

AGREEMENT

This Agreement is made and entered into this 15th day of July 2006, by and between the City of Overland Park, Kansas, hereinafter called "the City", and the Overland Park Convention and Visitors Bureau, Inc., hereinafter called "the Bureau."

WHEREAS, the City, pursuant to K.S.A. 12-1696, and amendments thereto, and applicable City ordinances, resolutions and other documents, has levied a transient guest tax and established the purposes for expenditure of said transient guest tax, and

WHEREAS, the City has authority to contract for the implementation of convention and tourism programs and the Bureau has offered to provide such services. The City deems it to be in its best interests to accept such offer.

NOW THEREFORE, the parties agree as follows:

SECTION 1. BUREAU DUTIES

Pursuant to the terms of this Agreement the Bureau agrees to provide convention and tourism services exclusively to the City; provided, the parties agree that the Bureau's efforts to promote local, state and regional convention and tourism services that benefit the City, may also benefit entities in addition to the City. The Bureau also agrees that the primary goal and focus of the convention and tourism services it provides is to increase the number of room nights for Overland Park hotels and increase convention center business.

SECTION 2. BUREAU PERFORMANCE GOALS

The parties shall establish annual performance goals for the Bureau for convention center and non-convention center room nights and other pertinent matters. These performance goals shall include goals to be achieved in a given year for that year as well as bookings for future years, with a minimum of 5 years. In the budget request from the Bureau, the Bureau shall provide a report of the prior year performance toward the previously established goals, year-to-date performance toward the current year goals, and preliminary recommended goals for the following year.

SECTION 3. FORCE MAJEURE

Except as otherwise provided herein, the Bureau shall not be obligated to perform, and shall not be deemed to be in default of its performance as set forth in this Agreement, if prevented by an occurrence outside of its reasonable control (a "force majeure"), including but not limited to fire, earthquake, tornado, wind, flood or act of God provided the Bureau shall immediately give written notice to the City of the Force Majeure event and use reasonable efforts to resume performance.

SECTION 4. BUREAU'S BUDGET

The Bureau will submit a proposed budget to the City for consideration as a part of the City's annual operating budget and final approval by the Governing Body of the City. The Bureau's budget shall reflect the proposed expenditures to be made by the Bureau and shall be subject to review by the "Convention and Tourism Committee" established by the City pursuant to the provisions of Charter Ordinance No. 35 and Resolution No. 2264, and any amendments thereto. Review of the Bureau's budget by the "Convention and Tourism Committee" shall be satisfied by members of the "Convention and Tourism Committee" serving as members of the Board of Directors of the Convention and Visitors Bureau.

SECTION 5. COMPENSATION

Subject to the conditions stated herein, the City, following approval of the proposed Bureau's budget, shall transmit to the Bureau quarterly, monies adequate to fund the Bureau's approved budget. All monies paid to the Bureau to support its budget shall be from collected transient guest tax funds as received solely from the City's convention and tourism fund in accordance with and as authorized by applicable City ordinances, resolutions and other documents establishing standards and criteria for expenditure of such funds.

It is understood and agreed between the parties that the City is obligated to fund the Bureau's budget only to the extent that adequate revenues are available. The Bureau acknowledges that the availability of transient guest taxes to fund the Bureau's budget is determined by the priorities, standards and criteria authorized by applicable City ordinances, resolutions and other documents. Should the revenues available to the City be insufficient to meet the Bureau's approved budget, the Bureau shall make adjustments to its budget to compensate for the reduced payments.

At no time shall the funds transferred by the City to the Bureau exceed, on an accrual basis, the amount appropriated in the City's Transient Guest Tax Operating Fund for the Bureau. And under no circumstances shall the Bureau's expenditures exceed the amount of its budget as submitted and approved by the City of Overland Park. Distribution of funds to the Bureau shall be made only from collected transient guest tax funds.

SECTION 6. EXPENDITURES

It is further understood and agreed by the parties that the Bureau will submit an accounting of its expenditures in budgetary format, on both an accrual and a cash basis, in accordance with generally accepted accounting practices as applicable, at the end of each month. The accounting submittal shall be a condition precedent to advancement by the City of the next quarterly payment as above set forth.

The Bureau agrees that all expenditures will be in accordance with the intent and purpose of K.S.A. 12-1696, and applicable City Charter Ordinances, regular ordinances, resolutions and other documents establishing standards for expenditure of transient guest tax funds. Further, the Bureau agrees that any expenditures exceeding or not authorized by the budget, as approved,

shall be the responsibility of the Bureau and not paid from City transient guest tax or other City funds.

In the event the Bureau has a positive balance of unexpended funds at the conclusion of an operating year, the Bureau is authorized to deposit such funds in an operating reserve account to be utilized for unusual CVB incentive purposes in succeeding years, provided that the amount of funds deposited in any such reserve account shall not exceed 5% of the Bureau's total budget for the immediately preceding year or \$25,000, whichever is greater. In no event shall the total amount of the reserve account exceed the amount authorized for a single year. Unexpended funds in one year, or cumulatively, which exceed the authorized amount shall be used to offset the subsequent years appropriation.

SECTION 7. AUDITS

The City shall at all reasonable times be entitled to inspect and audit all books and records of the Bureau for compliance with the terms of this agreement. In addition, the Bureau agrees to an annual audit of such books and records by the City's Post Auditor, which shall be an allowable expense item of the Bureau.

SECTION 8. BUREAU'S INDEPENDENT CONTRACTOR STATUS

It is further understood and agreed that the Bureau is engaged and retained as an independent contractor and not as an officer, agent, or employee of the City; and the Bureau must maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Bureau against any liability or loss. The City shall be listed as an additional insured on the Bureau's general liability policy.

SECTION 9. TERM AND TERMINATION

This agreement shall be in force and effect from and after July 15, 2006, provided, however, the parties agree to review the terms of this Agreement no less than every three years; provided further, that the Agreement may be terminated by either party for convenience upon service of written notice thereof upon the other party at least ninety (90) days prior to the expected termination date. In addition, the City may terminate this Agreement for cause subsequent to providing the Bureau ninety days written notice in which to cure the breach that is the basis for the termination.

At the termination of this agreement, the Bureau will deliver to the City all unexpended funds advanced by the City, together with all items of tangible personal property purchased with City funds in the Bureau's possession at the time of termination.

SECTION 10. CASH BASIS LAW

The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds,

the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

SECTION 11. INDEMNITY

A. Definitions

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

1. The “Bureau” means and includes Bureau, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
2. “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).

B. Indemnity

For purposes of this Agreement, Bureau 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 Bureau. 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 the Bureau’s obligation hereunder shall not include amounts attributable to the fault or negligence of the City.

SECTION 12. INSURANCE

During the performance of this Agreement, the Bureau agrees to maintain for the duration of the Agreement insurance coverage of the types and minimum liability as set forth below. The Bureau shall furnish to the City a Certificate of Insurance verifying such coverage. The certificate holder on the Certificate of Insurance shall be as follows:

City of Overland Park, Kansas
c/o City Clerk
8500 Santa Fe Drive
Overland Park, KS 66212

Prior to any material change or cancellation, the City will be given thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

General and automobile liability insurance requirements:

A. General Liability Insurance

COMMERCIAL GENERAL LIABILITY POLICY

General Aggregate:	\$500,000
Products-Completed Operations Aggregate:	500,000
Personal & Advertising Injury:	500,000
Each Occurrence:	500,000

Policy must include the following:

1. Broad Form Contractual/Contractually Assumed Liability

B. Automobile Liability Insurance

Policy shall protect the consultant against claims for bodily injury and/ or property damage arising from the ownership or use of all owned, hired and/ or non-owned vehicles and must include protection for either:

- a) Any Auto

OR

- b) All Owned Autos;

Hired Autos; and

Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the General Liability section.

C. Workers' Compensation and Employers' Liability

This insurance shall protect the Bureau against all claims under applicable state Workers' Compensation laws. The Bureau 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 the following:

Workers' Compensation:	Statutory <u>Employers' Liability:</u>
Bodily Injury by Accident	\$ 100,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 100,000 each employee

D. Professional Liability Insurance

Policy shall protect the Bureau against claims for wrongful acts associated with professional services. Limits are to be no less than \$500,000 per wrongful act / \$500,000 annual aggregate.

Industry Ratings – The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is licensed to do business in the State of Kansas;
 2. Carries a Best's policyholder rating of A or better;
- AND
3. Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Bureau.

Certification of insurance coverage in items (1), (2) and (3) above shall be provided by the Bureau's insurance carrier.

Certification of professional liability insurance shall be provided on a separate form provided by the Bureau's insurance carrier.

SECTION 13. COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS

The Bureau agrees that:

1. The Bureau shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any

- person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, ancestry or age;
2. In all solicitations or advertisements for employees the Bureau shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
 3. If the Bureau fails to comply with the manner in which the Bureau reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Bureau shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
 4. If the Bureau 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 Bureau shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
 5. The Bureau shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The Bureau further agrees that the Bureau 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. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project 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.

SECTION 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

SECTION 15. APPLICABLE LAW

This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

SECTION 16. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

SECTION 17. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the contract. Some terms are capitalized throughout the contract but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

SECTION 18. EXECUTION OF AGREEMENT

The parties hereto have caused this contract to be executed in triplicate this _____ day of _____, 2006.

CITY OF OVERLAND PARK, KANSAS

By _____
Carl Gerlach
Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Senior Assistant City Attorney

OVERLAND PARK CONVENTION AND VISITORS BUREAU, INC.

By _____
Gerald L. Cook, Ed.D.
President

ATTEST:

Secretary