

JEDO CONTRACT NO. C-2017-01

AGREEMENT FOR SERVICES

THIS AGREEMENT is entered into this 10th day of May, 2017, 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. 12-2904a which was created by Interlocal Agreement dated April 19, 2016 and amendments thereto ("Interlocal Agreement").

WHEREAS, the Interlocal Agreement authorizes the JEDO to select one or more independent contractors to execute the economic development priorities set forth in the Interlocal Agreement; and

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

WHEREAS, the JEDO and GO Topeka are currently parties to JEDO Contract No. C-1-2014 extending through the end of 2017; and

WHEREAS, the parties wish to continue the contractual relationship for three years beginning on January 1, 2018.

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

1. Grant.

(a) For each of the calendar years 2018, 2019, and 2020, 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 identified in the Interlocal Agreement. 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.

(b) GO Topeka agrees that at least ten percent (10%) of the funds referenced in Section 1 shall be used for the purposes identified in Section 5(a) of the Interlocal Agreement relating to socially and economically disadvantaged individuals/business enterprises. 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).

(c) GO Topeka shall allocate Fifteen Thousand Dollars (\$15,000) 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 allocation.

(d) Notwithstanding Section 1(a), GO Topeka understands the payment of grant funds are subject to the distribution schedule of the Kansas Department of Revenue that collects and distributes the retailers' sales tax.

2. Term.

(a) The term of this Agreement shall be for three (3) years commencing on January 1, 2018 and terminating on December 31, 2020. The term of this Agreement may be extended beyond this term only upon written agreement of the parties.

(b) Notwithstanding Section 2(a) either party may terminate this Agreement

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. 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.

3. Budget; business plan; quarterly reports; cash-carry forward.

(a) 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.

(b) GO Topeka shall submit each business plan and budget to the JEDO before the beginning of each calendar year for consideration and approval by the JEDO. No expenditures shall be made from the grant funds, except as authorized in the budget approved by the JEDO which budget may be amended by GO Topeka with the JEDO's approval.

(c) GO Topeka will submit to the JEDO quarterly program status reports, as well as quarterly financial statements within forty-five (45) days after the close of each quarter and an annual program report and financial statement at the conclusion of each

calendar year.

(d) 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 the JEDO.

(e) Both parties understand that GO Topeka may incur budgeted expenses that are not due and payable until after the close of the calendar year. Therefore, the parties may execute a cash carry-forward (from one year to the next) agreement.

4. Independent contractor; GO Topeka employees.

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

(b) GO Topeka 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. Go Topeka 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.

5. Unlawful discrimination. 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.

6. Conflict of interest.

(a) 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 matters addressed in this Agreement shall participate in any decision which affects his/her personal interest, including pecuniary interests, direct or indirect.

(b) 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.

7. Assignment. 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.

8. Hold harmless; indemnification; insurance. 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.

9. Records; outcomes; inventory. 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. As required by the Interlocal Agreement, GO Topeka will promptly respond to inquiries submitted by voting, as well as non-voting members of the JEDO. Moreover, 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 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 each calendar year, submit to 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) Record retention. Financial and project records, necessary supporting data, and programmatic reports shall be retained for a period of at least three (3) years.

(f) Inventory. 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.

10. Amendments. This Agreement may be amended by written agreement of the parties.

11. Notices. All notices shall be deemed to be sufficiently given if mailed, postage prepaid, by certified or registered mail, return receipt requested, addressed as follows:

For GO Topeka:
GO Topeka
120 S.E. 6th Ave.
Topeka, KS 66603

For JEDO:
City Clerk
City of Topeka
215 SE 7th Street

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

13. Execution in Counterparts. This Agreement may be signed by faxed or electronic signature, which shall be deemed to be an original signature. This Agreement 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.

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

Dated: 5-12-17

JOINT ECONOMIC DEVELOPMENT ORGANIZATION

By: Larry E. Wolgast
Larry E. Wolgast, Chair



Attest: Brenda Younger
Brenda Younger, City Clerk

Dated: 5-18-2017

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY

By: Matthew Pivarnik
Matthew Pivarnik, President