



JEDO Board Meeting
May 18, 2016
6:00 P.M.

City Council Chambers
214 SE 8th Street, 2nd Floor
Topeka, Kansas

JEDO Board Members

Shawnee County Commissioners

Shelly Buhler District No. 1
Kevin Cook District No. 2
Bob Archer District No. 3

City of Topeka Governing Body

Larry Wolgast	Mayor
Karen Hiller	District No. 1
Sandra Clear	District No. 2
Sylvia Ortiz	District No. 3
	District No. 4
Michelle De La Isla	District No. 5
Brendan Jensen	District No. 6
Elaine Schwartz	District No. 7
Jeffrey Coen	District No. 8
Richard Harmon	District No. 9

JEDO Board Voting Members

Shawnee County Commissioners

Commissioner Shelly Buhler
Commissioner Kevin Cook
Commissioner Bob Archer

City of Topeka Governing Body

Mayor Larry Wolgast
Deputy Mayor Michelle De La Isla
Councilman Jeffrey Coen
Pending appointment by City Council

Public Comment. Comment from members of the public shall be entertained on each actionable agenda item and at the end of each meeting. Comment shall be limited to topics directly relevant to JEDO business. Members of the public wishing to speak must notify the County Counselor's Office (call 785-251-4042 or email megan.barrett@snco.us) before 5:00 p.m. on the date of the meeting. This requirement shall not apply to items added during the meeting. Members of the public shall be given four (4) minutes to speak and must maintain proper decorum relating to public meetings.

Agenda. Agendas are furnished at least five (5) business days prior to each meeting and posted on the City of Topeka web page at www.topeka.org/JEDO and the Shawnee County web page at www.snco.us/jedo.

To make arrangements for special accommodations please call 785-368-3940. A 48-hour advance notice is preferred.



**JEDO Board of Directors Meeting
Agenda for Wednesday, May 18, 2016
6:00 p.m.**

**Topeka City Council Chambers
214 SE 8th Street, 2nd Floor
Topeka, Kansas**

1. Call to Order
2. Roll Call
3. **Action Item:** Approval of Incentive Agreement – Project Sand: GO Topeka staff. (Pgs. 3-12)
4. Public Comment.
5. Adjournment.

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INCENTIVE AGREEMENT

This Incentive Agreement is effective _____,
20____, and is entered into between the following parties:

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: Scott Smathers,
 Vice President of Economic Development

BUSINESS: PROJECT SAND

 Phone:
 FAX:
 Contact Person/Title:

WHEREAS, BUSINESS or a subsidiary formed and controlled by it will be in good standing and qualified to do business under the laws of Kansas; and

WHEREAS, BUSINESS is contemplating investing approximately Thirty Million Dollars (\$30,000,000) over the next four (4) years to renovate and equip its manufacturing facility located in Shawnee County, Kansas, including improving infrastructure to allow continued operations; and

WHEREAS, such manufacturing facility is referred to herein as the "Facility;" and

WHEREAS, as of April 1, 2016, BUSINESS had One Hundred Seventy-Two (172) Full Time Employment Positions (defined below) at the Facility; and

WHEREAS, as a result of such efforts at the Facility BUSINESS will be able to retain jobs and add up to Twenty Eight

(28) new jobs, and continue operations at the Facility for the foreseeable future; and

WHEREAS, GO TOPEKA desires to assist and promote BUSINESS by offering it up to One Hundred Forty Thousand Dollars (\$140,000) in employment incentives and Sixty-Six Thousand Dollars (\$66,000) in facility improvement incentives; 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. GO TOPEKA agrees to make available to BUSINESS the following employment incentive ("Employment Incentive") for net new Full Time Employment Positions added and maintained by the BUSINESS, subject to the limitations and requirements below:

\$3000 incentive for Full Time Employment Positions with a July 1 to June 30 compensation of \$30,000 to \$39,999;

\$4000 incentive for Full Time Employment Positions with a July 1 to June 30 compensation of \$40,000 to \$49,999; and

\$5000 incentive for Full Time Employment Positions with a July 1 to June 30 compensation of \$50,000 or greater.

For purposes of determining eligibility for Employment Incentives (and the amount thereof), compensation includes salary, over-time, bonuses or other cash incentives paid by BUSINESS to the Full Time Employment Position in the period of July 1 of one year to June 30 of the next, but does not include benefits, contributions to retirement plans or profit sharing (if any).

Each Employment Incentive will be divided into five (5) equal installments to be paid in five (5) consecutive annual installments if the subject Full Time Employment Position is maintained for the entire July 1 to June 30 year.

Notwithstanding anything to the contrary herein, a maximum Employment Incentive available hereunder shall not exceed more than One Hundred Forty Thousand Dollars (\$140,000) in aggregate, and shall not exceed Twenty-Eight Thousand Dollars (\$28,000) in any one calendar year. To qualify for an incentive, the net new Full Time Employment Positions must be in place by June 30, 2019.

As used herein, a "Full Time Employment Position" is an employee position that includes approximately 2080 paid hours of service in Shawnee County, Kansas, during each July 1 to June 30 year. Each position shall be eligible to receive health insurance benefits, at least half of the premiums of which are paid by the BUSINESS, and paid holiday and vacation leave. 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 herein, including compensation). Each Full Time Employment Position must be one which has the BUSINESS withholding and paying all applicable federal, state and local employment taxes attributable to the employee. More than one position cannot be aggregated to qualify for an Employment Incentive.

A Full Time Employment Position shall not fail to qualify for the Employment Incentive if the position is vacated (voluntarily or otherwise) and BUSINESS is undertaking an open and active search and such position is filled within ninety (90) days after the vacancy during the July 1 to June 30 year;

provided, however, that the vacancy could affect the compensation of the position (and therefore the amount of the Employment Incentive available). (If unfilled for longer than ninety (90) days during a July 1 to June 30 year, the position will cease to qualify as Full Time Employment Position and will not be eligible for an Employment Incentive for that year).

GO TOPEKA will endeavor to make an Employment Incentive payment by September 30 of the year in which the qualifying Full Time Employment Positions was maintained for the entire previous July 1 to June 30 year; provided, however, that BUSINESS must first provide GO TOPEKA with sufficient documentation relating to such employment levels (as required elsewhere herein).

The parties recognize there may be some turnover and fluctuations in the BUSINESS' employment levels. Therefore, subject to the termination provision, a position may qualify for an Employment Incentive in one year after failing to qualify in a prior year (and forfeiting that Employment Incentive installment); provided, however, that if the average per hour compensation for a position increases (into another incentive category) over its initial, first year amount, the incentive may also increase subject to the maximum employment incentive provided for herein, but if the compensation for a position decreases (into a lower incentive category), the incentive shall be decreased to meet the incentive category.

For purposes of illustration, if BUSINESS maintains throughout July 1, 2016 to June 30, 2017, ten new (10) Full Time Employment Positions receiving a July 1 to June 30 compensation of \$41,000, BUSINESS would be eligible to receive an Employment Incentive installment of \$800 per employee ($\$4000 / 5$ years), for a total installment for that year of \$8000 ($\$800 * 10$ employees), payable in 2017. If, in July 1, 2017, to June 30, 2018, there were no changes except that one of the positions was

not maintained for the entire year, BUSINESS would again receive an Employment Incentive installment of \$800 per employee, but the total installment would be reduced by \$800 due to the lost position, for a total installment of \$7200 payable in 2018.

2. Facility Incentive. BUSINESS shall be entitled to a Facility Incentive of up to Sixty-Six Thousand Dollars (\$66,000), payable as follows: Two Thousand Dollars (\$2000) for every Million Dollars of Equipment added or improved at the Facility, and Five Thousand Dollars (\$5000) for every Million Dollars of building and facility improvements at the Facility; provided, however, that in no event will the aggregate Facility Incentive exceed Sixty-Six Thousand Dollars (\$66,000). GO TOPEKA shall endeavor to pay Facility Incentives within three months of completion of an addition or improvement; provided, however, that BUSINESS must first provide GO TOPEKA with sufficient documentation relating to such investment. To qualify for a Facility Incentive, the additions or improvements must be completed by December 31, 2020.

3. Incentive Calculation Documentation. When and as reasonably requested by GO TOPEKA, BUSINESS shall provide GO TOPEKA with state and federal employment, tax return and/or other information reasonably necessary to establish employment levels in Shawnee County, Kansas, for purposes of calculating Employment Incentives and monitoring BUSINESS's performance hereunder. When and as reasonably requested by GO TOPEKA, BUSINESS shall provide GO TOPEKA with invoices, receipts and other information reasonably necessary to establish the amount invested in the Facility. GO TOPEKA is granted the right to audit financial documents at any time during this Agreement. GO TOPEKA is granted the right to reduce payments made to the BUSINESS by amounts found to be improper, unauthorized or unsubstantiated. GO TOPEKA shall have sole authority in this

regard and shall base its decision upon information submitted, including absence of documents to substantiate expenditure.

4. Use of Funds. The funds received by BUSINESS pursuant hereto shall be used for the purpose of improving, repairing or equipping the Facility and/or in the employment or training of persons to be employed in Shawnee County, Kansas.

5. Termination. If BUSINESS fails to invest at least Fifteen Million Dollars (\$15,000,000) in the Facility by December 31, 2020, or if its Full Time Employment Positions at the Facility fall below One Hundred Seventy-Two (172) at any time before June 30, 2024, this Agreement shall terminate prospectively such that GO TOPEKA shall not be required to make any further incentive payments to BUSINESS under this Agreement.

6. Notices. Any notices required or permitted to be given pursuant to this Agreement may be delivered in person or mailed, certified mail, return receipt requested, to the addresses identified above.

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

a. BUSINESS agrees to make every reasonable effort to use Shawnee County, Kansas-based vendors for the improvements and equipment, as well as the training, contemplated herein. BUSINESS or its subsidiary to which this Agreement may be assigned, shall have qualified to do business in Kansas and be in good standing with Kansas prior to being eligible to receive any incentive payments pursuant hereto.

b. BUSINESS agrees to make every reasonable effort to use, if qualified, Shawnee County residents to fill new Full Time Employment Positions in Shawnee County, Kansas.

c. BUSINESS shall provide prompt advance notice to GO TOPEKA of any material change in BUSINESS's ownership,

control or management, including issues of insolvency or bankruptcy, or other material changes that could reasonably result in a default by BUSINESS under any agreement to which it is a party related to the matters set forth herein, or a change in the Full Time Employment Positions maintained in Shawnee County, Kansas.

d. BUSINESS agrees to participate in a public event with GO TOPEKA in Shawnee County, Kansas, celebrating the new business and employment expansion contemplated by this Agreement. Such event would include general recognition of JEDO's and GO TOPEKA's involvement in the project.

e. This writing contains the entire agreement reached between the parties hereto with respect to the subject matter hereof, and may be amended only in writing, duly executed by all parties concerned.

f. This Agreement shall be interpreted under the laws of the State of Kansas, with venue being solely in the state District Court of Shawnee County, Kansas. In the event any provision is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.

g. Time is of the essence in this Agreement.

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

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

j. 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.

k. 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.

l. 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; provided, however, that BUSINESS may assign this Agreement to an entity owned and controlled by it.

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

n. GO TOPEKA's obligations hereunder are contingent upon approval hereof by Joint Economic Development Organization ("JEDO") and the continued funding of GO TOPEKA at adequate levels through a portion of the Shawnee County retailer's sales tax and/or by JEDO. GO TOPEKA may unilaterally reduce or eliminate any payments hereunder in the event that sufficient funds are not available (taking into account GO TOPEKA's other obligations). GO TOPEKA will endeavor to give BUSINESS advance notice of any reduction of funds when practical. BUSINESS agrees and understands that if there are not sufficient funds appropriated or available to GO TOPEKA to continue to make any payments hereunder (taking into account GO TOPEKA's other

obligations), GO TOPEKA may terminate this Agreement with written notice of termination to BUSINESS. The reduction or elimination of any payments, and/or termination of this Agreement pursuant to this paragraph, shall not cause any penalty or damages to be charged to GO TOPEKA and BUSINESS waives and releases any rights, causes of action or claims it may have should such insufficiency of funds occur.

o. 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.

p. 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.

q. 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.

r. 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.

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

"BUSINESS"

PROJECT SAND

By: _____

Print Name: _____

Title: _____

"GO TOPEKA"

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By: _____

Print Name: Scott Smathers

Title: Vice President of Economic Development