

DONATION AGREEMENT

1. **PARTIES.** This Donation Agreement (the "Agreement") is made and entered into this 21st day of April, 2025, by and between the City of New Prague, a Minnesota municipal corporation, located at 118 Central Ave. N., New Prague, MN 56071 ("Donee"), and Forward New Prague Foundation, a Minnesota nonprofit corporation, located at 305 Columbus Ave. S., New Prague, MN 56071 ("Donor") d/b/a Praha Outdoor Performance Stage (a/k/a "POPS") (each a "Party," collectively, the "Parties").

2. RECITALS AND PURPOSE.

- 2.1. The Donee owns certain real property located at 302 2nd Street NW, New Prague, MN 56071, which is currently an undeveloped piece of land (the "Land").
- 2.2. The Donor desires to construct and donate to the Donee an outdoor performance stage and associated improvements (the "Stage") that will serve the Community.
- 2.3. The specific location of the Stage upon the Land is further defined as depicted in Exhibit A.
- 2.4. The Donor intends to construct the Stage pursuant to plans (the "Plans") that have not yet been completed and have not yet been approved by the Donee and which are still subject to City Approval (the "City Approval").
- 2.5. Accordingly, the Donor agrees to construct and donate the Stage to the Donee in accordance with the City Approval and all terms and conditions contained in this Agreement.

In consideration of the mutual promises set forth in this Agreement, the Parties covenant and agree to the terms and conditions set forth herein.

3. **CONSTRUCTION OF THE STAGE; LIMITED LICENSE.** The Donor hereby agrees to construct the Stage and all associated improvements on the Land, with construction beginning by July 1, 2025 in order to complete the construction on or before December 31, 2026, and in accordance with the City Approval and this Agreement. For that purpose, the Donee grants to the Donor, its agents and contractors a nonexclusive limited use license over and across those portions of the Land located at 302 2nd Street NW reasonably necessary for said construction, solely for the purpose of constructing the Stage and in exchange for the Donor's covenants and promises contained in this Agreement. The Donor is solely responsible for all costs and expenses associated with constructing the Stage and adhering to all permits and approvals associated therewith, and the Donee shall in no way be responsible for any such costs and expenses except as noted below:

The City of New Prague agrees to reimburse costs to the Forward New Prague Foundation up to \$100,000.00 associated with mitigating the cost of needed soil corrections of the Land designated as City Center to prepare a buildable site for the Praha Outdoor Performance Stage (POPS) structure. The soil correction costs include, but are not limited to, the cost and installation of helical piers, grade beams, cut and fill, and those other associated costs outlined by structural engineering to address soil conditions at the site designated for the building. The funds will be reimbursed to the Forward New Prague Foundation upon submission of invoices to the City after completion of the project.

This Agreement shall not be construed to afford any other person or entity with any authority to use the Stage or any other real or personal property owned by the Donee for any purpose that they would

not otherwise be entitled to absent the Agreement. Notwithstanding this Agreement, the Donee retains all rights and access to the Land that it is otherwise entitled to, including, but not limited to, the ability to access and maintain the Land and all appurtenances and facilities located thereon. Donor acknowledges that Donee controls and owns the Land and will utilize and dispose of the Land in the public's interest. The Donor shall provide the Donee with a construction schedule and provide contact information to the Donee of a Donor representative that will communicate with the Donee at all reasonable times and as it relates to the Stage construction.

4. INSURANCE. The Donor agrees to require and ensure that any entity or contractor performing the construction activities contemplated herein procures and maintains, throughout the duration of said work, commercial general liability insurance providing coverage for bodily injury and personal property damage. Liability limits shall not be less than \$500,000 when the claim is one for death by wrongful act or omission or for any other claim and \$1,500,000 for any number of claims arising out of a single occurrence. All policies required herein must name the Donee as an additional insured and provide for 30 days' written notice to the Donee in the event of cancellation or modification of the policy. A copy of the insurance certificate must be provided to the Donee prior to any work being performed pursuant to this Agreement.

5. DONATION AND TERMINATION. This Agreement shall automatically terminate upon the Donor's completion of construction of the Stage and written acceptance thereof by the Donee. Such written acceptance shall be provided by the Donee via resolution, in accordance with Minnesota Statutes, section 465.03, following the satisfactory construction of the Stage in accordance with this Agreement. Following such written acceptance, the Stage shall become the property of the Donee. Notwithstanding the foregoing, should either Party breach any material term of this Agreement, then the non-breaching Party may terminate this Agreement only after the other Party with 30 days' written notice of the breach and an opportunity to cure. Notwithstanding any consideration set forth in the Agreement and upon the donation contemplated herein, Donee will own, operate and maintain the Stage and Land as Donee desires.

6. RELATIONSHIP; THIRD PARTIES. Notwithstanding any provision to the contrary in this Agreement, the Parties agree that their relationship with respect to the donation contemplated herein is one of donor and donee and licensor and licensee only, and no provision of this Agreement shall be construed to create any other type of status or relationship between the Parties. Neither Party nor its agents or employees are the representatives of the other Party for any purpose and neither Party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever. Third parties shall have no recourse against the Parties under this Agreement.

7. HOLD HARMLESS; INDEMNIFICATION. Any and all claims that arise or may arise against the Donor, its officers, employees, agents or contractors while engaged in the construction of the Stage and any other activity contemplated herein shall in no way be the obligation of the Donee. Furthermore, the Donor shall indemnify, hold harmless and defend the Donee, its officials, employees, contractors and agents from and against any and all liability, loss, costs, damages, expenses, claims, actions or judgments, including reasonable attorneys' fees which the Donee, its officers, employees, agents or contractors may hereinafter sustain, incur, or be required to pay arising out of any act or failure to act by the Donor, its officers, employees, agents or contractors or arising out of or by reason of this Agreement. Nothing in this Agreement shall be construed as a waiver by the Donee of any immunities, defenses, or other limitations on liability to which the Donee

is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, chapter 466 or otherwise. This paragraph 7 shall survive any termination of this Agreement irrespective of the reason or method of such termination.

Notwithstanding any other provisions of this Agreement, neither Party shall be liable to the other for any breach of this Agreement or other frustration of performance of this Agreement caused by unavoidable delays. Unavoidable delays shall mean delays, outside the control of the Party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

8. LIENS AND ENCUMBRANCES. The Donor agrees that it shall not and will not permit or suffer any liens or encumbrances to be placed against the Donee's property, nor shall it during the term of this Agreement engage in any activity that would cause or result in the placement of any liens or encumbrances against such property.

9. COMPLIANCE WITH LAWS. The Donor agrees to abide by and conform to all laws, rules, and regulations, as it relates to the activities contemplated herein, including, but certainly not limited to, all permitting requirements of the Minnesota State Building Code. This Agreement is not a building permit and should not be interpreted as such.

10. ASSIGNMENT. The provisions of this Agreement will be binding on the Parties' successors and assigns. Any assignment shall require the prior written consent of the other Party. Such consent may not be unreasonably withheld.

11. NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by First Class United States mail, postage and fees prepaid, addressed to the Party to whom such notice is intended to be given at the address set forth in paragraph 1 of this Agreement. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

12. INCORPORATION. All documents expressly referenced herein, including the City Approval and the Plans, are, by reference, incorporated into this Agreement as if fully set forth herein.

13. PARAGRAPH HEADINGS. The headings of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

14. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

15. WAIVER OF BREACH. The waiver by any Party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

16. GOVERNING LAW. The construction and interpretation of this Agreement and any disputes arising hereunder (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the internal laws of the State of Minnesota without giving reference to its conflict of laws principles. In the event any suit, action or proceeding is brought by either Party with respect to this Agreement or the matters contemplated herein, such action, suit or proceeding shall be brought in the state courts located in Scott County, Minnesota and both Parties hereby accept, consent and submit to the exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

17. SEVERABILITY. If any provision of this Agreement is declared to be invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.

18. AUTHORITY. The Parties represent that they each have full power and authority to execute this Agreement and to carry out the terms and conditions contemplated herein. Additionally, the Parties represent that the person or persons executing this Agreement are authorized to bind each respective Party to the terms and conditions of this Agreement.

19. DONOR RESERVATION OF STAGE. In consideration for the Donor's donation contemplated herein, Donor desires to have the "New Prague Arts Foundation" have first right of refusal to reserve and schedule up to eight (8) performances each year at the Stage on certain weekday evenings from June 1 to August 31st during the times of 4:00 P.M. to 10:00 P.M. whereby the "New Prague Arts Foundation" is responsible for filling those dates/times. Donor shall provide Donee with such dates to schedule the Stage by January 31st of each year. Donee shall then open the Stage to the general public for reservations. Donor and Donee agree that the right of the "New Prague Arts Foundation" to reserve the Stage shall expire ten (10) years from the date of Donor's donation and Donee's acceptance of the Stage and termination of this Agreement. After the 10 years have expired, any other agreements regarding the reservation of the stage must be negotiated annually via a separate agreement. This Paragraph No. 19 shall survive the termination of this Agreement.

20. SECURITY REQUIREMENTS. The Donor's cost estimate for the Stage improvements and all other work identified as the Donor's responsibility is attached in Exhibit B of this Agreement. Before starting any construction activity, the Donor or its contractor must provide the Donee with a cash escrow, certified check, performance bond, or irrevocable letter of credit (collectively known as the "Security"), in the amount of \$20,000.00. The purpose of the Security requirements of this Paragraph 20 and this Agreement, should Donor fail to complete the Donor's performance of all terms and conditions of this Agreement and the Stage improvements consistent with this Agreement, shall be to allow the Donee, in its sole discretion, to secure the site for safety purposes and cover any and all associated costs. The Security is for the exclusive use and benefit of the Donee/City of New Prague. The Donee may draw on the Security to guarantee the terms and conditions of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year written above.

Donor:

**Forward New Prague Foundation, dba
Praha Outdoor Performance Stage
Advisory Committee**

Donee:

City of New Prague

By: _____

Name: _____

Title: _____

By: _____

Name: Duane J. Jirik

Title: Mayor

By: _____

Name: Joshua M. Tetzlaff

Title: City Administrator

EXHIBIT A

DEPICTION OF STAGE LOCATION ON LAND



Site Features: City Block

- Multi-family residential
- Playground
- Community room
- Multi-use plaza (farmers mkt, food trucks, parking, etc.)
- Outdoor performance stage
- Stormwater treatment (area TBD)
- “Skinny” street w/planted median & parking
- Entry plaza
- Overflow parking (if needed)
- Commercial infill building (per market demand)

EXHIBIT B

STAGE IMPROVEMENTS COST ESTIMATE

PROPOSED ESTIMATE – 03/10/2025

Design/Architectural/Structural Engineer-permit ready	\$42,000
• Includes architect, structural engineer, civil engineer, surveying.	
Soil Borings	\$8,800
Permit (maybe the city will work out a reduced fee plan with the FNPF?)	\$7,500
• To negotiate fee with city since building is a city-owned property.	
Excavation	\$30,000
• (May be donated by excavator.)	
Above Grade Block	\$280,000
FDTN/Flatwork	\$135,000
Appropriate anchoring system materials	\$60,000
Lumber	\$80,000
Roofing Labor	\$25,000
Metal Towers	\$25,000
Framing	\$90,000
Erosion control	\$4,000
Electrical (purchase lighting, wiring, etc.) – some reduction possible	\$15,000
Other Utility Needs (NP Utilities Commission)	--0—
• Proposal to provide materials/labor = \$11,000 (electrical from street to facility)	
Sod and Landscaping	\$12,000
Temporary Fence	\$25,000
• This is another area to discuss regarding final cost	
Dumpster	\$2,000
Portable Toilet	\$1,500
Insurance (by contractor)	\$5,000
Signage for donors (size, scope, materials TBD)	\$15,000
ESTIMATED TOTAL	\$862,800*

***Total could be reduced with further pro bono opportunities.**