JEDO Board Meeting
July 11, 2011
Council Chambers
214 SE 8th Street
5:00 p.m.

Agenda

1. **Approval of May 12, 2011 Minutes – Presiding Officer Bob Archer**

2. **Consideration of Incentive Proposal for Mars Chocolate North America - Steve Jenkins**

3. **Consideration of appointment of Rich Eckert, Shawnee County Attorney as the attorney of record representing JEDO for Project Pepper – Bob Archer**

4. **Adjournment – Bob Archer**

(1)

Joint Economic Development Organization Board Minutes
May 12, 2011

City of Topeka Council Chambers, 214 SE 7th Street, Topeka, Kansas, Thursday, May 12, 2011.

The Joint Economic Development Organization (JEDO) Board members met at 6:00 P.M. with the following Board members present: City of Topeka Councilmembers John Alcala, Denise Everhart and Andrew Gray; City of Topeka Mayor William W. Bunten; Shawnee County Commissioners Vic Miller, Shelly Buhler and Ted Ensley -7.

Also present were nonvoting JEDO Board members: City of Topeka Councilmembers Bob Archer, Karen Hiller and Chad Manspeaker.

Absent: City of Topeka Councilmembers Sylvia Ortiz, Larry Wolgast and Richard Harmon.

Acting Chairman Bob Archer called the meeting to order. He announced this is the first JEDO Policy Board meeting to be televised. He thanked Norton N. Bonaparte, Jr., City Manager and City staff for facilitating the televising of the meeting.

APPROVAL of the Minutes of the JEDO Board meeting of November 17, 2010, were presented.

Mayor Bunten moved to approve the Minutes of the JEDO Board meeting of November 17, 2010. The motion seconded by Councilmember Gray carried unanimously. (7-0-0)

ELECTION of the 2011 JEDO Board Presiding Officer was presented.

Chairman Archer opened the floor for nominations.

Commissioner Miller nominated Councilmember Archer to serve as the JEDO Board Presiding Officer. The nomination seconded by Commissioner Ensley carried unanimously. (7-0-0)

Councilmember Archer thanked fellow Board members for having the confidence in him to serve as Chair of the Board.

2011 ECONOMIC DEVELOPMENT First Quarter Report for the Greater Topeka Chamber of Commerce and the Growth Organization of Topeka was presented.

Lucky DeFries, GO Topeka Board gave a brief history of the Growth Organization (GO) of Topeka and stated the Organization was established with the intent to take economic development efforts to a new level while having a balanced approach for minority and women-owned business enterprises. He stated it has been exciting to see what has emerged over the years and noted GO Topeka has one of the best Disadvantaged

Business Enterprises (DBE) Program in the country. He stated it is a very competitive arena and the necessary resources have to be committed and this has been done through the sales tax initiative commitment by the community. He stated they are proud of the Organization's successes and what has been built and recognized nation wide. He stated they appreciate the support of the JEDO Board and they are looking forward to working with them through a continued partnership. He introduced Ms. Cyndi Hermocillo-Legg, Disadvantaged Business Enterprises (DBE) Program Director and commended her for her hard work and contributions to the successful program.

Doug Kinsinger, President and Chief Executive Officer, Greater Topeka Chamber of Commerce and GO Topeka read the GO Topeka Vision Statement and Mission Statement. He reported the Organization's focus is to attract primary job opportunities and economic development investments.

Steve Jenkins, GO Topeka Economic Development Senior Vice President referenced the organizational charts for JEDO and GO Topeka. He explained the organizations are divided into functional areas and they are currently trying to fill a newly created research position which is crucial for economic development. He stated the functions and primary expectations for each position would change following the finalization of their 3-year market plan.

Doug Kinsinger stated their focus is to attract primary jobs and employers that would provide a net gain to the economy. He reported by attracting primary jobs that sell or provide products or services far beyond the local market area it brings new dollars to the local economy. He noted companies need to export more products than they import to help build the local economy.

Steve Jenkins discussed primary employers and secondary and indirect jobs. He reported primary employers export products and services and secondary and indirect jobs circulate existing local dollars and typically do no inject new or outside dollars into the local economy and generally have lower wages and consume local community wealth. He discussed the following Shawnee County wage examples:

County Average	\$38,272
Manufacturing	\$47,424
Distribution	\$39,260
Medical Services	\$40,768
Retail	\$22,412

Mr. Jenkins continued to explain if the community is not boosting wages above the base economy average then the per capita of wealth in the community decreases and the community does not experience growth in secondary jobs. He referenced a study conducted on the economic impact of primary employers in Shawnee County in 2010; the economic impact of jobs by sector; and contributions of primary employers to Shawnee County's annual economy in 2010. The study reflected the following information:

- Direct Primary Jobs: 17,113
- Indirect Jobs: 13,528
- Direct and Associated Indirect Jobs: $1.6 billion
- Annual Increase in Gross Area Product (GAP): $4.6 billion
- Total Taxable Sales Generated: $718.7 million

Discussion continued on GO Topeka's primary focus for the last 3 years including increased national awareness of Topeka and its business assets to corporations and site consultants; strengthening and expanding the existing business programs with particular attention to the community's primary employers; strengthening and focusing on minority and women business development programs; development and deployment of a meaningful entrepreneurial development program targeting emerging potential primary businesses; identify and address the needs in workforce development that increases the community's competitiveness for job and investment attraction and retention.

Doug Kinsinger gave a brief overview of the following Quarterly Report information:

Results of Direct Assistance Provided by GO Topeka
2002 - 2010

New Jobs Created:	3,882
Jobs Retained	5,040
Total Jobs	8,922
Capital Investment	$987.3 Million

JEDO/GO Topeka Federal Projects - Secured Since 2002

- Infrastructure for Central Crossing and Kanza Fire Commerce Parks (3 projects)
- Topeka Boulevard Bridge
- Forbes Field Taxiway Improvements
- 190th Headquarters and Support Facility
- I-70 Viaduct Planning and Design
- Kansas Children's Discovery Center.

2002 - 2010 Total Direct Primary Jobs Impact

New Jobs	3,882
Retained Jobs	5,040
Total Jobs	8,922

Total Direct and Indirect Jobs: 16,659
Salaries to be paid to Direct/Indirect Workers: $7.05 billion
Taxable Sales: $2.6 billion over 10 years
Property taxes collected from projects in 2010: $123.9 million

Impact of Closing the 190th Air Refueling Wing - 2010
GO Topeka Project through Government Relations

Direct Employment (military and civilian)	899
Indirect Employment	344
Direct Payroll Impact	\$37.5 million
Indirect Payroll Impact	\$13.4 million
Estimated Economic Impact in Community	\$163.9 million

Results of Direct Assistance from GO Topeka 2009 – 2010

New Jobs Created	825
Jobs Retained	1,691
Total Jobs	2,516
Capital Investment	\$444.45 million

Impact of Total Direct Primary Jobs 2009 - 2010

New	825
Retained	1,691
Total	2,516

Total Direct and Indirect Jobs: 4,654
Salaries to be paid to direct and indirect workers: \$24.8 million/year
Taxable Sales: \$1.01 billion over 10 years
Net benefits to City and County: \$21.9 million over 10 years

Mr. Kinsinger continued discussion relating to the acquisition of the Central Crossing and Kanza Fire Commerce Industrial Parks. He reported there are 70 acres remaining to develop and noted the industrial park offers over 6000 feet of railroad access for companies.

Steve Jenkins stated it was important to note they have had a lot of good input from companies and they continue to work to meet the needs of their clients by concentrating on a timely response (within 24 hours) and excellent service which is critical in the process. He referenced a quote from Bimbo Bakeries USA and noted the Baker would be the most highly sophisticated bakery in the world as Bimbo follows suit with today's corporations which are leaner and more aggressive with marketing and relationship building. He stated they would continue to provide assistance and support to existing businesses and reported on five major expansions that took place in the community even at the height of the recession. He stated they have a good partnership with the community and work to provide a global work force; new marketing blue prints; building relationships with site consultants or selectors; good public relations and protect our investments. He also discussed attraction targeted sectors including food manufacturing, biomedical, logistics, distribution and clean technology. He stated their attraction goals include continued existing business support; entrepreneurial and minority business development and workforce development. He discussed the implementation of a robotics training program slated for 2012 in the USD 501 School District. He reported the program would be centered in the Highland Park High School, creating skill sets for students to obtain good jobs. He stated he is excited to announce there are 27 students currently signed up for the program and a waiting list with more students interested in the program.

Cyndi Hermocillo-Legg, Disadvantaged Business Enterprises (DBE) Program Director reported the robotics training program is a great resource and the first of its kind globally. She stated job creations will be higher per capita with a beginning wage range of $38,000 to $51,000 and will be open to all Shawnee County School Districts. She reported robotics training has one common language no matter what industry and we need to target skills as early as possible, even allowing junior and senior students to train is not young enough. She noted this pilot project would grow into other opportunities for the community.

Kevin Singer, USD 501 School District Superintendent stated Topeka has a great sense of neighborhood and partnership which has allowed the community to survive tough economic times over the past decade. He stated they continue to work together to make things happen through partnerships with GO Topeka and the DBE Program. He stated they continue to work to improve Highland Park High School and the surrounding area to create a great source for the east Topeka community to grow opportunities.

Larry Robbins, USD 501 Executive Director of Operations stated he is very excited about the possibilities and opportunities the program would present for the east side of town and the community as a whole. He stated the robotics training program would provide students with the skills to compete in the 21st century. He noted there are unlimited possibilities to expand on the program and he looks forward to other partnerships that provide similar opportunities.

Steve Jenkins stated the robotics training program is a vision of the Women Minority Council and an exciting opportunity that would continue to grow. He reported they will continue workforce development by full deployment of the Competitiveness Center Alliance; implement a long-term strategy for creating and sustaining a globally competitive workforce; and continue on-going skill assessments through WorkKey testing. He highlighted the First Quarter 2011 Progress Report and discussed the following:

ATTRACTION

2011	Annual Goal	First Quarter
Suspect Generation	1,100	539
New Prospects	100	15
Qualified Projects	25	4

Other Actions

- NHRA event with 12 national site consultants to acquaint them with Topeka/Shawnee County, May 19-20
- Visits with 15 national site consultants
- New GO Topeka website anticipated to be active by June 1; beta testing underway
- New 3-Year Marketing Blueprint being completed

EXISTING BUSINESS

	Annual Goal	First Quarter
Business Visits	220	43
Primary Employer Visits	50	12
Walk-Around Visits	4	June & September
Primary Employer Events	2	May & 4th Quarter

Other Actions

- Value in Manufacturing
- Surviving Progress
- Working with 3 existing primary employers on potential expansion

ENTREPRENEURIAL & MINORITY BUSINESS DEVELOPMENT

	Annual Goal	First Quarter
Breakfast Buzz Programs	4	1
Transitional FSFT Programs	4	1
Child Care FSFT	3	1 in Progress

Other Actions

Signature Initiative:

- PTAC Partnership
- Advanced Automation Robotics Program (Joint Venture with USD 501)
- MWBD 2nd Annual Conference (9/21/11)
- Surviving Progress Outreach
- Innovation Engineering Leadership Institute Scholarships

In conclusion, Doug Kinsinger stated economic development is a community team effort and they feel a great sense of partnership because of the continued unified level of support from a number of entities.

Councilmember Gray thanked Doug Kinsinger and Steve Jenkins for the thorough presentation. He questioned the community role of the Greater Topeka Chamber of Commerce compared to GO Topeka.

Doug Kinsinger reported the Greater Topeka Chamber of Commerce provides product development and GO Topeka promotes sales and marketing.

Councilmember Gray asked what would happen when the sale tax incentive sunsets.

Doug Kinsinger stated they would not have the funds to aggressively attract economic development as they do right now.

Councilmember Archer asked if GO Topeka receives private sector funds.

Doug Kinsinger reported they receive approximately $400,000 annually of private sector funds.

Councilmember Manspeaker asked if a business is required to become a Chamber member to receive their services; what purpose will the website upgrades serve; and would the new website provide a transparency aspect of the organization.

Doug Kinsinger reported a business does not have to be a Chamber member to receive their services.

Steve Jenkins reported it was necessary to upgrade the website to allow them to reach out to site selectors and determine what customers want and need. He noted the most important marketing tool is a robust website and the new website will be more transparent.

Councilmember Gray asked what the 5 major expansions were referenced in the report.

Steve Jenkins reported the following business expansions for the past year include (1) Schendel Pest Control, Inc., creating 10 new jobs (2) Frito Lay, Inc., made a major investment retaining 40 people with higher paying jobs (3) Del Monte, Inc., made a major investment allowing them to keep 50 employees earning more money (4) Goodyear Tire & Rubber Company added 300 new employees (5) PTMW expanded creating 472 new jobs and retaining 1691 jobs with an average salary range of $50,000 and included a $390 million capital investment.

Commissioner Miller clarified competition is not always with other States, it also takes place internally within existing companies. He reported many times, a company such as Frito Lay, Inc., is required to submit a proposal to their corporate headquarters outlining why a particular location should be allowed to expand and any assistance companies receive from GO Topeka is an advantage.

Councilmember Manspeaker questioned who owns the property title when GO Topeka purchases land.

Doug Kinsinger stated the land is owned by GO Topeka on behalf of JEDO and in the event GO Topeka is no longer an economic development entity for JEDO the land would be transferred back to JEDO.

Councilmember Alcala asked what new economic development is currently underway; and what do competitors offer that GO Topeka does not.

Doug Kinsinger reported there are some significant manufacturing companies currently considering the Topeka-Shawnee County community. He also reported that each case is different in regards to why a company may not come to Topeka including not having the right workforce skills represented in this area, raw materials, method of distribution, or logistics. He stated they would not have the leverage they do if infrastructure was not in place and noted the Kanza Fire Commerce Park is their strongest advantage right now.

Commissioner Miller questioned the use of "extra funds" offered by other States in their incentive packages. He stated in his opinion, the lack of "extra funds" has been a deal breaker for GO Topeka in some cases.

Dough Kinsinger reported more and more States have been adding "closing funds" which is an additional State incentive package to be included in the local incentive package. He noted the State of Texas currently is provided with an additional $250 million annually to be used at the Governor's discretion to sprinkle on projects. He reported they have been working with the State of Kansas to implement the same type of incentives.

Steve Jenkins reported they lost a project to the State of Arkansas because they were able to offer the company a "closing funds" incentive. He stated it is crucial to meet the needs of companies or they are not interested in communicating with you.

Councilmember Everhart asked how the Topeka-Shawnee County area ranks in regards to community amenities or quality of life factors when attracting economic development to the community.

Steve Jenkins reported the quality of life is increasingly important to companies and it is essential to have a vibrant core or downtown because young professionals have different demands. He stated companies want to know where a community will be in several years and if you want quality jobs you have to have a successful long-term community plan to work together to make things happen.

Councilmember Gray stated he agrees it is imperative to have a long-term plan. He asked what GO Topeka's plan is when the sales tax initiative sunsets in 2016, and if there is a contingency plan in place.

Doug Kinsinger stated it would be premature to try and predict what the solution would be until discussions are held; however, it would be the decision of the City and County.

Steve Jenkins stated he believes the sales taxes incentive is an important asset that provides them with a competitive edge in attracting economic development, as well as, allows them to craft a proposal that meets the needs of each company.

A PUBLIC COMMENT POLICY for the Joint Economic Development Organization was presented.

The proposed policy was presented as follows: **Public Comment:** Requests by the public to speak regarding items listed on the JEDO agenda will be placed on the agenda in the order received. The public must sign the Public Comment Agenda Sheet available at the JEDO meeting location 15 minutes prior to the beginning of all JEDO meetings. Persons planning to speak must be identified by name and organization represented (if applicable), under the items listed on the agenda. Public comment is allowed on actionable items and must relate to the actionable item as listed on the agenda (Actionable items are those agenda items which require a vote at that scheduled meeting.). There will be no public comments on items listed on the consent agenda. Persons addressing JEDO will be limited to three consecutive minutes for their presentation, unless a majority of JEDO voting members agrees to award additional time to the speaker. Matters pertaining to personnel, litigation and violations of laws, ordinances or resolutions are excluded from public comment. Those making public comment are to maintain proper decorum relating to public meetings.

Commissioner Miller moved to strike Line 2, "The public must sign the Public Comment Agenda Sheet available at the JEDO meeting location 15 minutes prior to the beginning of all JEDO meetings." The motion seconded by Commissioner Ensley carried. Mayor Bunten voted "no." (6-1-0)

Commissioner Miller moved to strike the sentence, "Persons addressing JEDO will be limited to three consecutive minutes for their presentation, unless a majority of JEDO voting members agrees to award additional time to the speaker." The motion seconded was by Commissioner Ensley.

Commissioner Miller stated it has been his experience that it is not necessary to place a time restriction on public comment because if a person remains on topic, is not repetitive, and maintains proper decorum a person generally does not speak longer than 3 minutes.

Councilmember Alcala stated he supports no time limits on public comment.

Councilmember Gray stated he agrees with the 3 minute time limit because the time could be extended if needed; and it would eliminate the Board from having to determine if a person should cease public comment.

Commissioner Miller stated in his experience public comment usually adds to debate not restricts it; the Chairman has the authority to control the situation if necessary; and members of the public will appreciate the fact they are respecting their time.

Mayor Bunten stated he believes it is good policy to have a reasonable constraint on time and would not support the amendment to the policy.

The motion to strike the sentence, "Persons addressing JEDO will be limited to three consecutive minutes for their presentation, unless a majority of JEDO voting members agrees to award additional time to the speaker." carried. Mayor Bunten and Councilmember Gray voted "no." (5-2-0)

Commissioner Miller moved to strike the sentence, "There will be no public comments on items listed on the consent agenda." The motion seconded by Councilmember Gray carried. Mayor Bunten voted "no." (6-1-0)

Commissioner Miller moved to strike the sentence, "Matters pertaining to personnel, litigation and violations of laws, ordinances or resolutions are excluded from public comment." The motion seconded by Commissioner Ensley carried. Mayor Bunten, Councilmembers Alcala and Gray voted "no." (4-3-0)

Commissioner Miller moved to approve the Public Comment Policy as amended with the exception public comment would be allowed on the proposed policy prior to adoption. The motion was seconded by Commissioner Buhler.

Joseph Ledbetter commended the Board for the policy amendments. He asked if they plan to allow general public comment at the end of each meeting.

Commissioner Miller reported the policy does not allow for open public comment at the end of each meeting; however, it does allow public comment on any item on the agenda. He stated he is available 24 hours a day, 7 days a week, if Mr. Ledbetter would like to express his concerns to him.

Joseph Ledbetter stated he would prefer to express his concerns at the JEDO meetings to make certain the issues and general business concerns he has regarding GO Topeka and the Chamber are recorded in the permanent record.

The motion to approve the Public Comment Policy as amended carried. Mayor Bunten voted "no." (6-1-0)

The amended Public Comment Policy was approved as follows: **Public Comment:** Requests by the public to speak regarding items listed on the JEDO agenda will be placed on the agenda in the order received. Persons planning to speak must be identified by name and organization represented (if applicable), under the items listed on the agenda. Public comment is allowed on actionable items and must relate to the actionable item as listed on the agenda (Actionable items are those agenda items which require a vote at that scheduled meeting.) Those making public comment are to maintain proper decorum relating to public meetings.

THE 2010 GO TOPEKA FINANCIAL AUDIT REPORT was presented.

Doug Glenn, Mayer Hoffman McCann, P.C., stated the financial statements are the responsibility of the Organization's management and to express an opinion on these financial statements based on their audits. He reported the audits are conducted in accordance with auditing standards generally accepted in the U.S. and it is their opinion, the financial statements present fairly the financial position of the Growth Organization of Topeka-Shawnee County, Inc., as of December 31, 2009 and 2010. He discussed the planned scope of the audit, timing of the audit, and audit findings. He noted they did not issue any letters for weaknesses in internal control.

Joseph Ledbetter expressed concern with the public not having access to JEDO Board meeting information or handouts prior to the meeting. He questioned Footnote 6, Related Party Transactions and asked who made the transfer of funds.

Doug Glenn reported the amounts billed to GO Topeka for the year ending 2010, in the amount of $884,000 and the year ending 2009, in the amount of $897,000 was transferred by the Greater Topeka Chamber of Commerce.

Councilmember Gray moved to approve the 2010 GO Topeka Financial Audit Report. The motion seconded by Commissioner Buhler carried unanimously. (7-0-0)

CONSIDERATION of a $25,000 Investment in the Governor's Military Council was presented.

John Armbrust, Governor's Military Council Executive Director referenced the information sheet (page 37) provided in the meeting packet. He reported the Governor's Military Council has been restructured to focus on two primary missions both tied to economic development including (1) Grow and protect the State's current military installations which is directly related to the Council's previous focus, and (2) Maintain and recruit defense related industries to the state, a new focus for the Council. He reported the Governor reduced the State's contribution to the Council to $100,000 from $350,000 and they are asking the surrounding communities of the five major military installations to provide annually, as a minimum, funds matching the State's contribution. He stated they continue to work to grow Forbes Field and plan to conduct a study to determine where they are now in terms of growth, the vulnerabilities they may face, and what actions could they take to remove the vulnerabilities and keep military installations viable. He reported the Council's activity of creating new jobs is new and they are in the process of building a plan by working with GO Topeka and the Chamber to identify what needs to be done. He stated they would work in conjunction with the Kansas Department of Commerce and local university representatives to grow major military installations, and to expand defense related research and defense related jobs. He reported several communities have already committed to allocating $25,000 annually to the Council. He stated they are asking JEDO to approve at least $25,000 annually to the Governor's Military Council to continue their work.

Commissioner Miller asked if the $25,000 allocated from JEDO would be used in the same fiscal year as the State's and other community funding allocations.

John Armbrust stated the $25,000 would be used in the same fiscal year (2012).

Commissioner Ensley asked if Forbes Field would be excluded from the Council's efforts if the $25,000 request is denied.

John Armburst stated Forbes Field would not be excluded; however, when there are less financial resources due to the lack of contribution from a particular community, decisions would have to be made regarding priorities.

Commissioner Ensley asked how the funds would be used.

John Armburst stated the funding would be used for normal economic development activity including conducting studies of each military installment from an economic development perspective, something that has never been done before.

Commissioner Ensley asked if there would be a final report on the completed studies.

John Armburst stated they would provide quarterly reports, as well as, an annual report at the end of each fiscal year.

Councilmember Alcala asked if the expenditures would include cost of travel or employee salaries.

John Armburst stated the funds may be used for cost of travel or to host. He reported the State has provided a point of contact and they would not pay for a salary that is already being paid by the State; however, they may have to pay for salary activities directly related to the plan.

Councilmember Alcala stated he believes the financial breakdown is too broad and would prefer a better explanation.

Councilmember Everhart questioned the intent of the Governor in reducing the Council's budget and asking for community contributions.

John Armburst stated it was the Governor's intent to have the communities that request the presence of military installments share in the financial responsibilities of maintaining them.

Councilmember Gray stated he commends Mr. Armburst for the presentation; however, he would not support the request because he believes it is the State's way of shifting more expense to communities when they are already financially strapped.

Commissioner Miller clarified the State contributes annually to the Council in addition to contributions from local government entities.

John Armburst reported in the beginning local governments contributed funds; however, over the past several years they have tried to operate without local contributions. He stated the $250,000 eliminated from the budget was used to pay for their consultant in Washington, D.C., a position that has been eliminated.

Councilmember Manspeaker asked if there is any plan to expand the services of the V.A. Hospital located in Topeka as the need increases.

John Armburst reported they are related to the activities of the V.A. Hospital; however, their primary charter is to concentrate on the economic success of the five major military installations.

Commissioner Ensley asked if the Council works closely with the Metropolitan Transit Airport Authority (MTAA).

John Armburst stated they do not have regular interaction; however, they would help if needed.

Joe Ledbetter stated it was his understanding GO Topeka still continues to fund the Washington D.C. consultant.

Commissioner Miller clarified the consultant in Washing D.C. was funded through an independent pool of money generated from local and State sources; however, GO Topeka continues to pay for the lobbyist that handles matters before Congress.

Joseph Ledbetter asked if the Coast Guard Pay Center falls under the auspices of the Council.

John Armburst reported the Council does not interact with the Coast Guard Pay Center on a daily basis; however, the Commander of the Pay Center attends their meetings and provides operational updates. He stated if there was ever a threat of the operation leaving the Topeka area they would become intimately involved in the issue.

Joseph Ledbetter stated $25,000 appears to be a small investment compared to the amount of money GO Topeka spends annually. He asked if the request was included in GO Topeka's budget last year.

Doug Kinsinger reported the request was not included in last year's budget and that is why it has been brought before the Board for consideration.

Councilmember Alcala stated he would support the request because it is a small investment compared to the large community return; however, he questions the expenditure breakdown of the funds and believes it is too broad.

Commissioner Ensley moved to approve the funding request of the Governor's Military Council in the amount of $25,000. The motion seconded by Councilmember Everhart carried. Councilmember Gray voted "no." (6-1-0)

CONSIDERATION of the Administration Fee-Utility Relocation Reimbursement Policy Resolution. ***(Resolution No. 2011-1)***

Tom Vlach, Shawnee County Public Works Director provided a brief overview of the function of the JEDO Finance Committee. He reported the resolution has been presented to seek clarification from the JEDO Policy Board regarding the intent of the 2004 Countywide Retailers' Sales Tax Interlocal Agreement as it relates to reimbursement of administrative fees and utility relocation costs that are realized by the City and/or County as a result of implementing the sales tax referendum roadway infrastructure projects. He stated the JEDO Finance Committee approved the proposed resolution by a vote of 4-0-0. He stated Mike Teply, City of Topeka Development Coordination Division Director is present to provide an update on the sales tax projects if needed. He reported if the resolution is approved they would have a projected ending balance of $3 million.

Mayor Bunten thanked Finance Committee members for their work on the proposal. He asked what kind of administrative costs are incurred that are not already being paid for in the regular appropriation of Public Works expenses for each corresponding agency (City and County). He questioned the need for additional administrative fees to be paid when both the City and County already have staff members being paid to perform the administrative duties.

Commissioner Miller stated they are not creating money they are using sales tax funds to cover what used to be paid for by property tax funds. He noted the City has already been following the practice of covering the cost of existing staff to administer sales tax projects with sales tax funds.

Mayor Bunten asked if property taxes would be reduced if sales tax funds are used in lieu of property tax funds.

Commissioner Miller stated project taxes would be reduced dollar for dollar.

Commissioner Ensley moved to approve the resolution. The motion seconded by Councilmember Gray carried unanimously. (7-0-0)

A REPORT on the Road and Bridge Sales Tax Completion Projects was presented.

Randy Speaker, Deputy City Manager distributed an updated project list.

Joseph Ledbetter questioned the extension of the street improvement project on SE 29th Street and SE Croco Road. He stated the ballot question approved by the public did not include language that would allow for extension of improvements south of SE 29th Street. He reported the JEDO Board approved the extension in 2005 and the improvement was funded with sales tax funds.

Tom Vlach, Shawnee County Public Works Director stated that particular corridor was funded through the Countywide Half-Cent Sales Tax Program, a combination of Federal STP Funds, County matching funds, and City of Topeka funds.

Tom Flannigan, Shawnee County Project Manager reported the corridor was financed with sales tax funds beginning at SE 6th Street to SE 29th Street through the intersection. He stated during the process of improving the intersection they asked the JEDO Policy Board to approve an extension of the project (approximately 1300 feet south on SE 29th Street) to include the portion of the street in front of the Thunderbird Square Business District, eliminating the need to disrupt businesses at a later date.

Joseph Ledbetter questioned if they are deviating from the text of the 2004 ballot question for other projects.

Chairman Archer asked if JEDO is in compliance of the 2004 ballot question.

Randy Speaker, City of Topeka Public Works Director stated he would research the matter and report back to the Board.

Commissioner Miller reported the JEDO Policy Board had full discussion and full debate on the issue. He stated the discussion about the particular section in question (approximately 1300 feet south of SE Croco Road) was whether or not it could be considered as part of the overall project, and a majority of the JEDO Policy Board voted in agreement that they could not finish a street project on one side of the street with five lanes and the other side of the street with two lanes and have a safe intersection; therefore, it was approved.

Joseph Ledbetter stated he did not dispute what Commissioner Miller stated in regards to the safety of the intersection. He stated he disagrees with the process of approval because it was accomplished without public input. He stated he wants assurance the public will have input on these types of decisions made by the Board in the future.

Chairman Archer stated the meetings would continue to be televised and noted they now have a public comment policy to follow.

NO FURTHER BUSINESS appearing the meeting was adjourned at 8:38 p.m.

2

Greater
Topeka
CHAMBER & GO TOPEKA

Memorandum

To: Bob Archer, Chair, Joint Economic Development Organization Members, JEDO Board

From: Steve Jenkins, Senior Vice President, GO Topeka

Subject: Mars Chocolate North America

Date: June 30, 2011

Attached are the proposed incentives for the Mars Chocolate North America facility to be constructed in the Kanza Fire Commerce Park. These incentives have been approved by the GO Topeka Board of Directors and are being forwarded to JEDO for consideration and action.

Also, attached is the proposed incentives agreement negotiated with the company. Please note that recapture or clawback provisions for the incentives are included in case of non-performance by the company.

GO**Topeka**

ECONOMIC PARTNERSHIP

Incentive Summary
Mars Chocolate North America

GO Topeka Incentives

• Land: 150 acres in Kanza Fire Commerce Park	$1,520,775
• Possible 40 acres for wind farm	$ 400,000
• Performance-Based Job Creation Cash Incentive $6,000 x 425 jobs	$2,550,000
• Building Permit Fee Waiver	$ 200,000
• Utility Connection Fees Waiver	$ 30,000
• Railroad with switch	$1,300,000
• Innovation Parkway	$ 100,000
• Renewable Energy Facilities	$1,100,000
• Workforce Development	$1,700,000
• Water and sewer service lines to the facility	$ 217,000
Total	**$9,117,775**

Leveraged State of Kansas Infrastructure Incentives

• Innovation Parkway (KDOT)	$3,000,000
• Rail (KDOT)	$1,100,000
• Renewable Energy (KDOC KEOIF Funds)	$ 300,000
• Renewable Energy (KDOC)	$ 800,000
Total	**$5,200,000**

AF Draft: 7/1/11

INCENTIVE AGREEMENT

TABLE OF CONTENTS

Exhibits:

INCENTIVE AGREEMENT

This Incentive Agreement is effective as of ________, 2011 (this "Agreement"), and is entered into by and among (i) GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. ("GO TOPEKA"), (ii) MARS CHOCOLATE NORTH AMERICA, LLC, a Delaware limited liability company ("BUSINESS") and (iii) JOINT ECONOMIC DEVELOPMENT ORGANIZATION ("JEDO").

Recitals:

WHEREAS, BUSINESS is contemplating constructing a manufacturing facility in the Kanza Fire Commerce Park in Shawnee County, Kansas located on the parcel described in **Exhibit A** attached hereto, with an initial approximate space of Three Hundred Fifty Thousand (350,000) square feet (the "Facility"); and

WHEREAS, GO TOPEKA desires to assist and promote BUSINESS in locating its operations in the Kanza Fire Commerce Park in Topeka, Shawnee County, Kansas; and

WHEREAS, BUSINESS, acting in reliance upon the incentives set forth in this Agreement, has decided to locate its operations in the Kanza Fire Commerce Park in Topeka, Shawnee County, Kansas; and

WHEREAS, the parties wish to memorialize their understanding regarding the details of the incentive package to this legally enforceable contract.

WITNESSETH:

NOW, THEREFORE, in consideration of such mutual benefits and of the mutual covenants and agreements expressed herein, the parties covenant and agree as follows:

1. **Local Employment Incentive.**

a. Employment Incentive Fee. For each new Full Time Employment Position (up to a maximum of Four Hundred Twenty-Five (425) positions) added and maintained (as required below) by BUSINESS, GO TOPEKA shall pay an incentive to BUSINESS of Six Thousand Dollars ($6,000) (the "Employment Incentive Fee"). The aggregate of such Employment Incentive Fee shall not exceed Two Million Five Hundred Fifty Thousand Dollars ($2,550,000). Each Full Time Employment Position in which BUSINESS receives an Employment Incentive Fee must be maintained for a minimum of ten (10) consecutive years measuring on the January 1st immediately succeeding the year that the Full Time Employment Position is filled (i.e., If Full Time Employment Position is filled on 6/1/14, the ten consecutive year period is measured from 1/1/15-12/31/25). To be eligible for an Employment Incentive Fee, the Full Time Employment Position must be created by December 31, 2019. Each Full Time Employment Position may qualify for only one Employment Incentive. BUSINESS agrees that to the extent that it receives any Employee Incentive Fee, it shall spend at least that amount in the construction and purchase of machinery and equipment for the Facility and the renewal wind energy facility. At such time that BUSINESS has spent $2,550,000 in the design, engineering, construction and purchase of machinery and equipment for the Facility and the renewal wind energy facility (as defined in Section 7(a) of this Agreement), BUSINESS shall be deemed to satisfy the spending requirements in this Section 1(a).

b. Full Term Employment Position Defined. A "Full Time Employment Position" must include Two Thousand Eighty (2,080) paid hours annually at the Facility, with at least an annual base average wage of $43,000 (when averaged against all other Full Time Employment Positions at the Facility and shall not include bonuses or over-time pay) plus benefits which at a minimum shall include health insurance of which BUSINESS shall pay a portion of the premium. A Full Time Employment Position is an employment position at the Facility for which the BUSINESS withholds and pays all federal, state and local employment taxes attributable to the employee. Nothing herein shall require that a Full Time Employment Position be held by the same person, nor shall this Agreement preclude BUSINESS from changing the title, purpose or utility of a position (as long as it meets the other requirements identified in this Section 1(b)).

c. Timing of Payments and Reports. No later than January 31st of each year commencing on January 31, 2012 to January 31, 2030, BUSINESS shall send GO TOPEKA a written report which provides: (i) the average number of Full Time Employment Positions maintained in the previous calendar year, (ii) the number of Full Time Employment Positions maintained on December 1st of the immediately previous calendar year, (iii) the amount of Employment Incentive Fees due and payable to BUSINESS on March 1st from GO TOPEKA as a result of new Full Time Employment Positions filled in the immediately previous calendar year, (iv) the amount of Employment Incentive Fees that will be returned to GO TOPEKA by BUSINESS pursuant to Sections 1(d) or 1(e) of this Agreement, and (v) the difference between the amounts set forth in Sections 1(c) (iii) and (iv) and the total amount of payment due to the applicable party after the offsets have been calculated. In addition, for January 31, 2015, the report shall also provide the number of Full Time Employment Positions maintained by Business on April 1, 2014 and June 1, 2014 (only if the number of Full Time Employment Positions on April 1, 2014 is less than 180). A sample of the written report that BUSINESS would provide to GO TOPEKA is attached hereto as **Exhibit B**. If Employment Incentive Fees are due and payable by GO TOPEKA to BUSINESS after the calculation set forth in clause (v) above, GO TOPEKA shall pay such Employment Incentive Fees to BUSINESS no later than March 1st of each year. If Employment Incentive Fees are to be reimbursed by BUSINESS to GO TOPEKA after the calculation set forth in clause (v) above, BUSINESS shall pay such Employment Incentive Fees to GO TOPEKA no later than March 1st of each year.

d. Minimum Employment Requirement. BUSINESS shall have at least 180 Full Time Employment Positions by April 1, 2014. If BUSINESS has less than 180 Full Time Employment Positions by April 1, 2014, it shall inform GO TOPEKA in writing and GO TOPEKA shall give BUSINESS a two calendar month cure period. If BUSINESS has less than 180 Full Time Employment Positions by June 1, 2014, BUSINESS shall reimburse GO TOPEKA for all of the Employment Incentive Fees that it had previously received no later than March 1, 2015, and BUSINESS shall not be eligible to receive any further Employment Incentive Fees.

e. Pro-Ration of Employment Incentive Fee. If, after receiving an Employment Incentive Fee for a Full Time Employment Position, BUSINESS scales back, eliminates, or otherwise fails to maintain the Full Time Employment Position for the full ten (10) consecutive years as provided in Section 1(a), without another eligible Full Time Employment Position taking such terminated position's place no later than December 1st during the calendar year in which such terminated position occurred, BUSINESS shall refund to GO TOPEKA Ten Percent (10 %) of the Employment Incentive Fee received for such position for each year that the Full Time Employment Position is not maintained for the entire such year pursuant to Section 1(c).

Example #1: If position #1 was terminated after eight years, but there were 428 full-time positions in years nine and ten then BUSINESS would retain the entire Employment Incentive for position #1.

Example #2: If position #1 was terminated after seven years, but there were 424 full-time positions in year eight, 425 full-time positions as measured on December 1st in year nine and 424 positions in year ten, BUSINESS would remit $600 to GO TOPEKA at the end of each of years eight and ten and would retain $600 relating to year nine.

Example #3: If in year nine another eligible Full Time Employment Position was established, BUSINESS would receive a $6,000 Employment Incentive Fee for such new position, provided that Employment Incentive Fees had not already been paid for 425 positions.

2. **Property Transfer Matters.**

a. On the date which is the earlier of (i) the 30th day after the full execution of this Agreement or (y) July 29, 2011, GO TOPEKA shall transfer marketable fee simple title in and to Block "A", Lots 1 and 2, in the Kanza Fire Commerce Park, in Shawnee County, Kansas, as set forth in **Exhibit A** attached hereto, consisting of approximately One Hundred Fifty (150) contiguous acres (the "Initial Property") by special warranty deed to BUSINESS, free and clear of any liens or encumbrances. If the Initial Property does not include the real property in which the spur and rail yard servicing the Facility shall be located (the "Rail Yard Property"), then GO TOPEKA shall transfer to BUSINESS, marketable fee simple title to the Rail Yard Property by special warranty deed, free and clear of any liens or encumbrances, within thirty days after written request of BUSINESS. For purposes of this Agreement, the value of the Initial Property (which shall include the Rail Yard Property) is agreed to be Four Million Five Hundred Thousand Dollars ($4,500,000).

b. If BUSINESS notifies GO TOPEKA in writing by December 31, 2012, that BUSINESS desires to construct a wind renewable energy facility to support the Facility, GO TOPEKA shall transfer to BUSINESS no later than February 15, 2013, marketable fee simple title of approximately 40 acres of land free and clear of any liens or encumbrances, for purposes of accommodating wind renewable energy facilities to support the Facility (collectively, the "Additional Property" and with the Initial Property and the Rail Yard Property, collectively, the "Property"). The value of the Additional Property shall be agreed to by the parties at the time of transfer. If the Additional Property is not contiguous with the Initial Property, GO TOPEKA shall provide BUSINESS or its subsidiary with an access easement so that BUSINESS shall have unrestricted permanent access for vehicular traffic between the Initial Property and the Additional Property. In addition, the access easement must satisfy any conditions relating to the Property achieving BUSINESS' desired LEED certification.

c. GO TOPEKA agrees that it shall not use eminent domain or other legal means to seize, transfer or purchase all or any portion of the Property from BUSINESS after the Facility is constructed without BUSINESS's consent which it may withhold in its sole discretion.

d. GO TOPEKA and BUSINESS will work together in good faith to create a Declaration of Covenants, Conditions, Restrictions and Dedication of Easements that would encumber certain real estate within the Kanza Fire Commerce Park in the City of Topeka, Shawnee County, Kansas (the "Declaration") as mutually agreeable to the parties. GO TOPEKA and BUSINESS desire to promote development within the Kanza Fire Commerce Park that is site responsive, aesthetically appropriate and consistent in character, by designing and developing the Kanza Fire Commerce Park in a manner that will result in attractive, functional and viable businesses located within the Kanza Fire Commerce Park for the City of Topeka and Shawnee County. GO TOPEKA acknowledges that the design and development of the Facility shall be used as a model for determining the appropriate covenants, conditions and restrictions that shall be part of the Declaration.

3. **Incentive Calculation Documentation**. When and as reasonably requested by GO TOPEKA, BUSINESS shall provide GO TOPEKA or a third party accounting firm selected thereby, with invoices relating to the purchase of equipment and machinery and other capital investment relating to the construction and operation of the Facility and relating to satisfying the conditions set forth in Section 7a(ii) of this Agreement, state tax return of BUSINESS, payroll receipts and/or time sheets for the employees employed at the Facility to establish investment in and at the Facility and employment levels for purposes of calculating Employment Incentives and monitoring BUSINESS' performance hereunder. GO TOPEKA, at its sole cost and directly or through a third party accounting firm selected by GO TOPEKA, shall have the right to review the documents set forth in the immediately previous sentence but shall not have the right to request the financial statements of BUSINESS. If GO TOPEKA and BUSINESS disagree as to whether BUSINESS has satisfied the requirements set forth in this Agreement to receive the incentives as set forth in this Agreement, the parties agree to meet in person through their representatives selected by each respective party to try to amicably resolve the issue prior to submitting the issue to litigation.

4. **Other GO TOPEKA Incentives.** GO TOPEKA, at its sole cost and expense, shall also provide the following to (or for the benefit of) BUSINESS:

a. Processing and installation of all water, fire flow, and sewer service lines to certain designated service points at the Facility as reasonably determined by BUSINESS, with sufficient capacity as reasonably determined by BUSINESS to support the Facility (collectively, the "Service Lines") GO TOPEKA estimates will cost GO TOPEKA approximately Three Hundred Sixty-Seven Thousand One Hundred Dollars ($367,100) to process and install the Service Lines. The location of the Service Lines are shown on the attached **Exhibit C**. The Service Lines shall be installed no later than December 31, 2011. GO TOPEKA agrees that it is responsible for processing and installing the Service Lines even if the cost exceeds $367,100, and BUSINESS acknowledges that if the cost for processing and installing the Service Lines is less than $367,100, that GO TOPEKA shall retain such cost savings.

b. The Facility building permit fees paid to the City of Topeka (the "Permit Fees") which is estimated at Two Hundred Thousand Dollars ($200,000), based on the published schedule set by the City of Topeka ordinance. GO TOPEKA agrees that it is responsible for paying the Permit Fees even if the cost exceeds $200,000, and BUSINESS acknowledges that if the Permit Fees are less than $200,000, that GO TOPEKA shall retain such cost savings.

c. The cost of water and sewer connection fees for the Facility (the "Connection Fees") which is estimated at Thirty Thousand Dollars ($30,000), based on the published schedule set by the City of Topeka ordinance. GO TOPEKA agrees that it is responsible for paying the Connection Fees even if the cost exceeds $30,000, and BUSINESS acknowledges that if the Connection Fees are less than $30,000, that GO TOPEKA shall retain such cost savings.

d. Two Million Four Hundred Thousand Dollars ($2,400,000) payable to BUSINESS within thirty (30) days after written request from BUSINESS for such funds. BUSINESS does not need to provide invoices or other documentation at the time it requests and receives these funds. The funds shall be used toward the costs of installing railroad infrastructure for the Facility, including the required sidings and main switch that meet the Burlington Northern Santa Fe ("BNSF") design guidelines; construction of renewable energy capacity and/or rates to serve the Facility; and as a reserve fund that may be allocated to any need directly associated with constructing or making the Facility operational as determined by BUSINESS, including the renewable energy capacity and/or rates. BUSINESS may direct that GO TOPEKA pay BUSINESS's contractors directly with the funds or request that BUSINESS be paid the funds directly. At such time that a certificate of occupancy for the Facility is issued and the Facility is at least Three Hundred Fifty Thousand (350,000) square feet, BUSINESS shall be deemed to have satisfied the requirement that the $2,400,000 be used for the purposes set forth in this Section 4(d).

e. One Million Seven Hundred Thousand Dollars ($1,700,000), to be paid by GO TOPEKA to the Washburn Institute of Technology, for the training of key Facility positions, pursuant to an agreement by and among BUSINESS, GO TOPEKA and the Washburn Institute of Technology.

f. In addition to the foregoing, GO TOPEKA shall use its best efforts (by working with the County and landowners) to zone the real property within an approximately two (2) miles straight line radius from the boundary line of the Initial Property and within an approximately one (1) mile straight line radius from the boundary line of the Additional Property for only commercial and industrial uses. These zoning restrictions shall be established by no later than June 1, 2012 for the Initial Property and a date mutually agreeable to the parties for the Additional Property. Notwithstanding the foregoing, the real property used as of the date hereof for residential purposes relating to the two mile radius around the Initial Property will not be so restricted; provided that no additional residential improvements may be built on such property ("Existing Residential Homes"). If GO TOPEKA is unable to rezone the real property within an one mile straight line radius from the boundary of the Property (the "One Mile Radius Properties") for only commercial or industrial use by June 1, 2012 for the Initial Property and by a mutually agreeable date for the Additional Property, GO TOPEKA shall use its best efforts to purchase at commercially reasonable rates by December 31, 2012 for the Initial Property and a mutually agreeable date for the Additional Property, the residential development rights for the One Mile Radius Properties which are not Existing Residential Homes.

g. If GO TOPEKA has cost savings in implementing any of its estimated incentives (such as in Sections 4(a), 4(b) or 4(c)) or if BUSINESS informs GO TOPEKA in writing that it does not anticipate using the entire incentive set forth in a certain provision of this Agreement (collectively, "Incentive Cost Savings"), GO TOPEKA has the right to use such Incentive Cost Savings to fund its obligations under this Agreement.

5. **Other Incentives**. In addition to the foregoing, the parties understand BUSINESS would qualify for the following incentives not administered or controlled by GO TOPEKA, and confirmation by BUSINESS of such qualification for all such incentives and self-help rights for BUSINESS to provide it with protection that such incentives shall be timely delivered shall be a condition of BUSINESS proceeding with the contemplated development of Facility:

a. Installation by and at the cost of the City of Topeka of a twelve (12) inch water main along the west side of the BNSF rail from Gary Ormsby Drive to Innovation Parkway. The lines are shown on the attached **Exhibit D**. The construction of this water main shall be completed by December 9, 2011.

b. Washburn Institute of Technology has proposed the training program pursuant to the funds that it receives from GO TOPEKA pursuant to Section 4(e).

c. Three Million Dollars ($3,000,000) by the Kansas Department of Transportation ("KDOT") for the construction and completion of a three lane industrial grade street to be known as Innovation Parkway which location is outlined on **Exhibit E**. The construction of Innovation Parkway shall be completed by October 5, 2012.

d. Three Hundred Thousand Dollars ($300,000) from the Kansas Economic Opportunity Initiatives Fund ("KEOIF") and Eight Hundred Thousand Dollars ($800,000) from the Kansas Department of Commerce ("KDOC") for renewable energy capacity to serve the Facility.

e. One Million One Hundred Thousand Dollars ($1,100,000) by KDOT for the rail infrastructure to serve the Facility.

f. The KDOC, through the Kansas Partnership Fund, shall also contribute a low interest negotiable loan, in an amount up to Seven Hundred Fifty Thousand Dollars ($750,000), to local governmental jurisdiction, to support infrastructure needs of the Facility to be installed by such local governmental jurisdiction.

g. Annual real property tax abatement relating to the Property is estimated at Three Million Six Hundred Thousand Dollars ($3,600,000) to Five Million Nine Hundred Thousand Dollars ($5,900,000) depending on the size of BUSINESS' capital investment. BUSINESS shall receive the annual real property tax abatement for the ten (10) year period commencing the year that the Facility is fully operational (tax abatement period estimated to be 2013-2023).

h. Westar Energy, Inc., has proposed pursuing a new renewable energy tariff providing a 30% discount (if Facility receives Platinum LEED certification), 25% discount (if Facility receives Gold LEED certification) and 20% discount (if Facility receives Silver LEED certification) over 20 years for qualifying LEED facilities, but this is subject to approval of the Kansas Corporation Commission.

i. Westar Energy, Inc., is also proposing a five-year rate discount on the traditional tariff starting at 10% in year 1 (first year BUSINESS achieves at least 7 MW of load) and reducing 200 basis points annually each year, phasing out after five years, but this is subject to approval by the Kansas Corporation Commission.

j. BNSF will provide BUSINESS with $100 per inbound rail car to cover the cost of the main line switch, but not to exceed $300,000. This incentive fee would be paid over the period of three years or until the cost of the switch is fully reimbursed (whichever comes first). BUSINESS has the right to off-set any monies due to BNSF with this incentive fee.

k. Nordic Windpower USA and two solar developers have proposed providing two megawatts of renewable energy devoted to the Facility.

l. The Kansas Department of Commerce has outlined a number of other incentives in its Incentive Overview dated January 6, 2011 to GO TOPEKA relating to the Facility, and are additional incentives not otherwise provided in this Agreement.

m. Processing and installation of all electric service to certain designated service points at the Facility, with sufficient capacity to support the Facility to be provided and paid for by Westar Energy.

n. Processing and installation of all gas service to certain designated service points at the Facility, with sufficient capacity to support the Facility to be provided and paid for by Kansas Gas Service.

o. Processing and installation of all telephone and cable and/or FIOS service to certain designated service points at the Facility, with sufficient capacity to support the Facility to be provided and paid for by the applicable telephone/cable and/or FIOS company.

Each of these benefits, programs and/or services are important to BUSINESS's decision to enter into this Agreement. GO TOPEKA agrees to cooperate in and facilitate BUSINESS's efforts in accessing each of the incentives set forth in this Section 5.

6. **Property Tax Abatement.** For each year in which BUSINESS receives a property tax abatement relating to the Facility as set forth in Section 5(g), BUSINESS shall pay to GO TOPEKA (within 60 days after the confirmation that such abatement has been applied to the BUSINESS's tax obligation relating to the Property) an amount equal to Ten Percent (10%) of such annual abatement for application by GO TOPEKA to the sustainability of improvements in the Kanza Fire Commerce Park and the construction and operation of a fire house and fire department which would serve the Facility.

7. **Default of Business.**

a. An Event of Default by BUSINESS shall occur if any of the following conditions exist and BUSINESS has not cured such default within ninety (90) days following written notice from GO TOPEKA of such default:

i. BUSINESS fails to maintain at least a minimum of an average of One Hundred (180) Full Time Employment Positions at the Facility for each of the calendar years 2015-2025 (the "Minimum Required Employment Positions;"), with the average Full Time Employment Positions separately measured each calendar year; or

ii. BUSINESS fails to invest, by December 31, 2015, at least Two Hundred Seventy Million Dollars ($270,000,000) of new capital investment in the design, engineering, and construction of the Facility and the renewal wind energy facility and the design, engineering, purchase, installation and operation of machinery and equipment in or at the Facility or the renewal wind energy facility (collectively, "Total Project Costs"). BUSINESS's placement of a purchase order by December 31, 2015, shall count as investment in Total Project Costs.

"Total Project Costs" in clause (ii) above shall include, but not be limited to all hard and soft costs and expenses in connection with land acquisition, the development, design, engineering, construction and operation of the Facility and the renewal wind energy facility and any other part of this project and the design, engineering, purchase, installation and operation of the machinery and equipment to be used in connection with the Facility and the renewal wind energy facility incurred by BUSINESS or its affiliates, including (A) amounts due to all third-parties (i.e. architects, engineers, contractors, accountants, attorneys and consultants), (B) all costs incurred to discharge any liens against the Facility or the renewal wind energy facility, (C) all costs incurred in obtaining all governmental approvals necessary to receive a certificate of occupancy for such Facility, (D) all expenses set forth in the development budget for the Facility, which includes: all real estate taxes (if not abated), insurance, interest and financing fees (or imputed interest if BUSINESS finances the project itself), (E) the total value of all contracts, as may increased by change orders or authorizations, for all third-party design professional services for the Facility and the renewal wind energy facility, including, but not limited to, engineers, architects and their respective subconsultants that provide architectural, engineering, structural, mechanical, electrical and plumbing/fire protection, acoustical, geotechnical, environmental, landscaping, transportation, logistics, LEED, Building Information Modeling, or other design consulting services; (F) the total value of all contracts and purchase orders, as may be increased by change orders, for the construction management and pre-construction and construction of the Facility and the renewal wind energy facility, including all construction manager and trade contractor fees, costs, allowances, general conditions, incentive bonuses and contingencies; (G) the total value all materials and supplies used in, or under contract for, the construction of the Facility and the renewal wind energy facility; (H) insurance, bonds, legal and accounting fees and costs for the Facility and the renewal wind energy facility, (I) utility and telecommunications costs incurred by the Facility or other parts of the project and paid by BUSINESS or its affiliates and not paid by GO TOPEKA, and (J) all internal costs incurred by BUSINESS relating to the design, engineering and construction of the Facility and the renewal wind energy facility and the machinery and equipment relating to the Facility, that are allocated to this project by BUSINESS and which would not otherwise be incurred by BUSINESS.

b. If BUSINESS maintains at least the Minimum Required Employment Positions, but fails to maintain positions for which it received an Employment Incentive Fee, timely repayment of that Employment Incentive Fee (or the proportionate amount thereof) as required by Section 1 shall be sufficient to avoid a default hereunder. If BUSINESS is in default under Section 7(a)(i) for failure to maintain the Minimum Required Employment Positions, such default shall not preclude or otherwise relieve BUSINESS from also repaying the Employment Incentives Fee for positions that were not maintained as required pursuant to Section 1.

c. BUSINESS shall be deemed to be in default under this Agreement for provisions other than Section 7 (an "Event of Default by BUSINESS") in the event BUSINESS shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by BUSINESS, and such failure shall continue (i) for a period of ten (10) business days after BUSINESS receives written notice from GO TOPEKA specifying the default in case of monetary defaults or (ii) for a period of thirty (30) days after BUSINESS receives written notice from GO TOPEKA in the case of non-monetary defaults; provided, however, that if such non-monetary default cannot be cured within such thirty (30) day period, then BUSINESS shall be entitled to such additional time as shall be reasonable, provided BUSINESS is capable of curing same, has promptly proceeded to commence cure of such default within said period, and thereafter diligently prosecutes the cure to completion; provided, however, that in no event shall such additional time exceed ninety (90) days.

8. **GO TOPEKA Default Remedies**.

a. In the event that by January 1, 2015, BUSINESS elects not to build the core manufacturing facility with an initial approximate space of no less than 350,000 square feet ("Core Facility") after the Property has been transferred to BUSINESS or its subsidiary, BUSINESS or its subsidiary, as applicable, shall: (i) promptly transfer the Property back to GO TOPEKA in the same condition as it received the Property, free and clear of any liens or encumbrances caused by BUSINESS, (ii) repay any Employee Incentive Fee that it received, (iii) repay the amount that had been actually paid by GO TOPEKA to BUSINESS or on its behalf pursuant to Section 4(d) of this Agreement ($2,400,000), and (iv) repay the amount that had been actually paid by GO TOPEKA under Section 4(b) for the Permit Fees in an amount not to exceed $200,000.

b. If an Event of Default occurs under Section 7(a)(ii) of this Agreement, BUSINESS shall (i) repay any Employee Incentive Fee that it has received and shall no longer be eligible to receive the Employee Incentive Fee set forth in Section 1, (ii) repay the amount that had been actually paid by GO TOPEKA to BUSINESS or on its behalf pursuant to Section 4(d) of this Agreement ($2,400,000), (iii) repay the amount that had been actually paid by GO TOPEKA under Section 4(b) for the Permit Fees in an amount not to exceed $200,000, and (iv) Business shall have the option to either (1) promptly transfer the Property back to GO TOPEKA in the same condition as it received the Property, free and clear of any liens or encumbrances caused by BUSINESS, or (2) pay GO TOPEKA the lesser of (x) the appraised value of the Property (which value shall exclude any improvements paid by BUSINESS or its affiliates) as determined by an appraiser mutually agreeable to GO TOPEKA and BUSINESS plus the demolition cost of removing the Facility from the Initial Property (the "Demolition Costs"), or (y) Four Million Five Hundred Thousand Dollars ($4,500,000) for the Initial Property and the value of the Additional Property as determined by the parties at the time of the Additional Property transfer to BUSINESS.

c. If an Event of Default occurs under Section 7(a)(i) of this Agreement, BUSINESS shall repay to GO TOPEKA a proportion (defined below) of (1) the Employment Incentive Fee, (2) the lesser of (x) the appraised value of the Property (which value shall exclude any improvements paid by BUSINESS or is affiliates) as determined by an appraiser mutually agreeable to GO TOPKEA and BUSINESS plus the Demolition Costs, or (y) Four Million Five Hundred Thousand Dollars ($4,500,000) for the Initial Property and the value of the Additional Property as determined by the parties at the time of the Additional Property transfer to BUSINESS, and (3) the amount that had been actually paid by GO TOPEKA to BUSINESS or on its behalf pursuant to Section 4(d) of this Agreement ($2,400,000). The repayment proportion shall be calculated by multiplying the foregoing amounts by a fraction, the numerator of which shall be the number of years (including the year of the Event of Default) left in the expected Ten (10) year performance period when the Event of Default occurs, which performance period begins on January 1, 2015. The denominator of such faction is "10."

> For example, if the Employment Incentive Fee of $2,550,000 has been received, the Additional Property is valued at Five Hundred Thousand Dollars ($500,000) at the time of the transfer, the appraised value of the Property is $4,400,000, the entire Two Million Four Hundred Thousand Dollars ($2,400,000) has been expended in accordance with Section 4(d), and an Event of Default occurs in May 2021, the repayment amount will be:
>
> 4/10 * $9,350,000 = $3,740,000.
>
> [Where $9,350,000 = $2,550,000 + $4,400,000 + $2,400,000, and where the numerator is calculated based on the fact that years 2015 through 2020 are complete, leaving 4 years.]

d. In the event that BUSINESS elects not to build the Core Facility or BUSINESS defaults under this Agreement for any reason whatsoever, BUSINESS shall not be liable for any damages or be liable to reimburse GO TOPEKA, JEDO or any other party for any funds spent by such party in anticipation of the operation of the Facility as set for in Sections 4(a) (water/fire/sewer lines), 4(c) (water/sewer connection fees), 4(e) (Washburn Institute of Technology) and 4(f) (zoning) and Section 5.

e. If BUSINESS elects to receive the Additional Property and does in fact receive the Additional Property, but does not commence the construction of a functional renewal wind energy facility thereon by December 31, 2013, BUSINESS shall either (i) deed the Additional Property back to GO TOPEKA, subject only to the easements, liens, covenants and restrictions of record and zoning regulations that were in place when received by BUSINESS, or (ii) if BUSINESS still plans to develop a functional renewal wind energy facility on the Additional Property, BUSINESS may reimburse GO TOPEKA for the lesser of (x) the appraised value of the Additional Property (which value shall exclude any improvements paid by BUSINESS or is affiliates) as determined by an appraiser mutually agreeable to GO TOPKEA and BUSINESS or (y) the value of the Additional Property as determined by the parties at the time of the Additional Property transfer to BUSINESS.

f. If an Event of Default occurs by BUSINESS under this Agreement, GO TOPEKA and JEDO shall have no further obligations under this Agreement, such as to make incentive or other payments, transfers or efforts to or for the benefit of BUSINESS.

g. GO TOPEKA and JEDO shall not be entitled to specific performance as a result of an Event of Default by BUSINESS under this Agreement. For Events of Default relating to Section 7(a) of this Agreement, GO TOPEKA's remedies are set forth exclusively in Sections 8(a), 8(b), 8(c), 8(d), 8(e) and 8(f)). For Events of Default of BUSINESS that are other than Events of Default relating to Section 7(a) of this Agreement, the remedy set forth in Section 8(f) shall be in addition to any other remedies BUSINESS may have under applicable law.

9. **Default by GO TOPEKA**. GO TOPEKA shall be deemed to be in default under this Agreement (an "Event of Default by GO TOPEKA") in the event GO TOPEKA shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by GO TOPEKA and such failure shall continue (i) for a period of ten (10) business days after written notice thereof by BUSINESS to GO TOPEKA in case of monetary defaults, or (ii) for a period of thirty (30) days after written notice thereof by BUSINESS to GO TOPEKA in the case of non-monetary defaults; provided, however, if such default cannot be cured within such thirty (30) day period, then GO TOPEKA shall be entitled to such additional time as shall be reasonable, provided that GO TOPEKA is capable of curing same, has promptly proceeded to commence cure of such default within said period, and thereafter diligently prosecutes the cure to completion; provided, however, that in no event shall such additional time to cure non-monetary defaults exceed ninety (90) days.

10. **BUSINESS Default Remedies**.

a. Upon the occurrence of an Event of Default by GO TOPEKA under this Agreement, BUSINESS shall be entitled to exercise its rights at law or in equity, including the right to (i) compel specific performance of GO TOPEKA's and/or JEDO's obligations hereunder, (ii) self-help rights set forth in Section 10(c) of this Agreement, or (iii) to terminate this Agreement and to recover any amounts owed to BUSINESS under this Agreement. The remedies set forth in Section 10 shall be in addition to any other remedies BUSINESS may have under applicable law.

b. If GO TOPEKA has defaulted on any of its obligations under this Agreement or if BUSINESS has not received the benefits of the incentives set forth in Sections 5(a), 5(h), 5(i), 5(j), 5(m), 5(n) or 5(o) of this Agreement, BUSINESS shall have the right to set-off the abatement payment due to GO TOPEKA under Section 6 (Property Tax Abatement) and any payments due to GO TOPEKA under this Agreement by the amount needed to satisfy GO TOPEKA's obligations under this Agreement and the amount needed to satisfy the incentives promised to BUSINESS under Sections 5(a), 5(h), 5(i), 5(j), 5(m), 5(n) or 5(o) of this Agreement. If permitted by all of the parties in the agreements set forth in Sections 5(a), 5(h), 5(i), 5(j), 5(m), 5(n) or 5(o) of this Agreement, GO TOPEKA shall be a third party beneficiary of such agreements; provided that GO TOPEKA's actions to enforce such agreements on behalf of BUSINESS shall not interfere with the enforcement of such agreements by BUSINESS.

c. If an Event of Default by GO TOPEKA occurs under Sections 4(a), 4(b), 4(c), or 4(e) of this Agreement, BUSINESS may, without waiving any claim for breach of agreement, cure such default for the account of GO TOPEKA and make all necessary payments in connection therewith, including but not limited to, reasonable attorneys' fees, costs, or charges in connection with any legal action that may have been brought, with interest thereon at six percent (6%) per annum. BUSINESS shall have the right to offset such costs against any payments due and owing under this Agreement to GO TOPEKA, until fully reimbursed.

d. If an Event of Default occurs by GO TOPEKA or JEDO under this Agreement, BUSINESS shall have no further obligations under this Agreement, including, without limitation, any obligations to make any payments, transfers of real property or efforts to or for the benefit of GO TOPEKA or JEDO.

11. **Escrow and JEDO Obligation**.

a. GO TOPEKA's obligations hereunder are within its budget and expected funding stream. Notwithstanding the foregoing, GO TOPEKA's obligations hereunder are contingent upon the continued funding of GO TOPEKA at adequate levels through a portion of the Shawnee County, Kansas, retailer's sales tax and/or by the local Joint Economic Development Organization ("JEDO"). Commencing on July 20, 2011, GO TOPEKA agrees that it will escrow funds on the 20th day of July, October, January, and April with First American Title Insurance Company, National Commercial Services ("Escrow Agent"), that it receives from the Shawnee County, Kansas, retailers' sales tax (the "Escrowed Funds") to fulfill its obligations under this Agreement pursuant to the payment schedule attached hereto as **Exhibit F**. The Escrowed Funds will be held in escrow pursuant to an Escrow Agreement by and among GO TOPEKA, JEDO, BUSINESS and Escrow Agent attached hereto as **Exhibit G**. The Escrow Agent shall disburse the Escrowed Funds to BUSINESS within ten (10) business days after receiving a written request from BUSINESS provided that GO TOPEKA does not object in writing to such disbursement within five (5) business days after receipt of such request from Escrow Agent. GO TOPEKA shall timely fund its obligations under this Agreement even if there are not adequate Escrowed Funds to satisfy such obligations. If GO TOPEKA funds its obligations with monies that are not held in escrow ("Non-Escrowed Funds"), then the payment schedule attached hereto as **Exhibit F** shall be modified to the extent that the Non-Escrowed Funds shall reduce the last Escrowed Funds which are due under the payment schedule. *For example*, if GO TOPEKA is required to pay BUSINESS for 212 Full Time Employment Positions in 2012 (rather than the 106 Full Time Employment Positions budgeted in **Exhibit F**), GO TOPEKA would not need to deposit Escrowed Funds for the 106 Full Time Employment Positions budgeted for 2015 since this obligation would have already been satisfied. The Escrow Agent shall disburse the Escrowed Funds to GO TOPEKA within ten (10) business days after receiving a written statement from GO TOPEKA that an Event of Default of BUSINESS has occurred under this Agreement and that GO TOPEKA is entitled to reimbursement of the Escrowed Funds pursuant to this Agreement; provided that BUSINESS does not object in writing to such disbursement within five (5) business days after receipt of such request from Escrow Agent.

b. JEDO agrees that to the extent that GO TOPEKA is unable to meet its financial obligations under this Agreement to BUSINESS that JEDO shall be obligated to BUSINESS to satisfy GO TOPEKA's financial obligations and shall satisfy such funding obligations to BUSINESS.

12. **Notices**. All notices, demands, consents, approvals, and requests given by either party to the other hereunder shall be in writing and shall be sent by hand delivery, by a nationally recognized overnight courier, or by facsimile (provided that facsimile notices are also promptly delivered by hand or by a nationally recognized overnight courier), to the parties at the following addresses:

To: GO TOPEKA:

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.
120 SE 6th Avenue, Suite 110
Topeka, KS 66603-3515
Phone: (785) 234-2644
FAX: (785) 234-8656
Contact Person/Title: Steve Jenkins,
Senior Vice President-Economic Development

With a copy to:

Coffman, Defries & Nothern, P.A.
534 S. Kansas Ave., Suite 925
Topeka, KS 66603-3407
Attention: Jeffrey A. Wietharn, Esq.
Facsimile: (785) 234-3363

To: BUSINESS:

Mars Chocolate North America, LLC
800 High Street
Hackettstown, NJ 07840
Attention: Edgar Pew, Esq., Associate General Counsel

With a copy to, upon completion of the Facility:

Mars Chocolate North America, LLC
[insert street address of Facility]
Topeka, KS 66603
Attention: Plant Manager

With a copy to:

Bevan, Mosca, Giuditta & Zarillo, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
Attention: Alexandra R. Bratsafolis, Esq. and Richard A. Giuditta, Jr., Esq.
Facsimile: (908) 848-6432

With a copy to:

Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Attention: Kimberly A. Wachen, Esq.
Facsimile: (202) 857-6395

To: JEDO:

JOINT ECONOMIC DEVELOPMENT ORGANIZATION
c/o Richard Eckert, Shawnee County Counselor
200 SE 7th St. Room 100
Topeka, KS 66603-3971

With a copy to:

Attn: City Attorney
215 SE 7th, Room 353
Topeka, KS 66603-3914

or to such other address and to the attention of such other person as either party may from time to time designate in writing. Notices properly given as described above shall be effective upon receipt or, if received on a date that is not a business day or after normal business hours in the location delivered, the following business day. Refusal to accept delivery shall constitute receipt.

13. **Miscellaneous.** The following miscellaneous provisions shall apply to this Agreement:

a. BUSINESS shall have a one time right to delay the construction and operation of the Facility for a period not to exceed twenty-four (24) months by notifying GO TOPEKA of such delay in writing by no later than December 31, 2013. All time periods in this Agreement shall be extended by the extension of time set forth in BUSINESS's notice (the "Extension Period"). Notwithstanding the foregoing, the time periods and the amount to be escrowed set forth in Section 11(a) and **Schedule F** attached hereto for GO TOPEKA to escrow funds shall not be extended unless there has been an extension of the Shawnee County, Kansas retailers' sales tax in the amount of one-half of one cents past December 31, 2016 for the amount of the Extension Period. If BUSINESS exercises its rights to delay the construction and operation of the Facility by twelve (12) months or greater pursuant to this Section 13(a) and if GO TOPEKA can demonstrate to the satisfaction of BUSINESS, in its sole discretion, that GO TOPEKA would be able to escrow all of the funds relating to the Washburn Institute of Technology incentive set forth in Section 4(e) which were originally scheduled to be funded in 2011 and 2012 pursuant to **Schedule F**, to the years 2012 and 2013 with such escrowed funds to be deposited quarterly in the amounts to be determined by BUSINESS so that by December 31, 2013, the $1,700,000 incentive fee set forth in Section 4(e) would be fully escrowed.

b. BUSINESS agrees to participate in a public event with GO TOPEKA at the Facility celebrating the location of the Facility and employment expansion contemplated by this Agreement at such date and time mutually agreeable to the parties. Such event would include general recognition of GO TOPEKA's involvement in the project and BUSINESS shall determine in its sole discretion its representatives from the BUSINESS to appear at such event.

c. The parties agree that no public release or announcement concerning this Agreement, the agreements contemplated in Section 5, the Facility, the project or anything that could create an obligation for BUSINESS shall be issued by any party without the prior written consent of the other party, except as required by law or applicable regulations. GO TOPEKA agrees that it will obtain the consent from a Senior Manager of Mars Chocolate Corporate Affairs on all external or public announcements and releases relating to the Facility or this Agreement. If GO TOPEKA receives the consent of Mars Chocolate Corporate Affairs Senior Manager relating to a public release or announcement relating to the Facility or this Agreement, then BUSINESS shall be deemed to consent under this Section 13(c). As of the date of this Agreement, Jessica Graves (contact information: Jessica.graves@effem.com, 908-619-0782) is the Mars Chocolate Corporate Affairs Senior Manager who should be contacted by GO TOPEKA for purposes of this Section 13(c).

d. This Agreement and the agreements contemplated under Section 5 (Other Incentives) contain the entire agreements reached between the parties hereto with respect to the subject matter hereof, and this Agreement may be amended only in writing, duly executed by all parties concerned.

e. This Agreement shall be interpreted under the laws of the State of Kansas. In the event if any provision is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.

f. Time is of the essence of this Agreement.

g. By signing this Agreement, the parties affirm that they have the authority of their respective entities to enter into this Agreement and bind their respective entities.

h. This Agreement shall bind and inure to the benefit of the parties to this Agreement, their heirs, legal representatives, assignees, transferors and successors.

i. No failure by a party to insist on prompt performance by the other party of its obligations hereunder shall constitute a waiver of rights under the Agreement. Similarly, the waiver by a party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

j. This Agreement may be executed in counterparts, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all parties.

k. The parties acknowledge and agree that BUSINESS shall not assign, transfer, hypothecate or otherwise encumber this Agreement and its rights hereunder, without the prior written approval of GO TOPEKA.

l. GO TOPEKA makes no representation as to the taxability or tax effect of this Agreement and the incentive payments hereunder.

m. In carrying out the terms and provisions of this Agreement, BUSINESS shall not unlawfully discriminate against any employee, applicant for employment, recipient of service or applicant to receive or provide services because of race, color, religion, sex, age, disability, national origin or any other status protected by applicable federal or state law or local ordinance.

n. Every duty, right, or obligation contained in this Agreement imposes an obligation of good faith in its performance or enforcement. For the purposes of the Agreement, "good faith" dealing means honesty in fact in the conduct or the transaction concerned.

o. Nothing herein contained shall be construed or held to make any party a partner, joint venturer or associate of another party in the conduct of its business, nor shall either party be deemed the agent of the other. It being 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.

p. The parties agree to execute and deliver such other documents, agreements or instruments as may be necessary or convenient to effect the purposes of this Agreement and to comply with any of the terms hereof.

q. All incentives contemplated under this Incentive Agreement are for the sole purpose of inducing BUSINESS to locate its operations in Topeka, Shawnee County, Kansas, and to expand the Facility in the future. GO TOPEKA, JEDO, KDOT, KEOIF, KDOC and any other governmental entity are not providing the incentives in consideration for any goods or services rendered or as a subsidy. Moreover, any payments made by non-governmental entities unrelated to BUSINESS or its affiliates or subsidiaries provide only indirect and intangible benefits to the payors and were not made to achieve a business purpose of the payor.

r. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect whatsoever in construing the provisions of this Agreement.

s. BUSINESS understands the importance of local sourcing. The design, engineering and construction of the Facility; the design, engineering, and installation of the machinery and equipment; and other portions of this project relating to the Facility are highly proprietary and specialized. As a result BUSINESS shall only be obligated to hire or use those companies or people that BUSINESS believes, in its sole discretion, meet the strict qualifications necessary to complete the work or obtain the materials necessary to meet BUSINESS's standards and qualifications. BUSINESS will work with local companies and people when appropriate and consistent with BUSINESS's standards and qualifications.

t. There shall be no third party beneficiaries to this Agreement and no party other than GO TOPEKA, JEDO and BUSINESS and its affiliates shall have any rights under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

<u>"BUSINESS"</u>

MARS CHOCOLATE NORTH AMERICA, LLC
A Delaware limited liability company

By: ______________________________
Name: ___________________________
Title: ______________________________

<u>"GO TOPEKA"</u>

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By: ______________________________
Name: ___________________________
Title: ______________________________

<u>"JEDO"</u>

JOINT ECONOMIC DEVELOPMENT ORGANIZATION

By: ______________________________
Name: ___________________________
Title: ______________________________

Exhibit A

Legal Description of Initial Property

A TRACT OF LAND SITUATED IN THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 15 EAST OF THE SIXTH PRINCIPAL MERIDIAN, BEING A PORTION OF THOSE CERTAIN TRACTS OF LAND DESCRIBED IN BOOK 4760, PAGE 251 RECORDED DECEMBER 1, 2009 AND BOOK 4761, PAGE 68 RECORDED DECEMBER 2, 2009 AND ALSO BOOK 4774, PAGE 165 RECORDED JANUARY 25, 2010 ALL IN THE OFFICE OF THE SHAWNEE COUNTY REGISTER OF DEEDS, SHAWNEEE COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 12; THENCE ON AN ASSUMED BEARING OF SOUTH 88 DEGREES 31 MINUTES 48 SECONDS WEST, COINCIDENT WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 195.20 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY; THENCE SOUTH 16 DEGREES 11 MINUTES 04 SECONDS WEST, COINCIDENT WITH SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 59.80 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 16 DEGREES 11 MINUTES 04 SECONDS WEST, COINCIDENT WITH SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 2670.54 FEET; THENCE SOUTH 88 DEGREES 25 MINUTES 32 SECONDS WEST, BEING 57.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 1357.37 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE ON SAID CURVE HAVING A RADIUS OF 947.50 FEET A CENTRAL ANGLE OF 54 DEGREES 09 MINUTES 09 SECONDS, AN ARC LENGTH OF 895.52 FEET; THENCE NORTH 37 DEGREES 25 MINUTES 19 SECONDS WEST, A DISTANCE OF 1074.47 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF S.W. GARY ORMSBY DRIVE; THENCE COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY LINE, ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1706.04 FEET, A CENTRAL ANGLE OF 11 DEGREES 34 MINUTES 06 SECONDS, (WHOSE CHORD BEARS NORTH 45 DEGREES 01 MINUTES 50 SECONDS EAST, 343.87 FEET), AN ARC LENGTH OF 344.46 FEET; THENCE NORTH 39 DEGREES 14 MINUTES 47 SECONDS EAST, COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 393.67 FEET; THENCE NORTH 42 DEGREES 40 MINUTES 48 SECONDS EAST, COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 164.34 FEET; THENCE NORTH 37 DEGREES 14 MINUTES 14 SECONDS EAST, COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 280.75 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY LINE ON SAID CURVE HAVING A RADIUS OF 1246.72 FEET, A CENTRAL ANGLE OF 32 DEGREES 59 MINUTES 50 SECONDS, (WHOSE CHORD BEARS NORTH 55 DEGREES 44 MINUTES 38 SECONDS EAST, 708.12 FEET), AN ARC LENGTH OF 718.00 FEET; THENCE ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1147.50 FEET, A CENTRAL ANGLE OF 13 DEGREES 42 MINUTES 22 SECONDS, (WHOSE CHORD BEARS NORTH 81 DEGREES 40 MINUTES 37 SECONDS EAST, 273.85 FEET), AN ARC LENGTH OF 274.50 FEET; THENCE NORTH 88 DEGREES 31 MINUTES 48 SECONDS EAST, BEING 55.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 1831.47 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE ON SAID CURVE HAVING A RADIUS OF 986.50 FEET, A CENTRAL ANGLE OF 2 DEGREES 06 MINUTES 48 SECONDS, AN ARC LENGTH OF 36.39 FEET; THENCE SOUTH 89 DEGREES 21 MINUTES 24 SECONDS EAST, A DISTANCE OF 35.55 FEET TO THE POINT OF BEGINNING. CONTAINING 152.38 ACRES, MORE OR LESS.

BEING THE SAME PROPERTY AS IDENTIFIED AS BLOCK "A", LOT 1 OF THE FINAL PLAT PREPARED BY BARTLETT & WEST DATED JANUARY 8, 2010 FOR THE KANZA FIRE COMMERCE PARK TO BE RECORDED IN THE OFFICE OF SHAWNEE COUNTY REGISTER OF DEEDS, SHAWNEE COUNTY, KANSAS.

Exhibit B

Employment Incentive Fees Report Prepared by BUSINESS

COMPLIANCE REPORT

GROWTH ORGANIZATION OF
TOPEKA/SHAWNEE COUNTY, INC.
120 SE 6th Avenue, Suite 110
Topeka, KS 66603-3515
Attention: Steve Jenkins

Re: Incentive Agreement dated as of ________ ___, 2011 (together with amendments, if any, the "Incentive Agreement"), by and between Growth Organization of Topeka/Shawnee County, Inc. ("GO Topeka") and Mars Chocolate North America, LLC ("Mars")

The undersigned representative of Mars does hereby certify that the following information is true and correct in all material respects and that for the previous calendar ending December 31, 20___:

1. The average number of Full Time Employment Positions maintained in the previous calendar year was ______.

2. The number of Full Time Employment Positions maintained on December 1st of the immediately previous calendar year was ______.

3. The amount of Employment Incentive Fees due and payable to Mars from GO Topeka as a result of new Full Time Employment Positions filled in the immediately previous calendar year is $____________.

4. The amount of Employment Incentive Fees that will be returned to GO Topeka by Mars pursuant to Sections 1(d) or 1(e) of the Incentive Agreement is $____________.

5. The difference between the amounts set forth in Sections 3 and 4 above, after the offsets have been calculated, is $____________ and this amount is due and payable to [Mars/GO Topeka] by March 1st.

6. [*Only for the for January 31, 2015, report]*: The number of Full Time Employment Positions maintained by Mars on April 1, 2014 [*only if the number of Full Time Employment Positions on April 1, 2014 is less than 180]* and June 1, 2014 was ______.]

7. Capitalized terms not defined herein shall have the meanings given to such terms in the Incentive Agreement.

[Signature on following page.]

Dated this ____ day of January, 20__:

MARS:

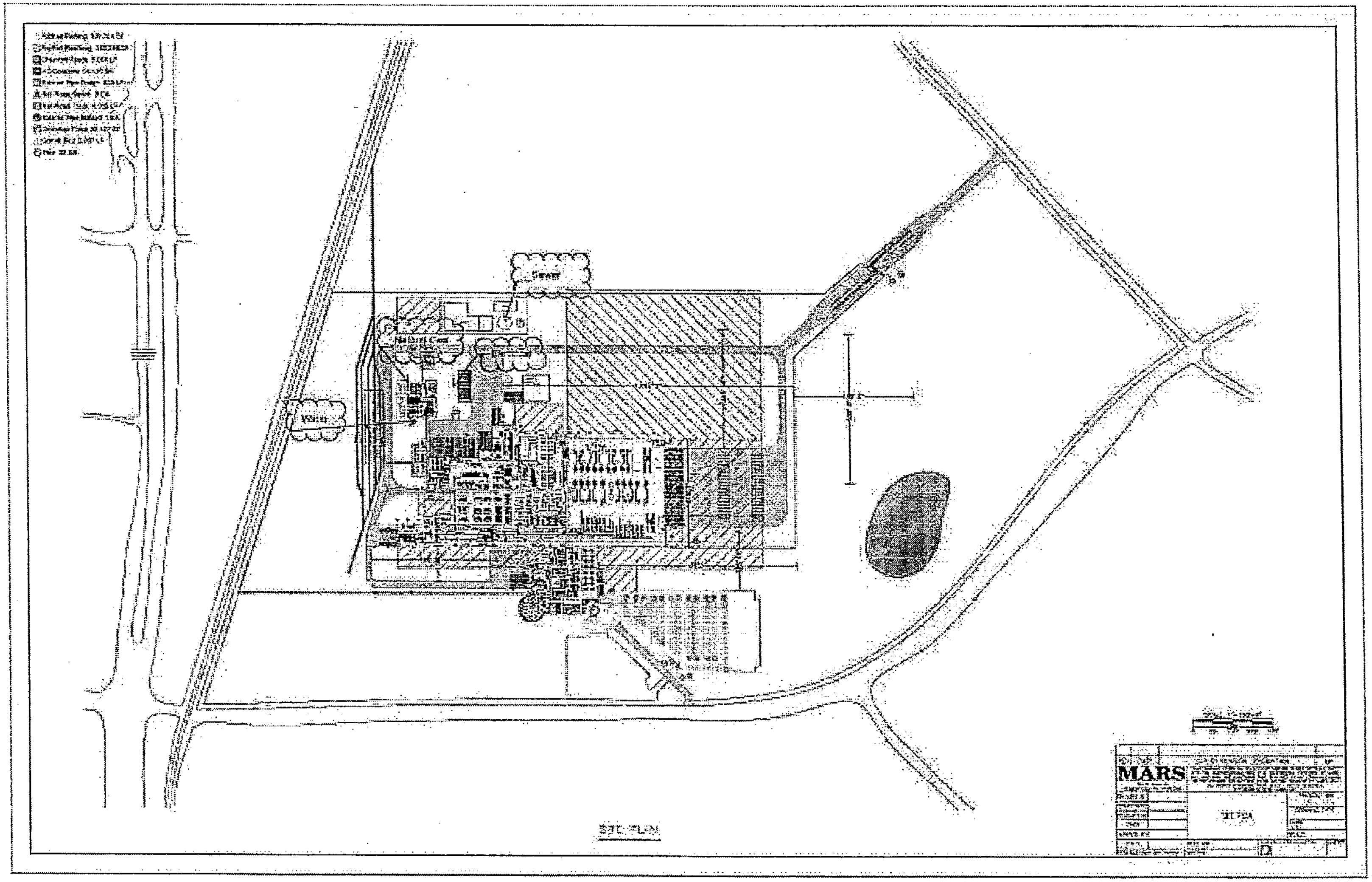
MARS CHOCOLATE NORTH AMERICA, LLC
A Delaware limited liability company

By: ______________________________
Name: ______________________________
Title: ______________________________

Exhibit C

Location of Water, Fire Flow, and Sewer Service Lines

[See attached.]

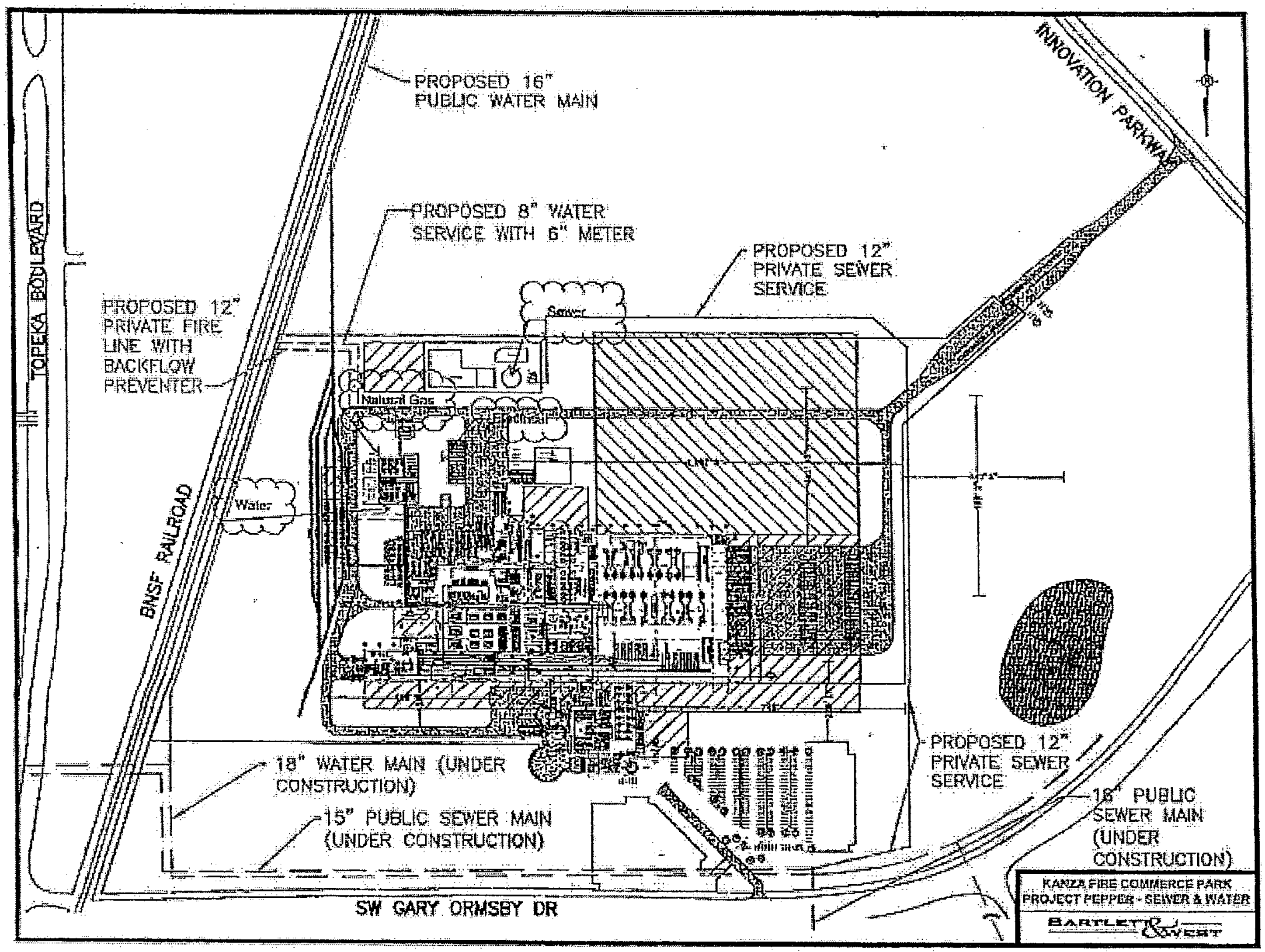


SITE PLAN

Exhibit D

Location of Water Main Line to be Installed by City of Topeka

[See attached.]

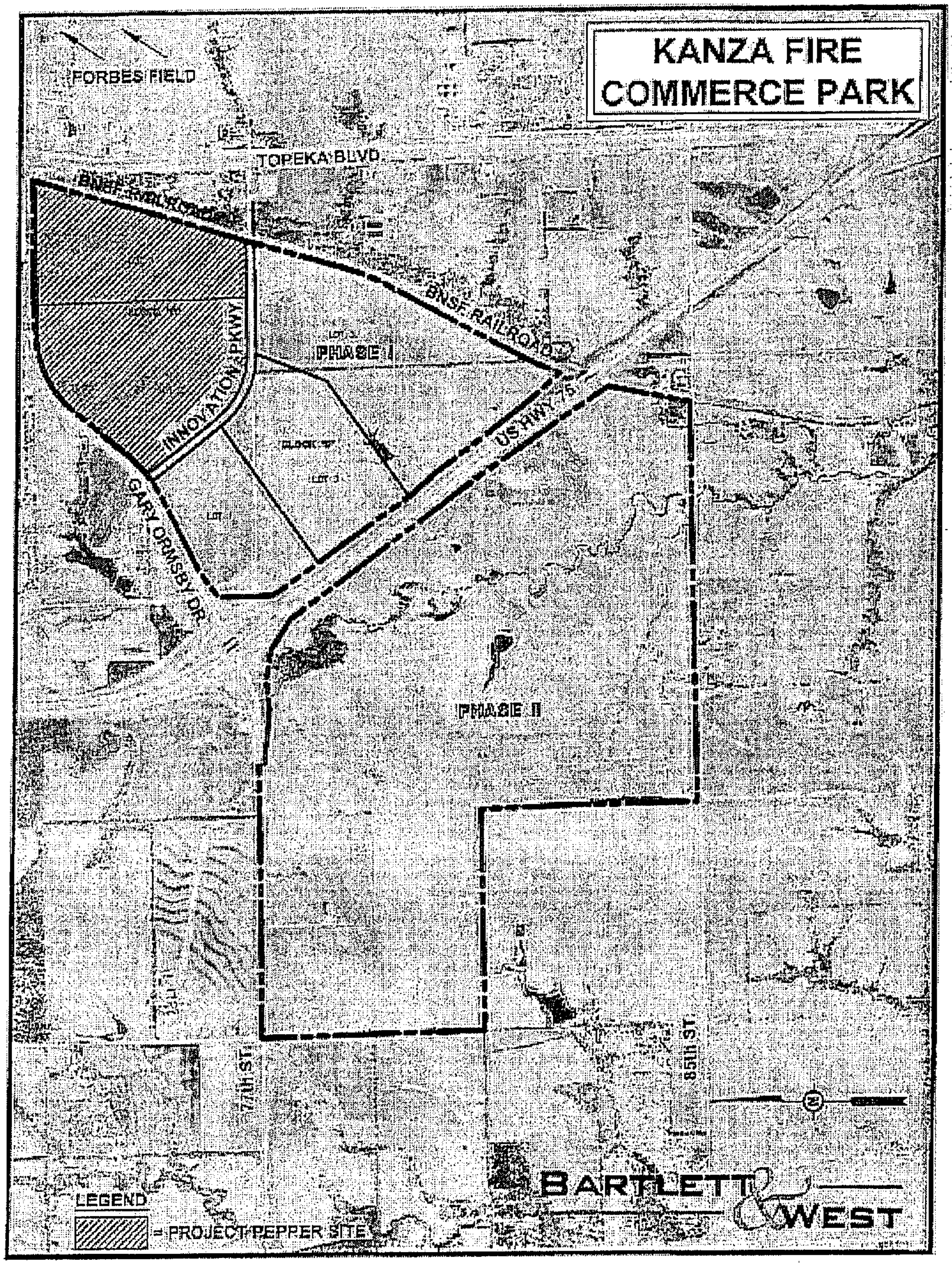


INNOVATION PARKWAY
PROPOSED 16" PUBLIC WATER MAIN
PROPOSED 8" WATER SERVICE WITH 6" METER
PROPOSED 12" PRIVATE SEWER SERVICE
TOPEKA BOULEVARD
PROPOSED 12" PRIVATE FIRE LINE WITH BACKFLOW PREVENTER
Sewer
Natural Gas
Water
BNSF RAILROAD
PROPOSED 12" PRIVATE SEWER SERVICE
18" WATER MAIN (UNDER CONSTRUCTION)
15" PUBLIC SEWER MAIN (UNDER CONSTRUCTION)
18" PUBLIC SEWER MAIN (UNDER CONSTRUCTION)
SW GARY ORMSBY DR
KANZA FIRE COMMERCE PARK
PROJECT PEPPER - SEWER & WATER
BARTLETT & WEST

<u>Exhibit E</u>

Location of Innovation Parkway

[See attached.]



KANZA FIRE
COMMERCE PARK
FORBES FIELD
TOPEKA BLVD
BNSF RAILROAD
INNOVATION PKWY
PHASE I
US HWY 75
GARY ORMSBY DR.
PHASE II
77th ST
85th ST
BARTLETT & WEST
LEGEND
= PROJECT PEPPER SITE

<u>Exhibit F</u>

Schedule of Funds to be Escrowed by GO TOPEKA

[See attached.]

Project Pepper: GO Topeka Quarterly Escrow Payments

	Quarterly Funding Date	Total Escrowed Funds	Local Employment Incentive	Sewer/Water Lines	Building Permit	Water/Sewer Connection	Reserve Fund	Washburn Tech
			$2,550,000	$367,100	$200,000	$30,000	$2,400,000	$1,700,000
2011		$2,174,877.78						
Q3	October 2011	$1,202,438.89		$183,550.00	$200,000.00	$30,000.00	$600,000.00	$188,888.89
Q4	January 2012	$972,438.89		$183,550.00			$600,000.00	$188,888.89
2012		$2,593,055.56						
Q1	April 2012	$948,263.89	$159,375.00				$600,000.00	$188,888.89
Q2	July 2012	$948,263.89	$159,375.00				$600,000.00	$188,888.89
Q3	October 2012	$348,263.89	$159,375.00					$188,888.89
Q4	January 2013	$348,263.89	$159,375.00					$188,888.89
2013		$1,204,166.67						
Q1	April 2013	$348,263.89	$159,375.00					$188,888.89
Q2	July 2013	$348,263.89	$159,375.00					$188,888.89
Q3	October 2013	$348,263.89	$159,375.00					$188,888.89
Q4	January 2014	$159,375.00	$159,375.00					
2014		$637,500.00						
Q1	April 2014	$159,375.00	$159,375.00					
Q2	July 2014	$159,375.00	$159,375.00					
Q3	October 2014	$159,375.00	$159,375.00					
Q4	January 2015	$159,375.00	$159,375.00					
2015		$637,500.00						
Q1	April 2015	$159,375.00	$159,375.00					
Q2	July 2015	$159,375.00	$159,375.00					
Q3	October 2015	$159,375.00	$159,375.00					
Q4	January 2016	$159,375.00	$159,375.00					

Exhibit G

Form of Escrow Agreement

ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is made and entered into as of July __, 2011, by and among GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. ("GO TOPEKA"), JOINT ECONOMIC DEVELOPMENT ORGANIZATION ("JEDO"), MARS CHOCOLATE NORTH AMERICA, LLC, a Delaware limited liability company ("BUSINESS"), and FIRST AMERICAN TITLE INSURANCE COMPANY ("ESCROW AGENT").

WITNESSETH:

WHEREAS, this Agreement is executed pursuant to that certain Incentive Agreement dated as of July __, 2011, by and among GO TOPEKA, JEDO and BUSINESS, as may be amended from time to time (the "Incentive Agreement").

WHEREAS, pursuant to the Incentive Agreement, GO TOPEKA is assisting and promoting BUSINESS in locating its operations in the Kanza Fire Commerce Park in Topeka, Shawnee County, Kansas and, in connection therewith, GO TOPEKA is providing BUSINESS with an incentive package funded through a portion of the Shawnee County, Kansas retailers' sales tax and/or by JEDO.

WHEREAS, pursuant to the terms of Section 11(a) of the Incentive Agreement, GO TOPEKA and JEDO are required to execute this Agreement to agree that, subject to the terms and conditions of this Agreement, GO TOPEKA shall escrow certain funds to fulfill its obligations under the Incentive Agreement and, to the extent GO TOPEKA is unable to meet its financial obligations under the Incentive Agreement, including the deposit of escrowed funds hereunder, JEDO shall satisfy such funding obligations.

WHEREAS, GO TOPEKA, JEDO, BUSINESS and ESCROW AGENT have entered into this Agreement to set forth the terms and conditions of the foregoing arrangement.

NOW, THEREFORE, in consideration of the premises and of good and valuable consideration the receipt and sufficiency whereof is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Incentive Agreement.

2. GO TOPEKA, JEDO and BUSINESS hereby appoint First American Title Insurance Company as ESCROW AGENT hereunder.

3. Commencing on July 20, 2011 and ending January 20, 2016, GO TOPEKA shall escrow funds, and shall wire such funds in accordance with the wiring instructions set forth on **Exhibit A** to this Agreement, on the 20th day of July, October, January and April (each a "Quarterly Funding Date") with ESCROW AGENT that GO TOPEKA receives from the Shawnee County, Kansas, retailers' sales tax or otherwise obtains to fulfill its obligations under the Incentive Agreement pursuant to the payment schedule attached hereto as **Exhibit B**. If the 20th is not on a business day, GO TOPEKA shall escrow funds on the next business day. Notwithstanding the foregoing, if GO TOPEKA has not received its share of the Shawnee County, Kansas, retailers' sales tax on the Quarterly Funding Date, it shall so inform BUSINESS and ESCROW AGENT in writing and shall deposit the funds no later than five (5) business days after GO TOPEKA receives the funds, not to exceed thirty (30) days after the originally scheduled Quarterly Funding Date. ESCROW AGENT agrees to deposit the amounts received hereunder in an interest bearing account (the "Escrow Account"), subject to the receipt from GO TOPEKA of a form W-9 for the purposes of investing said funds, and to hold and disburse said funds, and any interest earned thereon, as hereinafter provided. All amounts held by ESCROW AGENT from time to time in the Escrow Account are hereinafter referred to as the "Escrowed Funds".

4. GO TOPEKA, JEDO and BUSINESS agree that the sole use for the Escrowed Funds shall be to pay the obligations of GO TOPEKA under the Incentive Agreement (the "Obligations"). If GO TOPEKA funds the Obligations with monies that are not held in escrow ("Non-Escrowed Funds"), the payment schedule attached as **Exhibit B** shall be modified to the extent that the Non-Escrowed Funds shall reduce the last Escrowed Funds that are due under the payment schedule. In addition, if GO TOPEKA desires to pay for the Obligations set forth in Sections 4(a) (Services Lines), 4(b) (Permit Fees), 4(c) (Connection Fees) or 4(e) (Washburn Institute of Technology) with a portion of the Escrowed Funds to be paid by the Escrow Agent directly to the third-party service provider pursuant to the procedure set forth in Section 5(b) of this Agreement, then the next quarterly payment owed by GO TOPEKA for the applicable Obligation under Sections 4(a)-(c) or 4(e) shall be increased by an amount equal to the amounts withdrawn in excess of the budgeted amounts already paid by GO TOPEKA or, as applicable, decreased to zero if the applicable Obligation has been satisfied and GO TOPEKA has requested withdrawal of only the budgeted amounts already paid by GO TOPEKA.

Set forth below are examples of situations in which an adjustment to the amount of the last Escrowed Funds shall occur:

Example 1: If GO TOPEKA pays BUSINESS an Employment Incentive Fee for 212 Full-Time Employment Positions in 2012 (rather than the 106 Full Time Employment Positions budgeted in **Exhibit I** of the Incentive Agreement) through Escrowed Funds and/or Non-Escrowed Funds, GO TOPEKA would not need to deposit Escrowed Funds for the 106 Full Time Employment Positions budgeted for 2015 since this obligation would have already been satisfied.

Example 2: If GO TOPEKA pays a third-party service provider for the Service Lines in the amount of $400,000 in Q3 of 2011 (after GO TOPEKA has already deposited $183,550 into the Escrow Account for the Service Lines), and GO TOPEKA withdraws $183,550 in Escrowed Funds in Q3 of 2011 pursuant to Section 5(b) of this Agreement as a direct payment to the third-party service provider, uses Non-Escrowed Funds to pay the difference of $216,450 ($400,000 - $183,550), and the Obligations for the processing and installation of the Service Lines are fully satisfied prior to the due date of the next Escrowed Funds in Q4 of 2011, GO TOPEKA would not need to deposit Escrowed Funds in Q4 of 2011 for the Service Lines since this Obligation would have already been satisfied. This example also applies where GO TOPEKA uses Escrowed Funds and Non-Escrowed Funds to pay a third-party provider directly for services/fees incurred under Section 4(a) (Service Lines), Section 4(b) (Permit Fees), 4(c) (Connection Fees) and 4(e) (Washburn Institute of Technology) of the Incentive Agreement.

Example 3: If GO TOPEKA pays a third-party service provider for the Service Lines in the amount of $400,000 in Q3 of 2011 (after GO TOPEKA has already deposited $183,550 into the Escrow Account for the Service Lines), and GO TOPEKA withdraws $400,000 in Escrowed Funds in Q3 of 2011 pursuant to Section 5(b) of this Agreement as a direct payment to the third-party service provider, GO TOPEKA would be required to deposit Escrowed Funds in the amount of $216,450 in Q4 of 2011 to replenish the Escrow Account. This example also applies where GO TOPEKA uses Escrowed Funds in excess of the Escrowed Funds (and budgeted amounts) to pay a third-party provider directly for services/fees incurred under Section 4(a)(Service Lines), Section 4(b) (Permit Fees), and 4(c) (Connection Fees) of the Incentive Agreement.

5. The Escrowed Funds shall be held by the ESCROW AGENT in the Escrow Account and not disbursed until one of the following events has occurred, in which event the ESCROW AGENT is authorized and directed to disburse the Escrowed Funds, or a portion thereof, in the manner indicated as set forth below. ESCROW AGENT shall use good faith efforts to notify within one business day after receiving a disbursement request the party which has not requested a disbursement from the Escrowed Account. The party requesting a disbursement from Escrow Agent shall send a copy of such requested disbursement simultaneously to the other party of this Agreement.

(a) Within ten (10) business days after each receipt of a written request from BUSINESS, ESCROW AGENT is authorized and directed to disburse such portion of the Escrowed Funds to BUSINESS in the amounts identified in the written request in accordance with the wiring instructions attached as **Exhibit C** to this Agreement, provided that GO TOPEKA does not object in writing to such disbursement within five (5) business days after receipt of such request from ESCROW AGENT.

(b) Within ten (10) business days after each receipt of a written request from GO TOPEKA or BUSINESS, ESCROW AGENT is authorized and directed to disburse such portion of the Escrowed Funds to a third-party service provider for work in connection with satisfaction of the Obligations in Section 4(a) (Service Lines), 4(b) (Permit Fees), 4(c) (Connection Fees) or Section 4(e) (Washburn Tech) in the amounts identified in the written request, provided that the party not making the request does not object in writing to such disbursement within five (5) business days after receipt of such request from ESCROW AGENT.

(c) Within ten (10) business days after receiving a written statement from GO TOPEKA which provides that an Event of Default of BUSINESS has occurred under the Incentive Agreement and that GO TOPEKA is entitled to reimbursement of the Escrowed Funds pursuant to the Incentive Agreement, ESCROW AGENT is authorized and directed to disburse the Escrowed Funds to GO TOPEKA, provided that BUSINESS does not object in writing to such disbursement within five (5) business days after receipt of such request from ESCROW AGENT.

(d) Upon receipt of joint written instructions from GO TOPEKA and BUSINESS, ESCROW AGENT is authorized and directed to disburse the Escrowed Funds as directed in the notice (and, if directed to be paid to BUSINESS, in accordance with the wiring instructions attached as **Exhibit C** to this Agreement).

(e) Within ten (10) business days after receiving a written statement from GO TOPEKA which provides that the Obligations have been satisfied and that GO TOPEKA is entitled to reimbursement of the remaining Escrowed Funds, ESCROW AGENT is authorized and directed to disburse the Escrowed Funds to GO TOPEKA, provided that BUSINESS does not object in writing to such disbursement within five (5) business days after receipt of such request from ESCROW AGENT.

(f) Within ten (10) business days after receiving a written statement from BUSINESS which provides that the Obligations have been satisfied and that GO TOPEKA is entitled to reimbursement of the remaining Escrowed Funds, ESCROW AGENT is authorized and directed to disburse the Escrowed Funds to GO TOPEKA.

6. Unless this Agreement has been previously terminated pursuant to Sections 5(d), 5(e) or 5(f) of this Agreement, on the earlier of December 31, 2020, or when all of the Escrowed Funds have been disbursed pursuant to this Agreement, this Agreement will be void and of no further force and effect and ESCROW AGENT shall disburse the balance of the Escrowed Funds (if any) and any interest earned thereon to GO TOPEKA unless JEDO requests that such excess Escrowed Funds be disbursed to JEDO.

7. ESCROW AGENT shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to its duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which ESCROW AGENT shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement.

8. A fee of $100 per each disbursement of the Escrowed Funds (the "Disbursement

Fee") made by ESCROW AGENT for the duration of this Agreement shall be paid to ESCROW AGENT. GO TOPEKA and BUSINESS shall each pay fifty percent (50%) of the Disbursement Fee. If either GO TOPEKA or BUSINESS does not timely pay the Disbursement Fee, ESCROW AGENT may deduct the Disbursement Fee from the Escrowed Fund. ESCROW AGENT shall bill GO TOPEKA and BUSINESS annually for the payments due to ESCROW AGENT under this Agreement and GO TOPEKA and BUSINESS shall pay ESCROW AGENT within sixty (60) days after receipt of such invoice.

9. GO TOPEKA and BUSINESS hereby agree to indemnify and hold harmless ESCROW AGENT against any and all losses, claims, damages, liabilities and expenses, including without limitation, reasonable costs of investigation and attorneys' fees and disbursements which may be imposed upon or incurred by ESCROW AGENT in connection with its serving as ESCROW AGENT hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence.

10. At such time that GO TOPEKA has defaulted under the Incentive Agreement and JEDO is, therefore, fulfilling the obligations of GO TOPEKA under the Incentive Agreement or if for any other reason, JEDO is fulfilling the obligations of GO TOPEKA under the Incentive Agreement, JEDO shall have all of the rights of GO TOPEKA under this Agreement (and shall be bound by this Agreement) and notices that would have been sent to GO TOPEKA under the terms of this Agreement shall be sent to JEDO. ESCROW AGENT shall send notices to JEDO at such time that it receives written notice from JEDO or BUSINESS that JEDO should receive notices under this Agreement pursuant to the terms of this Section 10.

11. All notices, demands, consents, approvals, and requests given by any party to any other party hereunder shall be in writing and shall be sent by hand delivery, by a nationally recognized overnight courier, by e-mail or by facsimile (provided that facsimile notices and e-mail notices are also promptly delivered by hand or by a nationally recognized overnight courier and facsimile notices and e-mail notices are courtesy copies only and shall not be deemed to be a "notice" under this Agreement), to the parties at the following addresses:

To: GO TOPEKA:

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

120 SE 6th Avenue, Suite 110
Topeka, KS 66603-3515
Phone: (785) 234-2644
FAX: (785) 234-8656
Contact Person/Title: Steve Jenkins, Senior Vice President-Economic Development

E-mail:sjenkins@gotopeka.com

With a copy to:

Coffman, Defries & Nothern, P.A.
534 S. Kansas Ave., Suite 925
Topeka, KS 66603-3407
Attention: Jeffrey A. Wietharn, Esq.
Facsimile: (785) 234-3363
E-mail:jwietharn@cdnlaw.com

To: <u>BUSINESS</u>:

Mars Chocolate North America, LLC
800 High Street
Hackettstown, NJ 07840
Attention: Edgar Pew, Esq., Associate General Counsel
E-mail: edgar.pew@effem.com

<u>With a copy to, upon completion of the Facility</u>:

Mars Chocolate North America, LLC
[insert street address of Facility]
Topeka, KS 66603
Attention: Plant Manager

<u>With a copy to</u>:

Bevan, Mosca, Giuditta & Zarillo, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
Attention: Alexandra R. Bratsafolis, Esq. and Richard A. Giuditta, Jr.,
Esq.
Facsimile: (908) 848-6432
E-mail:abratsafolis@bmgzlaw.com and rgiuditta@bmgzlaw.com

<u>With a copy to</u>:

Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Attention: Kimberly A. Wachen, Esq.
Facsimile: (202) 857-6395
E-mail: wachen.kimberly@arentfox.com

To: **<u>JEDO (who shall only be a notice party if GO TOPEKA defaults under the Incentive Agreement and JEDO takes over the Obligations)</u>:**

JOINT ECONOMIC DEVELOPMENT ORGANIZATION

c/o Richard Eckert, Shawnee County Counselor
200 SE 7th St. Room 100
Topeka, KS 66603-3971

With a copy to:

Attn: City Attorney
215 SE 7th, Room 353
Topeka, KS 66603-3914

To: Escrow Agent:

Clare Ursano
First American Title Insurance Company
National Commercial Services
1825 Eye Street NW, Suite 302
Washington DC 20006
Facsimile (714) 824-4843
E-mail: cursano@firstam.com

or to such other address and to the attention of such other person as a party may from time to time designate in writing to all other parties. Notices properly given as described above shall be effective upon receipt or, if received on a date that is not a business day or after normal business hours in the location delivered, the following business day. Refusal to accept delivery shall constitute receipt.

12. In the event of a dispute between any of the parties hereto sufficient in the sole discretion of ESCROW AGENT to justify its doing so, ESCROW AGENT shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Agreement, together with such legal pleading as it deems appropriate, and thereupon be discharged.

13. This Agreement may be amended only in writing, duly executed by all parties concerned.

14. This Agreement shall be interpreted under the laws of the State of Kansas. In the event any provision is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.

15. This Agreement shall bind and inure to the benefit of the parties to this Agreement, their heirs, legal representatives, assignees, transferors and successors.

16. No failure by a party to insist on prompt performance by the other party of its obligations hereunder shall constitute a waiver of rights under this Agreement. Similarly, the waiver by a party of any breach of any provision of this Agreement shall not operate or be

construed as a waiver of any subsequent breach of that same or any other provision.

17. Time is of the essence in the performance of each obligation under this Agreement.

17. This Agreement may be executed in counterparts, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all parties.

IN WITNESS WHEREOF, the parties have signed, sealed, and delivered this Escrow Agreement as of the date and year first written above.

"BUSINESS"

MARS CHOCOLATE NORTH AMERICA, LLC
a Delaware limited liability company

By:______________________________
Name:____________________________
Title:_____________________________

"GO TOPEKA"

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By:______________________________
Name:____________________________
Title:_____________________________

"JEDO"

JOINT ECONOMIC DEVELOPMENT ORGANIZATION

By:______________________________
Name:____________________________
Title:_____________________________

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:______________________
Brian Lobuts
Vice President

Exhibit A
Wiring Instructions for Escrow Agent

First American Title Insurance Company
1801 K Street NW • Suite 200-K • Washington, D.C. 20006
(202) 530-1200 • (800) 808-6460 • FAX: (202) 530-1435

WIRING INSTRUCTIONS FOR
FIRST AMERICAN TITLE INSURANCE COMPANY
NATIONAL COMMERCIAL SERVICES DIVISION

BANK NAME: **First American Trust, FSB**
5 First American Way
Santa Ana, CA 92707

ABA NO.: **122241255**

CREDIT TO: **First American Title Insurance Company**
Commercial Services

ACCOUNT NO.: **3015140000**

SPECIAL INSTRUCTIONS SHOULD INCLUDE:

FATIC CASE NO.: **NCS-489015-DC72**

TRANSACTION: **"Project Sweetness"**

ATTENTION: **Clare Ursano/Brian Lobuts**

NOTE:
PLEASE PAY STRICT ATTENTION TO THE BANK AND ACCOUNT NUMBER WHERE YOU ARE HAVING THE FUNDS WIRED. EACH FIRST AMERICAN TITLE OFFICE USES A DIFFERENT BANK AND ACCOUNT NUMBER. FUNDS WILL BE RETURNED IF SENT TO THE INCORRECT ACCOUNT.

Exhibit B
Payment Schedule

Project Pepper: GO Topeka Quarterly Escrow Payments

	Quarterly Funding Date	Total Escrowed Funds	Local Employment Incentive	Sewer/Water Lines	Building Permit	Water/Sewer Connection	Reserve Fund	Washburn Tech
			$2,550,000	$367,100	$200,000	$30,000	$2,400,000	$1,700,000
2011		$2,174,877.78						
Q3	October 2011	$1,202,438.89		$183,550.00	$200,000.00	$30,000.00	$600,000.00	$188,888.89
Q4	January 2012	$972,438.89		$183,550.00			$600,000.00	$188,888.89
2012		$2,593,055.56						
Q1	April 2012	$948,263.89	$159,375.00				$600,000.00	$188,888.89
Q2	July 2012	$948,263.89	$159,375.00				$600,000.00	$188,888.89
Q3	October 2012	$348,263.89	$159,375.00					$188,888.89
Q4	January 2013	$348,263.89	$159,375.00					$188,888.89
2013		$1,204,166.67						
Q1	April 2013	$348,263.89	$159,375.00					$188,888.89
Q2	July 2013	$348,263.89	$159,375.00					$188,888.89
Q3	October 2013	$348,263.89	$159,375.00					$188,888.89
Q4	January 2014	$159,375.00	$159,375.00					
2014		$637,500.00						
Q1	April 2014	$159,375.00	$159,375.00					
Q2	July 2014	$159,375.00	$159,375.00					
Q3	October 2014	$159,375.00	$159,375.00					
Q4	January 2015	$159,375.00	$159,375.00					
2015		$637,500.00						
Q1	April 2015	$159,375.00	$159,375.00					
Q2	July 2015	$159,375.00	$159,375.00					
Q3	October 2015	$159,375.00	$159,375.00					
Q4	January 2016	$159,375.00	$159,375.00					

Exhibit C
Wiring Instructions for BUSINESS

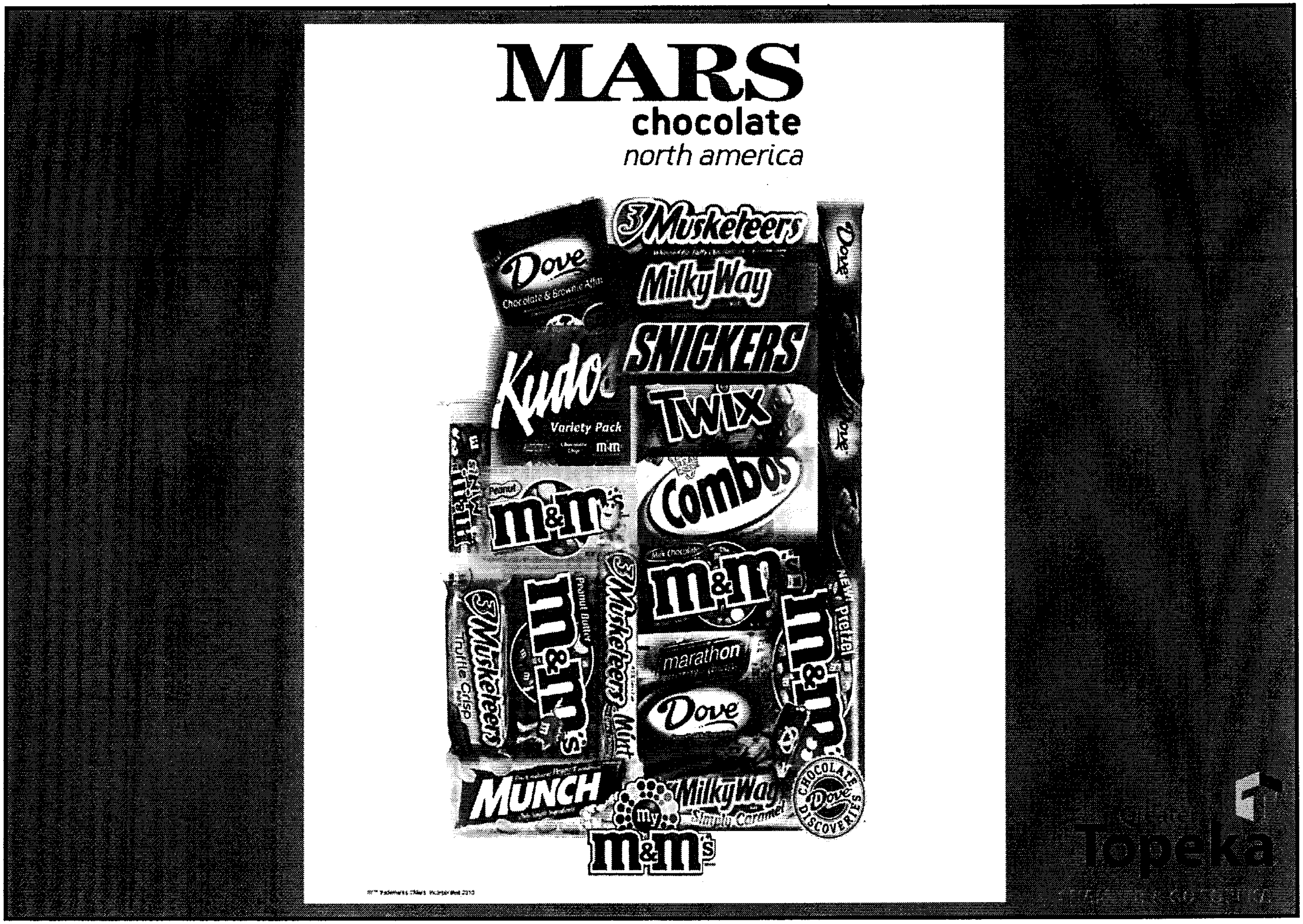
[see attached]

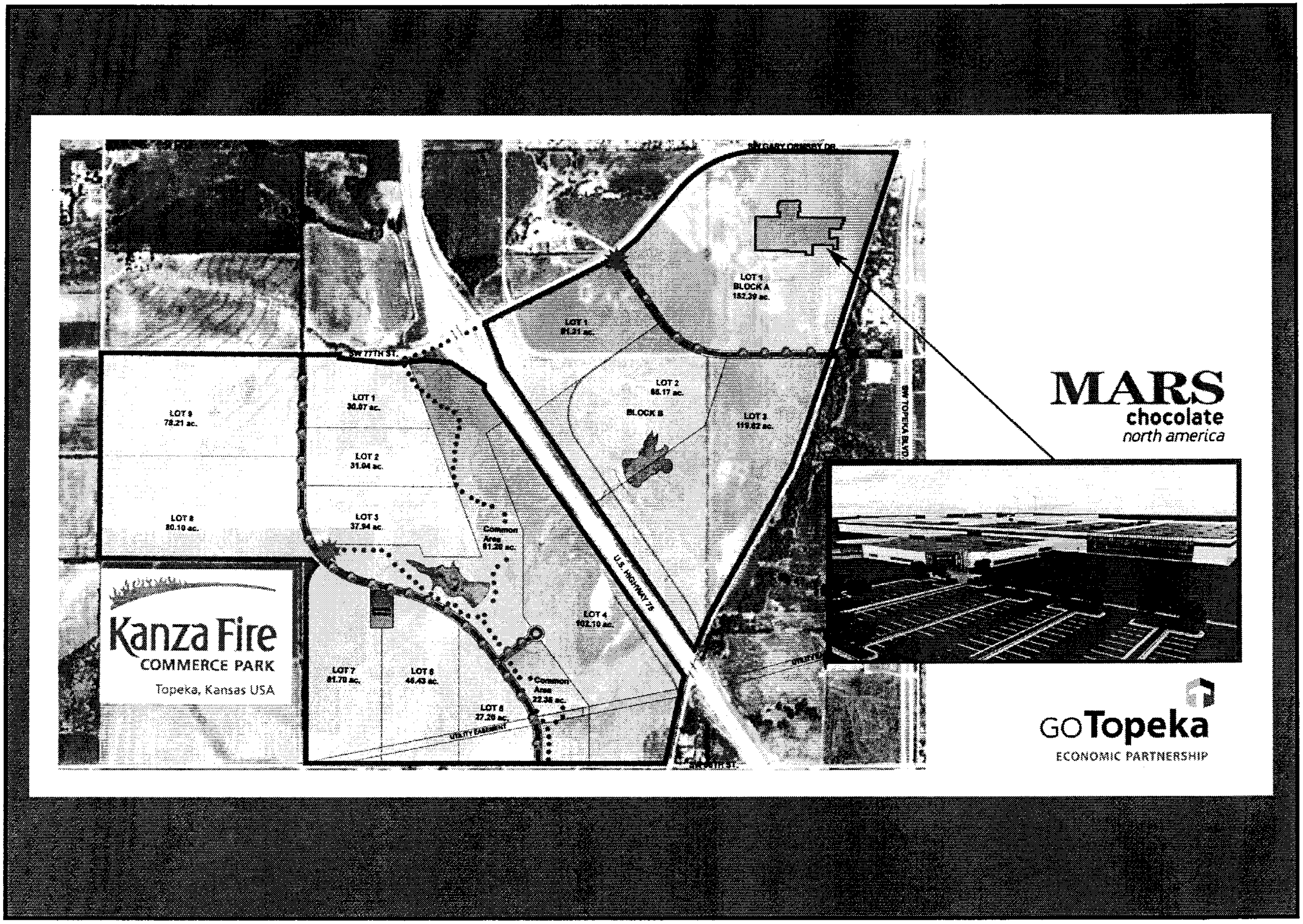
MARS

chocolate

north america

Topeka


MARS
chocolate
north america
3 Musketeers
Milky Way
SNICKERS
Dove
Chocolate & Brownie
Kudos
Variety Pack
Twix
Combos
m&m's
Peanut
Peanut Butter
3 Musketeers Mint
3 Musketeers Truffle Crisp
marathon
Dove
NEW! Pretzel
MUNCH
my m&m's
Milky Way Simply Caramel
Chocolate Dove Discoveries
Topeka


SW GARY ORMSBY DR.
LOT 1
BLOCK A
152.39 ac.
LOT 1
81.21 ac.
LOT 2
65.17 ac.
BLOCK B
LOT 3
119.62 ac.
SW TOPEKA BLVD.
SW 77TH ST.
U.S. HIGHWAY 75
LOT 9
78.21 ac.
LOT 8
80.10 ac.
LOT 1
30.87 ac.
LOT 2
31.94 ac.
LOT 3
37.94 ac.
Common Area
81.30 ac.
LOT 4
102.10 ac.
LOT 7
81.70 ac.
LOT 6
46.43 ac.
LOT 5
27.29 ac.
Common Area
22.36 ac.
UTILITY EASEMENT
Kanza Fire
COMMERCE PARK
Topeka, Kansas USA
MARS
chocolate
north america
GO Topeka
ECONOMIC PARTNERSHIP

Project Impact

- Employment: 425
- Phase 1: Up to 200
- Facility Size: Initially 350,000 square feet
- Investment: Phase 1 - $250 million
- Average Wage: $43,000 plus benefits and bonuses
- Direct and Indirect jobs: 974
- Direct and Indirect Payroll: $584.4 million (67:1 ROI)
- Taxable Sales and Purchases: $269.7 million (31:1 ROI)
- NET Revenues to City and County: $31.2 million (3.6:1 ROI)

Greater Topeka

Proposed Incentives

•Land: 160 acres in Kanza Fire Commerce Park	$1,520,775
•Possible 40 acres for wind farm	$ 400,000
•Performance Based Job Creation Cash Incentive $6,000 x 425 jobs	$2,550,000
•Building Permit Fee Waiver	$ 200,000
•Utility Connection Fees Waiver	$ 30,000
•Railroad with switch	$1,300,000
•Innovation Parkway	$ 100,000
•Renewable Energy Facilities	$1,100,000
•Workforce Development	$1,700,000
•Water and sewer service lines to the facility	$ 217,000
Total:	**$9,117,775**

Topeka

Partners That Made It Happen

Bartlett & West	Mid-America Manufacturing Technology Center
BNSF Railway Company	Networks Plus
City of Topeka	Nordic WindPower
Goffman, DeFries & Northern, P.A.	Office of the Governor, State of Kansas
Cox Communications	Shawnee County
Frito-Lay, Inc.	Shawnee Heights Fire District
The Goodyear Tire & Rubber Company	Stormont-Vail HealthCare
GO Topeka Economic Partnership	Terracon
Greater Topeka Chamber of Commerce	Topeka Civic Theatre
Heartland Works, Inc.	USD 437, Auburn-Washburn Public Schools
J. E. Dunn Construction Company	USD 501, Topeka Public Schools
Kansas Department of Commerce	Washburn Institute of Technology
Kansas Department of Transportation	Washburn University
Kansas Gas Service, A Division of ONEOK	Westar Energy, Inc.
Kansas City Area Development Council	

Greater Topeka

The Five Principles

Quality Responsibility Mutuality Efficiency Freedom

Mars, Incorporated

The Five Principles of Mars

Quality
Responsibility
Mutuality
Efficiency
Freedom

The Five Principles of Mars

We at Mars share special values about our company and the way it should be run. These values – our Five Principles – set us apart from others, requiring that we think and act differently towards our associates, our brands and our business. These principles have always been demanding and are an essential part of our heritage. We believe they are the real reason for our success; they keep us true to ourselves at times of growth and guide us reliably when we are challenged.

As a new generation of the Mars family takes on the care of the principles and the culture of our corporation, we felt it important that we examine what makes us different today. This new edition shows that the Five Principles are as relevant to the global Mars community of the twenty-first century as they were in the past.

At a time when change is constant, and in a business that continues to evolve, our Five Principles offer a link with our traditions and a bridge into the future.

Quality

The consumer is our boss,
quality is our work
and value for money is our goal.

Mars began to prosper in the depths of a depression, has met strong competition and has grown to its present size all as the result of billions of purchases made each year. These purchases are often among the smallest a consumer makes yet they have financed our growth around the world. Why has this happened? How are we to continue this success?

The consumer is our boss

We must remember that we cannot influence millions of consumer choices until we have convinced first one, then a second and a third consumer to buy our brand. Each individual sale should be considered our most important sale. If we forget this, there is a risk we could rest on our past and ignore our future.

We depend completely on consumers for our success, and we must tirelessly seek to understand their needs. By doing this we will build life-long relationships with them, through products and brands that bring joy today and can also adapt in the future to changing cultures and lifestyles.

Quality is our work

Our company is dedicated to the highest quality in all the work we do. Quality is the uncompromising standard for our actions, and it flows from our passion and our pride in being part of the Mars community. Quality work, which results from our personal efforts, is the first ingredient of quality brands and the source of our reputation for high standards.

Quality brands with unique benefits

By staying close to consumers, we know that there are certain things that convince them to buy from us again and again. Quality products and services, consistently meeting standards of excellence and made and delivered with minimum impact on the environment, have always been the foundation of our success. Others also claim quality, but few can match our commitment to offer our best and to raise our standards through constant innovation. Beyond product design, we strive to create brands with unique combinations of physical and emotional benefits that set our products apart and make them the better alternative.

Value for money

Alongside our belief in quality, we must also deliver value for money – the result of astute commercial transactions that maintain the balance between our brand's perceived benefits and its price. As we develop more innovative products and services to meet changing tastes and desires, achieving value for money is an ever more complex task. But by combining the best quality with the best value, we will still offer consumers the best buy for their needs.

Responsibility

As individuals,
we demand total responsibility from ourselves;
as associates,
we support the responsibilities of others.

We choose to be different from those corporations where many levels of management dilute personal responsibility. All associates are asked to take direct responsibility for results, to exercise initiative and judgement and to make decisions as required. By recruiting ethical people well suited to their jobs and trusting them, we ask associates to be accountable for their own high standards.

The importance of associates

Our company is complex, with brands, businesses, and operations around the world. How could we continue to thrive if every decision were made centrally? For this reason, we give all associates freedom to act with full responsibility for doing their assigned jobs. In return for accepting responsibility and delivering superior results, associates receive respect and support, and are appropriately rewarded in line with their performance. We celebrate success and recognize the many associates who make an extra effort. We also encourage associates to develop the full measure of their abilities to enable them to take on more demanding jobs.

Teamwork and the responsibilities of units

Just as we associates must be ready to share certain tasks, working together towards our common goals, units must work with each other to achieve broad corporate objectives. Although each is fully responsible for achieving its own mission, units and divisions are interdependent, and must be ready to respond to others. Because we rely on one another, we must actively communicate our objectives, plans, activities and needs, and resolve differences equitably.

The responsibilities and rewards of our association

The principle of Responsibility applies to every level within Mars, from the associate's obligation to maintain the highest standards of honesty and integrity to the company's ethical responsibility to its communities and the environment. Because we value and recognize each other's contributions, we treat all associates fairly and equitably, avoid divisive privileges and disapprove of disrespectful behavior of any kind. This is the source of the word "associate" and of the egalitarian spirit at Mars, which is our policy and practice regardless of age, gender, race or religious belief. As such we must have the courage to call attention to those associates not behaving according to our values. We believe that if what we say and what we do are consistent with our principles, we will achieve the results we seek.

Mutuality

A mutual benefit is a shared benefit; a shared benefit will endure.

We believe that the standard by which our business relationships should be measured is the degree to which mutual benefits are created. These benefits can take many different forms, and need not be strictly financial in nature. Likewise, while we must try to achieve the most competitive terms, the actions of Mars should never be at the expense, economic or otherwise, of others with whom we work.

Our Mutuality Principle has guided us reliably as we have established successful enterprises in new geographies and cultures. It has enabled us to act as a good corporate citizen, to minimize our impact on the environment and to use the natural resources of our planet wisely and efficiently.

Mutuality of benefits

We depend completely on the strength of our relationships – with our consumers, with fellow associates, suppliers, distributors and the communities in which we live and work. We believe we will only achieve the best results if we are unselfish in these relationships and give a fair return.

Our consumers

Our faith in quality and value is absolute. Regardless of business pressures, our actions and decisions must reflect the basic truth that, if quality and value are offered, support and success will come in return. Gains that ignore this will be short-lived.

Our associates, units and shareholders

The Mutuality Principle applies equally to all parts of our business. Associates are valued as individuals for their talent and resourcefulness, and are rewarded fairly for their results. Because we recognize that we all have different needs depending on our stage of life, we accept that associates may choose work style or career options that represent their own most appropriate balance of work within life.

Units pursue their objectives for the good of the whole of Mars, in return for which they receive support and resources. In recognition of continued commitment, shareholders receive a fair return on investment.

Our suppliers and our communities

As we negotiate with our suppliers and distributors, we must avoid terms that are harmful to their business while demanding supplies and services from them that will be the best for us.

Mutuality imposes a special obligation on us to respect the environment and develop the most sustainable methods for achieving our goals. Our aim is to return a fair benefit to our local and national communities, increasing their prosperity and quality of life as we benefit from partnership with them.

Corporate responsibility

Our constant commitment to Mutuality has always given us the highest standards of corporate responsibility. It has consistently underpinned the ethics of our corporate governance, and has helped us deal fairly everywhere we are active. Our Mutuality Principle is at the heart of the bond of trust, respect and honesty that we share with our associates and our consumers.

Efficiency

We use resources to the full, waste nothing and do only what we can do best.

How is it possible to maintain our principles, offering superior value for money and sharing our success? Our strength lies in our efficiency, the ability to organize all our assets – physical, financial and human – for maximum productivity. In this way, our products and services are made and delivered with the highest quality, at the least possible cost, with the lowest consumption of resources; similarly, we seek to manage all our business operations with the most efficient processes for decision making.

Return On Total Assets (ROTA)

Mars has a different business philosophy to other corporations and this is a key reason for our success. Our approach singles out Return on Total Assets (ROTA) not only as the prime financial measure but also as a driver of growth. By minimizing our assets, we give our consumers excellent value for money while delivering healthy returns at lower levels of profit than our competitors. This releases even more cash to drive growth.

High productivity and low cost

In our units we always strive to increase productivity and reduce cost. Our offices are open spaces where communication is direct and the experience and knowledge of our associates can be shared quickly. Our plants are orderly, clean and designed for simplicity. We continually innovate – seeking new processes, technologies and ways of working to improve our rate of output, reduce waste, minimize environmental impact and make the best use of our global learning.

New opportunities

The operation of any business is complex, and much experience and knowledge are required to make ours run well. For this reason, we think carefully before becoming involved with activities in which we may not have a high level of expertise. When we launch new businesses, our ROTA policy helps us to make them efficient and profitable as quickly as possible.

The task of efficiency

Efficiency is a task we all share. It demands constant and open communication and defines the way we work as individuals and as an organization. Lean businesses, small staffs and large jobs held by highly talented associates are all signs of the Efficiency Principle at work.

Freedom

We need freedom to shape our future; we need profit to remain free.

Mars is one of the world's largest privately owned corporations. This private ownership is a deliberate choice. Many other companies began as Mars did, but as they grew larger and required new sources of funds, they sold stocks or incurred restrictive debt to fuel their business. To extend their growth, they exchanged a portion of their freedom. We believe growth and prosperity can be achieved another way.

The role of profit

The freedom of Mars depends on the creation of profit. Because Mars is profitable and generates cash, we need not borrow money to the extent that we might lose control over our affairs. As long as Mars remains free, our well-being can always come before any other financial priority.

Every associate's commitment to Mars must be the same as the family's commitment: to see our principles work for everyone's benefit inside and outside our business. To this end, a substantial portion of operating profits is reinvested each year. This profit then provides the cash with which we can build and upgrade plants, enter new markets, invest in R&D, innovate and implement new ways of doing things, acquire new businesses and create strategic alliances, all to maintain our competitive position.

Future growth

If Mars continues to create sufficient profits, we will be free to operate the business in the way we regard as best. As Mars grows, we weigh decisions about our diversification with great care, wanting to enter only those businesses and markets where we may excel.

Private ownership

Private ownership allows Mars to remain free. The nature of freedom demands that it be used responsibly by associates and units alike. Our way of doing business allows us to remain free as a company and gives associates as individuals the freedom to innovate, act and grow while achieving our common goals. This creates the kind of environment in which we are all excited to work. Our private ownership, unanimity of purpose and high ethical standards allow us to move quickly in exploring new ground, act boldly in the face of competition, and take risks wherever they are justified. Above all, our private ownership gives us the freedom to take a long-term perspective on making investments, building businesses and providing for the well-being of our associates. This spirit has driven Mars in the past. It remains for each of us to make it the guiding force for our future.

To our associates worldwide

All our lives, our family has believed that our Five Principles are a fundamental part of the culture of Mars. Individually, they give us clear guidance on our priorities and working practices. Blending together, they can help us behave correctly in the most complex situations.

We first published The Five Principles of Mars in 1983 and released a second edition 10 years later. In the decade since 1993, Mars associates have relied on the principles, working hard to put them into practice as they have learned about new cultures and new markets, adapted to new technologies and faced many other new challenges.

This third edition of The Five Principles of Mars marks a change of emphasis in how we believe we must behave if we are to succeed in the modern world, embracing greater diversity, giving associates greater freedom to act and focusing even more on the quality of life of all.

The new material added to this edition reflects the evolution of our corporation, the growth of our learning, our new understanding of knowledge and human capital and the increasing importance of our corporate responsibility to the global environment. It emphasizes our need to find the balance of work within life most appropriate to our diverse community, and looks at how we can continue to create an environment in which we are all happy to give our best.

To those of you who are coming to the Five Principles for the first time, it is important to recognize how deeply they run through Mars. In an era when almost every corporation rightly has its statement of values, we are proud that our Five Principles have guided our organization since its beginnings. They have helped us come this far and, with your help, the principles will take Mars well into the future.

To those of you who already know the principles well, we ask you to use the publication of this new edition as an occasion to reflect on how we all must do our best to uphold them and the behavior that they demand. We must flexibly adapt to new conditions, while finding ways to remain true to our fundamental beliefs.

As representatives of the Mars family, we continue to see the company's goals in very clear and simple terms. We wish to pursue our own way of doing business, which flows directly from the Five Principles. We want Mars to be an example of the benefits everyone gains from a responsibly managed private enterprise and we give our complete support to all associates in doing this.

The Five Principles are demanding. They are difficult to get right, and we know that we don't always achieve them in the spirit in which they were written. However, we do see them as being fundamental. Knowing that we can always do a better job encourages us to challenge the status quo, and to believe that if we don't quite climb the mountain today, we will surely reach the top tomorrow. We set high standards for ourselves, and we all get a lot of fun out of trying to reach them. We hope you do, too.

Forrest E. Mars, Jr.

John F. Mars

Jacqueline B. Mars

Victoria B. Mars

Valerie A. Mars

Pamela D. Mars-Wright

Linda A. Mars

Frank E. Mars

Marijke E. Mars

Alexandra B. Airth

Michael J. Mars

Stephen M. Badger II

Christa M. Badger

Andy Sanchez - Handout

Kansas AFL-CIO

2131 S.W. 36th St. Topeka, KS 66611 785/267-0100 Fax 785/267-2775

July 11, 2011

Thank you Chairman Archer and members of the JEDO. I appreciate this opportunity to speak. My name is Andy Sanchez and I am the Executive Secretary-Treasurer of the Kansas AFL-CIO. I am joined by the President of the N.E. Kansas Building Trades, Brian Threadgold.

First, I want to congratulate you all on the acquisition of the MARS project. It is truly an accomplishment and those responsible deserve all the praise in the world. Our purpose for being here to day is to ask this body to see the value in using local construction trades and crafts. That is to say, that the creation of local jobs through $14 million in incentives should be for local workers. Our local construction trades and crafts have observed that in some recent construction projects they were not utilized and I've got to tell you, that was disheartening. When this happens, money that should be re-circulating in the local economy flows out and often completely out of the state or country. The use of out-of-state workforces actually drains the economy of what could be. There is a loss of state and local income taxes, social security revenues; Local workers are deprived employment opportunities, fringe benefits like health care and retirement.

Construction can be a powerful tool in expanding the local economy. There would be a multiplying effect if local construction workers are utilized. The result would be discretionary spending and that equates to dollars spent quickly and locally. When workers spend their wages it causes an increase in total demand for goods and services "downstream" and yet more activity is spurred in retail.

I can't help but think you ran for office to give back to the community. In this economy local workers are struggling. You have the ability to counteract those struggles of rising costs of food and energy, just to name a couple. Give local workers a chance to compete. Let them share in the "can-do" spirit you have created, they'll make you proud.

Thank you

http://ks.aflcio.org/statefed/ • andy.sanchezs-t@swbell.net • btunnell123@swbell.net

Mars Chocolate North America

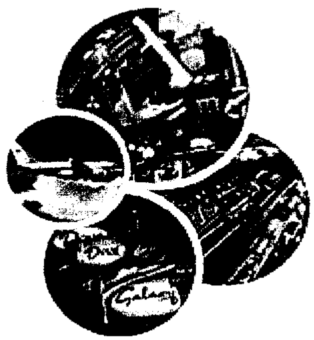
- Over 4,000 dedicated associates
- Over $3.2 billion in revenue
- Nine (9) manufacturing locations currently in the US and Canada
- New Topeka, KS site opening in 2013

We Have Iconic Brands

- The M&M'S Characters®, Red and Yellow, are instantly recognizable around the world and rival the popularity of Santa Claus and the Easter Bunny according to a 2004 Q Score report
- M&M'S® Chocolate Candies are on board Air Force One and have been on every space shuttle mission

- SNICKERS® Bar is the most popular chocolate bar in the world
- We own seven of the world's top 20 chocolate brands: #1 M&M'S® Chocolate Candies, #2 SNICKERS® Bar, #7 DOVE® Brand Chocolate, #11 MARS®**/MILKY WAY® Bar, #12** TWIX® Cookie Bars, #17 3 MUSKETEERS® Bar, #20 BOUNTY® Bar

Visit mars.com for additional information on our Company and our Brands.



Six Business Units. Dozens of the World's Favorite Brands

MARS

Mars, Incorporated Overview

In 1911, Frank C. Mars made the first Mars candies in his Tacoma, Washington kitchen and established Mars' first roots as a confectionery company. In the 1920s, Forrest E. Mars, Sr. joined his father in business and together they launched the MILKY WAY® bar. In 1932, Forrest, Sr. moved to the United Kingdom with a dream of building a business based on the philosophy of a "mutuality of benefits" for all stakeholders – this vision serves as the foundation of the Mars, Incorporated we are today. Based in McLean, Virginia, Mars has net sales of more than $30 billion and six business segments including Petcare, Chocolate, Wrigley, Food, Drinks and Symbioscience. More than 65,000 Associates worldwide are putting our Mars Principles in action every day to make a difference for people and the planet through our performance.

Our Driving Force…

The Five Principles

OUR PRINCIPLES IN ACTION

Our Five Principles

Quality. Quality flows from our passion and our pride in being part of the Mars community. The consumer is our boss, quality is our work and value for money is our goal.

Responsibility. As individuals, we demand total responsibility from ourselves; as associates, we support the responsibilities of others.

Mutuality. A mutual benefit is a shared benefit; a shared benefit will endure.

Efficiency. We use resources to the full, waste nothing and do only what we can do best.

Freedom. We need freedom to shape our future; we need profit to remain free.

Our Principles in Action

People: We are committed to improving the economic and social well being of the communities that are impacted by our business

Planet: We are making a difference to the next generation by responsibly using raw materials and packaging, and reducing non-sustainable energy, water and waste

Performance: we are a family business committed to sustainable, generational growth

MARS
chocolate
north america

GROWTH ORGANIZATION OF TOPEKA / SHAWNEE COUNTY, INC. - PUBLIC

Financial Statements & Accountants' Compilation Report

April 30, 2011

Accountants' Compilation Report

MIZE HOUSER & COMPANY P.A.

Growth Organization of Topeka / Shawnee County, Inc.
120 S.E. 6th – Suite 110
Topeka, Kansas 66603

We have compiled the accompanying financial statements and supplemental information of Growth Organization of Topeka / Shawnee County, Inc.–Public (a division of Growth Organization of Topeka/Shawnee County, Inc.), (Go Topeka), as scheduled below. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or provide assurance about whether the financial statements are in accordance with the modified cash basis accounting. The budgeted revenue and expense information is presented for supplementary analysis purposes only.

Statement of Assets, Liabilities and Change in Funds–Public – Modified Cash Basis as of April 30, 2011.

Statement of Income and Expense–Comparison to Budget–Public – Modified Cash Basis for the one month and four month periods ended April 30, 2011.

Supplemental Schedule of Committed/Pending Incentive Offers and Site Expenditures as of April 30, 2011.

Management is responsible for the preparation and fair presentation of the financial statements and supplemental schedule prepared in accordance with the modified cash basis of accounting and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements.

Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the modified cash basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's financial position and results of operations. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to Growth Organization of Topeka / Shawnee County, Inc.–Public.

Mize Houser & Company P.A.

Mize Houser & Company P.A.
Certified Public Accountants

June 27, 2011

BNO:rb:sc
Enclosures

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Go Topeka, Inc.
Statement of Assets, Liabilities, &
Change In Funds-Public - Modified Cash Basis
April 30, 2011

Assets

Current Assets		
Cash-Sales Tax		946,606
Investments-Reserved for incentive/site improvements		7,647,450
Total Current Assets		8,594,057
Other Assets		
Land Held for Development	9,266,859	
Total Other Assets		9,266,859
Total Assets		17,860,915

Liabilities and Fund Balance

Current Liabilities		
DBE Carryover	390,861	
Due To GTCC	30,309	
Total Current Liabilities		421,170
Fund Balances		
Opening Fund Balance	16,793,049	
Excess-Current Year	646,696	
		17,439,745
Total Liabilities and Fund Balance		17,860,915

See Accountants' Compilation Report

Go Topeka, Inc.
Statement of Income and Expense - Public
Modified Cash Basis
April 30, 2011

	Current Period Actual	Current Period Budget	Current Period Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Revenue						
Sales Tax	416,667	416,667	(0)	1,666,667	1,666,668	(1)
Investment Income	577	2,500	(1,923)	5,642	10,000	(4,358)
Investment MV Change	(280)	-	(280)	(441)	-	(441)
Other Program Revenue	2,069	1,125	944	20,195	4,500	15,695
Total Revenues	419,032	420,292	(1,260)	1,692,062	1,681,168	10,894
Expenses						
Program Expenses						
Business Retention	13,096	21,397	8,301	50,461	80,054	29,593
New Business Attraction	72,161	103,012	30,850	349,315	442,141	92,827
Workforce Development	7,121	7,030	(90)	26,363	33,182	6,818
Government Relations Consultant	3,920	6,630	2,710	15,595	26,091	10,496
Research & Governmt'l Relations	6,366	7,121	755	24,255	28,983	4,728
Entrepreneurial & Minority Bus Dev	34,387	54,929	20,541	96,500	331,951	235,452
Small Business Innovation Center	-	3,235	3,235	2,870	9,420	6,550
Site/Prospect Support	5,497	5,184	(314)	16,276	20,735	4,459
* Incentives & Site Expend - Direct	372,568	372,568	-	1,150,277	1,150,277	-
* Less: Site Expenditures Capitalized	(372,568)	(372,568)	-	(822,777)	(822,777)	-
Total Program Expenses	142,548	208,538	65,989	909,135	1,300,057	390,922
General & Administrative Expenses	19,176	20,769	1,593	76,231	83,070	6,839
Total Expenses	161,725	229,307	67,582	985,366	1,383,126	397,760
Transfer to Visioning	0	0	0	60,000	60,000	0
Revenues over (under) Expenses	257,307	190,985	66,322	646,696	238,042	408,654

See Accountants' Compilation Report

Go Topeka, Inc.
Committed/Pending Incentive Offers and Site Expenditures
April 30, 2011

	2011	2012	2013	2014	2015	2016	2017	2018	Totals
Cash:									
Committed:									
Alorica	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	720,000
Del Monte	0	45,000	45,000	45,000					135,000
Del Monte	70,000	70,000	70,000						210,000
Frito-Lay	37,500	37,500							75,000
U.S Foodservice	316,667	40,833	40,833						398,333
LB Steel	71,786	71,786	71,786	71,786					287,144
PTMW	0	161,000	94,500						255,500
Allen Foods	110,333	110,333	110,334						331,000
Allen Foods II	25,000	25,000	25,000						75,000
Schendel Pest	15,600	18,000	19,800	21,600	21,600	6000	3600	1800	108,000
Coca Cola	42,500								42,500
Reser's	8,000								8,000
Home Depot	225,000	225,000							450,000
Goodyear	100,000	100,000	100,000	100,000	42,000				442,000
Total Committed	1,112,386	994,452	667,253	328,386	153,600	96,000	93,600	91,800	3,537,477
Expected:									
Site Improvements	2,700,000								2,700,000
Confidential Pending Cash Incentives	200,000	667,000	3,780,000	1,912,500	637,500	-	-	-	7,197,000
Dev. & Maintenance	75,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	775,000
Total Expected	2,975,000	767,000	3,880,000	2,012,500	737,500	100,000	100,000	100,000	10,672,000
Total Committed and Expected	4,087,386	1,761,452	4,547,253	2,340,886	891,100	196,000	193,600	191,800	14,209,477
Under Consideration:									
Land Acquisitions	14,225	4,954,500							4,968,725
Confidential Pending Cash Incentives	0	0	0	0	0	0	0	0	0
Total Under Consideration	14,225	4,954,500	0	0	0	0	0	0	4,968,725
Total Cash	4,101,611	6,715,952	4,547,253	2,340,886	891,100	196,000	193,600	191,800	19,178,202
Land:									
Expected:									
Confidential Pending Incentives	2,060,775	-	-	-	-	-	-	-	2,060,775
Total Land (A)	2,060,775	0	0	0	0	0	0	0	2,060,775

Notes:
(A) Land incentives at approximate cost, to be provided from land acquired.

See Accountants' Compilation Report