

BILL NO. 3127

ORDINANCE NO. _____

AN ORDINANCE REVIEWING AND APPROVING THE AGREEMENT BETWEEN THE BRANSON/LAKES AREA CHAMBER OF COMMERCE AND THE CITY OF BRANSON AND AUTHORIZING THE MAYOR TO APPROVE RENEWAL FOR THE THIRD YEAR TERM.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, AS FOLLOWS:

- Section 1: The Board of Aldermen, upon annual review, hereby re-approves the agreement with the Branson/Lakes Area Chamber of Commerce for the third year of its three-year term, as attached hereto as Exhibit "A".
- Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this _____ day of _____, 2005.

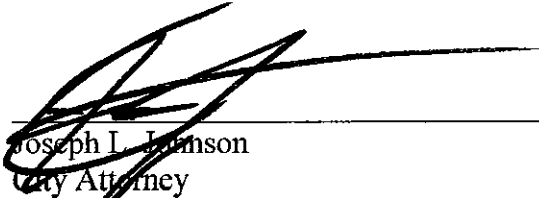
Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson, Missouri this _____ day of _____, 2005.

Louis E. Schaefer
Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K Westfall
City Clerk



Joseph L. Johnson
City Attorney

CONTRACT

THIS CONTRACT, made and entered into this _____ day of _____ 20____ by and between the city of Branson, Missouri, hereinafter referred to as the "City" and the Branson/Lakes Area Chamber of Commerce and Convention and Visitors Bureau a Missouri corporation, hereinafter referred to as the "**Contractor**".

W-I-T-N-E-S-S-E-T-H

WHEREAS, the City is required by Sections 94.800, et.seq, RS Mo., 1994, as amended (the "Act") to use twenty-five percent (25%) of the collections of tourism tax (the "**Tourism Tax**") by the City for tourism marketing and promotion; and

WHEREAS, the Contractor represents that it has experience in marketing and promoting tourism and seeks to promote tourism in the City in accordance with the Contractor's proposal for and at a cost not to exceed twenty-five percent (25%), less expenses of collection and a 2% contingency, of the amount collected from the Tourism Tax authorized by the voters of the City; and

WHEREAS, The City having considered proposals received in response to the request for proposals desires to retain the services of the Contractor to market and promote tourism in accordance with the Act for the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Term. The term of the Contract shall be from the date of execution of this agreement until September 30, 2006, in three (3) annual increments subject to approval by the Board of Aldermen, subject to annual budgetary appropriation and subject to any changes to which both the Board of Aldermen and Contractor may consent to in writing.

Section 2. Scope of Services. The City engages the services of the Contractor to establish and perform "out of market" marketing and promotional services which are more particularly described in the Contractor's proposal, on file with the City Clerk and incorporated herein by reference. The City has, with the encouragement of the businesses operating within the City, established a priority goal to extend the tourist season to include the winter season instead of being limited to the spring, summer and fall seasons. One of the primary goals of the City is to attract additional tourists throughout the year as well as extend the Tourist Season so that the existing infrastructure will be used more efficiently. The City relies on the Contractor's expertise to fund specific programs at an amount sufficient to achieve this goal, and Contractor will thus determine the amount allocated. To accomplish this goal, the Contractor agrees to support the following programs/organizations as included in contractor's annual budget in a manner designed to insure their increased success: Downtown Branson Main Street Association, and Veterans Task Force. In addition, the Contractor agrees to support the Entertainment Product Advisory Council, in the amount of \$100,000 which may be used for any purpose permissible under Section 94.800, et.seq, RS Mo., 1994, as amended.

The Contractor agrees to use appropriations of the tourism tax by the City in marketing and promoting the City as a tourist destination and by placing appropriate emphasis on extending the tourist season. If the Contractor engages subcontractors to perform any of the services under this Contract, the Contractor shall not be relieved of its duties under this Contract and the City reserves the right to approve any subcontractor employed by the Contractor prior to the subcontractor performing any work. All Tourism Tax funds shall be used for marketing outside a radius of 30 miles from Branson city limits.

The Contractor shall provide to the City a marketing plan for use in measuring the success of the marketing and promotion efforts. Such marketing plan shall establish a baseline for the beginning of the contract period. The Contractor shall measure success of the marketing plan by demonstrating success of the Contractor in exceeding the baseline established. The Contractor, in providing marketing reports to the City, shall demonstrate progress in advancing the objectives established in the marketing plan above the baseline.

Section 3. Contract Administration. The City designates the City Administrator (or his/her designated alternate) as its representative to whom all communications relating to the work performed under this Contract shall be directed by the Contractor.

The Contractor designates its Executive Vice President (or his/her designated alternate) as its representative for all communication, notices, contracts and administration of the work to be performed under this Contract.

The aforementioned representatives of both the City and the Contractor shall have primary responsibility and authority on behalf of the respective party to administer this Contract and to agree upon procedures for coordinating the efforts of both parties under this Contract.

Section 4. Furnishing Information. All information, data, and reports such as city maps, reports of sales tax collections and census demographics as are existing, available, and necessary for the carrying out of the work shall be furnished to the Contractor by the City, and the City shall cooperate with the Contractor in carrying out the services.

Section 5. Copyrights. The Contractor shall defend, indemnify and hold the City harmless from any and all claims or causes of action, including attorney's fees and legal expenses, arising out of or based upon any alleged infringement of any copyright, or any alleged invasion or infringement of any right of any third party in connection with the Contractor's performance of work hereunder.

Section 6. Reports.

(a) Quarterly Reports. The Contractor shall submit a progress report to the City, on a quarterly basis, which describes the work performed during the quarter. This report shall contain measurable, quantifiable, objective data, such as room occupancy, revenue base, inquiries from advertising, conversion study research, attendance from markets advertised in, etc., as well as a synopsis of the activity undertaken.

(b) Other Reports. The Contractor shall submit to the City such other reports in such formats as may be requested or which the City deems necessary to inform the City of issues which may require City action.

Section 7. Personnel. The Contractor's personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder will be performed by the Contractor or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

Section 8. Key Personnel and Program Organization. The Contractor will perform all of its services under this Contract through a staff under the direction of its designated representative, who will be responsible for the management, scheduling, planning and coordination of the service, and for communications between the Contractor and the City, and for the overall fulfillment of all obligations of the Contractor under this Contract. Tourism Tax funds shall not be used to pay for any of Contractor's staff, overhead expenses, studies, research, investigations, surveys, analysis, or any other data collecting procedures and processes.

Section 9. Commencement of Work. Services of the Contractor shall commence on the date this Contract is executed.

Section 10. Payment. Tourism Taxes collected prior to the effective date of this Contract are available for appropriation under the terms of this agreement. However, any payment by the City is contingent upon approval of a budget submitted by the Contractor, receipt of proper requisitions under that budget and the provision of other documentation required by this contract. At the date the budget is approved, and on a monthly basis thereafter, the City will inform the Contractor of the current amount available for requisition. Payments from the City to the Contractor for services under this Contract will be made as follows:

(a) Requisitions for reimbursement of expenditures included in the budget approved by the Board of Aldermen will be paid through the City's accounts payable system. Requisition forms received per the City's processing schedule will be processed, and checks will be written and mailed to the Contractor to reimburse it for such expenditures.

(b) Each requisition must be signed by the Contractor's designated representative verifying that the services covered are for work actually performed, items purchased or services rendered by third parties to the Contractor for matters covered under this Contract and will be accompanied by paid invoice for such work, items or services, as well as copies of checks, and either a copy of the advertising material purchased, or a concise summary description of sufficient particularity to identify the purchase as an out of market marketing or promotional service. If a requisition is made without including the invoice, the Contractor shall attach to the requisition a statement setting forth the reason an invoice is not included. The City will reimburse the Contractor for actual costs incurred in the performance of this Contract as stipulated in the Board of Aldermen's approved budget.

(c) Notwithstanding any other provision of this Contract, in no event shall the City be required to make payments in excess of twenty-five percent (25%) of the Tourism Tax collections, less expenses of collection. The City retains the right to appropriate 2% of the 25% for marketing and promotional purposes outside the scope of services provided by the Contractor (referred to herein as the "2% Contingency"). Nor shall the City be required to make any payment unless there are sufficient collected unencumbered funds, not otherwise appropriated, on deposit in the Tourism Tax Trust Fund.

Section 11. Budget.

(a) The Contractor shall, prior to any requests for disbursement of any funds, prepare a budget for tourism development and promotion for the ensuing fiscal year. The budget shall show the anticipated revenue to be received from Tourism tax for deposit into the Tourism Tax Trust Fund of the City and shall show the expenditures estimated to be made from the Tourism Tax Trust Fund in marketing and promoting the City. Tourism Tax dollars should be spent on programs that have a "Branson nexus", in other words, bringing visitors into the City. The City realizes that area attractions could be used to bring people into the City. The City shall not have any control over private dollars brought in by the Contractor as long as those activities are not illegal or immoral or directly contrary to the interests of the City.

(b) The Contractor will submit a proposed budget to the City Administrator. The City Administrator will review, and if necessary, revise the proposed budget to meet the objectives of the City and to insure that expenditure requests conform with the availability of anticipated revenues. The City Administrator will submit the proposed budget to the Board of Aldermen for their consideration and final approval. Upon approval by the Board, the budget will establish expenditure authority for Tourism Tax dollars for the term of the contract. Anticipated Tourism Tax revenues, identified as the revenue source for authorized expenditures, will be determined only by the City Administrator. Amendments to the budget that do not change the total expenditure authority as approved by the Board may be made and approved by the City Administrator. Any budget adjustments requiring an increase in expenditures beyond the Board approved budget will require Board approval.

(c) Revisions to the budget shall be handled as follows: (1) Budget changes within budget categories may be authorized by Contractor's designated representative, (2) Budget changes between budget categories require the approval of the City Administrator, (3) Budget changes that would increase the total budget appropriation must be approved by the Board of Aldermen.

It is expressly understood that in no event shall the total reimbursement under the terms of this Contract exceed twenty-five percent (25%) of the amount generated and collected less collection expenses from the Tourism Tax authorized by the voters of the City for the corresponding period of the term of this Contract, and the 2% Contingency. It is understood and agreed by all parties that the City shall in no event incur indebtedness or act as guarantor or endorser of the credit of the Contractor, nor shall any City revenue be pledged or encumbered for the benefit of the Contractor except as consideration for services rendered under this Contract.

The City also recognizes that the Budget will change from time to time by necessity. Changes within categories do not need approval by the City, only notification.

Section 12. Concurrent Deliveries. When the Contractor executes and delivers this Contract, it shall also deliver to the City the following documents, each of which shall be a condition precedent to the City's obligation to fund any payments under Section 10 of this Contract:

(a) Draft Marketing Plan. Concurrently with the delivery of this Contract, the Contractor shall submit to the City a plan outlining Contractor's proposed advertising campaign for the next year and which demonstrates to the satisfaction of the City that substantially all of the projected marketing dollars will be usefully and productively used to market and promote the City as a tourist destination.

(b) Draft Marketing Partner Plan. The Marketing Partner Plan submitted by the contractor should:

- i. Describe ways in which the contractor's members will contribute funds and the way which contractor will solicit other private funds to bring more visitors to the area and the positive effect this will have on the City.
- ii. Combine the marketing partner plan with the budget submitted by Contractor and stating the total amount of member funds and other private monies that will be used in conjunction with tourism tax funds for out of market marketing of the City.

Section 13. Pre-Qualification Procedure List. The Contractor shall furnish to the City for its approval, in writing, a pre-qualification procedure for use in selecting sub-contractors for the Marketing Program. The pre-qualification procedure shall require the Contractor to submit to the City a list of the names of all subcontractors proposed to be used by the Contractor. The procedure shall require that all sub-contractors be bona fide. The City requires that a list of those companies/firms/individuals to be paid with

Tourism Tax dollars be made available to the City prior to any request for payment. This list may be updated as need be, and no contractors would be engaged that the City feels are "incompetent, unfair, unreliable, quarrelsome or otherwise unsatisfactory." No agreements for profit sharing between the Contractor and the subcontractor shall be allowed under the procedure.

Section 14. Marketing Responsibilities. Notwithstanding anything in this Contract to the contrary, the Contractor agrees to commence "out of market" marketing and promotion activities for the purpose of developing and promoting the City as a tourist destination. Throughout the term of this Contract, the Contractor shall:

(a) Market the City in accordance with the Marketing Plan on terms which provide, overall, the most favorable combination of terms and the most economical price for the City;

(b) The Contractor shall not, in the scope of its marketing and promotion arrangements, market or promote the City as a tourist destination in a manner which produces a direct benefit to the Contractor or any affiliate or member or private person over and above that benefit gained by the City as a whole;

(c) Use its best efforts to investigate, research, develop and maintain markets for the City as a tourist destination. All data and information pertaining in total, or in part, to the City and the use of tourism tax dollars that is or has been derived from studies, research, investigations, surveys, test marketing, analysis, experience, and observations, or any other data collecting procedures and processes, will be recorded and documented and made available by the Contractor to the City.

(d) Properly submit to the City a marketing report describing activities it has performed and the data it has collected in fulfilling its obligations under this Contract; and

(e) Keep all records, provide all information and complete all information forms requested by the City.

(f) Any publication, partially or wholly funded by Tourism Tax dollars, which lists or identifies a class of businesses that pay the tourism tax, must use due diligence to include all such businesses within that classification regardless of membership or affiliation with any organization.

(g) The parties acknowledge that the City owns certain intellectual properties including but not limited to websites, domain names, URL registrations, or other types of internet properties. (Collectively known as the Domains) These properties are to be used by Contractor as a licensee of the City while Contractor is acting as the City's out of market marketing vendor. The parties acknowledge that, by separate agreement, Contractor's duties as Licensee of the Domains will be set forth in detail and that the Domain Name License Agreement shall govern Contractor's use of said Domains. The

parties further agree that in all other respects, the terms of this Agreement shall govern the parties relations and, in the event this Agreement is terminated prior to its conclusion, or in the event that this Agreement is not renewed at the end of its term, then this Agreement, as well as the Domain Name License Agreement shall be of no further force and effect except as set out in the Domain Name License Agreement

Section 15. Termination. If, through any cause, the Contractor shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreement, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination within 90 days of the City's discovery of said failure or violation unless the failure or violation is corrected within said 90 day period.

Section 16. In the event of termination of this agreement, the City will revoke its license to Contractor for the use of the City's intellectual properties described in paragraph 14(g.) above and Contractor will cooperate in the transfer of URL and domain registration to the City for the City's exclusive use.

Section 17. Conflict of Interest. All provisions of Section 105.450 RSMo., shall be complied with.

Section 18. Right of Audit

(a) Contractor's Books and Records. The Contractor will keep a full and separate accounting of all expenditures of tourism tax dollars and will keep accurate reports detailing all expenditures and claims submitted by the contractor for reimbursement from tourism tax revenues. The Contractor shall keep accurate reports and other records showing in full detail the expenditures for which the Contractor claims reimbursement from the Tourism Tax. The City may examine, at any time during regular business hours, such reports and other records at the Contractor's office, and the Contractor agrees that it will produce such records whenever required by the City. In addition to any other audits the City deems appropriate, the City shall have the right to conduct an annual audit of the Contractor's books and records to determine if the expenditures of the Contractor were made in accordance with the budget approved by the Board of Aldermen. Any expense incurred by the Contractor to prepare the records for the audit will be at the expense of the Contractor.

(b) Subcontractor's Books and Records. The Contractor agrees to include the substance of this Section in all subcontracts to be performed, giving the City the right to audit the books and records pertaining to any such subcontract.

Section 19. Insurance. During the performance of all work under this Contract or any subcontract hereunder, the Contractor shall maintain the following coverage. Proof of this coverage will be provided annually to the City, or more often if the insurance coverage is of a lesser term than one year. The Proof of Coverage (Certificate

of Insurance) shall name the City as additional insured, except in the case of Worker's Compensation Coverage.

(a) Worker's Compensation - as required by law.

(b) Commercial Comprehensive General Liability-with a minimum coverage amount of \$1,000,000 per single occurrence with no aggregate limit providing coverage for acts or omissions of the Contractor or Subcontractors.

(c) Commercial Automobile Liability, including owned, non-owned, and hired cars, with minimum limits of \$1,000,000 bodily injury and property damage combined providing coverage for acts or omissions of the Contractor or Subcontractors.

All coverage evidence required in this Contract must have a 30-day notice of cancellation on the Certificate of Insurance. All Certificates of Insurance shall be sent to the City finance department two weeks in advance of the lapse of the prior Certificate of Insurance.

Section 20. Discrimination. The Contractor agrees, in the performance of this Contract, not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, age, handicap, or political opinion or affiliation, against any employee of the Contractor or applicant for employment, and shall include a similar provision in all subcontracts let or awarded hereunder.

Section 21. Independent Contractor. The Contractor is an independent contractor with respect to all services performed hereunder, and nothing contained herein shall constitute or designate the Contractor or any of its agents or employees as agents or employees of the City.

The Contractor and its agents, employees, and subcontractors shall not be entitled to any of the benefits established for the employees of the City, nor be covered by the Worker's Compensation Program for the City.

Section 22. Indemnification and Liability. The parties mutually agree to the following:

(a) In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, whether or not caused by or resulting from City's negligence, arising out of or in any way connected with a breach of this Contract.

(b) The contractor shall defend, indemnify, and hold the City harmless from and against any and all claims, losses and causes of action arising out of any claims or causes of action, including but not limited to personal injuries, death, or damage to property which are incurred by the Contractor, or any third party arising out of or in any way connected with the services performed by the Contractor pursuant to this Contract.

(c) The Contractor assumes full responsibility for relationships with subcontractors, and shall defend, indemnify and save harmless the City from and against any and all liability, suits, claims, damages, costs (including attorney's fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with this Contract, notwithstanding any possible negligence (whether sole, concurrent or otherwise) on the part of the City, its agents, or employees.

Section 23. Applicable Laws. The Contractor agrees to comply with all laws of the United States of America, the State of Missouri and the City which are applicable to work being performed by the Contractor under this Contract.

Section 24. Jurisdiction. The parties mutually agree that jurisdiction and venue for the purposes of any action resulting from this Contract by the parties shall be in Taney County, Missouri.

Section 25. Notices. All notices required or permitted hereunder and required to be in writing may be given by first class mail and addressed as follows:

to the City: City of Branson, Missouri
 110 West Maddux
 Branson, MO 65616

to the Contractor: Branson/Lakes Area Chamber of Commerce & CVB
 269 State Highway 248
 P. O. Box 1897
 Branson, MO 65616

The date of delivery of any notice shall be the date falling on the second full day after the day of its mailing.

Section 26. Refunds. At the termination of this Contract, the Contractor shall pay to the City any refunds received by the Contractor from vendors or subcontractors for services performed or purchases made under the Contract and for which the Contractor has been reimbursed hereunder.

Section 27. Property. Throughout the duration of this Contract, any and all non-expendable equipment, supplies or other items purchased by Contractor for which the Contractor is reimbursed by the City under the terms hereof shall be the property of the City and it is expressly understood that Contractor is using said property only under and in performance of this Contract. Upon termination of this Contract said property shall be tendered to the City.

**APPROVED BY THE CITY OF BRANSON, MISSOURI ON THE _____ DAY
OF**

_____, 20__.

CITY OF BRANSON, MISSOURI

By: _____
Louis Schaefer, Mayor

Approved As To Form:

By: _____
Joseph L. Johnson, City Attorney

[SEAL]

ATTEST:

By: _____
Lisa K. Westfall, City Clerk

APPROVED BY _____ ON THE _____ DAY OF
_____, 20__.

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____