

**AGREEMENT BETWEEN
CITY OF DUNWOODY, GEORGIA AND
DEKALB CONVENTION & VISITORS BUREAU, INC.**

THIS AGREEMENT is made by and between the City of Dunwoody, Georgia, a political subdivision of the State of Georgia, acting by and through its duly elected Mayor and Council (hereinafter sometimes referred to as the "City"), and the DeKalb Convention & Visitors Bureau, Inc., a non-profit corporation, chartered in the State of Georgia, acting by and through its duly elected Board of Directors (hereinafter sometimes referred to as "Corporation").

W I T N E S S E T H:

WHEREAS, the Mayor and Council of the City of Dunwoody, Georgia, have levied a tax of 5% pursuant to the provisions of O.C.G.A. § 48-13-51(a)(3) (the "Tax"); and

WHEREAS, the provisions of O.C.G.A. § 48-13-51(a)(3) further require that the amount of the Tax in excess of 3% (the "Excess Tax") be expended for certain purposes stated therein, including but not limited to, promoting tourism, conventions, and trade shows; and

WHEREAS, the provisions of O.C.G.A. § 48-13-51(a)(3) further require that the expenditure of the Excess Tax be made only through a contract or contracts with certain entities stated therein, including, but not limited to, a private sector nonprofit organization; and

WHEREAS, the Corporation is a private sector nonprofit organization as defined in O.C.G.A. § 48-13-51(a)(8) which meets all other necessary and reasonable requirements to qualify as an appropriate entity to make expenditures of the Excess Tax; and

WHEREAS, the Corporation has covenanted and agreed that it shall make expenditures of the Excess Tax in accordance with an established budget for those funds (the "Budgeted Funds") which budget and any amendments or modifications thereof shall be subject to the prior approval of the City.

NOW, THEREFORE, for and in consideration of the mutual obligations herein assumed, the sufficiency of which is hereby acknowledged, the City hereby agrees that the Corporation shall make expenditures of the Excess Tax in the amounts approved by the City as Budgeted Funds, and the Corporation hereby agrees to receive and make expenditures of the Excess Tax in accordance with the terms and conditions hereinafter set forth. The general nature of the Corporation's activities shall be as set forth in Exhibit A attached hereto and incorporated herein by this reference.

I.

Corporation agrees to submit a budget acceptable to the City showing the planned expenditure of all Excess Tax funds to be received from the City and to maintain accurate records of the expenditure and disposition of such funds, such records to be maintained in accordance with generally accepted accounting principals and in accordance with the requirements of O.C.G.A. § 48-13-51(a)(9). All such records will be made available for inspection and audit by the City, upon its request. The Corporation's budget for 2009 is attached hereto as Exhibit B.

II.

Corporation shall be responsible from the time of signing the Agreement, or from the time of the beginning of the first work, whichever shall be the earlier, for all injury or damage of any kind resulting from its work or the work of any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them, to persons or property, including employees and property of the City. Corporation shall exonerate, indemnify, and save harmless the City from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation, and actions, based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with its performance of this Agreement or the work of any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them or by conditions created thereby or arising out of or in any way connected with work performed under this Agreement and shall assume and pay for, without cost to the City, the defense of any and all claims, litigation, and actions suffered through any act or omission of Corporation, or any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. The Corporation expressly agrees to defend against any claims brought or actions filed against the City where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

III.

Corporation shall furnish the following to the City:

- A. Certificates of Insurance from companies doing business in Georgia and acceptable to City covering:
 - 1. Statutory Workers' Compensation Insurance, or proof that Corporation is not required to provide such coverage under state law:
 - 2. Comprehensive Liability Insurance covering all operations and automobiles:
 - a. With limits of \$300,000 for each occurrence of bodily injury - general liability coverage, and with limits of \$100,000 for each person and \$300,000 for each occurrence - automobile liability coverage.
 - b. With limits of \$100,000 for each occurrence of property damage - general liability coverage and automobile liability coverage.
 - c. "Umbrella" or "Excess" coverage cannot be used to reach the limits stated in subparagraphs a and b above.

B. Certificates of Insurance must be executed in accordance with the following provisions:

1. Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this Agreement;
2. Certificates to contain the locations and operations to which the insurance applies;
3. Certificates to contain Corporation's protective coverage for any subcontractor's operations;
4. Certificates to contain Corporation's contractual insurance coverage;
5. Certificates are to be issued to:

City of Dunwoody, Georgia

Dunwoody, Georgia 30338

6. Certificates referred to in subparagraph 5 above must be mailed to:

City of Dunwoody, Georgia

Dunwoody, Georgia 30338

C. Corporation shall be wholly responsible for obtaining certificates of insurance showing coverage as set forth above for all subcontractors who are engaged in work covered by this Contract.

D. Corporation agrees to carry statutory Workers' Compensation Insurance and to have all subcontractors likewise carry statutory Workers' Compensation Insurance.

IV.

The City agrees that it will pay to Corporation the amount of the Excess Tax collected by it during 2009, less an administrative fee equal to 3% of such amount that is to be retained by the City. Corporation will be paid the amount of Excess Tax collected by the City during a calendar month within fifteen (15) calendar days following the end of that month. Any penalties assessed against hotels-motels for late payment of the Tax or any other reason will be retained by the City.

V.

The Corporation shall expend the funds received from the City, as a result of the collection of taxes levied pursuant to O.C.G.A. § 48-13-51, et seq., in each of those jurisdictions to promote, attract, stimulate, and develop conventions, trade shows, and tourism in each of

those jurisdictions in proportion to the amount of such tax funds received from each such jurisdiction.

VI.

The City designates the Mayor as its point of contact, coordinator, and liaison person with Corporation in the execution of the terms of this Agreement.

VII.

Subject to Paragraph IX below, this Agreement may be modified or amended by mutual agreement of the parties; provided, however, that no waiver, modification, or amendment of any term, condition, or provision of this Agreement will be valid, or of any force or effect, unless made in writing, approved by the respective parties' governing bodies, and properly executed by the parties' authorized representatives. Renewal of this Agreement may be accomplished through the process of amendment or modification as provided for herein.

VIII.

Subject to Paragraph IX below, this Agreement may be terminated, with or without cause, by either party hereto by giving of ninety (90) days written notice of such termination.

IX.

This Agreement will remain in effect from April 1, 2009 until midnight of December 31, 2009, unless it shall sooner have been terminated, modified, or amended in the manner set forth in it. Thereafter, this Agreement shall be automatically renewed on January 1 of each succeeding calendar year during which Excess Tax is collected by the City unless a party to it delivers written notice to the other party of such party's intent not to renew this Agreement at least ninety (90) days prior to the end of a calendar year. Except to the extent specifically agreed upon by the parties, any modification or termination of this Agreement in the manner set forth above or any other modification or termination of this Agreement for whatever cause or under whatever circumstances, shall not relieve or impair the obligations of either party arising prior to the effective date of any such modification or termination. Without limiting the generality of the foregoing, the provisions of Paragraphs I, II, IV, V and VI of this Agreement shall survive its termination until the accomplishment of all the requirements imposed by those paragraphs, as they exist as of the date of the termination of this Agreement. By way of illustration, Corporation shall continue to be obligated to devote any and all non-expended Excess Tax funds received from the City, and not returned to the City in accordance with the provisions of this Agreement, for the purposes provided in this Agreement and the City shall continue to be obligated to advance funds under Paragraph IV of this Agreement for the payment of actual costs incurred or committed to be incurred by Corporation prior to the modification or termination, as the case may be, of this Agreement.

X.

This Agreement shall be executed in an original and two (2) copies, any one of which may be used for any purpose for which the original may be used.

XI.

For the purposes of this Agreement, any notices required to be sent to the parties to it

shall be mailed to the following respective addresses:

CORPORATION

DeKalb Convention & Visitors
Bureau, Inc.
1957 Lakeside Parkway, Suite 510
Tucker, Georgia 30084

CITY

Mayor
City of Dunwoody

Dunwoody, Georgia 30340

XII.

It is the intent of the parties that nothing contained in this Agreement shall be interpreted to assign to Corporation any status under this Agreement other than that of an independent contractor.

XIII.

This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of action based on, arising out of, this Agreement shall be brought in the Courts of DeKalb County, Georgia.

[INTENTIONALLY LEFT BLANK]

XIV.

The parties agree that validity and interpretation of, and all rights and obligations created by, this Agreement shall be governed, controlled, and defined by and. under the laws of the State of Georgia.

The parties hereto have affixed their hands and seals on this _____ day of _____, 2009.

DEKALB CONVENTION & VISITORS
BUREAU, INC.

CITY OF DUNWOODY

BY: _____
President & CEO

BY: _____

Title: _____

ATTEST:

ATTEST:

Secretary

City Clerk

(SEAL)

(SEAL)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

PURPOSE AND NATURE OF AGREEMENT

City Purpose. The City wishes to promote tourism, conventions and trade shows and wishes to advertise, promote and encourage the use of all facilities and businesses relating to conventions, trade shows and tourism, both public and private, within the City, thereby increasing the City's revenue and creating employment opportunities within the City.

Corporation Purpose. The Corporation is a nonprofit organization under the Georgia Nonprofit Corporation Code and has been recognized as exempt from income taxation under Section 501(c)(6) of the Internal Revenue Code. Through its activities, it is anticipated that the Corporation can beneficially promote, attract, stimulate and develop conventions, trade shows and tourism within the City. Such activities are expected to be broad-based and to benefit a wide range of businesses and are not to benefit the City's government per se and such activities are related to and consistent with the performance of the Corporation's tax exempt activities.

Nature of Expenditures. It is understood and agreed that the expenditure of the Excess Tax funds are to be made by the Corporation in strict compliance with the provisions of O.C.G.A. § 48-13-51, et seq., and for the purpose of promoting conventions, tourism and trade shows within the City. The activities of the Corporation under this Agreement do not constitute the rendition of services to the City, but rather the Agreement constitutes the specified manner of compliance with the above statute for the levying of the Tax and the expenditure of the Excess Tax funds.

Intentions of the Parties. It is the understanding of the parties that the Excess Tax funds when received by the Corporation will not be taxable income under either the IRS Code or the Income Tax Code of the State of Georgia. The Corporation agrees to notify the IRS and the Georgia Revenue Department (if necessary) of this agreement and to seek confirmation of this understanding. If necessary, the parties agree to amend and modify this agreement in order to preserve the tax exempt status of the Corporation and the tax exempt status of the funds covered by this Agreement.

STATEMENT OF SERVICES

Corporation agrees to operate a convention and visitors bureau which will enable DeKalb County, the cities within DeKalb County and the hotels and motels located therein to market the county as a destination for specific inbound groups, increase the occupancy rate of hotel and motel rooms and promote the development of facilities designed to enhance the growth of the convention, trade show and tourism industry in DeKalb County and its cities. Corporation shall also perform the following:

1. Corporation will hire and direct staff members whose duties will include the following:
 - a. Develop and implement marketing plans for convention, trade show and tourism sales.
 - b. Produce and distribute publications in support of facilities and attractions in DeKalb County and its cities.

- c. Implement a tourism program to increase tourist visitation and spending in DeKalb County and its cities.
 - d. Make contact with meeting planners and other groups to provide them with information about DeKalb County facilities available to host their events and make appropriate referrals of such groups to such facilities.
2. Corporation will require and assure performance of its established Action Plan contained in its "2009 Marketing Plan", which is on file with the Corporation and which is incorporated herein by this reference.
 3. Corporation will (a) submit monthly programmatic and financial progress reports indicating its accomplishment of the Program to the City not later than the 15th day of each month for the preceding month and (b) report its accomplishment of the Program in the Corporation's annual report for 2009 and provide copies of all such publications to designated City personnel and to the City Council.
 4. Corporation will schedule and arrange appropriate sessions with hotel/motel property general managers to discuss the collection of the Tax and timely filing of related reports with the City.
 5. Corporation will use its best efforts to ensure that all funds received under this Agreement are expended for the purposes set forth in this Agreement.

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