

INCENTIVE AGREEMENT

This Incentive Agreement (the "Agreement") is effective April 29, 2016, 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:

SE2, LLC  
5801 SW 6th Avenue  
Topeka, KS 66636  
Phone: (785) 438-3069  
FAX: (785) 368-1309  
Contact Person/Title: James R. Schmank  
Senior Vice-President

**WHEREAS**, BUSINESS is a Kansas corporation in good standing and qualified to do business under the laws of the State of Kansas; and

**WHEREAS**, BUSINESS is contemplating creating as many as Two Hundred (200) New Employment Positions in Topeka, Kansas; and

**WHEREAS**, GO TOPEKA desires to assist and promote BUSINESS by offering up to One Million Dollars (\$1,000,000) in employment incentives; and

**WHEREAS**, BUSINESS, acting in reliance upon the incentives set forth in this Agreement, has decided to expand its operations in Topeka, 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. GO TOPEKA agrees to make available to BUSINESS the following employment incentive ("Employment Incentive") for new Full Time Employment Positions added and maintained by the BUSINESS, subject to the limitations and requirements below:

- o \$3000 incentive for Full Time Employment Positions with an annual compensation of \$30,000 to \$39,999
- o \$4000 incentive for Full Time Employment Positions with an annual compensation of \$40,000 to \$49,999
- o \$5000 incentive for Full Time Employment Positions with an annual compensation of \$50,000 to \$59,999
- o \$6000 incentive for Full Time Employment Positions with an annual compensation of \$60,000 to \$69,999
- o \$7000 incentive for Full Time Employment Positions with an annual compensation of \$70,000 to \$79,999
- o \$8000 incentive for Full Time Employment Positions with an annual compensation of \$80,000 to \$89,999
- o \$9000 incentive for Full Time Employment Positions with an annual compensation of \$90,000 to \$99,999
- o \$10,000 incentive for Full Time Employment Positions with an annual compensation of \$100,000 or greater

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 previous calendar year; provided, however that for 2016, qualifying positions need only be maintained from February 29, 2016 through December 31, 2016 (with the Employment Incentive installment relating thereto paid in 2017).

Notwithstanding anything to the contrary herein, a maximum incentive available hereunder shall not exceed more than One Million Dollars (\$1,000,000) in aggregate, and shall not exceed Two Hundred Thousand Dollars (\$200,000) in any one calendar year. To qualify for an incentive, the net new Full Time Employment Positions must be in place by December 31, 2017.

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 calendar year. For purposes of determining eligibility for Employment Incentives (and the amount thereof), compensation includes salary, overtime, bonuses (including bonuses earned in the calendar year but not paid until the subsequent year), or other cash incentives paid by BUSINESS to the Full Time Employment Position in a calendar year, but does not include benefits, employer contributions to retirement funds, or profit sharing. Each position shall be eligible to receive health insurance benefits, at least part 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 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 calendar 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 calendar 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 incentive payment by March 31 of the year next following the year in which the qualifying Full Time Employment Positions was maintained for the entire previous calendar 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 2016 ten (10) Full Time Employment Positions receiving annual 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 2017, 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. **Employment 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. GO TOPEKA is granted the right to audit such information 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.

3. **Use of Funds.** The funds received by BUSINESS pursuant hereto shall be used for the purpose of employment or training of persons to be employed in Shawnee County, Kansas.

4. **Termination.** If BUSINESS fails to maintain at least a minimum of Five Hundred Twenty-three (523) Full Time Employment Positions in Shawnee County, Kansas, in any calendar year (between the January 1, 2016 and the end of the 2023, which is the last year in which to qualify for an Employment Incentive installment), this Agreement shall be deemed terminated and GO TOPEKA shall not be required to make any further Employment Incentive payments to BUSINESS under this Agreement.

5. **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.

6. Confidentiality.

- a. "Confidential Information" means all non-public, confidential or proprietary information of BUSINESS, including, but not limited to, financial information, tax returns, employee lists, compensation, benefits, documents, data or business operations disclosed by BUSINESS to GO TOPEKA in connection with this Agreement, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, or by permitted observation, and whether or not marked, designated or otherwise identified as "confidential". Confidential Information does not include information that is: (i) in the public domain; (ii) known to GO TOPEKA at the time of disclosure; (iii) rightfully obtained by the GO TOPEKA on a non-confidential basis from a third party; or (iv) independently developed.
- b. GO TOPEKA (i) may disclose Confidential Information to its directors, officers, employees and contractors (the "Representatives"), solely and exclusively to those of its Representatives who need to know such Confidential Information for purposes related to the Agreement, and for no other purposes, but GO TOPEKA at its sole expense, shall take all reasonable measures to limit disclosure of Confidential Information by its Representatives, and (ii) shall use, and, at its sole expense, shall take all reasonable measures to cause its Representatives to use, Confidential Information solely and exclusively for purposes of this Agreement, and for no other purposes; and (iii) shall use reasonable measures to prevent unauthorized access to Confidential Information. GO TOPEKA shall be responsible for any breach of this Section by its

Representatives, and for any claims, losses, liabilities, and damages resulting therefrom.

- c. BUSINESS shall be entitled to injunctive relief for any violation by GO TOPEKA of this Section.

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

- a. BUSINESS agrees to make reasonable effort to solicit Shawnee County residents to fill the new Full Time Employment Positions in Shawnee County, Kansas.
- b. BUSINESS shall provide prompt notice to GO TOPEKA of any material adverse change in BUSINESS's financial condition that could reasonably result in a default by BUSINESS under this Agreement, or a material adverse change in Full Time Employment Positions maintained in Shawnee County, Kansas.
- c. BUSINESS agrees to participate in a public event with GO TOPEKA in Shawnee County, Kansas, celebrating the employment expansion contemplated by this Agreement. Such event would include general recognition of the Topeka-Shawnee County Joint Economic Development Organization's ("JEDO's") and GO TOPEKA's involvement in the expansion.
- d. 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.
- e. 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.

- f. 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 of 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.n. GO TOPEKA makes no representation as to the taxability or tax effect of this Agreement and the incentive payments hereunder.
- o. GO TOPEKA's obligations hereunder are contingent upon approval hereof by the 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 and treating its obligations to the Business and its similar incentive obligations to other Shawnee County businesses *pari passu*). 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 and treating its obligations to the Business and its similar incentive obligations to other Shawnee County businesses *pari passu*), 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.

- p. 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.
- q. 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.

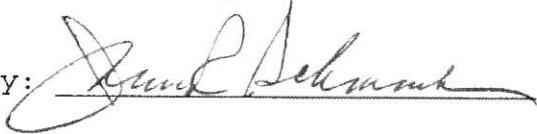
- r. Nothing herein contained shall be construed or held to make any party a partner, joint venturer or associate of another party in the conduct of its business, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the Parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.
- s. 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"

SE2, LLC, a Kansas Limited Liability Company

By:



Print Name: James R Schmank

Title: Senior Vice-President

"GO TOPEKA"

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By:



Scott Smathers

Vice President of Economic Development