

**AGREEMENT BETWEEN CITY OF BEND AND BEND CONVENTION AND
VISITORS BUREAU, INC.,
FOR VISITOR AND PROMOTION MANAGEMENT SERVICES**

THIS AGREEMENT is made and executed this 4th day of July, 2005, by and between CITY OF BEND, a body corporate and politic of the State of Oregon, located at 710 NW Wall Street, Bend, Oregon 97701 (hereinafter referred to as "CITY"), and BEND CONVENTION AND VISITORS BUREAU, INC. (hereinafter referred to as "CONTRACTOR"), a body corporate organized under the laws of the State of Oregon and having its registered office for business at 917 NW Harriman St., Suite 101, Bend, OR 97701. This Agreement supercedes all prior agreements between CITY and CONTRACTOR.

WITNESSETH

WHEREAS, CITY desires to enter this Agreement with CONTRACTOR to provide convention and visitors bureau services for CITY; and

WHEREAS, CONTRACTOR is willing to provide promotional development for CITY that will market, solicit, advertise, promote, sponsor and participate in conventions, sales meetings, trade shows, athletic or other exhibitions and competitions, film commission activities and all other activities in the CITY which will attract tourists or visitors to the CITY OF BEND area; and

WHEREAS, CITY shall support CONTRACTOR with tourism related taxes levied throughout the CITY and CONTRACTOR may be supported in part by private sector contributions; and

WHEREAS it is the desire of CITY to seek to improve the quality and efficiency of managing the convention and visitors bureau programs.

Now THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

I. SCOPE OF SERVICES

The scope of services which the CONTRACTOR shall provide are as follows:

1. Management and Administration of the Visitors Information Center.

Activities shall deal generally with the management and administration of the Visitors Information Center located in CITY OF BEND. CONTRACTOR shall provide all necessary staff, materials and services to adequately represent the CITY in meeting with visitors, dispensing information regarding the area, development of necessary informational programs, and coordination with associated agencies and entities.

2. Destination Sales and Marketing.

CONTRACTOR shall provide all necessary staff, services, supplies and equipment for promoting CITY OF BEND as a destination for local, state, national and international conventions, meetings and events. CONTRACTOR shall develop and maintain an Internet website for the purpose of promoting CITY OF BEND as a tourism destination.

3. Visitor Promotion Activities.

CONTRACTOR shall provide all functions, literature, advertising, staff, supplies, equipment and support associated with an educational awareness program designed to promote the CITY OF BEND area as a destination for tours and visitors. CONTRACTOR shall develop, arrange for printing, and distribute literature necessary to promote the CITY OF BEND area to visitors and identify and conduct activities and programs designed to promote the CITY OF BEND area for tours and visitors. CONTRACTOR shall coordinate its activities, as appropriate, with affiliated organizations such as the Oregon Travel Council and other visitor promotional entities.

4. Administrative and Management Functions.

CONTRACTOR shall provide day-to-day management activities including planning, purchase and acquisition of services, equipment, supplies and facilities necessary to fulfill the Annual Business and Marketing Plan for each of the areas outlined above. Management acquisition and retention of a capable and competent staff, fund raising and cultivation of community support and accounting for the budgeting of the Annual Business and Marketing Plan funds according to accounting procedures established by the CITY shall be the responsibility of the CONTRACTOR.

II. ANNUAL BUSINESS AND MARKETING PLAN

CONTRACTOR shall submit an annual Business and Marketing Plan (the “Business Plan”), by April 15 of each year, containing a detailed proposed budget and identification of activities with a statement of performance goals and standards for all activities contemplated pursuant to this Agreement. The Business Plan will be constructed and prioritized based on a verifiable production of Tourists to CITY OF BEND. “Tourists” as used here and throughout this Agreement shall be defined as non-CITY OF BEND residents who stay overnight in CITY OF BEND. The Business Plan shall contain a detailed budget predicated upon revenue estimates approved by CITY. Any and all job descriptions, qualifications requirements, salary ranges, bonus program, and hiring practices shall be included in the annual Business Plan.

CONTRACTOR shall notify CITY in writing of any significant change made to the Business Plan. CONTRACTOR shall give an oral report semi-annually to CITY on the progress being made on the Business Plan.

III. CONTROL AND SUPERVISION

CITY shall review and approve the Business Plan by May 10 of each year. Additionally, CITY may provide recommendations and suggestions relating to CONTRACTOR's services and activities. However, CONTRACTOR shall be responsible for the day-to-day operations, decisions and implementation of the Business Plan.

IV. CITY FUNDING FOR CONTRACTOR SERVICES

In consideration of the services provided hereunder, the CITY agrees to provide public sector funds to CONTRACTOR for the operation, management and performance of the services outlined herein and in the Business Plan. Funding for 2005 shall be funded in accordance with Section VIII(1) and shall be no less than 27% of the transient room tax revenues. CONTRACTOR shall have the right to petition the CITY for additional funding for special projects, business opportunities, and/or sponsorships. The CITY shall submit revenue projections to CONTRACTOR by February 1 of each year, so that CONTRACTOR can include those figures in the Business Plan submitted to CITY each April 15. The revenue projections provided by the CITY in its February 1 submission to CONTRACTOR shall be based upon a three (3) year average of the transient room tax revenues. Disbursement of actual funding by the CITY to CONTRACTOR shall be made on the first day of each calendar quarter.

V. ADMINISTRATIVE FUNCTIONS

1. All of CONTRACTOR's administrative and management functions, and activities deemed necessary by CONTRACTOR to operate the services hereunder, including but not limited to personnel, internal budgeting and accounting, fund-raising, purchasing, insurance, maintenance, supervision, legal, printing and any other necessary services shall be at the cost and discretion of CONTRACTOR.

VI. OWNERSHIP OF ASSETS

1. Ownership of buildings and real estate will not be affected by this Agreement.
2. Ownership of consumable assets (i.e. office supplies, technical and office equipment, furniture and fixtures) shall vest in CONTRACTOR who shall have discretion as to the purchase and sale thereof.
3. Ownership of all intellectual property rights of whatever nature, including any rights subsequently acquired by CONTRACTOR, shall remain or be placed in the name of CONTRACTOR. Upon dissolution of CONTRACTOR as an entity or upon termination of this Agreement, ownership of intellectual property rights shall be transferred by CONTRACTOR to purchaser (such purchaser may be the CITY or a separate third party) pursuant to a Purchase Agreement negotiated between CONTRACTOR and the purchasing party.
4. Ownership of publications, brochures, and other inventories of similar materials shall remain with the CONTRACTOR. However, production of said materials shall remain the responsibility of CONTRACTOR.

VII. RISK OF LOSS, BONDS AND INSURANCE

Risk of loss of all property, fixtures and personalty used to provide promotional services shall be upon CONTRACTOR. CONTRACTOR shall at its own expense furnish the following bonds and insurance to remain in full force and effect throughout the term of this Agreement.

1. Fidelity Bond. Upon execution of this Agreement, CONTRACTOR shall furnish the CITY with a fidelity bond in the amount of \$25,000 guaranteeing that the surety will reimburse the CITY, its agents and employees for such pecuniary loss

suffered by the CITY, its agents and employees as may be sustained as a result of any act of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of CONTRACTOR or any of its agents or employees, directly or indirectly. Said bond shall be issued by a responsible surety company authorized to do business within the State of Oregon and shall be subject to approval as to form and content by the CITY.

2. Liability Insurance. CONTRACTOR shall maintain throughout the term of this Agreement and upon execution of this Agreement exhibit evidence of public liability insurance against any and all losses or claims arising out of the performance of this Agreement. The insurance shall be obtained from a responsible insurance company authorized to do business in the State of OREGON and shall be in the following minimum amounts: Five Hundred Thousand Dollars (\$500,000) per person and up to One Million Dollars (\$1,000,000) per occurrence. All policies shall be in a form and content satisfactory to the CITY, shall list the CITY as an additional named insured, and shall contain a provision that said policy may not be canceled without sixty (60) days written notice to the CITY.
3. Worker's Compensation. CONTRACTOR shall secure worker's compensation insurance in form and amount sufficient to satisfy the requirements of applicable laws of the State of OREGON and be issued for the benefit of each of the persons employed by CONTRACTOR in the operation of the promotional services. Such insurance shall be kept in force during the entire term of this Agreement and shall contain the provision that the policy may not be canceled without sixty (60) days notice to the CITY.
4. Property Insurance. The CONTRACTOR shall provide its own insurance on the furniture, fixtures and equipment, loss of use, or other coverage as it deems appropriate.

5. Failure to Provide Bonds and Insurance. If bonds and insurance become unavailable or cost prohibitive, the CITY and CONTRACTOR shall negotiate an alternative acceptable to each.

VIII. BUDGETING

1. The budget for CONTRACTOR's activity in 2005 will reflect funding which shall be no less than 27% of the transient room tax revenues.
2. Public sector funding will be limited to those sources set forth in Section IV. The annual budget will be based upon a percent of tourism related taxes mutually agreed upon by February 1st of the proceeding year by CONTRACTOR and the CITY, and the annual budget will contain a reserve fund in an amount up to fifteen percent (10%) of the public funded portion of the annual budget. The reserve fund, if such is deemed to be necessary, may be used in the case of actual revenues being less than forecast revenues and in support of activities included in the approved Business Plan. CONTRACTOR may access the reserve fund upon request and approval by the CITY. In no case will expenditures exceed actual funds available for CONTRACTOR operations. Actual funds available shall consist of those funds provided in accordance with Section IV above, and any funds provided from private sector contributions. However, if CONTRACTOR assumes additional event sponsorships that are not funded by tourism related taxes, then CONTRACTOR may request additional funding from the CITY to support these additional events.
3. CONTRACTOR will prepare semi-annual financial reports in a form acceptable to CITY. The reports shall be submitted semi-annually to CITY for review and approval for payment.

IX. RECORDS AND ACCOUNTING

CONTRACTOR shall maintain records and accounts that will allow the CITY to assure a proper accounting for all funds paid for the performance of this Agreement. Within 72 hours of a written request by the CITY, CONTRACTOR shall make such records available for review by the CITY and other authorized entities requiring such records. CONTRACTOR agrees that, semi-annually, it will provide financial records from its accountants relating to the preceding six months to the CITY and to the CITY OF BEND Auditor. Such "Financial Records" shall include a balance sheet and income and expense reports. The Financial Records will be maintained by CONTRACTOR for at least three (3) years, or such longer period, as may be required by law or regulation after the expiration of this Agreement.

X. TERM AND TERMINATION

1. The initial term of this Agreement shall be from July 1, 2005 to June 30, 2006 (the "Term"), and shall automatically renew each year for calendar-year periods thereafter upon approval of the annual Business Plan (the "Renewal Terms").
2. Either party may terminate this Agreement "without cause" by providing six (6) months written termination notice to the other party.
3. Either party may terminate this Agreement "with cause" by providing written notice to the other party setting forth the items in which the other party is in default of or non-compliance with the Agreement. The defaulting/non-complying party shall then have thirty (30) days after receipt of such notice in which to cure such default/non-compliance. In the case of default/non-compliance not capable of being corrected within thirty (30) days, corrective action must commence within thirty (30) days of receipt of such notice and proceed with due diligence until completed.

XI. QUALITY OF SERVICE

The CITY shall have the right to require that any inappropriate practices be remedied or discontinued. Such rights by the CITY shall extend to the following functions and operations of CONTRACTOR:

1. Quality of Materials and Operations. All of CONTRACTOR's literature, materials, brochures, or related items shall be of high quality and shall not contain any indecent, obscene or defamatory material. No materials protected by copyright or other intellectual property rights shall be produced, displayed or distributed without first acquiring the legal rights to do so.
2. Quality of Equipment. All permanent or temporary facilities, supplies, equipment, fixtures or similar services, materials or equipment purchased or used by CONTRACTOR in furtherance of this Agreement shall be believed by CONTRACTOR to be of good quality for service and intended use, and adequate for the function intended to be served. All permanently installed equipment and fixtures shall be of good quality and shall be fit for their intended use.
3. Equal Opportunity. CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, religion, ancestry or national origin and shall take such affirmative action including but not limited to hiring, promotion or demotion, recruitment, layoff or termination, salary and selection for training as is necessary to ensure that all employees and applicants are treated equally as to the aforementioned bases. CONTRACTOR and its employees shall not, in the performance of this Agreement, discriminate against any customer, potential customer, Visitor Center patron or other person on the basis of race, color, sex, religion, ancestry, or national origin and shall provide services, facilities and other privilege to all such persons equally.

4. Entry Into Spaces. The CITY reserves to itself and to the duly-authorized representatives of the CITY or other appropriate governmental agencies the right to enter upon and inspect the Visitor Information Center, CONTRACTOR's facilities and all equipment related to the performance of services hereunder upon 48-hour prior notice to CONTRACTOR and during CONTRACTOR's normal working hours for the purposes of enforcing applicable business and health regulations and enforcing the provisions of this Agreement, as long as the regular conduct of CONTRACTOR's business is not disrupted.

XII. LIABILITY

1. CONTRACTOR Indemnification. CONTRACTOR hereby agrees to indemnify and save harmless the CITY, its officers, agents and employees from and against any and all claims, loss, damages, injury or liability including claims for misapplication of contributions or other funds, state or federal anti-trust violations, personal injury or death, damages to property, liability arising out of the use of materials, concepts or processes protected by intellectual property rights and liens of workmen and material men, howsoever caused, resulting directly or indirectly from the performance of this Agreement by CONTRACTOR.
2. CITY Indemnification. CITY hereby agrees to indemnify and save harmless the CONTRACTOR, its officers, agents and employees from and against any and all claims, loss, damages, injury or liability including claims for personal injury or death, damages to property, liability arising out of the use of materials, concepts or processes protected by intellectual property rights and liens of workmen and material men, howsoever caused, resulting directly or indirectly from the performance of this Agreement by CITY.

3. Conditional Limits on Liability. Neither party shall assume or have any liability under this Agreement for the timely failure to furnish the services set forth herein due directly or indirectly to causes beyond the control and without the fault or negligence of the parties including but not limited to: acts of God, acts of war or of the public enemy, acts of the United States, any state or territory of the United States or any political subdivision of the foregoing, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or defaults of any subcontractors due to any of the above causes.

4. Limits of Liability. The CITY shall not be liable for any damage to or loss of any goods, merchandise or equipment used or stored at the Visitors Information Center or elsewhere on CONTRACTOR's premises which loss or damage does not result directly from the CITY's sole negligence.

XIII. MISCELLANEOUS

1. Licensing and Taxes. CONTRACTOR shall be responsible for the acquisition and maintenance of all licenses and permits necessary pursuant to this Agreement. All taxes related to such acquisitions and maintenance due the United States, the State of OREGON or local governments shall be paid by CONTRACTOR.

2. Independent Contractor. CONTRACTOR states and affirms that it is acting as an independent contractor, holding itself out to the general public as an independent contractor. The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested only in the results to be achieved; all conduct and control of the work will lie predominantly with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of the CITY for any purpose, and the employees of CONTRACTOR are neither employees of the CITY nor entitled to any of the benefits that the CITY provides for its employees.

3. Insurance/Worker's Compensation. Both parties agree that CONTRACTOR shall be deemed to be an independent contractor in the performance of this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance, and worker's compensation. As such, CONTRACTOR shall have no authorization, express or implied, to bind the CITY to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the CITY, except as expressly set forth herein. CONTRACTOR shall furnish a Certificate of Insurance to CITY evidencing that CONTRACTOR'S worker's compensation insurance for CONTRACTOR and all of its employees.
4. Assignment. It is agreed that neither party may assign, subcontract, or otherwise transfer the rights and responsibilities of this Agreement except upon the written consent of the other party. If any assignment is made both the assigning party and his assignee shall be bound by the terms and conditions of this Agreement.
5. Amendments. This Agreement shall not be altered, modified or amended except upon the written agreement of both parties.
6. Laws of Oregon. It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Oregon both as to interpretation and performance.
7. Separate Parts. If any clause, sentence or paragraph of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, such decision shall not affect the remaining portions and the parties do now declare their intention that each such clause, sentence or paragraph of this Agreement be a separate part hereof.

8. Attorney's Fees. In the event that either party defaults in the performance of the obligations set forth herein, the defaulting party agrees to pay to the non-defaulting party all costs of pursuing any remedy available to include all reasonable attorney's fees, whether incurred prior to initiating litigation or subsequent to the issuance of any judgment thereunder.

CITY OF BEND, OREGON

By: _____
Harold Anderson, City Manager

ATTEST:

CITY Clerk/Auditor

By:
Its: Deputy

APPROVED AS TO FORM:

CITY OF BEND Attorney

By: _____
Its: Deputy

INDEPENDENT CONTRACTOR: BEND
Convention & Visitors Bureau, Inc.

By: _____
Chairman of the Board

By: _____
Executive Director