

JEDO CONTRACT NO. C- 1 - 2014

AGREEMENT FOR SERVICES

THIS AGREEMENT is entered into this 4th day of April, 2014, by and between the GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC., a non-profit Kansas corporation, hereinafter referred to as GO Topeka and the JOINT ECONOMIC DEVELOPMENT ORGANIZATION, hereinafter referred to as the JEDO, a duly organized separate legal entity authorized by K.S.A. 12-2904(a) which was created by the Interlocal Agreement between the Board of County Commissioners of the County of Shawnee, Kansas, hereinafter referred to as the County, and the City of Topeka, Kansas, hereinafter referred to as City, dated November 1, 2001 (as may be amended).

WHEREAS, the JEDO has as its principal mission the support of a strong economic development program designed to expand employment, strengthen the tax base and diversify and strengthen the Topeka and Shawnee County economy; and

WHEREAS, GO Topeka is an existing non-profit Kansas corporation, whose sole purpose is economic development within Topeka and Shawnee County; and

WHEREAS, the JEDO and GO Topeka have strong ties with goals and objectives that are compatible and mutually beneficial; and

WHEREAS, the JEDO and GO Topeka are currently parties to JEDO Contract No. C-1-2013 extending through the end of 2014; and

WHEREAS, JEDO wishes to extend the contractual relationship with GO Topeka for three years beginning on January 1, 2015;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. For each of calendar years 2015, 2016 and 2017, the JEDO agrees to grant at least Five Million Dollars (\$5,000,000.00) from its economic development fund to GO Topeka for the purpose of providing economic development services as set forth or referred to in this Agreement, including research, target marketing, existing business retention and expansion, new business recruitment, minority business development, entrepreneurial business development, infrastructure development, site acquisition and development, incentive funds, workforce training and expansion, and other such activities deemed necessary and appropriate. Such services shall be more fully described in the Business Plans authored by GO Topeka and presented to the JEDO prior to the beginning of each year. Notwithstanding the foregoing, if the sales tax that currently funds the JEDO's economic development fund is not renewed, extended and/or replaced, the JEDO's grant shall be proportionately reduced to correspond to trailing sales tax revenues received in 2017 (if any) from the sales tax discussed in Paragraph 3 below, and the Business Plan for 2017 would relate to

such trailing sales tax receipts, unspent economic development funds from previous years, and economic development projects.

2. The term of this Agreement shall be for three (3) years from January 1, 2015 to December 31, 2017. The term of this Agreement shall be extended beyond this term only upon written agreement of the parties unless either party terminates this Agreement by written notice to the other party given as provided in paragraph 9.

3. Subject to the clarification discussed above with respect to 2017, for each of calendar years 2015, 2016 and 2017, GO Topeka shall receive at least Five Million Dollars (\$5,000,000) from the JEDO pursuant to paragraph five of the Interlocal Agreement establishing the JEDO (Shawnee County Contract No. C261-2001 and City of Topeka Contract No. 31439, or in accordance with the terms of any successor Interlocal Agreement that may be executed between Shawnee County and the City of Topeka). GO Topeka understands the payment of said money is subject to the distribution schedule of the Department of Revenue of the State of Kansas who will collect and distribute the retailers' sales tax enacted for a twelve (12) year term beginning in year 2005, as the same may be extended, renewed or replaced. GO Topeka shall set aside Fifteen Thousand Dollars (\$15,000) of this money each year to pay for the expenses

of the JEDO. GO Topeka shall make payments on amounts owed to the County and City from this distribution.

4. The parties mutually agree that no expenditures shall be made from grant funds by GO Topeka, except as specified in the annual budget submitted by GO Topeka and approved by the JEDO each year. Such budget shall be submitted to the JEDO before the beginning of each calendar year, but may be amended from time to time by GO Topeka with the JEDO's approval.

5. In performing its duties and responsibilities hereunder, the parties acknowledge and agree that GO Topeka is and shall be an independent contractor and not a partner, officer, agent, or employee of the JEDO, the City, or the County.

6. GO Topeka shall submit to the JEDO an annual Business Plan and budget reflecting the expenditures to be made during the fiscal year to be used only in accordance with the terms of this Agreement. Such funds shall be used during the contract period unless otherwise agreed upon by both parties, in writing by an amendment to this Agreement.

7. GO Topeka agrees to submit to the JEDO updated quarterly program status reports, as well as quarterly financial statements. Quarterly statements shall be submitted to the JEDO within forty-five (45) days after the close of each quarter. Additionally, GO Topeka will submit an annual program report and financial statement

to the JEDO after the conclusion of the program year covered by this Agreement. Go Topeka agrees to respond promptly to written inquiries from both voting and non-voting members of the JEDO.

8. Both parties understand that GO Topeka may incur budgeted expenses that are not due and payable until after the close of the current term of this Agreement. A cash carry-forward (from one year to the next) may be allowed with the written agreement of both parties to this Agreement executed before the 31st day of December of each year.

9. It is understood and agreed that either party may terminate this Agreement at either party's sole discretion by giving the other party notice in writing of such termination, not less than one hundred eighty (180) days prior to termination. The JEDO agrees that if it terminates the Agreement that it shall pay any payments which are referred to in the approved budget which come due within the one hundred eighty (180) day notice period. Upon termination of this Agreement, no further funds shall be payable or paid hereunder, except as otherwise provided herein. In any event, all obligations and commitments made before this Agreement is terminated will be honored by both parties which are described or referred to in the approved budget. Notice shall be deemed given and effective upon mailing of such notice to the receiving party or upon personal delivery of such notice. All cash

and real property shall revert to the JEDO upon termination. During the one hundred eighty (180) day termination period, any expenditure in excess of Three Thousand and No/100 Dollars (\$3,000.00) shall be first approved by the JEDO.

10. GO Topeka represents that it has, or will secure, all necessary employees, agents, independent contractors and other personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the JEDO, the City or the County. GO Topeka shall have the sole responsibility for the selection, management and termination of all personnel engaged in the work required under this Agreement. All aforesaid employees shall reside inside the boundary of the County of Shawnee, Kansas or make their residence within said boundary within Sixty (60) days of their initial employment unless any such affected employee obtains a waiver of this provision from the JEDO.

All of the services required hereunder will be performed by GO Topeka or under its supervision; all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

11. In carrying out the terms and provisions of this Agreement, GO Topeka will not unlawfully discriminate against any employee, applicant for employment, recipient of service, or

applicant to receive services because of race, color, religion, sex, age, disability, ancestry, or national origin. GO Topeka shall take affirmative action to ensure that applicants for employment, employees, applicants for service, and recipients of service are treated equally and fairly without regard to their race, color, religion, sex, age, disability, ancestry, or national origin. GO Topeka shall, in all solicitations or advertisements for employees or of services, placed by or on behalf of GO Topeka, state that all qualified applicants shall receive consideration for employment or services without regard to race, color, religion, sex, age, disability, ancestry, or national origin.

12. Should the JEDO or GO Topeka request changes in the scope of services of GO Topeka to be performed hereunder, such changes shall be mutually agreed upon by both parties and incorporated by written amendments to this Agreement.

13. No officer or employee of the City or County, member of the Governing Body of the City or County, or other public official of the JEDO who exercises any functions or responsibilities in the review or approval of the undertaking of the terms of this Agreement shall participate in any decision relating to this Agreement which affects his/her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GO Topeka covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. GO Topeka further covenants that in the performance of this Agreement no person having such interest shall be employed.

15. GO Topeka shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation; provided, however, that claims for money due or to become due to GO Topeka under this Agreement may be assigned to a bank, trust company, or other financial institution upon written consent of the JEDO thereto.

16. Each party agrees to hold harmless and indemnify the other and any of their officers, agents, or employees from any and all liability for claims or causes of action of any person, firm, corporation, or entity for damages of any type whatsoever that might be sustained by virtue of any activities carried out in furtherance of this Agreement. GO Topeka shall procure and maintain during the term of this Agreement, in an amount approved by both parties, public liability and property damage insurance to insure GO Topeka and the JEDO from all liability for injuries, including death to persons or property which may arise out of the performance of this Agreement.

17. GO Topeka shall establish and maintain the records with respect to all matters covered in this Agreement in accordance with the JEDO policies or requirements, and specifically in accordance with the following provisions:

a. Documentation of Costs. All costs shall be supported by properly executed payrolls, invoices, contracts, vouchers, or other official documents evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, vouchers, orders and other accounting documents shall be clearly identified and readily accessible.

b. Documentation of Outcomes. Actual outcomes in job creation, job retention, business creation, business growth and success of individuals in using training to secure and retain jobs will be provided by GO Topeka, at a minimum on a quarterly basis, to the JEDO Board and the public. These reports will include periods for the current year, 5-year, and 10-year views.

c. Information and Reports. GO Topeka shall, at such time and in such form as the JEDO may require, furnish to the JEDO, any individual member of the JEDO, the City Attorney, the City Manager, and the County Counselor, such statements, records, reports, data and information as may be requested pertaining to matters covered by this Agreement. It is understood by both parties that such requests will not violate the professional code of confidentiality that is maintained between GO Topeka and its business clients and prospects. Both parties acknowledge that, in the course of this Agreement, certain confidential information will need to be exchanged. With respect to information supplied in connection with this Agreement and designated by the disclosing party as confidential, the recipient agrees to: (i) protect the confidential information in a reasonable and appropriate manner; (ii) use confidential information only to perform its obligations under this Agreement; and (iii) reproduce confidential information only as required to perform its obligations under this Agreement. These requirements shall not apply to information which is (a) publicly known, (b) already known to the recipient; (c) disclosed to a third party without restriction; (d) independently developed; or (e) disclosed pursuant to legal requirement or order, including

the requirement that JEDO is subject to the provisions of the Kansas Open Meetings Act, K.S.A. 75-4317, and the Kansas Open Records Act, K.S.A. 45-215.

d. Audits and Inspections. GO Topeka shall at any time during normal business hours make available to the JEDO, any individual member of the JEDO, the City Attorney, the City Manager, and the County Counselor, all of its records with respect to all matters covered by this Agreement. Further, such inspections shall not be limited in number or scope. GO Topeka shall also, at the conclusion of the Agreement year, order a certified annual audit by a certified public accounting firm selected by the JEDO, completed in accordance with generally accepted accounting principles relating to the finances related to this Agreement and make the audit results available to the JEDO.

e. Availability of Records. Financial and project records, necessary supporting data, and programmatic reports as requested by the JEDO, or its agent, shall be available for a period of at least three (3) years.

18. GO Topeka agrees that an amount not less than ten percent (10%) of the funds referenced in paragraph 3 shall endeavor to be used to support economic development for the socially and economically disadvantaged individual or business enterprise. The definition of a Disadvantaged Business Enterprise shall be the same as the Disadvantaged Business Enterprise Program of the Kansas Department of Transportation in accordance with 49 CFR Part 26.

To facilitate the expenditure of these funds, Go Topeka shall create and retain a Minority and Women Business Development Advisory Council with the responsibility of approving a disadvantaged business enterprise budget and whose approval shall

be required for any expenditure exceeding three thousand dollars (\$3000).

19. GO Topeka shall maintain an inventory of all expendable supplies and fixed assets in accordance with the standard fixed asset policies and procedures as approved by the JEDO and shall annually provide a signed copy to the JEDO.

20. The parties understand that the scope of economic development retention, expansion and attraction may, in some cases, require that GO Topeka enter into funding commitments that extend beyond the three (3) year term of this Agreement. For such commitments, GO Topeka shall obtain the prior approval of JEDO, either in writing or by formal action of the JEDO Board at a duly called meeting and reflected in the meeting minutes.

21. This Grant Agreement may be amended by mutual, written agreement of the parties only.

22. The parties agree that the effective date of this Grant Agreement shall be January 1, 2015.

23. This Agreement represents the entire Agreement between the parties and may be amended only by written agreement signed by both parties.

IN WITNESS WHEREOF, the JEDO and GO Topeka have executed this Agreement.

Dated: 4-4-2014

JOINT ECONOMIC DEVELOPMENT ORGANIZATION

By: Kevin J. Cook
Kevin J. Cook, Chair

Dated: 4/4/2014

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, a non-profit Kansas corporation

By: Doug Kinsinger
Doug Kinsinger, President