

CONTRACT NO. _____

ADVISORY AND ASSET MANAGEMENT SERVICES AGREEMENT

This Advisory and Asset Management Services Agreement (the “**Agreement**”) is entered into this ____ day of September, 2023, by and between the City of Topeka, Kansas, a municipal corporation organized and existing under the laws of Kansas (the “**City**”); and REVPAR International, Inc., a stock corporation organized and existing under the laws of Virginia (“**Consultant**”).

WITNESSETH:

WHEREAS, on June 27, 2023), the Contracts & Procurement Division of the City issued a Hotel Asset Manager RFP, soliciting proposals for hotel advisory and asset management services which RFP was amended on July 6 and 12, 2023, a copy of which is attached hereto as **Attachment A** (the “**Solicitation**”); and

WHEREAS, on July 19, 2023, Consultant submitted to the City a Proposal in Response to Hotel Asset the City RFP, a copy of which is attached hereto as **Attachment B** (the “**Proposal**”); and

WHEREAS, after due consideration of the Proposal, the City has accepted the Proposal subject to the terms and conditions of this Agreement; and

WHEREAS, the City desires to engage Consultant to provide the Services (defined below), and Consultant desires to be engaged to provide the Services to the City, as provided in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant, intending to be legally bound, hereby agree as follows:

1. **Services.** Consultant shall perform the Services in accordance with the terms and conditions of this Agreement and those components of the Solicitation and the Proposal that are expressly incorporated herein by reference. In the event that there is any inconsistency between or among Agreement, incorporated provisions of the Solicitation, and incorporated provisions of the Proposal, (a) this Agreement shall prevail over incorporated provisions of the Solicitation and/or the Proposal, and (b) incorporated provisions of the Solicitation shall prevail over incorporated revisions of the Proposal. Only those portions of the Solicitation and the Proposal that are expressly incorporated herein by reference are so incorporated. The remainder of the Solicitation and the Proposal are attached solely for convenience and have no legal effect.

a. The “**Services**” shall consist of the following:

(1) **Developing an Overall Strategy for the Hotel.** Consultant will advise the City on development of an overall strategy for redevelopment of the hotel located at 1717 S.W. Topeka Boulevard, Topeka, KS 66612 and now

operating as the Hotel Topeka at City Center (the “**Hotel**”), consistent with (1) paragraph A, including clauses i-iv, on page 2 of the Solicitation and (2) “Scope Item 1” (on pp. 13 and 14) of the Proposal, both of which are incorporated herein by reference. The overall strategy will include assisting the city in identifying a developer or buyer who is willing and able to take over redevelopment of the hotel for the City as the owner of the Hotel. Consultant shall provide recommendations on the structure of a proposed transaction in a way that will attract qualified prospective buyers and developers, which structure may include incentive packages. Notwithstanding anything to the contrary within Scope Item I, Phase 3 (on p. 14) of the Proposal, potential future owners of the Hotel need not be limited to entities that include some form of public participation. During Phase 1, Consultant will also advise the City on the business terms of a hotel management agreement with the management company that now operates the hotel, for continued management on a temporary basis while Consultant and the City pursue further steps toward redevelopment of the Hotel. As part of this scope, Consultant will evaluate whether the hotel should be branded as part of its redevelopment and repositioning. If Consultant determines that branding the hotel is accretive, Consultant will contact the pertinent brands on a preliminary basis to determine whether or not they would be willing to brand the hotel and the requirements for doing so, inclusive of preliminary costs, fees, etc. The actual selection of and negotiation with a specific brand would not occur until a later phase.

(2) Updating Hotel Facility Recommendations and Pro Formas. Consultant will independently prepare any updated facility recommendations and financial pro formas, consistent with Scope Item 5, Section A (on p. 19) of the Proposal, which is incorporated herein by reference. Consultant will do its own analysis. With respect to facilities recommendations, Consultant will work with architects and engineers who will be selected and engaged by the City. Specific to branding, the findings from **Scope a above** will be included in the Consultant’s facility recommendations and pro formas prepared in this section. Again, the actual selection of and negotiation with a specific brand would not occur until a later phase.

(3) Selecting a Management Company. If requested by the City in writing, Consultant will advise the City on selecting and engaging a management company to operate the Hotel, consistent (1) paragraph C, including clauses i-ii, on page 2 of the Solicitation and (2) “Scope Item 2” (on pp. 14-15) of the Proposal, both of which are incorporated herein by reference.

(4) Considering Brands and (if applicable) Selecting a Brand. Consultant will have already established which brands, if any, are most advantageous with which to affiliate the hotel **in 1.a and 1.b** above. In this phase, Consultant will undertake the balance of the methodology outlined in Scope Item

3 (on pp. 15-16) of Proposal and consistent with (1) Paragraph B, including clauses i-ii, on page 2 of the Solicitation to secure the brand for the hotel, both of which are incorporated herein by reference.

(5) Seeking a Developer/Buyer. Consultant will advise the City on marketing the Hotel to potential buyers, including buyers who may be interested in assuming some or all of the development process from the City.

(6) Technical Advisory and Pre-Opening Services. If requested by the City in writing, Consultant shall provide technical advisory and pre-opening services consistent with Scope Item 5, Section B (on pp. 20-21) of the Proposal, which is incorporated herein by reference. In addition to the Services described therein, during this phase, Consultant will assist the City in selecting contractors and overseeing renovation of the Hotel. The parties shall, in good faith, agree upon a written budget for Consultant's technical advisory and pre-opening services, and Consultant shall exercise commercially reasonable efforts to comply with the budget.

(7) Asset Management Services. If requested by the City in writing, Consultant will provide asset management services consistent with (1) paragraph D, including clauses i-iii and their respective subclauses on pages 2 and 3 of the Solicitation and (2) Scope Item 4 (on pp. 16-19) of the Proposal, both of which are incorporated herein by reference, and advise the City on preparing the Hotel to be marketed and sold to an independent party.

b. At an appropriate time to be agreed upon by Consultant and a representative of the City, Consultant shall cause Richard E. Pastorino to travel to Topeka, KS and make an in-person appearance before the City Council to express Consultant's recommendations for redevelopment of the Hotel based on some of the above Services, and to answer questions of City Council members.

c. Notwithstanding anything to the contrary within this Section 1, unless otherwise agreed by the parties in writing, the Services shall not include any of the following:

(1) any advisory or asset manager services of a type that are not specifically provided within the above scope;

(2) "extraordinary" advisory or asset management services that would not generally be contemplated within agreements of this type or provided to the Hotel in consideration for the compensation described herein; or

(3) specialized services that are only properly provided by specifically licensed or credentialed professionals. Among the excluded services, without limitation, are the following:

- (A) Accounting or preparation of annual or monthly profit and loss statements;
- (B) Acquisition due diligence services;
- (C) Appraisal or formal valuation services;
- (D) Capital project management services;
- (E) Design, construction, engineering, mechanical, structural, electrical or similar services;
- (F) Detailed market research, consumer surveys, focus groups, or similar services;
- (G) Forensic accounting, auditing, fraud detection, or bookkeeping services;
- (H) Insurance loss adjustment and related advisory services;
- (I) Legal advice or services, including litigation support services;
- (J) Negotiation and finalization of major ground leases ;
- (K) Negotiation of partnership agreements or loan documents, etc.;
- (L) Origination of debt and equity;
- (M) Preparation and prosecution of challenges to ad valorem tax assessments; or
- (N) Promotional, public relations and media relations services.

2. Timing, Estimated Costs and Maximum Costs. The parties shall exercise commercially reasonable efforts for Consultant to perform, and for the City to support Consultant in performing, the Services within the timeframes identified in the following table. Consultant's total fees and expenses for each of the following categories of Services shall not exceed the corresponding maximum amounts in this table.

Services	Projected Completion Date	Maximum Costs (1)	
		Prof Fees	Expenses
Developing an Overall Strategy for the Hotel	6 weeks from receipt of retainer	\$53,000 + \$7,500	
Updating Hotel Facility Recommendations and Pro Formas	3 weeks from authorization to proceed (assuming prior scope of work has been completed)	\$23,600 + \$1,200	
Selecting a Management Company	8 to 10 weeks	\$43,000 + \$7,500	
Considering Brands and (if applicable) Selecting a Brand	8 to 10 weeks	\$24,000 + \$5,000	

Seeking a Developer or Buyer	Ongoing	\$25,000 + \$7,500
Technical Advisory and Pre-Opening Services	Assumed 18 months	\$150,000 + \$25,000
Asset Management Services	Monthly – will start post renovation.	0.75% of Total Revenues or \$12,000 per month, whichever is greater + Expenses
Note (1) All fees assume no change in the scope of work outlined.		

3. Staffing. Consultant shall exercise its best efforts to cause the following services to be overseen by the following corresponding project director/manager employed by Consultant:

Services	Project Director or Manager
Developing an Overall Strategy for the Hotel	Rick Pastorino Chris Cylke Paul Landry
Updating Hotel Facility Recommendations and Pro Formas	Rick Pastorino Chris Cylke Paul Landry
Selecting a Management Company	Rick Pastorino Chris Cylke Paul Landry
Considering Brands and (if applicable) Selecting a Brand	Rick Pastorino Chris Cylke Paul Landry
Seeking a Developer or Buyer	Rick Pastorino Chris Cylke Paul Landry
Technical Advisory and Pre-Opening Services	Rick Pastorino Chris Cylke Paul Landry
Asset Management Services	Rick Pastorino Chris Cylke Paul Landry

4. Compensation. The City will pay Consultant fees for its Services, and reimburse Consultant for expenses incurred in the performance of its Services, consistent with Section 8 (on pp. 29-30) of the Proposal, which is incorporated herein by reference, as modified by this Agreement in the amounts set forth in the table above. Consultant shall invoice the City for its fees and expenses in arrears, and shall include, with each invoice, detailed time entries describing the Services provided and identification of each expense for which reimbursement is sought. Payment of the undisputed portion of any invoice shall be due within thirty (30) days after receipt

of the invoice. The parties shall negotiate in good faith to resolve any dispute over any invoice or portion thereof. The last paragraph of Section 8 of the Proposal (on p. 30) is stricken. Notwithstanding anything to the contrary within the Proposal, the City shall not be required to pay any retainer to Consultant.

5. Consultant's Work Product.

a. Except as provided in Section 5(b), all information, reports, studies, work products, and other tangible or intangible material produced by or as a result of the Services will be the sole and exclusive property of the City, it being intended that such material will be "works made for hire," of which the City will be deemed the author. To the extent that, notwithstanding the foregoing, such material is not deemed "works made for hire" under applicable law, Consultant irrevocably grants, assigns, transfers, and sets over unto the City all right, title, and interest of any kind, nature, or description in and to such material. Consultant will execute any documents requested by the City to evidence the City's ownership of such material.

b. Notwithstanding anything to the contrary within Section 5(a), the City shall not be entitled to any proprietary computer models that have been specifically designed by Consultant for the preparation of hospitality-related feasibility studies, valuations, and appraisals, among other analyses. These models will remain the property of Consultant. However, for the avoidance of doubt, Consultant irrevocably grants, assigns, transfers, and sets over unto the City all right, title, and interest of any kind, nature, or description in and to work product produced and delivered to Consultant that is based on application of the aforementioned models.

c. Notwithstanding anything to the contrary within Section 5(a), any report or associated materials produced by Consultant and submitted to the City pursuant to this Agreement may not be used in any prospectus or printed material used in connection with the sale of securities or real estate, or participation interests to the public, or in any newspaper publicity or other public forum, without Consultant's express, prior, written consent.

d. The scope of Consultant's study and reports thereon will not include the possible impact of zoning or environmental regulations, licensing requirements, or other restrictions concerning the proposed project except where such matters have been brought to Consultant's attention and are disclosed in any report delivered by Consultant to the City.

e. Consultant shall have no obligation to update its findings regarding changes in market conditions that occur subsequent to the completion of Consultant's fieldwork, or changes in the input of assumptions or information provided by the City after Consultant's

review of such information is complete, unless otherwise agreed in writing by Consultant and the City.

f. Since the estimates contained in any report issued by Consultant will be based on assumptions about circumstances and events that are inherently subject to uncertainty and variations, Consultant cannot guarantee that the results will actually be achieved. However, Consultant will exercise its best efforts to accurately project results, and will assign to the work professional personnel having the required competence.

g. Any projections made by Consultant of future rents, expenses, net operating income, mortgage debt service, capital outlays, cash flows, inflation, capitalization rates, discount rates, or interest rates are intended solely for analytical purposes and are not to be construed as predictions of Consultant and/or any appraiser engaged by Consultant. The aforementioned projections will represent only the judgment of the authors as to the assumptions likely to be used by market participants and sellers active in the marketplace, and their accuracy is no way guaranteed.

6. Confidential Information. Consultant agrees that the following information is strictly confidential: (a) any draft, preliminary or final report or any other oral or written work product produced by Consultant as part of or incident to the Services; and (b) any non-public information of the City that: (i) is designated as confidential or proprietary by the City, (ii) Consultant knew or reasonably should have known was confidential or proprietary, or (iii) derives independent value from not being generally known to the public (collectively, “**Confidential Information**”). Consultant further agrees it will not disclose any of Confidential Information to any third party or use any Confidential Information for its own benefit or the benefit of any third party. Consultant may share Confidential Information with its employees, officers or agents who have a need to know that is related to the business relationship created by this Agreement, but will inform them that the Confidential Information is confidential and proprietary to the City and will instruct them not to share the information with third parties. Consultant will take all reasonable steps necessary to preserve the confidentiality of the Confidential Information. The terms contained in this paragraph will survive the end or termination of this Agreement.

City understands and agrees that Consultant may collect certain confidential data (i.e., occupancy, average daily rate, etc.) from various industry sources typically under a confidentiality agreement which it is not permitted to divulge. To that end, REVPAR will only provide historical data in aggregate for groups of hotels as a whole, but not property-specific.

7. Audit. On three (3) business days’ notice and during regular business hours, the City will have the right to inspect, copy and audit the records of Consultant in connection with all matters related to this Agreement to evaluate compliance of Consultant with this Agreement, including, but not limited to, compliance by Consultant with legal requirements. Upon completion of the project, REVPAR International will deliver the stated deliverables per this contract or proposal. Under no circumstances shall the Client be entitled to any proprietary computer models, which have been specifically designed by REVPAR International for the preparation of hospitality-

related assignments including asset management projects, technical advisory assignments, feasibility studies, valuations, and appraisals, among other analyses. These models will remain the property of REVPAR International, Inc.

8. Assignment. Consultant will not assign this Agreement or any part hereof without the prior written consent of the City. The City may not assign this Agreement without the prior written consent of Consultant, not to be unreasonably withheld, conditioned or delayed if the assignment is to the owner of the Hotel, a purchaser of the Hotel, a subsequent operator of the Hotel or a lender or mortgagee of the Hotel.

9. Warranty. Without prejudice to Consultant's rights under Section 18 of this Agreement, Consultant covenants that the Services (i) will be performed in a timely, professional, and workmanlike manner, in compliance with applicable industry standards and in accordance with the requirements of this Agreement; (ii) will comply with applicable laws, rules, or regulations; (iii) will not violate or infringe on the rights of third parties, including contractual, employment, trade secrets, proprietary information, and non-disclosure rights, or any trademark, copyright, or patent rights; and (iv) to the extent consisting of deliverables, will be technically correct and based on criteria included in this Agreement and in the Solicitation. Except as modified by the main body of this Agreement, all criteria in the Solicitation are incorporated within the Agreement by reference. Consultant represents and warrants that it has complied with, and continues to comply with, all legal requirements about its employees, including, but not limited to, those related to immigration status, taxes, insurance, and wage and hour requirements.

10. No Conflict of Interest. Consultant may perform services similar to the Services for third parties in Consultant's sole discretion; except that (i) the performance of such similar services will not be deemed a justification or excuse for any failure to perform under this Agreement, and (ii) Consultant will notify the City of any actual or perceived conflict of interests, and may not perform such similar services if the City declines to waive such conflict of interest.

11. Licenses and Permits. Consultant will obtain and keep valid and in force at all times any licenses or permits required by applicable laws for Consultant to perform the Services. If any such required license or permit is no longer valid and in force for any reason: (i) Consultant will notify the City immediately, and (ii) the City may immediately terminate this Agreement.

12. Term of Agreement. The Agreement shall become effective upon the first date written above, and shall remain in effect through project completion and the City's acceptance of deliverables.

13. Time of the Essence. It is agreed by and between the parties that time and punctuality are essential elements of the Agreement and that the parties will perform their respective obligations as and when provided by the terms of the Proposal.

14. Governing Law. The Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, without giving effect to any conflict-of-law principles thereof that would result in application of any other state's laws.

15. Indemnification.

a. Consultant hereby agrees to indemnify, defend and hold harmless the City and any of its departments, divisions, agencies, officers, employees and elected officials (collectively the "**City Indemnitees**") from and against any and all claims, demands, causes of action, loss, damage, cost, or expenses, specifically including reasonable attorneys' fees and other expenses of litigation incurred by or on behalf of any of the City Indemnitees and arising out of any negligence, fraud or willful misconduct by Consultant. Consultant specifically agrees that, without limiting the generality of the immediately preceding sentence, this duty to indemnify, defend and hold harmless will apply to the following:

- (1) Claims, suits, or action of every kind and description when such suits or actions arise from the alleged negligent acts, errors, or omissions of Consultant, its employees, agents, or subcontractors; and
- (2) Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of Consultant, its employees, agents, or subcontractors.

Notwithstanding anything to the contrary stated within this Agreement, (i) under no circumstances shall the City or any of its departments, officers or employees be liable or responsible for any loss, or damage to property, arising out of any actions of Consultant; and (ii) no shareholder, trustee, partner, member, beneficiary, director, officer, manager, security holder, employee, agent, representative or other person acting for or on behalf of Consultant or Owner shall have any personal liability for any obligations entered into for or on behalf of such party, and the assets of any such person shall not be subject to any claims or actions relating to any obligations of such party.

b. The City hereby agrees to indemnify, defend and hold harmless Consultant and any of its affiliates, and any of their respective shareholders, directors, officers and employees (collectively the "**Consultant Indemnitees**") from and against any and all claims, demands and causes of action asserted by any third parties against any of the Consultant Indemnitees and arising out the City's use of the Consultant's Services, except to the extent that the same arise out of any negligence, fraud or willful misconduct by Consultant.

c. This Section 15 shall survive the termination of this Agreement.

16. Termination Due to Lack of Funding. If, in the judgment of the City the City Manager, sufficient funds will not be available to continue the functions performed in this Agreement and for the payment of the charges hereunder, then the City may terminate this

Agreement at the end of its then-current fiscal year, without liability on account of such termination. The City agrees to give written notice of any such termination to Consultant at least 30 days prior to the end of its then-current fiscal year. The City will pay to Consultant all regular contractual payments incurred through the end of such fiscal year.

17. Termination for Convenience. The City's Director of Contracts & Procurement or designee may terminate performance of Services under this Agreement (and Consultant's entitlement to compensation for such Services), in whole or in part, whenever the Director determines that such termination is in the best interest of the City, and without liability to the City on account of such termination, except for Services rendered before the effective date of such termination. In the event of such termination, the Director or his or her designee shall provide Consultant written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. Consultant shall continue to perform any part of the Services that may not have been terminated by the notice.

18. Termination for Performance. If Consultant defaults in the performance of any of its duties or obligations under this Agreement, which default is not substantially cured within thirty (30) days after written notice is given to Consultant specifying the default, or, with respect to those defaults which cannot reasonably be cured within thirty (30) days, if Consultant fails to proceed within thirty (30) days to commence curing said default and to proceed with all due diligence substantially to cure the default, but in any event does not substantially cure the default within ninety (90) days, then the City may, by giving written notice of termination to the defaulting Consultant, terminate this Agreement as of a date specified in the notice of termination (the "**Termination Date**") such Termination Date being subsequent to the date of the notice of termination.

19. Disclaimer of Liability. No provision of this Agreement will be given effect that attempts to require the City to defend, hold harmless, or indemnify Consultant or any third party for the City's acts or omissions. The City's liability is limited to the liability established in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*

20. Disclosure; Litigation. Consultant agrees to disclose to the City, on an annual basis, any litigation Consultant is or was involved in during the previous year.

21. Notices. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "**notices**") which may be required or desired to be given by either party to the other shall be in writing and shall be made by personal delivery or sent by United States certified mail, postage prepaid, return receipt requested, or by overnight delivery, prepaid, addressed as follows or to any other persons or addresses as may be designated by notice from one party to the other:

If to the City: City Clerk
 215 S.E. 7th Street
 Topeka, KS 66603

with copies concurrently sent by the same means to:

City of Topeka Public Works Department
620 S.E. Madison
Topeka, KS 66607
Attn: Mr. Braxton Copley

and

Lannan Legal PLLC
1717 K Street, N.W., Suite 900
Washington, D.C. 20006

If to Consultant: REVPAR International, Inc.
1020 North Fairfax Street
Suite 320
Alexandria, VA 22314
Attn: Mr Richard E. Pastorino

22. Relationship of Parties. It is understood by the parties that Consultant is an independent contractor of the City and, when authorized to interact with third parties on behalf of the City, an agent of the City. Nothing contained in this Agreement shall be construed or held to make the City an employer, partner, joint venturer or associate of Consultant or any of its owners, officers or employees, in the conduct of his or her business, it being expressly understood and agreed that the relationship between the parties to this Agreement shall at all times remain solely contractual, as provided in this Agreement.

23. Assignment. Neither the City nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. If Consultant employs any independent contractors or subcontractors, Consultant shall be responsible for the performance of their services.

24. Insurance. The City shall not be required to purchase any insurance against loss or damage for any property or service to which this Agreement relates. Subject to the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), and the claims provisions of the Code of the City of Topeka (Section 2-476 *et seq.*), Consultant shall bear the risk of any loss or damage to any personal property in which Consultant holds title. Consultant shall maintain on file in the Contracts and Procurement Division at all times during the term of this Agreement, including renewal periods, a current and valid Certificate of Insurance that provides Commercial General Liability, Automobile Liability, Workers' Compensation, and Professional Liability Insurance in the following minimum amounts:

- A. Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate, with Products & Completed Operations coverage of \$2,000,000 in the aggregate and Property Damage coverage of \$100,000 per occurrence.
- B. Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
- C. Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of the higher of the amount required by applicable laws or \$500,000 for each accident, covering all Consultant employees involved in performing Consultant's services under this Agreement.
- D. Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

The Certificate of Insurance shall reflect that (i) the City is named as an additional insured with respect to the aforementioned Commercial General Liability and Automobile Liability Insurance

policies, as well as any comprehensive (umbrella) insurance policy carried by Consultant; and (ii) each of the policies required by this Section 24 includes an indorsement requiring the insurer to provide the City a minimum of ten (10) days' written notification before any alteration, material change or cancellation of such policy can take effect, and that such notice shall be addressed to the City of Topeka, Contracts & Procurements Division, 215 S.E. 7th Street, Room 60, Topeka, KS 66603; and (iii) except with respect to the Worker's Compensation Insurance and Employer's Liability Insurance, each of the policies required by this Section 24 insures liability incurred pursuant to a contract.

25. Limitation of Liability. Notwithstanding anything to the contrary contained within this Agreement, Consultant's aggregate liability under this Agreement shall not exceed the sum of (a) all fees paid to Consultant pursuant to this Agreement plus (b) Consultant's total recovery from insurance policies for such liability.

26. Anti-Discrimination. Consultant agrees to comply with all federal, state, and local laws and ordinances prohibiting unlawful discrimination and to not unlawfully discriminate against any person because of age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law in the admission or access to, or treatment or employment in, its programs or activities. Without limiting the generality of the foregoing, Consultant agrees to comply with K.S.A. 44-1030 requiring that:

- (A) Consultant shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability unrelated to such person's ability to engage in the particular work, national origin or ancestry;
- (B) In all solicitations or advertisements for employees, Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Contracts and Procurement Division;
- (C) If Consultant fails to comply with the manner in which Consultant reports to the Contracts and Procurement Division in accordance with the provisions of K.S.A. 44-1031, Consultant shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- (D) If Consultant is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Contracts and Procurement Division which has become final, Consultant shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and

- (E) Consultant shall include the provisions of paragraphs (A) through (D) in every sub-contract or purchase order so that such provisions will be binding upon such sub-contractor or vendor.

Consultant understands and agrees that the failure to comply with the requirements of this paragraph may constitute a breach of contract, and the contract may be cancelled, terminated or suspended, in whole or in part by the City of Topeka.

27. Acceptance of Agreement. This Agreement shall not be considered accepted, approved or otherwise effective until the legally required approvals and certifications have been given.

28. Arbitration, Damages, Warranties. Notwithstanding any language to the contrary within this Agreement, no interpretation shall be allowed to find the City, or any department or division thereof, subject to binding arbitration. Further, the City of Topeka shall not be subject to attorney fees and no provision will be given effect, which attempts to exclude, modify, disclaim, or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

29. Representative's Authority to Contract. By signing the Agreement, the undersigned representative of Consultant thereby represents that such person is duly authorized by Consultant to execute this Agreement on behalf of Consultant and that Consultant agrees to be bound by the provisions thereof.

30. Statutory Notice Requirements. Nothing in this Agreement shall be construed to waive any notice requirements under K.S.A. 12-105b.

31. Responsibility for Taxes. The City shall not be responsible for, nor indemnify a Consultant for, any federal, state or local taxes, which may be imposed or levied upon the subject matter of this Agreement.

32. Entire Agreement. The terms and conditions set forth in this Agreement (including incorporated provisions of the Proposal) collectively constitute the final written expression of all the terms of this transaction and are a complete and exclusive statement of those terms. The Agreement supersedes any prior or contemporaneous oral or written agreement, proposed agreements, negotiations, and discussions with respect to the subject matter hereof. Any representations, promises, warranties or statements by any employee or agent of Consultant that differ in any way from the terms of this written agreement shall be given no force or effect. The Agreement may be amended only by a written instrument signed by an authorized representative of REVPAR, and the City Manager (or Acting City Manager) following approval of the Topeka City Council.

33. Waiver of Contractual Right. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

34. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

35. Forum Selection. Any action brought by either party against the other arising under or related to this Agreement shall be brought exclusively within the United States District Court for the District Kansas (Topeka Division) or, if federal subject matter jurisdiction is lacking, in a state court of competent jurisdiction in Shawnee County, Kansas. Each of the parties hereby consents to the personal jurisdiction of such courts and waives any objection based on venue or the doctrine of *forum non conveniens* to any such action being adjudicated in any such court.

36. Recitals Incorporated, Headings Not. The recitals at the beginning of this Agreement are hereby incorporated among the Agreement's terms and conditions. However, the headings at the beginnings of sections, subsections and paragraphs of this Agreement are solely for convenience and have no legal effect.

37. Execution in Counterparts. This Agreement may be signed by fax or electronic signature, which will be deemed to be an original signature, and may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument. This Agreement shall not be effective until the City has countersigned the Proposal on its "ACCEPTANCE AND RETAINER INVOICE" p., and this Agreement has been signed by both parties.

Signature page follows.

IN WITNESS WHEREOF, the parties have agreed to the Agreement effective as of the first date written above.

The “City”

“Consultant”

CITY OF TOPEKA, KANSAS

REVPAR INTERNATIONAL, INC.

Richard U. Nienstedt
Interim City Manager

Richard E. Pastorino
CEO/Principal

Date: _____

Date: _____

ATTEST:

Brenda Younger, City Clerk

APPROVED AS TO FORM AND LEGALITY

DATE _____ BY _____

C&P DIRECTOR

ATTACHMENT A

Solicitation

ATTACHMENT B

Proposal