

CITY OF TOPEKA CONTRACT NO. _____

DEVELOPMENT AGREEMENT

1 THIS DEVELOPMENT AGREEMENT (hereinafter the "Agreement") is hereby
2 made and entered into this ____ day of _____, 2024, by and between the City
3 of Topeka, a duly organized municipal corporation (hereinafter referred to as the "City")
4 and the Downtown Topeka Foundation, a Not For-Profit Corporation (hereinafter referred
5 to as the "Grantee").

6 WHEREAS, transient guest taxes (hereinafter referred to as "TGT") may be
7 imposed on individuals who occupy hotel and motel rooms for short durations; and

8 WHEREAS, the funds generated by the TGT may be used for convention and
9 tourism activities and to promote the general welfare of the City, including the attraction
10 of industry; and

11 WHEREAS, the City currently imposes a Seven Percent (7%) TGT; and

12 WHEREAS, on August 30, 2003, the governing body of the City of Topeka
13 (hereinafter "Governing Body"), via Resolution No. 7253, allocated One Percent (1%) of
14 the TGT for a period of Thirteen (13) years for historic preservation and the development
15 of the Great Overland Station, including Riverfront Park and extended by the governing
16 body on October 20, 2015 by a period of Twelve (12) years via Resolution No.8732; and

17 WHEREAS, via Resolution No. 8732, the City allocated \$300,000.00 over a period
18 of Twelve (12) years to provide funding for the Evel Knievel Museum subject to the terms
19 and conditions contained in the Resolution and Development Agreement; and

20 WHEREAS, the Evel Knievel Museum has ceased operations within the City of
21 Topeka prior to the end and disbursement of the allocated funds; and

WHEREAS, the Grantee has made a request for the remaining Evel Knievel TGT funds to develop plans and construct an ice rink (hereinafter "Project") in the Every Plaza area; and

WHEREAS, the City's Transient Guest Tax Committee (hereinafter "TGT Committee"), consisting of Council Members Kell, Miller and Hoferer, reviewed the request to re-allocate the funds to the Grantee; and

WHEREAS, on May 23, 2024, the TGT Committee adopted Grantee's request for the Project to re-allocate approximately \$167,000.00 through the end of the original twelve (12) year period through the end of 2027; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of specifying the rights and responsibilities relating to the project and the corresponding disbursement of TGT funds; in accordance with the specific requirements set forth herein, Resolution No. 8730 and any applicable provisions of the Topeka Municipal Code.

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

1. Funding Allocation; Distribution and Use. Subject to the terms and conditions contained in this Agreement and in Resolution No. _____, the City will allocate the total amount of One Hundred Sixty-Seven Thousand Dollars (\$167,000.00), (hereinafter "Allocated Funds") Project funding request application made orally during the May 23, 2024 Transient Guest Tax Committee meeting. Upon approval of the annual budget by the Governing Body, the City's chief financial officer (or his/her designee) will determine the appropriate amount based upon estimated revenues.

(a) Distribution. The Allocated Funds will be distributed over the remaining three (3)-year period, beginning August 1, 2024 and continuing through

fiscal year 2027, or until the maximum expenditure of the original amount of Three Hundred Thousand Dollars (\$300,000.00) now approximately One Hundred Sixty-Seven Thousand Dollars (\$167,000.00) has been met, whichever is earlier; provided, however, that all terms and conditions of this Agreement are fully and completely adhered to throughout the duration of the 12-year investment period. The Allocated Funds will be distributed quarterly, beginning in August 2024, based upon the *approximate* percentage of allocation approved by the TGT Committee; around Seventy-Two Percent (72%).

(b) Use. The Allocated Funds will be used to acquire land, prepare architectural/design plans, construct and support the year-round development and programming needs associated with the Project. The Grantee shall use the Allocated Funds only for the Project. Any changes to the scope of the Project pertaining to the use of Allocated Funds shall be approved by the City Manager, or his/her designee.

In order to ensure that the Allocated Funds are used only for the Project, and as specified in this Agreement, the Grantee shall provide a progress report every six (6) months to the City Manager or his/her designee, in a form acceptable to the City. Each progress report shall identify expenditures of Allocated Funds and progress toward completion of the Project.

The first report shall be due six (6) months from the date of execution of this Agreement and shall cover the first six (6) months of the Project. The final report shall be due six (6) months after completion of the Project and include the plans and specifications to complete the Project. The City reserves the right to audit financial documents relative to the Project at any time during this Agreement and

to request reimbursement for expenditures determined to be improper, unauthorized or unsubstantiated. The City shall have sole authority in this regard and shall base its decision upon reports submitted or, in the alternative, the absence of documents to substantiate expenditures.

If at the end of the first six (6) month project report, no progress has been made to plan and begin construction of the Project, any portion of the distributed TGT funds shall be re-allocated back to the City for consideration of other uses of the TGT funds.

2. Project Installation Costs. Distribution of the Allocated Funds will be contingent upon the Grantee's compliance with use of all the Allocated Funds toward the 2024 Ice Rink Initial Installation and 2025 Final Installation costs more fully set out in ***Exhibit A***, which is attached hereto and incorporated herein by reference, (hereinafter "Installation Costs"). The Grantee must submit documentation to the City Manager, or his/her designee, confirming that its application for the restoration match referenced in the Installation Costs has been approved, as well as documentation confirming that it has received all, or a sufficient portion of, the private funds referenced in the Installation Costs. This documentation must be submitted by December 31, 2024, and the City shall have sole discretion in determining whether or not the documentation is acceptable for all purposes associated with the distribution of the Allocated Funds to assist with the Project.

3. Project Design and Construction; Timeline. Distribution of the Allocated Funds will be contingent upon the Grantee's compliance with the various deadlines and milestones established in the Project design and construction documents. The Grantee will provide design and construction documents for the Project to the City Manager, or his/her designee, by December 31, 2024, as well as any additional information

demonstrating that the Project is on schedule and/or proceeding in a timely manner considering all of the facts and circumstances involved.

4. Project Operating Plan; Economic Benefits, Impact. The City's goal with this funding commitment is to support a viable project that will produce an economic return at the conclusion of the investment. Distribution of the Allocated Funds will be contingent upon the Grantee developing an operating plan for the Project, (hereinafter "Operating Plan"), identifying strategy, budget and various performance metrics by and through which the Grantee will realize the anticipated economic impact of the Project set forth in its original application for TGT funding. The Grantee will provide the Operating Plan to the City Manager, or his/her designee, by December 31, 2024, as well as any additional information demonstrating that the Project is being operated in a manner geared toward generating an economic benefit to the community.

5. Independent Auditor's Report. Upon request, the Grantee shall provide to the City an independent auditor's report covering the period of this Agreement. The cost of such an audit shall be borne by the Project.

6. Inspection and Audit of Grantee's Records. The City, through its authorized agents, shall be entitled to inspect and audit the books and records of the Grantee for compliance with the terms of this Agreement. The Grantee shall cooperate fully with all such inspection and audit requests.

7. Project Completion. The Grantee shall complete the Project within no later than one year following the date of execution of this Agreement. Any request for an extension of time shall be submitted to the City Manager, who shall submit the request to the TGT Committee. The TGT Committee, after providing the Grantee with the opportunity to be heard, will make a recommendation to the Governing Body as to

whether or not to grant or deny the request for extension with or without conditions; although requests shall not be denied unless for good cause.

8. Termination; Repayment of Allocated Funds.

(a) This Agreement shall terminate upon the earliest of: the Grantee's completion of the Project and submission of all reports required by the City; or effective January 1, 2028; or if the Grantee fails to comply with any terms contained in Resolution No. _____, or any of the terms of this Agreement.

(b) The City may require the Grantee to repay all or any portion of the Allocated Funds if any of the following occurs: (i) Expenditures are determined to be improper, unauthorized or unsubstantiated; (ii) Grantee fails to allow inspection and audit of Project records in accordance with the terms of this Agreement; (iii) The Project is not completed within time period provided in this Agreement and no extensions of time are granted; (iv) the Grantee fails to provide City staff with access for purposes of inspecting the work being done on the Project that is the subject of this Agreement; (v) the Grantee fails to comply with applicable building codes, including the securing of any permits required by ordinance; and/or the Grantee fails to comply with the terms of this Agreement.

9. Open to Public; City Participation Noted. Upon completion of the Project funded pursuant to this Agreement, the Grantee shall ensure that the Project is open to the public on a regularly scheduled basis. This requirement shall survive the termination of the Agreement. Any reports, brochures, advertisements, news releases shall recognize the participation of the City in providing funding.

10. Compliance with State and Local Laws. The Grantee shall comply with all applicable City ordinances and state laws and shall secure all appropriate permits.

The Grantee shall allow access to City staff to inspect the work that is the subject of this Agreement.

11. Indemnification. The City and its officers, agents and employees, shall have no responsibility or liability of any failure or inadequacy of performance or defective workmanship or materials in regard to the Project. The Grantee agrees to fully and completely indemnify, release, defend and hold the City, its officers, agents and employees, harmless from all claims, losses, liabilities, damages, suits, actions or proceedings, including attorney fees, by any person, including Grantee, its agents and employees, arising from personal injury, death or real or personal property damage, from any cause whatsoever, in whole or in part, arising out of this Agreement or the activities completed hereunder. The Grantee agrees to indemnify, hold the City harmless and defend City from any and all claims, causes of action and damages of every kind arising from the operations and activities of the Grantee, its officers, agents and employees, carried out in furtherance of this Agreement. This indemnification and hold harmless shall not include the sole negligence or willful misconduct of the City, its officers, agents and employees.

12. Insurance. The Grantee shall carry commercial general liability in the amount of five hundred thousand dollars (\$500,000.00), the cost of said insurance policy to be an expense of the Grantee, and the City shall be named as an additional insured. The Grantee shall also furnish, at its own expense, evidence of a satisfactory workers' compensation insurance policy covering all of the Grantee's employees to the statutory limit. If the Grantee is not required to maintain workers' compensation insurance, the Grantee shall sign an agreement indemnifying the City from any and all liability which may arise as a result of the Grantee's failure to secure workers' compensation coverage.

Should any insurance policy be cancelled, the Grantee shall ensure that the City is notified of such cancellation within ten (10) days after the effective date of cancellation. A certificate of liability insurance demonstrating compliance with this section shall be provided prior to execution of this Agreement by the City.

13. Debts to City; Secretary of State Certification. The Grantee shall not owe any debt due to the City, including, but not limited to, property taxes and special assessments. The Grantee shall be in good standing with the Kansas Secretary of State and shall submit a certificate from the Secretary of State as evidence of this status.

14. No Joint Venture; Independent Grantee. Nothing herein contained shall be construed or held to make the City a partner, a member of a joint venture or associate of the Grantee in the conduct of the Project, nor shall either party be deemed the agent of the other. It is expressly understood and agreed that the relationship between the parties hereto is, and shall at all times remain, contractual as provided by the terms and conditions of this Agreement.

15. Discrimination. The Grantee shall 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 or national origin. The Grantee 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 or national origin, as provided for by law. The Grantee shall, in all solicitations or advertisements for employees, or of services, placed by or on behalf of Grantee, state that all applicants shall receive consideration for employment or services without regard to race, color, religion, sex, age, disability or national origin, as provided for by law.

190 **16. ADA Compliance.** The Grantee shall comply with Title II of the Americans
191 with Disabilities Act (ADA) and the implementing regulations of 28 C.F.R. Part 35 as to
192 all of its facilities and programs. If at any time during the term of this Agreement, the City
193 determines that the Grantee is not in compliance, the City shall issue a notice of non-
194 compliance and the Grantee shall have ninety (90) days to cure the non-compliance. If
195 the Grantee remains in non-compliance after the cure period, the City may terminate this
196 Agreement and require reimbursement of all Allocated Funds.

197 **17. Assignment; Transfer.** The Grantee shall not assign any interest in this
198 Agreement and shall not transfer any interest in the same, whether by assignment or
199 novation; provided, however, that claims for money due or that become due to the
200 Grantee under this Agreement may be assigned to a bank, trust company or other
201 financial institution upon written consent of the City thereto.

202 **18. Entire Agreement.** This Agreement constitutes the entire agreement of the
203 parties, supersedes any and all prior agreements between the parties and neither party
204 shall rely upon any verbal representations, either express or implied, not specifically
205 stated herein. This Agreement shall not be amended or modified except by written
206 agreement of both parties.

207 **19. Availability of Funds.** The parties to this Agreement understand that
208 Allocated Funds are subject to the Budget and Cash Basis laws and that the amount of
209 Allocated Funds may be reduced to correspond to lower-than-expected Transient Guest
210 Tax revenues.

211 **20. Representations.** By signing this Agreement, the Grantee represents that
212 the person signing this Agreement is authorized to execute this Agreement on behalf of

213 the Grantee, and that the Grantee agrees to be bound by the provisions of this
214 Agreement.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of
the day and year first above written.

CITY OF TOPEKA, KANSAS

ATTEST:

Robert M. Perez Ph.D., City Manager

APPROVED AS TO FORM AND LEGALITY

DATE _____ BY _____

Brenda Younger, City Clerk

Downtown Topeka Foundation

Kenneth Scott, President

DRAFT

EXHIBIT A Installation Costs

The amount of TGT Funds requested is a maximum of \$167,000.00 with approximately \$94,000.00 allocated in 2024 to design and construct the Project with the remainder \$73,000.00 available for 2025 the Project Final Installation Costs. The Grantee will raise and furnish any additional funds necessary to complete the Project.

	2024 Ice Rink Initial Installation (Temporary Base)	2025 Ice Rink Final Installation (Concrete Base)
Chillers, Dasher Boards, Ice Mat	\$ 218,204	\$ (15,000)
Permanent Site Work	\$ 280,647	\$ 175,200
Ice Skates	\$ 8,716	\$ -
Skate Storage	\$ 5,000	\$ -
Rubber Mats	\$ 10,000	\$ -
Benches	\$ 5,000	
Ticket Booth	\$ 15,000	\$ -
Contingency (8%)	\$ 43,405	\$ 12,816
Total Acquisition Cost	\$ 585,973	\$ 173,016