall allow ARFOP, FOTA and FOF to sell memberships that include admission programs to the Overland Park Arboretum and Botanical Gardens and Deanna Rose Children's Farmstead respectively. One hundred percent of the net income from those memberships shall be deposited by ARFOP into FOF and FOTA accounts and shall be used exclusively for programs, projects and events that respectively benefit the Overland Park Arboretum and Botanical Gardens and Deanna Rose Children's Farmstead. ARFOP, FOTA and FOF shall provide and regularly update City staff with the appropriate information regarding both said memberships and said funds.
16. The City shall maintain a prioritized list of capital and operational programs, projects and events in need of ARFOP funding and assistance with dates and timeframes to build the capital projects and institute the programs and events.

Both Parties:

17. There shall be an individual contractual agreement between the City and ARFOP for each capital or operational program, project or event for which the City and ARFOP determine that ARFOP will participate and raise private funds.
18. The City and ARFOP will work collaboratively with the media on the public relations and marketing of programs, projects and events.
19. The parties expressly acknowledge and agree that the City is under no obligation to consent to or allow any program, project or event of ARFOP, FOTA, FOF or FOA to be implemented or conducted upon or on behalf of the City, Overland Park Arboretum and Botanical Gardens and Deanna Rose Children's Farmstead or any other public property, and that the expressed written consent of the City shall first be required.

20. The City or its duly authorized agent shall be entitled to inspection and audit of all books and records of ARFOP for compliance with the approved budget. In addition, ARFOP agrees to make such books and records available for the City and the City may cause an audit of the books at City's expense.
21. Any use of the City's name or logo or mark by ARFOP shall require prior City authorization.
22. The parties are independent contractors. It is specifically agreed between the parties that this Agreement does not create a joint venture agreement, partnership, employment agreement or agency relationship between the parties.
23. Non-Discrimination and Affirmative Action. ARFOP agrees that:
  - a. During the performance of this Agreement or any subcontract resulting thereof, the ARFOP, 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 this Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income.
  - b. In all solicitations or advertisements for employees ARFOP, 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 ARFOP, a subcontractor or vendor fails to comply with the manner in which ARFOP, a subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, ARFOP, the subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
  - d. If ARFOP, 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, ARFOP, the subcontractor or vendor shall be deemed to have breached this Agreement, and it may be cancelled, terminated or suspended in whole or in part by the City;
  - e. ARFOP 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.
  - f. ARFOP further agrees that it 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

Agreement and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Agreement and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

- g. 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 this Agreement and it may be canceled, terminated, or suspended, in whole or in part, by the City.
  - h. Applying general Title VII principles, ARFOP 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 ARFOP and regardless of whether ARFOP knew or should have known of their occurrence.
24. This Agreement may be terminated by either party upon ninety (90) days written notice to the other party.

Miscellaneous Provisions:

25. 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

ARFOP: Arts and Recreation Foundation of Overland Park  
P. O. Box 26392  
Overland Park, KS 66225

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

26. This Agreement supersedes any prior agreements or understandings between the parties. This Agreement constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by both parties. This Agreement is for the exclusive benefit of their parties, their successors and permitted assigns. There are no third party beneficiaries to this Agreement. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument.
27. This Agreement may not be assigned or transferred by either party without the expressed written consent of the other party.
28. Any failure by either party to enforce at any time or for any period of time any one or more of the terms or conditions of this Agreement, shall not be a waiver of

such terms or conditions or of either party's right thereafter to enforce each and every term and condition of this Agreement.

29. If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose. To the fullest extent permitted by applicable law, if any provision of this Agreement is invalid or unenforceable a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.
30. This Agreement will be governed by the laws of the State of Kansas, without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the parties set their hands on the day and year first above shown.

ARTS AND RECREATION FOUNDATION OF  
OVERLAND PARK, INC

\_\_\_\_\_  
Todd Roberts, President

CITY OF OVERLAND PARK, KANSAS

By \_\_\_\_\_  
Carl Gerlach, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen B. Horner  
Senior Assistant City Attorney