

**AGREEMENT**  
**FOR THE PROVISION OF**  
**ECONOMIC DEVELOPMENT**  
**AND**  
**CONVENTION AND VISITORS BUREAU**  
**SERVICES**  
**Between and among**  
**THE CITY OF OLATHE, KANSAS**  
**AND**  
**THE OLATHE CHAMBER OF COMMERCE**

## **AGREEMENT**

**THIS AGREEMENT** (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date") between the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the state of Kansas (the "City"), and the Olathe Chamber of Commerce, a Kansas 501 (c) (6) not-for-profit corporation (the "Chamber") (collectively, the "Parties").

### **WITNESSETH:**

**WHEREAS**, the City and the Chamber have cooperated since 1988 in the promotion of economic development, including the attraction, retention and expansion of businesses and the promotion of convention and tourism activities; and

**WHEREAS**, the City and Chamber have successfully demonstrated through cooperative efforts that a mutually beneficial public/private partnership can result in strong and vibrant economic development programs for business retention, business attraction, and convention and tourism promotion; and

**WHEREAS**, the Governing Body of the City has adopted Charter Ordinance No. XX (the 'Charter Ordinance'), authorizing the levy of a Transient Guest Tax at not to exceed the rate of nine percent (9%) upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourist court, the revenue of which is deposited into the City's Economic Development Promotion Account and is expended only for economic development promotion services in accordance with this Agreement; and

**WHEREAS**, the Chamber, through a sustained commitment of member contributions and support, is in a position to continue the involvement of the private sector in economic development activities in the City; and

**WHEREAS**, the Governing Body of the City deems it advisable and proper to contract with the Chamber to utilize its services in securing industry for the City, in promoting the general tax growth of the City, in securing tourism growth for the City by attracting events, conventions and sports events in the City and in the metropolitan area, thereby increasing the tax base and commerce of the City; and

**WHEREAS**, the Parties desire to establish clear guidelines for the use, reporting, and measurement of activities performed by the Chamber which are funded with the proceeds of the Transient Guest Tax;

**NOW, THEREFORE**, the parties agree, pursuant to the terms and conditions of this Agreement, to promote economic development activities in the City and to fund the promotion of such activities by a joint public/private effort of the City, the Chamber, and members of the business community in accordance with the following terms and conditions:

## **ARTICLE 1**

### **PURPOSE**

The purpose of this Agreement is to retain the Chamber to provide Economic Development Promotion services, as defined herein, on behalf of the City, and to set forth the financial disclosure, performance measurement, and accountability requirements of the Chamber to the City during the term of this Agreement.

## **ARTICLE 2**

### **DEFINITIONS AND INTERPRETATION**

A. Definition. For the purposes of this Agreement, 'Economic Development Promotion' means, in accordance with the Charter Ordinance, and any amendments thereto, (1) activities to attract the location or relocation of industrial or commercial enterprises into the community through marketing efforts, including advertising and incentives; (2) activities designed to encourage retention and expansion of existing industrial or commercial enterprises in the community; and (3) convention and tourism promotion activities designed to attract visitors into the community through marketing efforts, including advertising, directed to at least one of the five basic convention and tourism market segments consisting of a) group tours, b) pleasure travelers, c) association meetings and conventions, d) trade shows and e) corporate meetings, and travel and support of those activities and organizations which encourage increased lodging facility occupancy.

B. Interpretation. In this Agreement, unless a clear contrary intention appears:

the singular number includes the plural number and vice versa;

reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

reference to any gender includes each gender;

reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;

each of the items or agreements identified on the attached Index of Exhibits are deemed part of this Agreement to the same extent as if set forth herein;

"hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

"including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding."

- C. Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.
- D. Capitalized Terms. All capitalized terms used in this Agreement shall have the meanings ascribed to them herein, or as otherwise provided herein.

### **ARTICLE 3**

#### **BUDGET AND ACCOUNTING**

- A. Budget Approval. The annual budget for the Economic Development Promotion Account shall be established annually by the Governing Body of the City during its normal budget process. No later than June 1 of each year, Chamber Economic Development Council and Convention and Visitor's Bureau staff, upon the recommendations of the Chamber's Budget Task Force, the EDC and CVB (as hereinafter defined), respectively, and the Chamber Board of Directors, shall submit a proposed budget to the City which shall conform with the purpose of this Agreement. The proposed budget shall be accompanied by the following documents:
  - i. An annual work plan, meeting the goals and objectives of the Governing Body of the City established herein for the following calendar year, which plan shall include, but not be limited to, strategic tactics for implementation of this Agreement and specific projects and tasks which the accomplishment thereof demonstrates progress on the work plan.
  - ii. An annual report submitted to the Governing Body of the City from the preceding calendar year on the Economic Development Promotion activities performed in support of the work plan.

- iii. Reports of any facilitated strategic planning sessions with the City regarding Economic Development Promotion activities during the preceding calendar year, the outcomes of which will be used as a basis for future work plans.
- B. Funding of Economic Development Promotion Activities. To meet the purpose of this Agreement, the City agrees to remit the funds received into the Economic Development Promotion Account to the Chamber for Economic Development Promotion activities in accordance with the Charter Ordinance, and amendments thereto, and the Kansas Cash Basis law. The City will deposit transient guest tax payments into the Economic Development Promotion Account for remittance to the Chamber on a quarterly basis in January, April, July, and October of each year in the amount of estimated receipts from the transient guest tax in order to provide uniform support for the Chamber's budget, so long as all statutory budgeting requirements are met by the City. Any unused balance from the amount provided by the City to the Chamber in support of Economic Development Promotion activities shall be carried forward in reserves and shall be used to support the work plan, but in no event may such unused funds be used to support the general operations of the Chamber for programs not supported by the Economic Development Promotion Account. The Governing Body of the City, at its sole discretion and in furtherance of the Governing Body's strategic direction regarding its economic development goals established after the biennial renewal periods set forth in Article 5, herein, may seek the input of the Chamber regarding the appropriate proportionality of funding for EDC and CVB activities funded out of the Economic Development Promotion Account.
- C. Use of Economic Development Promotion Funds. Unless specifically prohibited from use by the terms of this Article, funds deposited into the Economic Development Promotion Account which are provided to the Chamber by the City pursuant to this Agreement shall be used for Economic Development Promotion activities within the meaning of this Agreement.
- D. Expenditures in Excess of City Budget Approval. Any expenditures exceeding the budget of the Chamber for Economic Development Promotion activities funded out of the Economic Development Promotion Account as approved by the Governing Body of the City may only be approved by the Governing Body of the City upon the request and recommendation of the Chamber Board of Directors. Such expenditures shall be subject to funding availability and shall be in compliance with all statutory budget and cash basis laws. The City shall have no obligation to make such expenditures, and any Chamber expenditures in excess of the budget for the Economic Development Promotion Account shall be at the Chamber's sole risk. Expenditures by the Chamber from revenue other than the Transient Guest Tax are permitted, and the budget and discretion to make such expenditures shall be within the sole control of the Chamber.
- E. Accounting, Inspection & Audit. In accordance with the Charter Ordinance, the Chamber shall, at all times, provide the separate accounting of the receipt and

disbursement of all funds from the Economic Development Promotion Account and any other funds received from any source for any purpose. The Chamber shall, at all times, prevent the commingling of the accounting of funds received from the Economic Development Promotion Account funds with the accounting of any other Chamber funds. The Chamber may deposit Economic Development Promotion Account funds into a bank account with other Chamber funds at the Chamber's sole discretion. The Chamber shall also contract, at the sole expense of the Chamber, the services of an independent financial auditor (which auditor may be the City's independent auditor, at the Chamber's sole discretion) to provide the City its audited financial statements, which shall include an accounting of the receipt and expenditures of such funds in accordance with generally accepted accounting principles. In accordance with K.S.A. 12-16,113, this accounting of the receipt and expenditures of transient guest tax funds shall be provided regularly and, in any event, within one hundred twenty (120) days after the end of the fiscal year of the Chamber during each year this Agreement is in effect. This accounting shall be in the form of detailed balance sheets and income statements. The Chamber shall also provide, no later than July 31 of each year, a report on examination of financial statements prepared and certified by the Chamber's independent auditor, which report shall include the separate financial statements of the Economic Development Advisory Council and the Convention and Visitors Bureau Advisory Council and a separate accounting of funds received from the Economic Development Promotion Account and any other funds received from any source for any purpose. The City, or its authorized representatives, shall be entitled to inspect, copy, audit and examine all books, records, and other documents of the Chamber relating to activities funded out of the Economic Development Promotion Account for compliance with the budget approved by the Governing Body of the City and the Chamber Board of Directors for Economic Development Promotion activities. In the event neither the accounting nor the audited report on examination is provided within the respective time periods set forth herein, funds from the Economic Development Promotion Account shall not be provided to the Chamber until such documentation is provided.

- F. Restrictions on the Use of Economic Development Promotion Funds. Funds received by the Chamber from the Economic Development Promotion Account pursuant to this Agreement shall not be used for the following, except as may be specifically approved by the Governing Body of the City:
- i. To fund activities that target the generation of businesses for any single specific private business entity, unless such funding applies to the Mahaffie Stagecoach and Farm complex and museum and Mahaffie Heritage Center and the 'Hotel & Conference Center' described in the Charter Ordinance.
  - ii. For any purposes that would violate the Charter Ordinance, as may be hereinafter amended.

- iii. For Economic Development Promotion activities, payment of lodging expenses for Chamber employees within a fifty (50) mile radius of the City, and or reimbursement of any travel expenses whatsoever for first class travel, room service, alcoholic beverages, and or lodging or meals of the family members of Chamber employees, consultants, or volunteers.
- iv. For country club, golf course, or any private club memberships for individual Chamber employees or members.
- v. For funding of the Chamber's legislative program, including but not limited to any and all lobbying activities at the local, state, and or federal level, to the extent that said program is inconsistent with the City's legislative program.

Should it be determined by the Governing Body of the City and the Chamber Board of Directors that, at any time during or after the term of this Agreement, the Chamber made inappropriate expenditures of public funds, the Chamber shall be liable to fully reimburse the City for such expenditures.

## **ARTICLE 4**

### **CHAMBER UNDERTAKINGS & OBLIGATIONS**

- A. Chamber Boards. At all times while this Agreement is in effect, two (2) representatives of the City shall be appointed as regular voting members to the Chamber Board by the Mayor with the consent of the remainder of the Governing Body of the City, and one representative of the City shall be appointed as a regular voting member to the Chamber Executive Board by the Mayor with the consent of the remainder of the Governing Body of the City.
- B. Chamber Councils. Pursuant to the Charter Ordinance, the Chamber shall establish, and maintain for the duration of this Agreement, the following Councils:
  - i. Economic Development Advisory Council. The Chamber shall establish an Economic Development Advisory Council ("EDC"), which sole and exclusive function shall be to serve in an advisory capacity and make recommendations to the Chamber Board of Directors and the Governing Body of the City concerning the programs and expenditures for economic development promotion in the City, including but not limited to, promoting the economic welfare and growth of the City and fostering and encouraging quality economic development which will have a significant impact on the economic growth of the City. The EDC shall be composed of the Mayor of the City, or a duly authorized representative; the City Manager, or duly authorized representative (who shall report actions of the EDC to the Governing Body); the President of the Chamber, who shall act as its secretary; and up to eighteen additional members selected pursuant to the terms of Bylaws of the EDC and which Bylaws have been

specifically approved by the Governing Body of the City and the Chamber Board of Directors. Each year, the members of the EDC shall elect one of their members as chair and another as vice-chair. The chair and vice-chair may serve successive one (1) year terms at the discretion of the EDC. Each member, including the chair, shall have one vote. Vacancies in any of the appointed positions on the EDC shall be filled by the remaining members of the EDC for the remainder of the term of the retiring or withdrawing appointee, subject to approval by the Chamber Board of Directors. The EDC shall be responsible for recommending the implementation of the annual and long term economic development objectives of the City which shall be approved by the Chamber Board of Directors and the Governing Body of the City, shall recommend a budget to be approved by the Governing Body of the City and the Chamber Board of Directors as set forth in this Agreement, and review and evaluate the effectiveness of the annual business plan of the EDC and its staff, and recommend, on an annual basis, objectives, goals, and tactics for effective implementation of the annual business plan.

- ii. Convention & Visitors Bureau Advisory Council. The Chamber shall establish a Convention and Visitors Bureau Advisory Council ("CVB") to serve in an advisory capacity and make recommendations to the Chamber Board of Directors and the Governing Body of the City concerning the programs and expenditures for economic development promotion in the area of tourism and conventions, including management and conduct of sporting events. The CVB shall be composed of the Mayor of the City, or duly authorized representative; the City Manager, or duly authorized representative (who shall report actions of the CVB to the Governing Body); the President, or a designated employee, of the Chamber, who shall act as its secretary; and up to eighteen additional members selected pursuant to the terms of Bylaws of the CVB and which Bylaws have been specifically approved by the Governing Body of the City. The members of the CVB shall each year elect one of their members as chair and another as vice-chair. The chair and vice-chair may serve successive one (1) year terms at the discretion of the CVB. Each member, including the chair, shall have one vote. Vacancies in any of the appointed positions on the CVB shall be filled by the remaining members of the CVB for the remainder of the term of the retiring or withdrawing appointee, subject to approval by the Chamber Board of Directors. The CVB shall be responsible for recommending the annual and long term tourism, convention, and event attraction and management objectives of the City which shall be approved by the Chamber Board of Directors and the Governing Body of the City, shall recommend a budget to be approved by the Governing Body of the City and the Chamber Board of Directors as set forth in this Agreement, and review and evaluate the effectiveness of the annual business plan of the CVB and its staff, and recommend, on an

annual basis, objectives, goals, and tactics for effective implementation of the annual business plan.

- C. Chamber Staff. Staffing for Economic Development Promotion activities shall be provided by the Chamber's staff which serves the EDC and CVB, respectively. All such staff shall be employees of the Chamber and shall implement the Economic Development Promotion goals, objectives, and programs described herein. The Chamber shall be responsible for operating within its allocated budget, which budget shall allow for the expenditure, allocation, and accounting for Economic Development Promotion activities in combination with private funds. All funds utilized by the Chamber for Economic Development Promotion activities shall be accounted for in the manner described herein.
- D. Chamber Scope of Services. The Chamber shall implement the goals and objectives of the Governing Body of the City regarding Economic Development Promotion activities, which responsibilities shall be recommended by the respective advisory councils and approved by the Governing Body of the City and the Chamber Board of Directors. However, in accordance with Article 4 F., herein, the performance of all activities by the Chamber hereunder shall be as an independent contractor and not as an agent of the City. The Chamber's responsibilities pursuant to this Agreement shall include, but not be limited to, partnering with the City to implement tactics and or strategies which accomplish the following:
- i. Identify/secure funding to maintain existing and build new infrastructure, including but not limited to water, sewer, roads, and quality of life amenities.
  - ii. Identify market niches and industries.
  - iii. Identify incentives appropriate to targeted industries.
  - iv. Create a uniform, consistent brand and identity to market Olathe and attract targeted industries.
  - v. Develop intellectual infrastructure necessary for a knowledge-based economy.
  - vi. Create an environment that supports local business creation, retention and expansion.
- E. Chamber Performance Measures. Notwithstanding anything to the contrary in this Agreement, the Chamber shall be fully integrated into the City's budget and performance measurement processes for all programs funded wholly or in part from the City's Economic Development Promotion Account. On an annual basis, the Chamber shall establish quantifiable targets for all performance measures

established and maintained herein. Such targets shall be established no later than the third quarter of the previous fiscal year (for the following fiscal year) and shall be recommended by the Chamber and approved by the City. The Chamber shall, at a minimum, establish and maintain the following types of performance measures within the aforementioned Scope of Services (which measures may be amended from time to time), shall submit a report on such measures in the form of a quarterly accountability report, and shall include a year end report on such measures in its annual budget and documents related thereto:

- i. Dollars leveraged through sponsorships, grants and/or loans for economic development purposes.
- ii. Total number of jobs created/retained annually in each targeted sector as set forth in the Economic Development Strategic Plan.
- iii. Percentage of new and existing businesses taking action as a result of assistance facilitated by the Chamber.:
  - a. New business actions
  - b. Existing business actions.
- iv. Total number of new jobs created annually as a result of economic development efforts.
- v. Total number of existing jobs retained annually as a result of economic development efforts.
- vi. Percentage of jobs created and or retained above the mean salary for Olathe.
- vii. Income growth:
  - a. Per capita
  - b. Household.
- viii. Retail sales per capita.
- ix. Dollar value of capital investment made by firms receiving assistance after twelve (12) months and twenty-four (24) months.

Dollar value of capital investment made in high priority areas and corridors as identified in the City of Olathe Comprehensive Plan.

- x. Growth in commercial space.

- xi. Percent increase in commercial assessed valuation.
- xii. Hotel occupancy rate.
- xiii. Annual growth in transient guest tax revenue.
- xiv. Percentage of respondents agreeing that the Chamber is doing a good job of promoting and creating and promoting economic development in Olathe (based on the City's Direction Finder Survey).
- xv. Percentage of visitors to Olathe rating their experience in Olathe as good or excellent (based on the City's Direction Finder Survey).
- xvi. Economic development partnerships established and actively maintained within targeted industries and among regional economic development partners.

F. Chamber Financing. The Chamber hereby represents and warrants that it has the financial wherewithal to engage in the Economic Development Promotion activities contemplated herein, including a sustained commitment of funds from private sector investors. The Chamber agrees to provide the City the following information to demonstrate its continuous ability to finance its operations:

- i. Quarterly Financial Reports. The Chamber agrees to provide the City, or its designated agent, financial reports regarding its office which it shall provide to the Chamber Board of Directors regarding its financial status and activities involving public funds on no less than a quarterly basis. Such reports shall contain the requisite information needed by the City, at the City's discretion, to confirm the Chamber's financial standing and ability to develop and complete the Economic Development Promotion activities contemplated herein on the City's behalf. Such reports may be submitted simultaneously to the City with the quarterly accountability reports.
- ii. Open Records Act. Any and all information related to the expenditure of public funds pursuant to this Agreement shall subject to Kansas Open Records Act.

G. Independent Contractor. The Chamber shall consult, coordinate, and work in cooperation with the City to carry out the services described in this Agreement. However, the performance of all activities by the Chamber hereunder shall be as an independent contractor and not as an agent of the City. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Chamber nor any contracted individual thereof shall be entitled to any benefit afforded City employees by virtue of the use and expenditure of transient guest tax funds deposited into the

Economic Development Promotion Account collected by the City or by virtue of the terms of this Agreement.

- H. Professionalism. The Chamber shall, at all times while this Agreement is in effect, represent the City in a highly ethical, professional, and responsible manner, and shall not engage in conduct which does not reflect positively on the City.
- I. Downtown Office. The City strongly encourages the Chamber to maintain its offices in downtown Olathe. Therefore, the Chamber shall endeavor in good faith to remain in compliance with all of its lease obligations under that certain Office Lease between the City and Chamber dated December 27, 2022.

## **ARTICLE 5**

### **TERM & TERMINATION**

- A. Term. The Term of this Agreement shall commence on the Effective Date and shall be in force for two (2) years (the "Initial Term"), beginning July 1, 2025, at the end of which time the Agreement shall either be terminated or renewed by the Parties. If renewed, the Agreement shall be renewed for an additional two (2) year term (the "Renewal Term"), provided that the City has budgeted and appropriated funds necessary to make payment as provided for by this Agreement in accordance with the Kansas Cash Basis law and budget laws. This Agreement may be terminated, renewed, or renegotiated at the request of either party prior to the end of the Renewal Term. If renewed, this Agreement will be automatically renewed at the end of the Renewal Term for an additional two (2) year term (the "Successive Term"), provided that the City has budgeted and appropriated funds for the payments required by this Agreement for the Successive Term as provided herein. In the event the City does not have sufficient funds available to be appropriated for the payments required by this Agreement at any time, this Agreement shall be terminated at the end of the then current term and the City shall not be obligated to make any payments pursuant to this Agreement beyond the then current term, unless terminated during the Renewal Term or any Successive Term, which termination shall be effective at the end of the then current year. The City agrees that this Agreement will not be terminated except pursuant to the conditions of this Article if funds have been budgeted and are available to make payments required during the then-current fiscal year of the City.
- B. Termination. This Agreement shall automatically terminate at the end of the Successive Term unless otherwise provided herein. If the City determines, at the City's sole discretion, that the Chamber has failed to comply with the terms of this Agreement or the intent thereof by mismanagement of funds, or if there is continued and appropriate criticism concerning the quality of services provided

by the Chamber on behalf of the City hereunder, the City shall notify the Chamber in writing of the specific actions constituting such failure. If the Chamber fails to take appropriate corrective action within ninety (90) days, the City may provide written notice of the termination of this Agreement, which termination shall be effective ninety (90) days after the receipt of such notice. Upon termination, the City shall have no obligation to provide the Chamber any public funds from any source whatsoever.

- C. Review. The Parties agree that no later than the expiration of the Successive Term the Parties shall fully review the terms of this Agreement and negotiate the terms of a new agreement for the provision of Economic Development Promotion services. Thereafter, subsequent agreements for the provision of Economic Development Promotion services between the Parties shall be reviewed and or consummated no less than every six (6) years, which timeframe shall coincide with the full election cycle and accompanying goal setting sessions of the Governing Body of the City.

## **ARTICLE 6**

### **MISCELLANEOUS**

- A. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.
- B. Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, failure of power or other insufficient utility service, riots, insurrection, environmental remediation required by any government authorities, alien invasion, any lawsuit seeking to restrain, enjoin, challenge or delay performance of obligations contemplated herein, war, terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.
- C. Organization and Due Authorization Covenants of Parties.

i. Representations and Warranties of the Chamber.

- a. Organization. The Chamber is a Kansas 501 (c) (6) not-for-profit corporation and is authorized and in good standing to conduct business under the laws of the State of Kansas prior to the effectiveness of this Agreement on a tax-exempt basis. The Chamber shall, at all times during the effective term of this Agreement, (1) preserve and keep in full force and effect its not-for-profit status and legal existence and (2) remain qualified to do business and conduct its affairs in the State of Kansas.
- b. Authority. The execution, delivery and performance by the Chamber of this Agreement are within the Chamber's powers and have been duly authorized by all necessary action of the Chamber.
- c. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of the Chamber or any provision of law, statute, rule or regulation to which the Chamber is subject, or to any judgment, decree, license, order or permit applicable to the Chamber, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which the Chamber is a party, by which the Chamber is bound, or to which the Chamber is subject.
- d. No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by the Chamber of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by the Chamber of this Agreement or the consummation of the transactions contemplated hereby, other than any consents, authorizations, approvals, orders, or other actions which may be exercised by the City herein.

ii. Representations and Warranties of the City.

- a. Authority. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

- b. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions contemplated herein, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.
  - c. No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby. The City acknowledges that any consents it is required to provide to the Chamber in furtherance of this Agreement shall not be unreasonably withheld.
- D. Anti-Discrimination. During the term of this Agreement or any subcontract resulting thereof, the Chamber 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 income. In solicitations or advertisements for employees, the Chamber shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission. If the Chamber fails to comply with the Kansas Acts Against Discrimination, including being found guilty of a violation of the Kansas Acts Against Discrimination under a final decision or order of the Kansas Human Rights Commission, the Chamber shall be deemed to have breached this Agreement, and such breach shall be grounds for automatic cancellation, termination, or suspension of the Agreement by the City.
- E. Indemnity and Hold Harmless. The Chamber agrees to and shall indemnify, hold harmless and defend the City, its officers, agents, representatives, employees and assigns from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorney fees for injury to or death of any person or for damage to or loss of any property arising out of this Agreement, or from any such cost or claims as a result of any act or omission, negligence or wrong doing of the Chamber or its officers, agents, representatives, employees or assigns.
- F. Confidentiality. The Parties understand and agree that information received in confidence in furtherance of this Agreement shall be retained in confidence

unless required by law to be disclosed. Neither City staff, the Governing Body of the City, the Chamber, nor members of the EDC, CVB, or Chamber Board of Directors may use confidential information obtained as a result of their position for any purposes (including personal benefit) other than to retain or expand a business within the City or to attract a prospective business to the City.

- G. Amendments. This Agreement may be amended, changed or modified only by a written agreement duly authorized and executed by the Governing Body of the City and the Chamber Board of Directors.
- H. Beneficiaries. The Parties hereto are the sole beneficiaries to this Agreement, and nothing herein shall create a contractual relationship with, or any rights in favor of, any third party of any kind whatsoever.
- I. Severability. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.
- J. Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

**THE CITY:**

**CITY OF OLATHE, KANSAS**

A Municipal Corporation duly organized under the laws of the State of Kansas

By: \_\_\_\_\_  
John W. Bacon  
Mayor

Attest: \_\_\_\_\_  
Brenda D. Swearingian  
City Clerk

(SEAL)

Approved as to Form:

By: \_\_\_\_\_  
Ronald R. Shaver  
City Attorney

**THE CHAMBER:**

**OLATHE CHAMBER OF COMMERCE**

A Kansas 501 (c) (6) not-for-profit corporation

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

Chair of the Board

Attest: \_\_\_\_\_

Timothy M. McKee  
President and Chief Operating Officer