

AGREEMENT FOR THE USE OF CITY GUEST TAX FUNDS

THIS AGREEMENT FOR THE USE OF CITY GUEST TAX FUNDS is made this 20 day of January, 2021, by and between the City of Lawrence, Kansas, a municipal corporation, and eXplore Lawrence, Inc., a Kansas not for profit corporation.

RECITALS

- A.** At its August 18, 2020, regular meeting, the Governing Body of the City of Lawrence, Kansas ("City"), a municipal corporation, approved the recommendation of the City Manager and authorized the City Manager to enter into an agreement with eXplore Lawrence, Inc. ("Grantee"), a Kansas not for profit corporation, whereby Grantee would receive a grant from the City Guest Tax Fund in the amount of \$996,000.00.
- B.** The application for funds, as approved and amended by the Governing Body, states that the grant will be used to fund tourism, visitor, or convention business of the City ("the Project"). The Project proposes to achieve terms outlined in the Agreement for Services between the City and Grantee to Operate the Lawrence Convention and Visitors Bureau, dated January 13, 2016 (hereinafter "Operations Agreement") (The City and Grantee acknowledge the importance of complying with the terms of the Operations Agreement and the importance of periodically reviewing the terms of the Operations Agreement and agree to perform such a review during calendar year 2021).
- C.** This Agreement for the Use of City Guest Tax Funds ("Agreement") memorializes the terms of that agreement and grants to Grantee the sum of \$996,000.00 from the City Guest Tax Fund for completion of a portion of the Project, subject to Grantee's execution of this Agreement and compliance with its terms.

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

TERMS

SECTION 1. Grant of Funds. In consideration of Grantee's completion of its portion of the project, the City hereby grants to Grantee the sum of **NINE HUNDRED AND NINETY-SIX THOUSAND DOLLARS AND NO CENTS** (\$996,000.00).

SECTION 2. Grantee's Covenants. As consideration for the receipt of the grant of funds, Grantee agrees and covenants that it will expend said funds in accordance with:

- (a) All applicable federal, state, and local laws; and
- (b) The recommendation of the City Manager, as approved by the Governing Body, which provides that said funds will be used to complete the Grantee's Project outcomes.

SECTION 3. Disbursement of Funds.

- (a) The Grantee shall, in writing, request the disbursement of funds on Grantee's official letterhead.
- (b) Unless otherwise agreed to in writing, requests shall be submitted quarterly no sooner than one week following distribution of the transient guest tax proceeds by the State of Kansas.
- (c) The City shall not disburse any funds prior to receipt of transient guest tax proceeds from the State of Kansas.
- (d) The City retains the right to withhold subsequent disbursements of funds for failure to provide monthly report as outlined in the Operations Agreement.
- (e) In accordance with the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.*, the City retains the right to unilaterally adjust the amount of the disbursement if the Governing Body determines that insufficient public funds exist to fully fund Grantee at level set forth in this agreement.

SECTION 4. Reporting Requirements.

- (a) Pursuant to the Operations Agreement, monthly reports shall be provided to the City Manager including:
 - (i) Reports that indicate the overall economic impact of tourism and sales activities;
 - (ii) Reports for event-specific economic impact for CVB-sponsored or coordinated events;
 - (iii) Monthly transient guest tax collections for the City;

- (iv) General trends on requests for proposals to hotel properties and sales activities;
 - (v) General reporting on special event activities and bids;
 - (vi) Marketing and communications activities; and
 - (vii) Other timely organizational items of note or requests by the City.
- (b) The Grantee shall deliver a final report to the Governing Body at the completion of the Project, which shall outline what was accomplished with the outlay of City funds. **The final report shall be due February 15, 2022.**
 - (c) The Grantee agrees to comply with K.S.A. 45-240, which requires not-for-profit entities receiving public funds to document and make available the receipt and expenditures of such funds.

SECTION 5. Retention and Access to Records.

- (a) The Grantee will give the City or any other authorized representatives of the City access to and the right to examine all records related to the expenditure of City funds.
- (b) The Grantee shall keep financial records and all other records pertaining to the Project being funded for a minimum of three (3) years.
- (c) The City may, at its sole option, conduct an audit related to this funding agreement.
- (d) The Grantee shall, upon the City's request, make its records, employees, and property available to the City, promptly.

SECTION 6. Withholding of Payment. The City shall retain the authority to withhold any and all payments to the Grantee if, in the sole judgment of the City, the proposed or continued use of the funds violates the terms of this Agreement, any applicable law, or is contrary to the appropriate use of public funds.

SECTION 7. Term. This Agreement will terminate upon Grantee's delivery of the final report or upon the joint agreement of the parties, whichever occurs earlier.

SECTION 8. Compliance with Equal Opportunity Laws, Regulations, and Rules.

- (a) Grantee agrees that it shall comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), codified as amended at K.S.A. 44-1001 *et seq.*, and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), codified as amended at K.S.A. 44-1111 *et seq.* and shall not discriminate against any person, in the course of performing under this Agreement, because of that person's race, sex, religion, color, national origin, age, ancestry, familial status, sexual orientation, disability, or gender identity.
- (b) In all solicitations or advertisements for employees, Grantee shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("KHRC").
- (c) In any subcontract, grantee agrees to include the language of this Section applicable to any subcontractor hereunder.
- (d) Grantee also agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.
- (e) If Grantee is found guilty or liable for any violation of the KAAD, the KADEA, the ADA, or Chapter 10 of the City Code by the KHRC or any investigating body, then Grantee shall be deemed to have breached the present Agreement.

SECTION 9. Indemnification. Grantee agrees to defend, indemnify, and otherwise hold harmless the City, its commissioners, officers, employees, and agents from any and all claims, actions, damages, costs, liabilities, settlements, judgments, expenses, or lawsuits, including attorneys' fees, but only to the extent that such are caused by Grantee's breach of this Agreement or by Grantee's negligence in performing the Project.

SECTION 10. Entire Agreement.

- (a) This Agreement represents the entire and integrated agreement between the City and Grantee and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. This Agreement may be amended only by a written instrument signed by both the City and the Grantee.
- (b) No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Agreement;

and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver, modification, or amendment made in writing and signed by both parties.

SECTION 11. Assignment. This Agreement is non-assignable by the Grantee or by the City.

SECTION 12. Authorizations. Each person executing this Agreement in behalf of the City and Grantee hereby represents and warrants that he or she has the authority to bind his or her respective party hereto and that all acts requisite to confer authorization to enter into this Agreement have been taken and completed.

SECTION 13. Independent Contractor. In no event, while performing under this Agreement, shall Grantee, its officers or principal, its employees, its agents, its subcontractors, or its vendors be deemed to be acting as an employee or as employees of the City; rather, Grantee, its officers or principal, its employees, its agents, its subcontractors, and its vendors shall be deemed to be an independent contractor or independent contractors. Nothing expressed herein or implied herein shall be construed as creating between Grantee and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 14. Captions. The Captions of this Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Agreement or its terms.

SECTION 15. Recitals. The recitals set forth at the beginning of this Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 16. Governing Law. This Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

SECTION 17. Severability. In the event that any provision of this Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Agreement for the Use of City Guest Tax Funds to be executed as of the date noted above.

CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation



CRAIG S. OWENS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

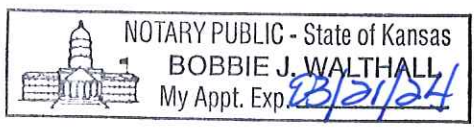
BE IT REMEMBERED, that on this 20 day of January, 2021, before me the undersigned, a notary public in and for the County and State aforesaid, came Craig S. Owens, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.




Notary Public

My Appointment Expires:



GRANTEE:
**eXplore LAWRENCE, INC., a Kansas
not for profit corporation**

Signature: 

Printed Name: Michael Davidson


Title: Executive Director

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 9th day of December, 2020, before me the undersigned, a notary public in and for the County and State aforesaid, came Michael Davidson, as Executive Director of eXplore Lawrence, Inc., a Kansas not for profit corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.


Notary Public

My Appointment Expires: 11/20/2022

