



JEDO Board Meeting

May 8, 2019

6:00 P.M.

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

JEDO Board Members

Shawnee County Commissioners

Bill Riphahn District No. 1
Kevin Cook District No. 2
Bob Archer District No. 3

City of Topeka Governing Body

Michelle De La Isla	Mayor
Karen Hiller	District No. 1
Sandra Clear	District No. 2
Sylvia Ortiz	District No. 3
Tony Emerson	District No. 4
Mike Padilla	District No. 5
Brendan Jensen	District No. 6
Aaron Mays	District No. 7
Jeff Coen	District No. 8
Mike Lesser	District No. 9

JEDO Board Voting Members

Shawnee County Commissioners

Commissioner Bill Riphahn
Commissioner Kevin Cook
Commissioner Bob Archer

City of Topeka Governing Body

Michelle De La Isla, Chair
Deputy Mayor Sandra Clear
Councilmember Tony Emerson
Councilmember Mike Lesser

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 City Clerk before 5 p.m. on the date of the meeting at cclerk@topeka.org or 785-368-3940 or 368-3941. This requirement shall not apply to items added during the meeting.

Members of the public shall be limited to four minutes unless the Board, by majority vote, extends the limitation. Debate, question/answer dialogue or discussion with Board members will not count towards the four minute time limitation. To make arrangements for special accommodations, please call 785-368-3940 or 368-3941. A 48-hour advance notice is preferred.



JEDO BOARD OF DIRECTORS AGENDA

May 8, 2019

6:00 p.m. - City Council Chambers
214 SE 8th Street, 2nd Floor, Topeka, Kansas

1. CALL TO ORDER:

2. ROLL CALL:

3. ACTION ITEMS:

- A. APPROVAL of February 13, 2019 JEDO Board Meeting Minutes and March 27, 2019 JEDO Board Special Meeting Minutes
- B. APPROVAL of Project Blueberry Incentive Agreement
- C. APPROVAL of Project Purple Funding
- D. APPROVAL of reallocation of Mars incentive funds originally allocated for construction of a fire house and authorizing JEDO Chair to execute amendment to original agreement dated July 27, 2011
- E. APPROVAL of 2018 GO Topeka Audit
- F. DISCUSSION with POSSIBLE ACTION: Community Broadband Task Force
- G. APPROVAL of transfer of liquidated damage funds to Washburn Tech – Washburn Tech East Project Update

4. PRESENTATIONS:

- A. GO Topeka First Quarter Report

5. PUBLIC COMMENT:

6. REMINDER: 2019 JEDO Board Meeting Dates per the JEDO Operational Rules:

- Wednesday – September 11, 2019
- Wednesday – December 11, 2019

7. ADJOURNMENT:

Public Comment Policy: 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 relevant to JEDO business. Members of the public wishing to speak must notify the City Clerk before 5:00 p.m. on the date of the meeting via email at cclerk@topeka.org or call 785-368-3940. This requirement shall not apply to items added during the meeting. Members of the public will 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 or 785-368-3941. A 48-hour advance notice is preferred.



Agenda Item No. 3A

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

**February 13, 2019
JEDO Board Meeting Minutes
And
March 27, 2019
JEDO Board Special Meeting Minutes**

**Joint Economic Development Organization Board Minutes
February 13, 2019**

City Council Chambers, 214 SE 8th Street, Topeka, Kansas, Wednesday, February 13, 2019.

The Joint Economic Development Organization (JEDO) Board Members met at 6:00 p.m. with the following voting Board Members present: Deputy Mayor Sandra Clear, Councilmembers Tony Emerson and Michael Lesser and Shawnee County Commissioners Bill Riphahn, Kevin Cook and Bob Archer -6. City of Topeka Mayor Michelle De La Isla presided -1.

Nonvoting Board Members Present: Councilmembers Hiller, Padilla and Coen.

Nonvoting Board Members Absent: Councilmembers Ortiz, Jensen and Mays.

APPROVAL of Minutes from the meeting of December 12, 2018, was presented.

Councilmember Emerson moved to approve the Minutes of December 12, 2018. The motion seconded by Councilmember Lesser carried unanimously. (7-0-0)

APPROVAL of engagement letter between the Joint Economic Development Organization and Summers, Spencer & Company for 2018 Audit Services was presented.

Betty Greiner, JEDO Finance Committee Treasurer and Shawnee County Audit Finance Director, reported the JEDO Board awarded the bid to Sommers, Spencer & Company, P.A., for 2018 Audit Services at the December 12, 2018 JEDO meeting, and the proposed engagement letter would formalize those services.

Commissioner Cook moved to approve the engagement letter. The motion seconded by Councilmember Lesser carried unanimously. (7-0-0)

APPROVAL of JEDO Finance Committee 4th Quarter 2018 Cash Statement was presented.

Betty Greiner, JEDO Finance Committee Treasurer and Shawnee County Audit Finance Director, reported the 2018 Year End Cash Statement includes revenues received from the Half-Cent Sales Tax in the amount of \$16,338,972.81 of which \$20,571.95 (Leverage Lender Interest) was paid to GO Topeka for scholarships. She stated the end of the year cash balance was \$618,311.26 which does not include the City sales tax payment paid in January.

Councilmember Emerson moved to approve the 4th Quarter 2018 Cash Statement. The motion seconded by Councilmember Lesser carried unanimously. (7-0-0)

APPROVAL of Incentive Agreement for Project Purple was presented.

Molly Howey, GO Topeka Senior Vice President of Economic Development, stated the company continues to review their plans and may add more employment incentives; therefore, they would like to postpone the incentive agreement until finalized and present it at a meeting.

APPROVAL of Incentive Agreement for Hill's Pet Nutrition (*Project Jingle*) was presented.

Molly Howey, GO Topeka Senior Vice President of Economic Development, reported the project would create six new jobs with an average annual wage of \$60,000 and a capital investment up to \$20 million.

Gary Semjenow, Hill's Pet Nutrition Technical Services Director, reported the project would expand the animal care facility, nutritional research for mainly dogs, and a visitor engagement center where visitors can observe during operating hours.

Commissioner Cook expressed the importance of companies recognizing living locally and including incentives that impact the local community. He commented on the agreement which includes language that makes every effort to utilize businesses, vendors and people within Shawnee County.

Gary Semjenow stated Hill's Pet Nutrition prefers to use local based individuals and businesses because projects run more efficient and there are good candidates in the area.

Deputy Mayor Clear moved to approve the Incentive Agreement for Hill's Pet Nutrition (*Project Jingle*). The motion seconded by Councilmember Lesser carried unanimously. (7-0-0)

APPROVAL of Incentive Request for Project Sherwood was presented.

Barbara Stapleton, GO Topeka Business Retention and Talent Initiatives Vice President, reported Project Sherwood was adding 47 new jobs at an average annual wage of \$40,000 and a capital investment of \$17.7 million. She stated it would be for an existing manufacturing company in the community and would include performance based incentives. She noted the incentive agreement would be presented at a future meeting.

Councilmember Lesser moved to approve the Incentive Request for Project Sherwood. The motion seconded by Commissioner Cook carried unanimously. (7-0-0)

Councilmember Lesser moved to begin the Presentation portion of the agenda with the Topeka Zoo Update. The motion seconded by Commissioner Riphahn carried unanimously. (7-0-0)

PRESENTATIONS:

AN UPDATE on the Topeka Zoo was presented.

Brendan Wiley, Topeka Zoo Director, reported in 2012, there was a political drive to develop a master plan for the Zoo; however, an entire master plan budget was never evaluated; it only included the engineers estimate for the elephant portion of the plan at approximately \$9 million; and suggested an

ambitious 20-40 year time frame for completion. He stated in 2014 when the Half-Cent Retailers' Sales Tax was being discussed for extension, a 15-year plan was completed and includes adequate fire protection at the Zoo to obtain an occupancy permit; fire hydrant and parking improvements are being completed; Camp Cowabunga opened in August 2018; the Gage Park Bio Retention Garden was drafted which includes a group entry to the Zoo; and Kay's Garden will break ground shortly and should be rated as one of the best Japanese gardens nationally within five to seven years of opening. He gave a brief overview of funding through 2020 for a total of \$13,486,000.

Commissioner Archer commended Brendan Wiley for making great improvements to the Topeka Zoo.

GO Topeka Quarterly Report was presented.

Molly Howey, GO Topeka Senior Vice President of Economic Development, highlighted New Business Attraction; the 2019 GO Topeka Board of Directors Retreat consisted of robust conversation and bold ideas and a second retreat will be scheduled on April 5, 2019; review of incentive guidelines, target industries review, familiarization tours and collaboration on crossover projects with Katrin Holzhaus, GO Topeka Senior Vice President of Innovation. She commented on business retention and expansion in 2018, and looking ahead with an aggressive visitation program; headquarter visits and collaboration with talent initiatives.

Glenda Washington, GO Topeka Senior Vice President of Entrepreneurial & Minority Business Development (EBMD), gave an overview of the small business incentive program of the last 3 years (177 Incentives Issued between 2016-2018) and the impact it has made in the community with the money invested (2016-2018 Total Incentives \$820,332). She commented on the full-time and part-time jobs added in the community, the loan program and reviewed what the future holds including the Topeka Housing Authority (THA) empowerment incubator, kitchen incubator, boot camp, training and continue community outreach. She summarized PTAC (Procurement Technical Assistance Center) which has 272 active clients and 46 contracts awarded for a value of \$12 million.

Commissioner Cook questioned the incentives for 2018 loan funds and if the First Opportunity Funds were expended or will the funds carry over to 2019.

Glenda Washington reported \$300,000 of the \$350,000 was awarded; there was an average of 25-30 people going through the process every month seeking incentives; and there was approximately \$600,000 left over in the First Opportunity Fund which cannot be used as carryover funds; therefore, they are trying to find ways to expend the funds.

Katrin Holzhaus, GO Topeka Senior Vice President of Innovation, reported 2018 was dedicated to strengthening the entrepreneurial ecosystem and forming strategic task forces within the Innovation Advisory Board (IAB); and evaluate and align with local networks to contribute to the overall effort and Momentum 2022 strategy. She stated the IAB has defined the following four areas of focus to gain traction in early 2019:

1. Ecosystems Best Practices

2. Space: Creating the Home of Innovation
3. Innovation Fund & Incentives
4. Organizational Structure: Building the Innovation Powerhouse

Councilmember Coen entered the room.

Katrin Holzhaus gave a brief update of 712 Innovations including the MakerSpace, a spin-off which opens April 1, 2019, and would create a new startup of an Arts and Craftsman Workshop. She stated it would include fabrication resources and space to create prototypes for emerging innovative and creative businesses in the Topeka Entrepreneurship Ecosystems.

Lindsay Lebahn, Forge Executive Director, reported Forge has over 2,000 members to date with over 222 volunteers investing and engaging in the community. She stated Forge continues to look ahead to increase social media presence, be an integral point of contact for the Greater Topeka Youth Partnership Commission, teamed up with the Washburn Leadership 400 Program and Top City Internship Program to create lasting positive relationships on young professionals.

Councilmember Hiller questioned if the Mayor's Youth Commission would be part of the Greater Topeka Youth Partnership Commission (GTYP) and how they will function together.

Lindsay Lebahn stated the GTYP was in the planning stages and was in the process of creating a brand book, meeting guidelines and establishing goals. She announced a press conference was scheduled February 18, 2019, to present more information on the GTYP.

Mayor De La Isla stated not all members of the Mayor's Youth Commission wanted to be part of the policy-making aspect; therefore, the GTYP will be another outlet for them to connect within the community.

Barbara Stapleton, GO Topeka Business Retention and Talent Initiatives Vice President, gave an update on Workforce and Education SOTO (South Topeka) and NeTO (North & East Topeka) with Ride to Work stats and the CaRE bus program which provided 284 passes to date. She gave a brief overview of Included which aims to be the authority on diversity and inclusion within businesses and organizations throughout the region. She commented on the public speakers hosted throughout 2018 and listening sessions held in January 2019.

Diann Faflick, GO Topeka Together Topeka Executive Director, reported Together Topeka hosted a community planning retreat with leadership from Strive Together on October 25, 2018, to launch efforts locally asking stakeholders to come together to develop and define the scope of work. She stated Together Topeka introduced a pledge of support to help establish a network of individuals and organizations committed to supporting targeted outcomes. She noted drafts of the Mission, Vision and Outcomes will be presented to a leadership team at the next planning meeting to be held in the first quarter of 2019.

A PRESENTATION on GO Topeka Board of Directors Retreat was presented.

Molly Howey, GO Topeka Senior Vice President of Economic Development, reported the retreat had a total of 39 attendees and discussion focused on economic development best practices, mission and vision statements, industries and incentive guidelines. She stated another retreat has been scheduled for April 5, 2019, focusing on talent and place. She invited the JEDO Board to attend the retreat and to contact GO Topeka for more details.

Councilmember Hiller commented on the retreat and the innovative discussions. She encouraged the JEDO Board to attend the GO Topeka Board of Directors Retreat on April 5, 2019.

AN UPDATE on Quality of Place was presented.

Kathy Clark, Quality of Place Workgroup Chair, reported meetings were held in January for individual projects receiving funds to discuss timelines and all projects are moving forward. She stated they are working with vendors to gather bids to come back before GO Topeka request for funding. She noted the Workgroup will keep the JEDO Board informed on the progress.

AN UPDATE on the East Topeka Learning Center Project was presented.

Barbara Stapleton, GO Topeka Business Retention and Talent Initiatives Vice President, reported the project continues to remain on track and move forward.

Dr. Clayton Tatro, Washburn Tech Associate Dean of Instruction, reported 94 students are currently enrolled in ETLTC and orientation has been scheduled in March and April. He invited everyone to visit the Learning Center.

Commissioner Archer asked if the estimated 400 students was over the course of a year or an annual enrollment period.

Commissioner Cook commended Dr. Tatro on the successful opening of the school and amount of interest received thus far.

Councilmember Hiller stated she was concerned with the use of the Antioch Family Life Center as a temporary location; however, the site was sufficient and she was excited to hear about the great start.

Dr. Tatro reported the full class schedules are currently running with no issues and he believes 400 students was an estimate over the course of a year.

Mayor De La Isla thanked Pastor T.D. Hicks, Antioch Missionary Baptist Church, for offering the temporary site.

AN UPDATE on the Kansas Expocentre was presented.

Charles Smith, AIA, HTK Architects, gave a brief overview of the plan of changes to the Kansas Expocentre that would resolve a number of issues with ADA accessibility, exterior issues and energy efficiency. He discussed the improvement timeline scheduled from 2011-2021 and identified master plan scenarios with a cost/benefit analysis. He reported the HVAC and boiler system improvements have been completed; renovation and expansion of Landon Arena and Exposition Hall as well as an Equine Addition were at the top of the improvement list along with seating in Landon Arena; and the need to address the condition of the parking lot.

Todd Ramsey, McCownGordon Construction, commented on the condensed overall construction schedule and working around events to still collect revenue.

Charles Smith noted normal operations at the Kansas Expocentre will continue during construction.

Kellen Seitz, Kansas Expocentre General Manager, stated the focus has been how renovations would impact and increase revenues and patrons. He noted a presentation would be conducted at the Shawnee County Commissioners meeting on February 14, 2019, and encouraged the JEDO Board to attend. He stated Spectra guaranteed Shawnee County during the first year of operations an operating subsidy budget of \$780,000 by refining booking and contracting events, creating more brand awareness and engaging with community partners, marketing and sales efforts to create more public participation and he was happy to announce that goal was met in 2018. He noted he knows the opportunity and potential are there and he has already seen the positive impacts made. He commented on securing new events as well as growing existing events.

Councilmember Coen stated that he has served on the Kansas Expocentre Advisory Board for the past three years and Spectra have been making vast improvements to the Expocentre.

PUBLIC COMMENT

Carol Marple commended Matt Pvarnik and GO Topeka staff for their work in the community. She requested more information be presented about the individuals participating in the programs and not just statistics. She stated she attended a Momentum 2022 meeting and one of the participants for the Quality of Place was located in Auburn. She noted Shawnee County residents should also be evaluated for programs as they also pay the half-cent sales tax when shopping in Topeka.

No further business appearing the meeting was adjourned 7:37 p.m.

Joint Economic Development Organization Board Minutes
March 27, 2019

City Council Chambers, 214 SE 8th Street, Topeka, Kansas, Wednesday, March 27, 2019.

The Joint Economic Development Organization (JEDO) Board Members met at 6:00 p.m. with the following voting Board Members present: Deputy Mayor Sandra Clear, Councilmembers Karen Hiller (proxy for Councilmember Emerson) and Michael Lesser and Shawnee County Commissioners Bill Riphahn, Kevin Cook and Bob Archer -6. City of Topeka Mayor Michelle De La Isla presided -1.

Nonvoting Board Members Present: Councilmembers Mays and Coen. Absent: Councilmembers Ortiz, Padilla and Jensen.

APPROVAL of Incentive Request for Project Blueberry was presented.

Barbara Stapleton, GO Topeka Business Retention and Talent Initiatives Vice President, gave a brief overview of the incentive funding request (\$66,000) for Project Blueberry, an existing local company looking to expand in the community. She reported the incentive was part of a capital investment which includes plant equipment additions and improvement expenditures of \$30 million. She noted the incentive proposal would be performance-based, to be paid out as earned, and details of the agreement would be outlined in a formal contract with the company.

Deputy Mayor Clear expressed concern with the lack of information about the company and details of the incentive package. She requested more information to make an informed decision.

Mayor De La Isla stated the confidentiality of the proposal has been established by the company until there was an agreement in place due to potential competition.

Councilmember Mays spoke in support of the incentive request and stated he believes \$66,000 was a good return on investment for a \$30 million project.

Commissioner Cook stated he concurs with Deputy Mayor Clear and believes non-disclosure of information places constraints on public transparency which the JEDO Board has worked hard to overcome. He asked how incentive packages are put together as well as the cost analysis. He spoke in support of the incentive request and noted it was a good return on investment for a \$30 million project.

Barbara Stapleton reported companies can request non-disclosure as there are many factors involved in expansion projects. She stated incentive guidelines are followed and based on many factors within a community; however, they are not shared publicly because other communities could use those same factors to create more competition. She noted she could share the guidelines with the JEDO Board if requested.

Commissioner Archer expressed the importance of a transparent process due to the large amount (\$5 million) of public funds allocated to GO Topeka every year with the assurance that transactions will be

credible and responsible; however, he understands why the company would not want their plans to be public at this time. He spoke in support of the good work GO Topeka continues to deliver.

Councilmember Lesser asked how GO Topeka performs their due diligence in regards to existing local companies while balancing incoming new businesses.

Barbara Stapleton reported it requires a balance of economic development tools and how those tools are used when targeting industries in terms of population, education and training. She noted GO Topeka meets regularly with local companies to offer their support and help them to grow.

Councilmember Hiller stated she appreciates the discussion and spoke in support of the incentive request. She commented on the responsibilities of an elected official and how those duties relate to the confidentiality of economic development projects.

Commissioner Riphahn asked how many jobs would be created from the project.

Barbara Stapleton reported Project Blueberry was a capital investment project; therefore, the creation of new jobs would not be part of the incentive package.

Mayor De La Isla announced she received written communication in the form of a text message from Councilmember Emerson designating Councilmember Hiller to serve as proxy in his absence.

Councilmember Lesser moved to approve the Incentive Request for Project Blueberry. The motion seconded by Commissioner Archer carried unanimously. (7-0-0)

PUBLIC COMMENT

There was no public comment.

No further business appearing the meeting was adjourned 6:17 p.m.



Agenda Item No. 3B

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

Approval of Project Blueberry Incentive Agreement

INCENTIVE AGREEMENT

This Incentive Agreement is effective _____, 2019, and is entered into between the following parties:

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. (hereinafter referred to as "GO TOPEKA")

719 S. Kansas Avenue, Suite 100

Topeka, KS 66603

Phone: (785) 234-2644

Fax: (785) 234-8656

Contact Person/Title: Molly Howey, Senior V.P., Economic Development

PROJECT BLUEBERRY

WHEREAS, Project Blueberry is a corporation that is in good standing and qualified to do business under the laws of the state of Kansas; and

WHEREAS, Project Blueberry is contemplating investing approximately Thirty Million Dollars (\$30,000,000) to add to and improve its facility for _____ in Shawnee County; and

WHEREAS, such additional investment is referred to herein as the "Addition;" and

WHEREAS, GO TOPEKA desires to assist and promote Project Blueberry by offering up to Sixty-Six Thousand Dollars (\$66,000) in investment incentives; and

WHEREAS, Project Blueberry acting in reliance upon the incentives set forth in this Agreement, has decided to maintain and expand its operations in Shawnee County, Kansas; and

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

WITNESSETH:

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

1. **Investment Incentive.** For each One Million Dollars (\$1,000,000) in capital investment in the construction of the Addition made by Project Blueberry in Shawnee County, Kansas up to but not to exceed a total capital investment of Thirty Million Dollars (\$30,000,000), GO TOPEKA shall pay an incentive to Project Blueberry of Two Thousand Two Hundred Dollars (\$2,200) (the "Investment Incentive"). The aggregate of said Investment Incentive payments shall not exceed Sixty-Six Thousand Dollars (\$66,000). The Investment Incentive Payment shall be made to Project Blueberry upon GO TOPEKA's receipt of paid invoices and pay applications to be verified by GO TOPEKA.

2. **Use of Funds.** The funds received by Project Blueberry pursuant to this Agreement shall be used for the purpose of capital investment in Project Blueberry's plant located in Shawnee County, Kansas.

3. **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.

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

a. Project Blueberry agrees to make every reasonable effort to include in the bidding process Shawnee County, Kansas-based vendors for construction at its facility and the purchase or procurement of the machinery and equipment contemplated herein.

b. Project Blueberry shall provide prompt advanced notice to GO TOPEKA of any material change in Project Blueberry's ownership, control or management, including issues of insolvency or bankruptcy, or other material changes that could reasonably result in a default by Project Blueberry under any agreement to which it is a party related to the matters set forth herein.

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

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. In the event 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 corporations 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 Project Blueberry shall not assign, transfer, hypothecate or otherwise encumber this Agreement and its rights hereunder, without the prior written approval of GO TOPEKA.

l. Sarbanes-Oxley and similar legislation may have application to, or affect the accounting for, this Agreement by Project Blueberry.

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 the 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 Project Blueberry advance notice of any reduction of funds when practical. Project Blueberry 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 Project Blueberry. 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 Project Blueberry 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, Project Blueberry 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 venture 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.

"PROJECT BLUEBERRY"

By: _____
Print Name: _____
Title: _____

“GO TOPEKA”

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By: _____

Print Name: Molly Howey

Title: Senior V.P., Economic Development



Agenda Item No. 3C

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

**Approval of
Project Purple Funding**



To: JEDO

From: Molly Howey, SVP Economic Development

Date: 5.1.19

RE: Project Purple Incentive Request

GO Topeka staff has been working with an existing company (Project Purple) that is looking to expand in our community. The GO Topeka Board of Directors approved the initial employment incentive at the 10/5/18 board meeting. The GO Topeka Executive Committee approved the full package including capital investment at the 4/30/19 committee meeting.

Below is a summary of the project and requested incentive package:

Project Purple Summary

Industry Type: Professional Services

Average Wage: \$52,000 annually, plus benefits

Number of Jobs: 220 new jobs over five years

Capital Investment: \$9M

Incentive Proposal

In the expansion of Project Purple in Shawnee County, Kansas with an expected addition of 220 new full-time jobs with an average salary of \$52,000 plus benefits, GO Topeka proposes \$5,500 per new job to be paid out in equal installments (1/5 of each qualified job incentive = \$1,100 per year) annually over five years. An incentive in the amount of \$8,000 per million for real property and \$2,000 per million invested in equipment will be offered as earned. In addition, a training incentive in the amount of \$1,000 per new employee will be offered to the company as part of the package.



Project Purple Memo (continued)

All proposed incentives are performance-based, to be paid out as earned and details of the agreement will be outlined via a formal contract with the company.

Below is a breakdown of the proposed incentives:

\$5,500 per job X 220 new jobs = \$1,210,000

\$8,000 per million (real property) = \$56,000

\$2,000 per million (equipment) = \$4,000

\$1,000 per new employee for training X 220 new employees = \$220,000

TOTAL PROPOSED INCENTIVE = \$1,490,000



Agenda Item No. 3D

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

**APPROVAL of reallocation of Mars incentive funds
originally allocated for construction of a fire house and authorizing
JEDO Chair to execute amendment to original agreement
dated July 27, 2011**

MARS WRIGLEY

Confectionery

In 2011 Mars Wrigley Confectionery broke ground on our first new chocolate factory in the United States in more than 35 years. In 2014 we opened the doors to our Topeka site, confident that the site would help us fuel the growth of our business. In the five years since the first M&M'S PEANUT® & SNICKERS® bars rolled off the line we have a lot to be proud of. We have continued to grow, invest and thrive, thanks largely to the support of the Topeka community.

In 2015, just one year after opening, we announced our first expansion for \$100M which added an additional 70 jobs. Since we arrived in Topeka we have invested over \$500M and created more than 420 new jobs. Because of this access to talent, we are now the proud home of M&M'S PEANUT®, SNICKERS®, TWIX® and the only site globally that makes M&M'S CARAMEL®, our biggest innovation and product launch ever.

When our site first opened in 2014, we were very fortunate to partner closely with the state of Kansas, Shawnee County, and the City of Topeka and received a generous incentive offer. The original incentive agreement included a commitment from Mars to allocate funds to a Kanza Fire Improvement account equal to 10% of the annual tax abatement. Since late 2017, through conversations with Go Topeka, JEDO and community stakeholders, we have learned that the immediate need for the funds and development within the Kanza Fire Park has shifted.

Mars Wrigley Confectionery Topeka, in partnership with Go Topeka, has developed a recommendation to reallocate a large portion of incentive dollars to drive a positive impact on workforce development, community engagement and quality of life for our Associates, industry partners, and the entire Topeka community. We are proposing an allocation of this money to be distributed between the following areas: City of Topeka – support of future Kanza Fire development, Workforce development and community improvement, including continued downtown development.

Mars believes that the impact we are able to make is bigger than just our business and are committed to overall community improvement, ability to attract new employers, and development of the incredible talent in the greater Topeka area. We view the community as a true partner and believe that when the community thrives, we all thrive.

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 City of Topeka – support of future Kanza Fire development, Workforce development, and Community Improvement including continued downtown development.

FINAL

INCENTIVE AGREEMENT

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Exhibits:

Exhibit A:	Legal Description of Initial Property
Exhibit B:	Employment Incentive Fees Report Prepared by BUSINESS
Exhibit C:	Location of Water, Fire Flow, and Sewer Service Lines
Exhibit D:	Location of Water Main Line to be Installed by City of Topeka
Exhibit E:	Location of Innovation Parkway
Exhibit F:	Schedule of Funds to be Escrowed by GO TOPEKA
Exhibit G:	Form of Escrow Agreement

INCENTIVE AGREEMENT

This Incentive Agreement is effective as of July 27, 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 and JEDO 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 and JEDO 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 a third party accounting firm selected by and paid for by GO TOPEKA, 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. The 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. The third party accounting firm shall then confirm to GO TOPEKA and JEDO that information reported as set forth in **Exhibit B** is accurate and whether BUSINESS has satisfied the requirements set forth in this Agreement to receive and/or retain the incentives set forth in this Agreement. 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 the City of Topeka, at GO TOPEKA's cost, 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 be 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 its affiliates) as determined by an appraiser mutually agreeable to GO TOPEKA 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 fraction 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 forth 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 its affiliates) as determined by an appraiser mutually agreeable to GO TOPEKA 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.

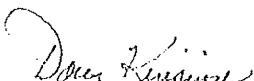
"BUSINESS"

MARS CHOCOLATE NORTH AMERICA, LLC
A Delaware limited liability company

By: 
Name: D. Michael Withman
Title: V P Supply

"GO TOPEKA"

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By: 
Name: Doug Kinsinger
Title: President

"JEDO"

JOINT ECONOMIC DEVELOPMENT ORGANIZATION


By: 
Name: Bob Archer
Title: Presiding Officer

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, SHAWNEE 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

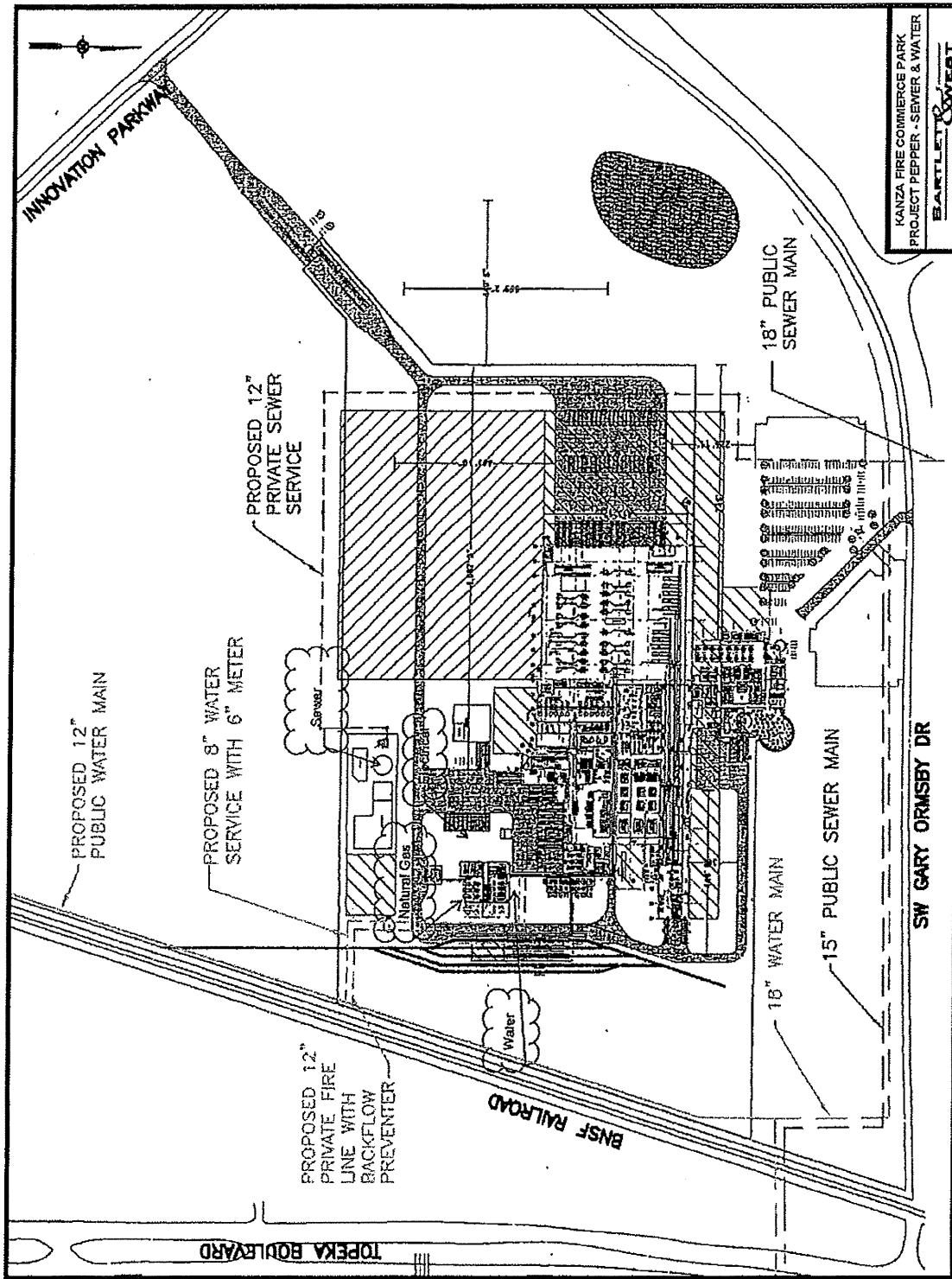
Location of Water, Fire Flow, and Sewer Service Lines

[See attached.]

Exhibit D

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

[See attached.]



KANZA FIRE COMMERCE PARK
PROJECT PEPPER - SEWER & WATER
BARTLETT & WEST

SW GARY ORMSBY DR

Exhibit E

Location of Innovation Parkway

[See attached.]

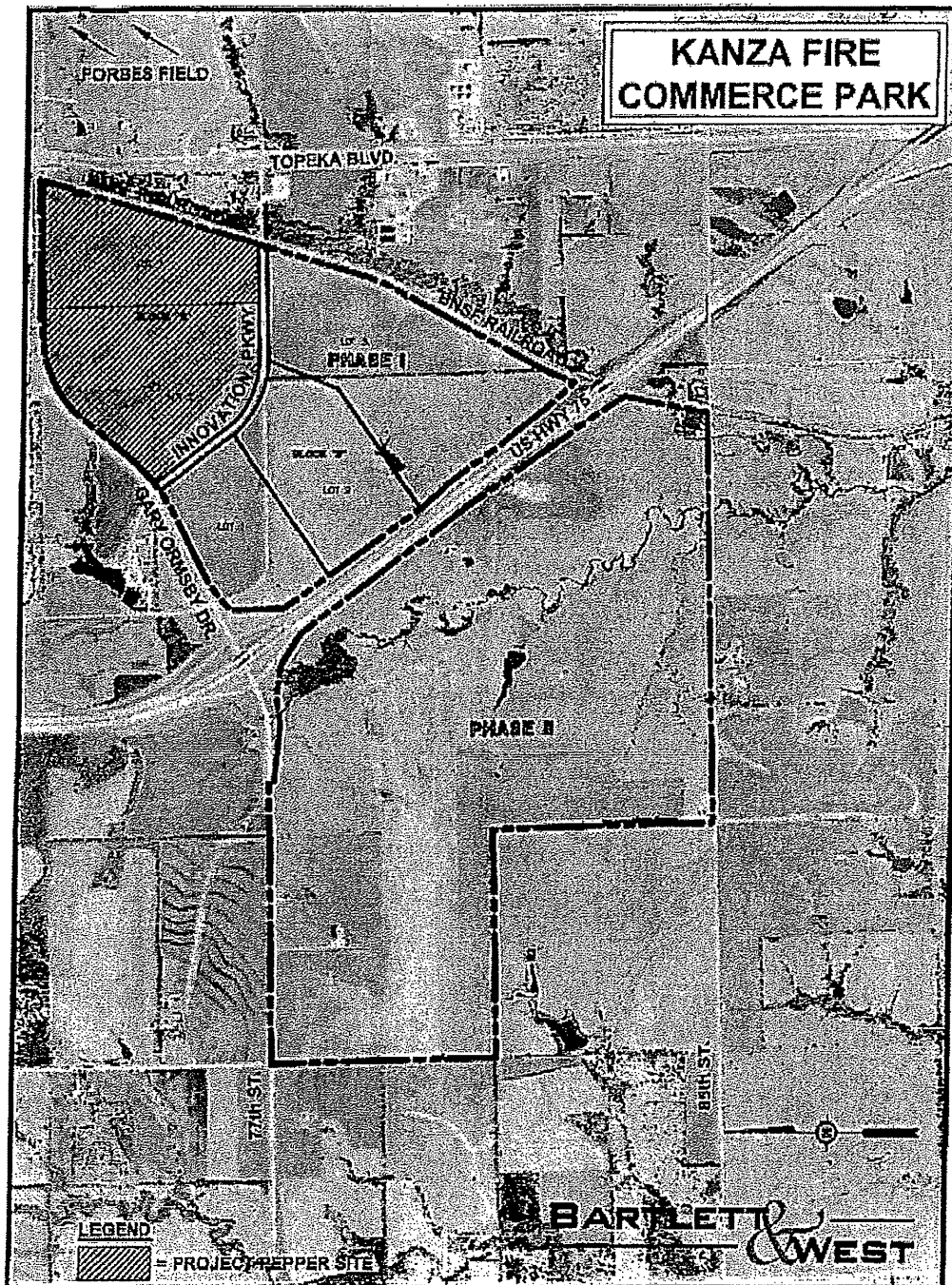


Exhibit F

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
2011	\$2,174,877.78	\$2,550,000	\$367,100	\$200,000	\$50,000	\$2,400,000	\$1,700,000
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 & Nothorn, 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: BUSINESS:

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

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
E-mail: abratsafolis@bmgzlaw.com and rgiuditta@bmgzlaw.com

With a copy to:

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: JEDO (who shall only be a notice party if GO TOPEKA defaults under the Incentive Agreement and JEDO takes over the Obligations):

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 Data		Total Escrowed Funds	Local Employment Incentive	Sewer/Water Lines	Building Permit	Water/Sewer Connection	Reserve Fund	Washington Fed
2011		\$2,174,877.78	\$2,550,000	\$367,100	\$200,000	\$30,000	\$2,400,000	\$1,700,000
Q3	October 2011	\$1,202,438.89						
Q4	January 2012	\$972,438.89		\$183,550.00	\$200,000.00	\$30,000.00	\$600,000.00	\$188,888.89
2012		\$2,593,055.56		\$183,550.00			\$600,000.00	\$188,888.89
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	\$948,263.89	\$159,375.00				\$600,000.00	\$188,888.89
Q4	January 2013	\$348,263.89	\$159,375.00					\$188,888.89
2013		\$1,204,166.67						\$188,888.89
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					\$188,888.89
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

Bank of America
1401 Elm St.
Dallas, TX 75202
Swift BOFAUS3N
ABA 0260-0959-3
Beneficiary: Mars Chocolate NA
a/c 3750699658



Agenda Item No. 3E

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

**Approval of
2018 GO Topeka Audit**



BERBERICH TRAHAN & CO., P.A.

Certified Public Accountants

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. & SUBSIDIARY

CONSOLIDATED FINANCIAL STATEMENTS
YEAR ENDED DECEMBER 31, 2018



BERBERICH TRAHAN & CO., P.A.
Certified Public Accountants

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary
Topeka, Kansas

Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary, which comprise the consolidated statement of financial position as of December 31, 2018, and the related consolidated statements of activities, functional expenses and cash flows for the year then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

An Independently Owned Member, RSM US Alliance

RSM US Alliance member firms are separate and independent businesses and legal entities that are responsible for their own acts and omissions, and each are separate and independent from RSM US LLP. RSM US LLP is the U.S. member firm of RSM International, a global network of independent audit, tax, and consulting firms. Members of RSM US Alliance have access to RSM International resources through RSM US LLP but are not member firms of RSM International.

Emphasis of Matter

As discussed in Note 2 to the financial statements, on January 1, 2018, Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary adopted ASU No. 2016-14, Not-for-Profit Entities (Topic 958): Presentation of Statements of Not-for-Profit Entities. Our opinion is not modified with respect to this matter.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary as of December 31, 2018, and the changes in net assets and cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Berberich Trahan & Co., P.A.

Berberich Trahan & Co., P.A.
Topeka, Kansas
April 29, 2019

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENT OF FINANCIAL POSITION
DECEMBER 31, 2018

ASSETS

Current assets:	
Cash and cash equivalents	\$ 8,225,065
ETLC Restricted Cash	5,098,648
Investments	5,996,560
Grants receivable	22,302
Accounts receivable	830
Prepaid expenses	54,755
Due from 712 Innovations	60
Restricted funds	<u>1,701,636</u>
Total current assets	<u>21,099,856</u>
Property and equipment, net	<u>2,640,637</u>
Other assets:	
Land held for economic development	<u>7,307,656</u>
Total other assets	<u>7,307,656</u>
Total assets	<u><u>\$ 31,048,149</u></u>

LIABILITIES AND NET ASSETS

Current liabilities:	
Deferred grant revenue - JEDO	\$ 13,202,699
Accounts payable	105,456
Grants payable	2,012,500
Due to Greater Topeka Chamber of Commerce	6,318
Due to Greater Topeka Partnership Foundation	9,500
Due to Greater Topeka Partnership	189,829
Improvement and training incentives	<u>1,557,636</u>
Total current liabilities	<u>17,083,938</u>
Other liabilities:	
KFCP Improvement and Fire Station Fund	357,769
Long-term debt, net of loan fees	<u>6,163,628</u>
Total liabilities	<u>23,605,335</u>
Net assets:	
Without donor restrictions	
Undesignated	(32,397)
Board designated	<u>7,475,211</u>
Total net assets	<u>7,442,814</u>
Total liabilities and net assets	<u><u>\$ 31,048,149</u></u>

See Notes to the Consolidated Financial Statements

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENT OF ACTIVITIES
YEAR ENDED DECEMBER 31, 2018

	Without donor restrictions	With donor restrictions	Total
Support and revenues:			
JEDO grant revenue	\$ 8,803,533	\$ -	\$ 8,803,533
Private contributions and pledges	16,153	(12,600)	3,553
Other grant revenue	46,481	-	46,481
Other income	41,352	-	41,352
Sponsorship revenue	33,836	-	33,836
Event revenue	26,072	-	26,072
Interest and investment income	98,072	-	98,072
Affiliate support revenue	629,205	-	629,205
Total support and revenues:	9,694,704	(12,600)	9,682,104
Expenses:			
Program expenses:			
Economic development	8,602,491	-	8,602,491
East Topeka Learning Center	287,674	-	287,674
Total program expenses	8,890,165	-	8,890,165
Supporting services expense:			
General and administrative expenses	2,182,738	-	2,182,738
Total supporting expense	2,182,738	-	2,182,738
Total expenses	11,072,903	-	11,072,903
Change in net assets	(1,378,199)	(12,600)	(1,390,799)
Net assets, beginning of year	8,821,013	12,600	8,833,613
Net assets, end of year	\$ 7,442,814	\$ -	\$ 7,442,814

See Notes to the Consolidated Financial Statements

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
STATEMENT OF FUNCTIONAL EXPENSES
YEAR ENDED DECEMBER 31, 2018

	Economic Development	East Topeka Learning Center	General and administrative	Total expenses
Personnel costs	\$ 815,725	\$ -	\$ 323,964	\$ 1,139,689
Dues and subscriptions	36,872	-	8,972	45,844
Supplies, printing and postage	17,501	-	9,646	27,147
Rent	17,545	-	67,203	84,748
Events	44,436	-	1,279	45,715
Hospitality and promotions	84,672	-	12,160	96,832
Advertising and research	238,263	-	39,210	277,473
Professional services and contract labor	202,741	-	106,438	309,179
Office expenses	30,400	405	75,485	106,290
Repair and maintenance	7,463	-	20	7,483
Depreciation and amortization	-	4,082	635	4,717
Professional development and training	81,406	-	7,309	88,715
Insurance, taxes and fees	22,773	-	5,294	28,067
Interest expense	-	33,187	-	33,187
Grants and new initiatives	6,702,054	250,000	-	6,952,054
Contributions	-	-	1,525,123	1,525,123
Large incentives	300,640	-	-	300,640
Total expenses	<u>\$ 8,602,491</u>	<u>\$ 287,674</u>	<u>\$ 2,182,738</u>	<u>\$ 11,072,903</u>

See Notes to the Consolidated Financial Statements

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENT OF CASH FLOWS
YEAR ENDED DECEMBER 31, 2018

Cash flows from operating activities:	
Contributions, grants and other support	\$ 5,778,009
Cash paid to employees and suppliers	(8,684,338)
Cash incentives paid	(348,640)
Interest and dividends received	<u>98,072</u>
Net cash flows from operating activities	<u>(3,156,897)</u>
Cash flows from investing activities:	
Net purchases of short-term investments	(80,687)
Purchase of property and equipment	(2,641,272)
Restricted funds held for East Topeka Learning Center	(5,098,648)
Proceeds from long-term debt	6,500,000
Loan origination fees	<u>(340,454)</u>
Net cash flows from investing activities	<u>(1,661,061)</u>
Net decrease in cash and cash equivalents	(4,817,958)
Cash and cash equivalents at beginning of year	<u>13,043,023</u>
Cash and cash equivalents at end of year	<u><u>\$ 8,225,065</u></u>

See Notes to the Consolidated Financial Statements

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(1) History and organization

The Growth Organization of Topeka/Shawnee County, Inc. was organized to encourage business and industry to locate and develop within the greater Topeka area and to otherwise promote the common economic interest of greater Topeka. The Organization receives funding through a grant from the Joint Economic Development Organization (JEDO) and by donations from the business community.

In 2018, the Growth Organization of Topeka/Shawnee County, Inc. set up and became the sole member of the GO Topeka ETLC Support Corporation. This entity was set up to hold and finance the East Topeka Learning Center project.

Together, the entities will be referred to as the Organization throughout the footnotes.

(2) Summary of significant accounting policies

Basis of reporting - Assets, liabilities, net assets, revenues, and expenses are recognized on the accrual basis of accounting. Grant revenue is recognized at the time the funds are expended or are accrued for expenditure. Revenue from private contributions is recognized at the time the funds are received. Revenue from pledges is recognized in the period the pledge commitment is made by the donor.

The Organization reports information regarding its financial position and activities according to two classes of net assets: net assets without donor restrictions and net assets with donor restrictions.

Net Assets Without Donor Restrictions represent the portion of funds currently available to support the Organization's operations. The Organization's Board of Directors may designate a portion of net asset without donor restrictions to be used for certain purposes or projects. At December 31, 2018, the Board has designated net assets for future incentives related to land held for economic development and certain amounts funded to restricted escrow accounts.

Net Assets with Donor Restrictions - Net assets with donor restrictions are resources that are restricted by a donor for use for a particular purpose or in a particular future period. Some donor-imposed restrictions are temporary in nature, and the restriction will expire when the resources are used in accordance with the donor's instructions or when the stipulated time has passed. Other donor-imposed restrictions are perpetual in nature; the organization must continue to use the resources in accordance with the donor's instructions.

Consolidation – The financial statements of Growth Organization of Topeka/Shawnee County, Inc. and GO Topeka ETLC Support Corporation are consolidated in the financial statements. All intercompany balances and transactions have been eliminated in consolidation.

Fair value measurement – Assets recorded at fair value on the statement of financial position are categorized based upon the level of observability associated with the inputs used to measure their fair value. Fair value is defined as the amount that would be received to sell an asset in an orderly transaction between market participants at the measurement

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

date. The availability of unobservable in the market, the determination of fair value requires more judgment.

The three-level hierarchy for fair value measurements is defined as follows:

- Level 1 – Inputs are unadjusted, quoted prices in active markets for identical assets at the measurement date.
- Level 2 – Inputs are other than quoted prices in active markets that are observable for the asset, either directly or indirectly, including inputs in markets that are not considered to be active.
- Level 3 – Inputs are unobservable and significant to the asset, and include situations where there is little, if any, market activity.

Management endeavors to utilize the best available information in measuring fair value.

Investments - The Organization invests in U.S. government securities money market funds, certificates of deposit and U.S. government securities. Investments, other than certificate of deposits, are stated at fair value. Certificate of deposits are carried at costs plus interest credited to date. Realized and unrealized gains and losses, dividends and interest on investments are reflected in the statement of activities.

Investment securities are exposed to various risks, such as interest rate, market fluctuation and credit risk. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in risks in the near term could materially affect investments and the amounts reported in the statements of financial position.

Management use of estimates –The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Land held for economic development - The Organization holds land for the development of the Kanza Fire and Central Crossing Commerce Parks in southwest Topeka, Kansas. The acquisition cost of the land and certain types of improvements are recorded as an asset on the Statement of Financial Position. Maintenance and certain utility extension costs that result in benefits beyond the park development are expensed as incurred. Management annually reviews the land held for economic development to determine whether carrying values have been impaired.

Land held for economic development is a board designated net asset.

Property and equipment - The Organization capitalizes all expenditures in excess of \$1,000 for property and equipment at cost. Depreciation is determined on the straight-line basis, with estimated useful lives as follows:

Equipment	5 years
Furniture and fixtures	7 years
Building	39 years

Maintenance and repairs which neither materially add to the value of the property nor appreciably prolong its life are charged to expenses as incurred.

GROWTH ORGANIZATION OF TOPEKA/Shawnee County, Inc. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

Income taxes - The Growth Organization of Topeka/Shawnee County, Inc. is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code and GO Topeka ETLC Support Corporation is exempt from federal income tax under Section 501(c)(3). The Organizations are exempt from federal income taxes pursuant to Section 501(a) of the Code and have been classified as other than a private foundation.

Expense allocation - The costs of providing various programs and other activities have been summarized on a functional basis. Expenses that can be identified with a specific program or support service are charged directly to that program or support service. General and administrative expenses include those costs that are not directly identifiable with any specific program, but which provide for the overall support and direction of the organization. There are no costs common to multiple functions.

Cash defined for statements of cash flows - For purposes of the statement of cash flows, the Organization considers unrestricted cash held in commercial banks with original maturities of three months or less to be cash and cash equivalents.

New accounting pronouncement - The Financial Accounting Standards Board (FASB) issued Accounting Standards Update ASU 2016-14, Not-for-Profit Entities (Topic 958) – Presentation of Financial Statements of Not-for-Profit Entities. The update addresses the complexity and understandability of net asset classification, deficiencies in information about liquidity and availability of resources, and the lack of consistency in the type of information provided about expenses and investment return. The Organization has adopted ASU 2016-14 in the current year, applying the changes retrospectively to all periods presented. Adoption of the ASU did not result in any reclassifications or restatements to net assets or changes in net assets. Net assets previously reported as temporarily restricted and permanently restricted are now reported as with donor restrictions and amounts previously reported as unrestricted are now reported as without donor restrictions.

Pending accounting pronouncements - In May 2014, FASB issued ASU No. 2014-09, Revenue from Contracts with Customers, which provides a robust framework for addressing revenue recognition issues and replaces most of the existing revenue recognition guidance including industry-specific guidance, in current U.S. GAAP. The standard is effective for nonpublic entities for periods beginning after December 15, 2018. Management is currently evaluating the effect that the standard will have on the financial statements.

In February 2016, FASB issued ASU 2016-02, Leases (Topic 842). The guidance in this ASU supersedes the leasing guidance in Topic 840, Leases. Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Management is currently evaluating the effect that the standard will have on the financial statements.

(3) Cash and cash equivalents

Cash and cash equivalents include repurchase agreements with a local bank. The repurchase agreements represent ownership interest in Federal Agency securities. Other bank deposits are generally maintained within FDIC-insured limits.

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(4) Availability and liquidity

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use, within one year of December 31, 2018 are:

Financial assets:

Cash and cash equivalents	\$ 8,225,065
Investments	5,996,560
Grants receivable	22,302
Accounts receivable	<u>830</u>
Amounts available for general expenditures within one year	<u><u>\$ 14,244,757</u></u>

In addition to the financial assets available to meet general expenditures over the next 12 months, the Organization anticipates collecting revenue to cover a majority of the general expenditures. The Organization regularly monitors liquidity to meet its operating needs and other contractual commitments, while also striving to maximize the investment of its available funds.

(5) Investments and fair value

Investments consist of the following at December 31, 2018:

U.S. government securities money market fund	\$ 3,193,652
Certificates of deposit	<u>2,802,908</u>
Total Investments	<u><u>\$ 5,996,560</u></u>

The following table summarizes the investments recorded at fair value based on valuation hierarchy as of December 31, 2018:

	<u>Fair Value</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Money market fund	<u>\$ 3,193,652</u>	<u>\$ 3,193,652</u>	<u>\$ -</u>	<u>\$ -</u>
Total fair value	<u>3,193,652</u>	<u><u>\$ 3,193,652</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>
Certificates of deposit	<u>2,802,908</u>			
Total Investments	<u><u>\$ 5,996,560</u></u>			

The fair value of the money market fund is based on the carrying value of the accounts due to its short maturity, high liquidity, and low risk of default.

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(6) Property and equipment

Property and equipment consists of the following as of December 31, 2018:

Cost	
Land	\$ 251,909
Construction in progress	2,342,722
Furniture and fixtures	42,308
Equipment	<u>4,333</u>
Total property and equipment	2,641,272
Accumulated depreciation	<u>(635)</u>
Net property and equipment	<u><u>\$ 2,640,637</u></u>

(7) Land held for economic development

The Organization owns a portion of land at the Kanza Fire and Central Crossing Commerce Parks in southwest Topeka, Kansas. The land is available for the Organization to transfer to companies for economic development.

(8) Restricted cash and funds

Restricted funds represent amounts held in an escrow account for specific purposes. The escrow account is maintained for certain property improvements, training, and employment incentives. The following is a summary of funds held in escrow:

	<u>2018</u>
Balance, January 1	\$ 2,113,181
Payments from escrow	(413,993)
Interest and other	<u>2,448</u>
Balance, December 31,	<u><u>\$ 1,701,636</u></u>

Restricted cash of \$5,098,648 represents amounts held in escrow accounts for the specific purpose of funding the East Topeka Learning Center project.

(9) KFCP improvement and fire station fund

The Organization has an agreement with Mars requiring an amount equal to 10% of their annual property tax abatement to be paid by Mars to the Organization. The funds are to be used for Kanza Fire Commerce Park improvements and a fire station to serve the park.

(10) Long-term debt

GO Topeka ETLC Support Corporation has two notes payable with Partnerships of Hope XXI, LLC for a total of \$6,500,000. The terms of both notes are the same with an interest rate of 1.127641% and a maturity date of July 2053. Interest only payments will be paid out on a quarterly basis on the 5th of March, June, September and December until September 5, 2027. On September 5, 2027, both interest and principal quarterly payments will begin.

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

The note is collateralized by the East Topeka Learning Center building. The building is under construction as of December 31, 2018.

Growth Organization of Topeka/Shawnee County, Inc. is the guarantor on the notes payable. These notes payable are intended to constitute a qualified low-income community investment for the lender and as such GO Topeka ETLC Support Corporation is required to maintain the status of a qualified active low-income community business throughout the terms of the loans.

As of December 31, 2018, debt maturities are as follows:

2019	\$ -
2020	-
2021	-
2022	-
2023	-
Thereafter	6,500,000
Less: loan fees	(336,372)
Total	<u>\$ 6,163,628</u>

(11) Related party transactions

The Greater Topeka Partnership became the sole member of the Organization, effective January 1, 2018. The initial partners in the Greater Topeka Partnership include Downtown Topeka, Inc., the Greater Topeka Chamber of Commerce, Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary, and Visit Topeka. The Greater Topeka Partnership holds the controlling interest of the Greater Topeka Partnership Foundation. The Foundation is the sole member of The Topeka/Shawnee County First Opportunity Fund, LLC, Heartland Visioning, LLC, and 712 Innovations, LLC. The Greater Topeka partnership holds funds for the Governor's Military Council.

The purpose of the Greater Topeka Partnership is to foster economic development and improve the quality of life in Topeka and Shawnee County, Kansas.

Due to/from:

The Organization has entered into an agreement with The Greater Topeka Partnership. On a monthly basis, the Greater Topeka Partnership pays for certain operational expenses and requests reimbursement from the Organization. These operation expenses consist of the Organizations dedicated employees' salaries and benefits, shared services employees' salaries and benefits, office rent, parking rent, payment for company credit cards, fixed asset purchases, accounting support, marketing, and any other expense in which it is deemed appropriate to be allocated across all of the subsidiaries of the Greater Topeka Partnership. The allocation was determined by completing an annual employee time allocation study. The Organization owed the Greater Topeka Partnership \$189,829 at December 31, 2018, which is comprised of \$14,640 for pledges collected on their behalf, \$2,799 for bonuses, \$84,074 for payroll paid for the Organization, \$40,436 in fixed asset purchases and \$47,880 for shared operating expenses including office and parking rent.

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

At December 31, 2018, the Organization owed the Greater Topeka Chamber of Commerce \$6,318, respectively, for reimbursement of expenses and fees for participation in Chamber events and programs.

At December 31, 2018, the Organization owed \$9,500 to the Greater Topeka Partnership Foundation for pledges collected on their behalf.

At December 31, 2018, the Organization had an amount due from 712 Innovations for \$60.

Revenue:

The Organization received contributions of \$629,205 from the Greater Topeka Partnership for affiliate support and reimbursement of expenses paid with private dollars.

Expense:

The Organization made a contribution in the amount of \$100,000 in 2018 to 712 Innovations, LLC, a subsidiary of the Greater Topeka Partnership Foundation. 712 Innovations, LLC was established to provide a makerspace/co-work space for economic development.

As a result of the joining the Greater Topeka Partnership, the Organization made a contribution for the amount of \$1,525,123 to the Greater Topeka Partnership. This amount represents private dollars and related assets as of January 1, 2018.

The Organization's lease payments based on its proportionate share of space under a lease agreement between Security National Properties and the Greater Topeka Partnership totaled \$61,592 for the year ended December 31, 2018.

(12) JEDO grant

JEDO is a separate legal entity authorized by Kansas Statute 12-2904(a) which was created by an inter-local agreement between the Board of Commissioners of Shawnee County and the City of Topeka. The Organization has an agreement with JEDO that provides for a grant to the Organization for the purpose of providing economic development services, including research, target marketing, existing business retention and expansion, new business recruitment, minority and women-owned businesses, infrastructure development, site acquisition and development, incentive funds, workforce training and expansion, and other such activities deemed necessary and appropriate. The term of the agreement was for one year with options to extend for successive periods of one year each unless either party terminates the agreement. During 2017, JEDO approved a new grant agreement with the Organization for a three - year period commencing January 1, 2018.

JEDO has approved the carryover of the 2018 unexpended grant funds. This carryover is included in the deferred JEDO grant revenue at December 31, 2018 and includes approximately \$1,160,000 for the minority and women-owned business program at December 31, 2018.

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(13) Concentrations and major customers

The Organization received 91% of their total revenue from a grant with the Joint Economic Development Organization (JEDO) for the year ended December 31, 2018. In the event this grant was discontinued, the activities of the Organization would be curtailed accordingly.

(14) 401(k) retirement plan

The Organization established a 401(k) retirement plan in which eligibility is reached when an employee has completed ninety days of continuous employment and is over the age 21. The 401(k) retirement plan is sponsored by the Greater Topeka Partnership.

The Organization's 401(k) retirement plan expense was \$49,019 for the year ended December 31, 2018.

(15) Incentives

The Organization enters into various incentive agreements covering several years and generally requiring maintenance of employment levels and other obligations. For the year ended December 31, 2018, the Organization paid a net amount of \$348,640 for cash incentives paid and amounts recouped from employers that did not maintain employment levels or meet other requirements.

At December 31, 2018, the Organization also has outstanding contingent incentive commitments to various companies expected to be payable as follows:

2019	\$ 2,042,365
2020	448,400
2021	419,400
2022	373,800
2023	189,000
Therafter	<u>10,000</u>
Total	<u>\$ 3,482,965</u>

Improvements and training incentive liability includes the following at December 31, 2018:

Funded and held in escrow (see Note 8)	\$ 1,701,636
Less board designated employment incentive held in escrow	<u>(144,000)</u>
Balance, December 31	<u>\$ 1,557,636</u>

(16) Subsequent events

The Organization has evaluated subsequent events through April 29, 2019, the date which the financial statements were available to be issued. No subsequent events were noted.

SUPPLEMENTARY INFORMATION



BERBERICH TRAHAN & CO., P.A.
Certified Public Accountants

INDEPENDENT AUDITORS' REPORT ON SUPPLEMENTARY INFORMATION

To the Board of Directors
Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary
Topeka, Kansas

We have audited the consolidated financial statements of the Growth Organization of Topeka/Shawnee County, Inc. and Subsidiary as of and for the year ended December 31, 2018, and have issued our report thereon dated April 29, 2019, which expressed an unmodified opinion on those consolidated financial statements. Our audit was conducted for the purpose of forming an opinion on the December 31, 2018 consolidated financial statements as a whole. The consolidating information on pages 16 and 17 is presented for purposes of additional analysis of the consolidated financial statements rather than to present the financial position and results of operations of the individual organizations, and is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The December 31, 2018 information has been subjected to the auditing procedures applied in the audit of consolidated financial statements and certain additional procedures; including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the December 31, 2018 information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

Berberich Trahan & Co., P.A.

Berberich Trahan & Co., P.A.
Topeka, Kansas
April 29, 2019

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
CONSOLIDATING STATEMENTS OF FINANCIAL POSITION
DECEMBER 31, 2018

	Growth Organization of Topeka/Shawnee County, Inc.	GO Topeka ETLC Support Corporation	Eliminations	Consolidated
ASSETS				
Current assets:				
Cash and cash equivalents	\$ 8,225,065	\$ -	\$ -	\$ 8,225,065
ETLC Restricted Cash	-	5,098,648	-	5,098,648
Investments	5,996,560	-	-	5,996,560
Grants receivable	22,302	-	-	22,302
Accounts receivable	830	-	-	830
Prepaid expenses	54,755	-	-	54,755
Due from 712 Innovations	60	-	-	60
Restricted funds	1,701,636	-	-	1,701,636
Total current assets	16,001,208	5,098,648	-	21,099,856
Property and equipment, net	46,006	2,594,631	-	2,640,637
Other assets:				
Land held for economic development	7,307,656	-	-	7,307,656
Total other assets	7,307,656	-	-	7,307,656
Total assets	\$ 23,354,870	\$ 7,693,279	\$ -	\$ 31,048,149
LIABILITIES AND NET ASSETS				
Current liabilities:				
Deferred grant revenue - JEDO	\$ 13,202,699	\$ -	\$ -	\$ 13,202,699
Accounts payable	46,206	59,250	-	105,456
Grants payable	2,012,500	-	-	2,012,500
Due to Greater Topeka Chamber of Commerce	6,318	-	-	6,318
Due to Greater Topeka Partnership Foundation	9,500	-	-	9,500
Due to Greater Topeka Partnership	189,829	-	-	189,829
Intercompany due to/from	(1,754,441)	1,754,441	-	-
Improvement and training incentives	1,557,636	-	-	1,557,636
Total current liabilities	15,270,247	1,813,691	-	17,083,938
Other liabilities:				
KFCP Improvement and Fire Station Fund	357,769	-	-	357,769
Long-term debt, net of loan fees	-	6,163,628	-	6,163,628
Total liabilities	15,628,016	7,977,319	-	23,605,335
Net assets:				
Without donor restrictions				
Undesignated	251,643	(284,040)	-	(32,397)
Board designated	7,475,211	-	-	7,475,211
Total net assets	7,726,854	(284,040)	-	7,442,814
Total liabilities and net assets	\$ 23,354,870	\$ 7,693,279	\$ -	\$ 31,048,149

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. AND SUBSIDIARY
CONSOLIDATING STATEMENTS OF ACTIVITIES
YEAR ENDED DECEMBER 31, 2018

	Growth Organization of Topeka/Shawnee County, Inc.			GO Topeka ETLC Support Corporation			Consolidated		
	donor restrictions	With donor restrictions	Total	donor restrictions	With donor restrictions	Total	donor restrictions	With donor restrictions	Total
Support and revenues:									
JEDO grant revenue	\$ 8,803,533	\$ -	\$ 8,803,533	\$ -	\$ -	\$ -	\$ 8,803,533	\$ -	\$ 8,803,533
Private contributions and pledges	16,153	(12,600)	3,553	-	-	-	16,153	(12,600)	3,553
Other grant revenue	46,481	-	46,481	-	-	-	46,481	-	46,481
Other income	41,352	-	41,352	-	-	-	41,352	-	41,352
Sponsorship revenue	33,836	-	33,836	-	-	-	33,836	-	33,836
Event revenue	26,072	-	26,072	-	-	-	26,072	-	26,072
Interest and investment income	94,438	-	94,438	3,634	-	3,634	98,072	-	98,072
Affiliate support revenue	629,205	-	629,205	-	-	-	629,205	-	629,205
Total support and revenues:	9,691,070	(12,600)	9,678,470	3,634	-	3,634	9,694,704	(12,600)	9,682,104
Expenses:									
Program expenses:									
Economic development	8,602,491	-	8,602,491	-	-	-	8,602,491	-	8,602,491
East Topeka Learning Center	-	-	-	287,674	-	287,674	287,674	-	287,674
Total program expenses	8,602,491	-	8,602,491	287,674	-	287,674	8,602,491	-	8,890,165
Supporting services expense:									
General and administrative expenses	2,182,738	-	2,182,738	-	-	-	2,182,738	-	2,182,738
Total supporting expense	2,182,738	-	2,182,738	-	-	-	2,182,738	-	2,182,738
Total expenses	10,785,229	-	10,785,229	287,674	-	287,674	10,785,229	-	11,072,903
Change in net assets	(1,094,159)	(12,600)	(1,106,759)	(284,040)	-	(284,040)	(1,090,525)	(12,600)	(1,390,799)
Net assets, beginning of year	8,821,013	12,600	8,833,613	-	-	-	8,821,013	12,600	8,833,613
Net assets, end of year	\$ 7,726,854	\$ -	\$ 7,726,854	\$ (284,040)	\$ -	\$ (284,040)	\$ 7,730,488	\$ -	\$ 7,442,814



Agenda Item No. 3F

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

**DISCUSSION with POSSIBLE ACTION:
Community Broadband Task Force**

Encouraging Better Broadband in Topeka and Shawnee County

Recommendations for Policy and Process Improvements Related to Broadband
Infrastructure Development

prepared for

City of Topeka and Shawnee County, Kansas
Joint Economic Development Organization

April 30, 2019



TILSON

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Portland, Maine 04103

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1 Executive Summary

As part of the “Broadband Business Assistance Initiative” to provide encouragement to broadband service providers willing to invest private capital in expanding and improving broadband networks in the City of Topeka and Shawnee County, Tilson has examined the County and City regulation, requirements, and processes with which service providers would interact to deploy fiber optic facilities in the City and the County, and wireless facilities in the rural parts of Shawnee County. As a general matter, Tilson found requirements and processes that are similar to that of many other jurisdictions. Some of the major municipal permitting and regulatory requirements in the City and County include:

- A. Franchises and Master License Agreements: These provide companies with the overarching authority to operate within City or County owned rights-of-way, and also provide compensation to the City or County for the use of those rights of way.
- B. Right-of-way permitting. These permits (under a variety of different names in the City and the County), regulate the details of where and how companies will locate and install facilities along specific roads or streets.
- C. Contractor licensing. The City also requires contractors performing work to meet certain testing and education requirements and be registered with the City.
- D. Zoning requirements. These are the general land use regulations for development, regardless of whether or not the facility is in the public right-of-way. Tilson looked at zoning regulations that might apply to wireless facilities developed in the County’s jurisdiction.

To better encourage broadband infrastructure investment, Tilson recommends that the City and the County consider the following changes to the management of proposals for broadband development, regulations, policies, and procedures:

- 1. The City and the County should appoint a Broadband Project Coordinator to serve as the principal point of interface for companies wishing to develop broadband infrastructure. This coordinator should manage City and County resources and also coordinate with non-municipal organizations affecting broadband infrastructure development, such as the state and electric utilities.
- 2. The City should streamline the permit process for major broadband infrastructure projects. It can accomplish this through the use of development agreements that establish a consistent and predictable framework for a developer and allow permits for work conducted within that framework to receive expedited handling.
- 3. The City should more clearly state that it will allow common underground construction methods for installing fiber optic networks, especially directional boring. It should also clearly state an objective to ensure that networks can economically reach all serviceable premises, and that it will consider alternative construction methods as needed to allow broadband providers to reach this objective.
- 4. The City and County should clarify that they will only require Internet Service Providers who also hold a franchise for video or local telephone services to pay any compensation the City or County currently require from these categories of franchise holders, based on those franchised services.

5. The County should adopt a section in its zoning ordinance tailored to the circumstances of small wireless facilities, to encourage the use of this type of facility.

2 Background

This report stems from the work of the Broadband Task Force established by the Joint Economic Development Organization of Topeka and Shawnee County (JEDO), for whom Tilson has been engaged as a technical consultant. Beginning in 2017, the Broadband Task Force with Tilson's assistance engaged in a stakeholder outreach process and a cost and business-case assessment of various models to improve broadband service within the City and the County. Through the stakeholder engagement process and the other work of the Task Force, the Task Force identified three high-level goals for the City and the County.

1. Make available a minimum of 25/3 Mbps¹ service to virtually all premises within the County – rural and urban alike.
2. Ensure that every household has access to a minimum of 25/3 Mbps service, especially households with school-aged children. In addition, seek to identify ways to allow households who may not be able to afford even reduced-price service access to home broadband.
3. Introduce gigabit services to parts of Topeka and Shawnee County that are currently well-served with broadband infrastructure.

In 2018, the Broadband Task Force, supported by Tilson, prepared and JEDO issued a Request-for-Information (RFI) to private sector broadband providers to identify interest, ability, and barriers for these providers to undertake improvements that will meet these goals. The RFI process was supplemented by in-person and telephonic interviews with potentially interested providers. Through this process, the Task Force discovered substantial interest from a range of existing and new private service providers to make private investments that addressed Goal 3 (gigabit services), and to a lesser extent, Goal 1 (comprehensive coverage). As a result of feedback gathered through this outreach, the Task Force recommended to JEDO that the next phase of the project be a "Broadband Business Assistance Initiative" in which the JEDO, the City, and the County would catalyze private investment by demonstrating Topeka and Shawnee County are "broadband ready." This would happen by collecting data that service providers had indicated was useful for planning networks and conducting business cases, ensuring low barriers to use of public rights-of way, an efficient permitting process, and clear communication and coordination of the City and County's requirements and process.

As one component of this Broadband Business Assistance Initiative, the Task Force asked Tilson to review key policies and processes that impact private broadband deployments and make recommendations for modifications as necessary. That is the focus of this report. In doing so, Tilson focused on the deployment of fiber optic cables, and in the rural parts of Shawnee County, wireless facilities, as these will be the major categories of new facilities that service providers would seek to deploy on a going-forward basis. Tilson reached out to City and County staff in engineering, public works, planning and development review, and legal counsel to understand the City and County processes. Tilson made written requests, participated in telephone calls with staff, and posed follow-up questions. The staff with whom Tilson interacted were helpful, professional, and public-spirited. Tilson reviewed City and County regulations, policies, sample agreements and permits, and compared them

¹ 25 Megabits per second download speed with 3 Megabits per second upload speed, which is the minimum speed threshold currently used by the Federal Communications Commission (FCC) to define broadband to fixed locations such as homes and businesses.

against Tilson's own experience operating in the broadband industry both as a consultant to other governmental clients, as well as provider of engineering, construction, permitting and licensing services to broadband and wireless service providers.

Topeka and Shawnee County are not outliers in their approaches to development of broadband facilities. Their requirements and processes are like those of many jurisdictions across the United States. There is neither a need to perform a wholesale overhaul of the policies that the City and the County have built over time, nor a need for a complete reform of the way that the City and the County do business. However, if the City and the County wish to position themselves as more welcoming than average to businesses who will improve broadband services, Tilson would recommend some enhancements that will ease the development of new broadband infrastructure. These enhancements are the focus of the remainder of this report.

Once JEDO, the City and the County take action on these recommendations, Tilson will prepare a Development Guide for Broadband Infrastructure in Topeka and Shawnee County that will provide companies with a roadmap to City and County information, policies, procedures and requirements relevant to developing infrastructure in the region.

3 City and County Requirements for New Broadband Infrastructure at a High Level

This section is not intended to be a comprehensive review of all City and County requirements. It does provide an overview of the main categories of requirements for fiber optic facilities in the City and the County and wireless broadband facilities in the County, to orient the reader to our recommendations.²

3.1 Franchising and Master License Agreements

The State of Kansas allows cities such as Topeka to request compensation from companies using the public right-of-way to provide services within the City. Using different applicable provisions of state law, the City has over the years provided companies deploying communications services either franchises or master licenses. Franchisees pay the city a percentage of gross revenue from some (but not necessarily all) of the services that they provide. Certain companies who deploy fiber optic facilities in the right-of-way but do not have a franchise do so under a Master License Agreement with the City and pay per foot of plant deployed. Franchises for video services are issued by the Kansas Corporation Commission, but the City may and does request compensation.

The State of Kansas also allows counties to require compensation based on gross revenue from video services providers (such as cable operators), who also typically provide broadband service.

3.2 Right-of-Way Permitting

Prior to installing facilities in specific City or County rights-of-way, developers must also obtain permits from the City or County to do so. Companies developing broadband infrastructure in the City are required to file permit applications along with a site plan on a block-by-block basis for a Temporary Use of the Right-of-Way Permit, for an Excavation Permit and for a Sidewalk Permit (if sidewalks need to be replaced because of an installation at a particular location). An Excavation Permit is required even if the excavation is located outside the public right-of-way and is also required for locating on existing utility poles. The City typically provides an initial review and response within two weeks.

The County requires a Highway Use Permit that briefly describes the location of the facilities to be placed, and reviews are usually conducted the same day as filed. Highway Use Permits are not required of companies who have received a cable franchise from the County.

3.3 Contractor Licensing

The City requires that contractors (and subcontractors) doing work on a fiber deployment project be licensed. That includes general contractors, excavation contractors, and electrical contractors. To become licensed, the contractor must pay a fee, pass a test or complete and equivalent education requirement, and there is a continuing education requirement.

3.4 Zoning for Wireless Facilities

Communication Towers are generally conditional uses under the County's zoning regulations with specially-crafted regulations in the County's Zoning Regulation. Recently, the City and the County crafted a set of Small Cell Wireless Facilities General Design & Aesthetic Guidelines to accommodate an

² The scope of Tilson's current engagement included a review of the County, but not the City zoning requirements for wireless facilities.

increase in the availability and quality of wireless broadband by wireless providers and wireless infrastructure companies that locate small cell facilities in the public right of way (ROW). These Guidelines address Kansas State Statute 66-2019, which addresses the siting of wireless infrastructure and the placement of small cell facilities in public rights-of-way.

4 Establishing a Broadband Development Single Point of Contact

4.1 The Current State

Obtaining information needed to plan a significant broadband network project in the City of Topeka and Shawnee County involves many City and County staff and Departments from each jurisdiction.

Broadband businesses require interactions with City and County attorneys, planning departments, public works and engineering, information technology, and GIS groups. Staff are professional, public-spirited, and diligent, but also face many demands on their time and attention. These businesses must learn and understand to whom within City and County government to turn to get information needed to plan their networks, understand what the City and County expect of them, and understand who can assist when facing unforeseen issues or unforecasted delays. Some organizations that are outside the control of the City and the County, such as the electric utilities and the Kansas Department of Transportation, nevertheless influence the course of development and require coordination.

4.2 The Desired State

The City and County support their desire for private investment to improve broadband services by mobilizing to pave the way for desired development, much as they might for a major employer attraction or expansion opportunity. These efforts are led and coordinated by a single point of contact charged with rapidly and knowledgeably being able to direct broadband businesses to information that they will require, answer questions, manage City and County responsibilities and timelines to support the design and construction of infrastructure, and convene other City and County staff, resources, and leadership. The single point of contact also coordinates with key non-City, non-County organizations, such as utilities and state government, and advocates for the City and County's interest in improved broadband services and infrastructure.

4.3 Recommendations

The City and the County should designate a Broadband Project Coordinator empowered to oversee projects that seek the placement of additional infrastructure. Ideally there will be a single Coordinator between both the City and the County that helps broadband businesses seeking to deploy in either or both jurisdictions. Initially, this coordination role may be assigned to a member of existing staff with responsibilities for some aspect of responding to proposals for broadband infrastructure development who takes on the role of coordinating other City and County responsibilities as well.

When a major project is proposed for construction, the City and County should seek to dedicate a Coordinator to the project for the duration of major construction activities to allow for increased responsiveness in reviewing proposed plans and specifications, processing right-of-way and other permits, coordinating inspections, and providing a liaison with communities in impacted neighborhoods. The Coordinator should work closely and communicate regularly with the broadband businesses' project manager to minimize surprises and to expeditiously identify and raise for resolution unexpected events or circumstances. The Coordinator should be charged with safeguarding the City and County's interests both in achieving improvements in broadband service while minimizing unnecessary impacts on other infrastructure and neighborhoods. The Coordinator should be empowered and encouraged to work with broadband businesses creatively to develop mutually agreeable approaches to design and construction that do so while minimizing those businesses' costs and time to deploy in the City and the County.

A “major” project might, for example, be one with an anticipated implementation of more than one year that addresses at least a quarter of the premises in the City and/or a comparable part of the County. This threshold is proposed as a general guideline and need not be applied rigidly.

5 Streamline the Permit Process for Major Broadband Infrastructure Projects in Topeka

5.1 The Current State

Companies developing broadband infrastructure in the City are required to file permit applications along with a site plan on a block-by-block basis for a Temporary Use of the Right-of-Way Permit, for an Excavation Permit (including for locating on existing utility poles) and for a Sidewalk Permit. A review period of two weeks is typical. If the City identifies a potential utility coordination issue, the City will contact the utility for their review as well.

5.2 The Desired State

Companies undertaking major broadband infrastructure projects in the City will operate within the framework of a general agreement that will cover major requirements of the City regarding subjects such as placement of facilities within the ROW, typical depths, permissible construction methods, restoration requirements, inspections, encroachment into the streets, sidewalks, or other public property, traffic disruption and control, notification and mitigation measures. Plans for work to be performed consistent with the general framework will be submitted by the developer in an electronic form and may include broad segments of the City. Reviews of plans consistent with the general framework will be limited (simply to determine consistency with the general agreement), and conducted on an expedited basis, typically within not more than five business days. Utility coordination is performed through the City and County's Broadband Project Coordinator and the developer's project manager up-front, as part of the creation of the development agreement, and as a matter of ongoing communication.

5.3 Recommendations

Major broadband infrastructure projects should have the option of entering into a more comprehensive development agreement up front than is typical for past franchises and master licenses, an agreement that would streamline the permitting process once a project is underway. Existing franchisees who are undertaking major projects to extend or upgrade infrastructure that involves work in the right-of-way should also have the option of entering into such a development agreement. Such an agreement would include more information about the method(s) of construction that broadband businesses intend to use in their project and that are approved by the City. Such an agreement would include for example cross-section plans for these methods of construction and describe the type of situations in which they may be used, and the major allowed variances from the norm. These agreements should describe the typical requirements for site restoration, traffic management, notification, and protection. They should also establish the documentation that the developer will provide prior to construction about engineered plans and as-builts, either in form of detailed engineering drawings, or preferably, GIS files.

Once the development agreement is approved, construction permitting should be consolidated and streamlined, if the developer's plans and practices are consistent with the parameters approved in the development agreement. The Street or Sidewalk Emergency Use Permit, the Excavation Permit, and the Sidewalk Permit should be provided as a single approval for projects developed under a development agreement. The developer should be allowed to submit plans and receive permits for larger, multi-block areas as the designs become available. The typical size of the areas submitted for review should be established in the development agreement, but areas containing up to 800-1000 premises would not be

unreasonable. Required plans should be limited to one-dimensional (overhead) plans that indicate the placement of the proposed facility within the ROW and the method of construction when the proposed construction method is one of the approved types and within the parameters described in the development agreement. Where a local condition requires a deviation from the approved methods, the City should consider these exceptions on a case-by-case basis but may require greater supporting documentation to support the permit.

These recommendations, once approved, should be included in the Development Guide for Broadband Infrastructure for the City and the County, and could be included as an amendment to the Permit Requirement and Permit Application sections of the Title 12 of the City Code.³ Alternatively, they could be implemented via extension of the existing authority of the Public Works Director to “approve an alternate procedure for submission and notification of excavations; permit applications; permit application details; and payment of permit fees by a franchised utility whose operations require frequent excavations on a continuing basis.”⁴ If so, this authority should be extended to companies operating in the right-of-way under a master license agreement that includes a development agreement.

³ City Code 12.30.080 and 12.30.090.

⁴ City Code 12.30.090(d)

6 Clarify Allowed Construction Methods for Underground Construction

6.1 The Current State

The City requires Excavation Permit applicants to propose a method of construction as part of their application, as does the County of Highway Use applicants. The City does not have pre-approved methods of underground construction. The County Highway Use application contemplates that the applicant may use boring, trenching, or plowing methods for underground construction methods, with explanation required if trenching methods are proposed for underground road crossings.

6.2 The Desired State

Applicants know that the City and County will consider construction methods commonly employed for fiber construction within the ROW appropriate to the range of conditions likely to be found within the jurisdictions. The City and County will also review and consider alternative methods that meet performance-based requirements.

6.3 Recommendations

Directional boring should be more clearly identified as a typically permitted construction method in urban neighborhoods.

While the City should, like the County, identify construction methods that it would typically expect, these should not be the exclusive construction methods permitted. Other methods may be appropriate due to local conditions, such as local underground obstructions or a lack of space in the right-of-way corridor or utility easement. As a matter of overall policy, the City and County should state their willingness to work with developers to identify appropriate and cost-effective methods to allow access to any serviceable premise, based on a balance of the following factors:

- Minimizing the cost to install facilities serving premises within the City to the extent practical
- Minimizing the duration and disruption of work carried out within the right-of-way
- Minimizing the acceleration of depreciation of the right-of-way, taking into account the effectiveness of restoration methods proposed in slowing the depreciation of the right-of-way.

These recommendations, once adopted by the City and the County, should become part of the Development Guide for Broadband Infrastructure in the City and the County.

7 Clarify City and County Franchise and Master License Requirements

7.1 The Current State

Topeka has issued City franchises for local exchange carriers (local telephone companies) and cable companies. Shawnee County has issued cable franchises. However, in 2006 the State of Kansas (through the Kansas Corporation Commission) took over the issuance of franchises for “video services providers” and now AT&T and Cox operate with a state video services franchise. The City and the County are still allowed, however, to request up to 5% of gross revenue on video services. The City’s legacy incumbent telephone company, AT&T, has received a City franchise for local exchange services, and pays 5% of its gross revenue on those services.⁵ Other competitive local exchange carriers have received franchises from the City as well.

More recently, the City has provided access to City rights of way and required compensation using Master License Agreements. Compensation under these agreements is calculated differently and varies by the type of infrastructure. Companies who deploy fiber optic lines are required to pay \$0.74/year per linear foot of fiber optic cable installed, and wireless companies are charged for pole-mounted facilities in the right-of-way. The Federal Communications Commission recently issued an order asserting authority under the Telecommunications Act to preempt local compensation requirements for wireless facilities that it determined to be in excess of costs borne by the municipality for the use of the right-of-way. In an effort to comply with these new federal requirements, the City is now using \$270/year per wireless attachment as its compensation rate for wireless facilities.

With the issuance of the FCC order, municipal compensation requirements are moving toward a more uniform national framework for wireless networks. Wireline networks, whether from a legacy telephone company, a legacy cable company, or a new fiber-based ISP are all converging on an all-fiber optic or increasingly fiber-optic based network. Fiber optic lines are also important for connecting the increasing number of wireless nodes. However, for wireline ISPs, access to the ROW and the cost of that access varies within Topeka based on what services (other than Internet) the company provides over those facilities. The different taxing bases (gross revenue on video services, gross revenue on local exchange services, or linear distance of facilities deployed) mean that different companies can pay different amounts for the same access to the City Rights-of-Way.

Furthermore, since one type of authorization—a franchise—is granted based on the services offered, and another type of authorization—a master license—is offered based on the type of facility used to deliver services, it may not be clear to a company evaluating whether to come to Topeka which framework (or frameworks) the City would seek to apply to it if it is offering Internet service in combination with local telephone services and/or video services.

7.2 The Desired State

Fiber optic networks providing internet access in the City and the County will be subject to equivalent rates of compensation to video and local exchange carrier franchisees who also provide internet access.

⁵ AT&T’s franchise expired in 2010, but the company has continued to pay compensation to the City under it.

7.3 Recommendations

The City and the County should adopt and publish a policy that Internet Service Providers who qualify for either a state video franchise or, within the City, a municipal franchise as a local exchange carrier (local telephone company) will not be subject to compensation requirements from the City or the County beyond any applicable gross revenue tax that the City or the County require on their video or local exchange services, respectively.

8 Provide More Options for Small Wireless Facilities

8.1 The Current State⁶

County zoning regulations are fairly standard for traditional larger, “macro” communications towers. However, some aspects of these regulations are incompatible with the stated goal of accelerating broadband development and could possibly create conflict with recent FCC rulings⁷ and Kansas state law⁸, in particular for smaller-scale wireless facilities that are increasingly a part of wireless networks. These smaller wireless facilities are typically located on utility poles, street furniture, and other structures of similar scale. The City and the County have recently collaborated on a Small Cell Design Guidelines document. This document is tailored to the regulation of small wireless facilities, and generally provides a good basis for responding to the needs to deploy these types of structures. Some limited changes would further remove barriers to the deployment of these types of structures for both fixed wireless broadband service to homes and businesses and for 4G/5G mobile wireless services. However, the Guidelines have not been formally incorporated into the County’s zoning ordinance. The provisions of greatest concern include those dealing with spacing requirements, antenna and concealment requirements, material requirements, and limitations on new and replacement poles.

8.2 The Desired State

The County adopts zoning regulations that allow the widespread deployment of small wireless facilities.

8.3 Recommendations

The County should adopt a section in its zoning ordinance specific to small wireless facilities. Please see the Appendix for a model. The adopted ordinance and application should establish application and fee requirements and a framework for review and processing.

The City and County should make the following modifications to their design guidelines

1. Design specifications:
 - a. Shape: limiting the antennas to cylindrical shapes is problematic. Most 5G antennas are panels, and many 4G applications are using small panels as well. This may also hinder fixed wireless deployments in the rural areas of the county, where many common antennas and access point/antenna combinations are not cylindrical.
 - b. Enclosures: this will preclude 5G, which can’t be shrouded.
2. The spacing requirements could create a situation where one carrier is allowed on a block, and therefore other carriers are prevented from deploying on the same block. That is problematic if it leads to one carrier being precluded from a large area. This could potentially leave the Guidelines open to legal challenge as an “effective prohibition of service.”

⁶ The scope of Tilson’s current engagement included a review of the County, but not the City zoning requirements for wireless facilities. However, since the City and the County have collaborated on a common set of Small Cell Design Guidelines, our analysis and recommendations include the City requirements to the extent that they are included in these Guidelines.

⁷ Declaratory Ruling and Third Report and Order, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (WT Docket No. 17-79) and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WT Docket No. 17-84), released Sept. 27, 2018.

⁸ Kansas State Statute 66-2019

3. Precluding collocation on decorative poles is fine, but it would be much better to allow replacement of those poles with a visually similar decorative pole that can accommodate multiple small wireless facilities.
4. It is unclear if the Guidelines allow new wood poles, not merely attachment to existing poles. Allowing new wood poles, especially in rural zones in the County, as well as in certain commercial/industrial zones would create more options for more rapid deployment.

9 Next Steps

Implementation of the recommendations contained within this report must be carried out by the City and the County themselves. Therefore, Tilson suggests that JEDO refer these recommendations to them for action.

The preparation of these recommendations required Tilson to collect information about the City and County processes and requirements relevant to broadband service providers. Tilson is already using this information to write a Development Guide for Broadband Infrastructure Deployment, another part of the Business Broadband Assistance Initiative. This document will be targeted to companies who wish to invest in the region's broadband infrastructure, providing a convenient roadmap to navigate their interactions with the City and the County. If the City and County act upon the policy and procedure recommendations within this document, those changes can be incorporated into the Development Guide. While the City and the County should not delay in responding to interest from any company seeking to invest in broadband infrastructure pending the finalization of these policy changes and the Development Guide, taking these steps will send an important positive signal to companies who are considering additional investment in the region. The recommendations outlined in this report are not designed as an advantage to be conferred on one or two companies as the result of a future Request for Proposals. Instead, they are intended to be an aid to any company willing to spend its capital to improve broadband service within the City of Topeka and Shawnee County.

JEDO's Broadband Business Assistance Initiative will facilitate private sector investment without making public expenditures to build, fund, or finance the resulting infrastructure. Based on the Request-for-Information and other service provider outreach conducted in 2018, there appears to be substantial private sector interest in the City of Topeka, and likely in the more densely populated parts of Shawnee County as well. Broadband coverage across all rural parts of Shawnee County likely will involve a wireless component and interest in doing so comprehensively at speeds meeting the national broadband definition is less certain. Adoption of these policy and procedure recommendations and the issuance of the Development Guide will extend the invitation to those providers who have expressed an interest investing in network improvements in either the City, the County, or both. It remains to be seen if these further steps alone will result in all the improvements sought in the planning goals established by the Task Force. They will, however, provide better opportunities for broadband businesses and allow the City, the County and JEDO the opportunity to see just how far new private investments can go with appropriate encouragement.

Appendix—Draft Small Wireless Facility Ordinance

This draft ordinance incorporates much of the “City of Topeka/Shawnee County Small Cell Wireless Facilities General Design & Aesthetic Guidelines,” along with Tilson’s recommended modifications. As such, the draft is written as if a new ordinance would codify and supersede that document. Although for wireless facilities, the focus of Tilson’s work was on the County’s regulations, not the City’s, since the Guidelines are a joint City/County document, this draft ordinance is written to refer to both the City and the County. During Tilson’s communication with municipal staff regarding current requirements, City staff indicated that the City is also considering an amendment to its zoning code to administratively allow new poles for small wireless facilities instead of with a Conditional Use Permit approved by the Governing Body.⁹ This step would facilitate the deployment of small wireless facilities and is consistent with the draft ordinance presented here.

In preparing this draft ordinance, Tilson has attempted to ensure its provisions comply with Kansas state law and Federal law. However, prior to adoption, the City and County should have the ordinance reviewed by their respective attorneys for compliance. Tilson has not been engaged to provide legal services, and this document does not constitute legal advice.

Small Cell Facilities Deployment Ordinance

Section 1. Purpose and Scope

Purpose. The purpose of this Ordinance is to establish regulations, standards and procedures for the siting and Collocation of Small Cell Facilities within the jurisdictional boundaries of the City of Topeka and the County of Shawnee in the State of Kansas.

Conflicts with Other Ordinances. This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, the Wireless Provider shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or State laws or regulations.

Section 2. Definitions

As used in this chapter, the following definitions shall apply:

“Accessory Equipment” means any equipment serving or being used in conjunction with a Small Cell Facility including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

⁹ E-mail from Bill Fiander, City of Topeka Planning Director, April 23, 2019.

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of Wireless Services.

"Applicant" means any person who submits an Application to the City or County and is a Wireless Provider.

"Application" means a request submitted by an Applicant to the City or County for the Collocation of a Small Cell Facility, or construction of a new or replacement Utility Pole or Wireless Support Structure for the purpose of Collocation a Small Cell Facility.

"Base station" means a station that includes a structure that currently supports or houses an Antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, Antennas, coaxial cables, power supplies and other associated electronics. "Base station" does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant Application is filed with the authority, does not support or house equipment described in this paragraph.

"City" means the City of Topeka, State of Kansas.

"Collocation" means the mounting or installation of Small Wireless Facilities on a building, structure, Wireless Support Structure, tower, Utility Pole, Base Station or Existing Structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

"County" means the County of Topeka, State of Kansas.

"Existing Structure" means a structure that exists at the time an Application to Collocate Small Cell Facilities on a structure is filed with an authority. The term includes any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

"Public Right-of-Way" means the area of real property in which the City or County has a dedicated or acquired Right-of-Way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as Right-of-Way. "Public Right-of-Way" does not include any state, federal or interstate highway Right-of-Way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

"Replacement" includes constructing a new Wireless Support Structure or Utility Pole of comparable proportions and of comparable height or such other height that would not constitute a Substantial Modification to an existing structure in order to accommodate Collocation of a Small Cell Facility and includes the associated removal of the pre-existing Wireless Facilities, if any, or Wireless Support Structure.

"Small Cell Facility " means a Wireless Facility that meets both of the following qualifications: (A) Each Antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (B) primary equipment enclosures that

are no larger than 28 cubic feet in volume. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

"Small Cell Network" means a collection of interrelated Small Cell Facilities designed to deliver wireless service.

"Substantial Modification" means a proposed modification to an existing Wireless Support Structure or Base Station that will substantially change the physical dimensions of the Wireless Support Structure or Base Station under the objective standard for substantial change, established by the Federal Communications Commission pursuant to 47 C.F.R. 1.40001.

"Utility Pole" means a structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2018 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

"Wireless Services" means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities.

"Wireless Provider" means any person that builds or installs transmission equipment, Wireless Facilities or Wireless Support Structures, or is a provider of Wireless Services.

"Wireless Support Structure" means a freestanding structure, or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. "Wireless Support Structure" shall not include any telephone or electrical Utility Pole or any tower used for the distribution or transmission of electrical service.

Section 2. Regulation of Small Cell Facilities

Agreement Required. Every Wireless Provider shall sign a license agreement¹⁰ that addresses regulations related to the use of the City's and County's Right-of-Way. This Agreement is required prior to placing or replacing any Utility Pole or other Wireless Support Structures or Collocating any Small Cell Facility on any Wireless Support Structure or City or County owned Utility Poles or third-party owned Utility Poles.

Permitted Use. Subject to the provisions of this Ordinance, a Wireless Provider, subject to an Application, shall have the right to construct, maintain and operate Wireless Support Structures, Utility Poles, and Small Cell Facilities along, across, upon, under or above the Public Right-of-Way.

¹⁰ This draft assumes that the license agreement deals with certain requirements like indemnification, insurance, notification, abandonment and maintenance. As such, this draft does not contain those details in the ordinance. If the City or County would prefer to deal with any of those items in the ordinance they can certainly put them in here.

Permit Required. An Applicant shall obtain one or more permits from the City or County to install a Small Cell Facility. An Application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

- A. Application Requirements The Applicant shall provide the following information to the City and/or County, together with the Small Cell Facilities Permit Application:
 - 1. A report stamped by a Professional Engineer licensed in the State of Kansas attesting to the ability of the Wireless Support Structure or Utility Pole to support the proposed Small Cell Facility.
 - 2. The location where each proposed Small Cell Facility, Wireless Support Structure or Utility Pole is to be installed and photographs of the location and its immediate surroundings depicting the Utility Poles or Wireless Support Structures on which each proposed Small Cell Facility would be mounted or location where Utility Poles or Wireless Support Structures would be installed. This should include photo simulations of the completed Wireless Facility.
 - 3. Specifications and drawings prepared and stamped by a Professional Engineer licensed in the State of Kansas for each proposed Small Cell Facility covered by the Application as it is proposed to be installed;
 - 4. The equipment type and dimensions for Antennas and all other Accessory Equipment associated with the Small Cell Facility;
 - 5. A proposed schedule for the installation and completion of each Small Cell Facility covered by the Application, if approved; and
 - 6. Evidence of the consent of the owner of such Utility Pole or Wireless Support Structure if not owned by the Applicant.
- B. Consolidated Application An Applicant for a Small Cell Network involving no more than 25 individual Small Cell Facilities of a substantially similar design shall be permitted to file a consolidated Application and receive a single permit for the installation, construction, maintenance and repair of a Small Cell Network instead of filing separate Applications for each individual Small Cell Facility.
- C. Application Processing
 - 1. The City or County shall render a decision no later than 60 days after the submission of an Application for Collocation of a Small Cell Facility to Existing Structure.
 - 2. Within 150 calendar days of receiving an Application for Collocation of a Small Cell Facility on a new Wireless Support Structure or New Utility Pole, and within 90 calendar days of receiving an Application for a substantial modification to an existing Wireless Support Structure or base station, or any other Application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a), an authority shall:
 - i. Review the Application in light of the Application's conformity with this Ordinance;
 - ii. make a final decision to approve or disapprove the Application; and

- iii. advise the Applicant in writing of the City's or County's final decision, supported by substantial evidence contained in a written record and issued contemporaneously.
 3. The time period for approval of Applications shall begin when the Application is submitted and may be tolled within the first 30 days after the submission of the Application if the City or County notifies the Applicant that such Application is incomplete, identifies all missing information and specifies the code provision, ordinance, Application instruction or otherwise publicly stated procedures that require the information to be submitted. The time period for approval of Applications shall begin running again when the Applicant provides the necessary supplemental information. Additionally, the time period for approval of Applications may be tolled by the express agreement in writing by both the Applicant and the City or County.
 4. The City or County shall deny an Application which does not meet the requirements of this Ordinance. The City or County shall document the basis for a denial, including the specific code provisions or Application conditions on which the denial is based, and send the documentation to the Applicant on or before the day the City or County denies an Application.
- D. Fees¹¹ The Applicant shall pay Application fees to the City or County as follows:
1. [\$500] for an Application to collocate on an Existing Structure, that is not a substantial modification; or
 2. [\$2,000] for an Application for a new Wireless Support Structure or new Utility Pole for a Small Cell Facility, or for a collocation Application that is a substantial modification of a Wireless Support Structure.

Section 3. Design Standards

Small Cell Facilities should be designed to use the smallest size Antenna and Associated Equipment as practicable. Any deviation from the guidelines set forth in Section 4 below must be approved by The City or County.

- A. General Standards All Small Cell Facilities shall conform to the following size requirements. The following design standards are of general applicability and apply to all Small Cell Facilities:
1. Antennas
 - a. Each Antenna shall be located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an Antenna that has exposed

¹¹ The fees set forth in the draft ordinance are the maximum allowed by State law. The City and County should check to see if these are a reasonable approximation of their costs to review the applications and adjust downward accordingly. Additional fees for ROW use (annual) can be added IF the City/County also charge other telecommunications or video service providers, alternative infrastructure or wireless services providers or any investor-owned utilities or municipally-owned commercial broadband providers for the use of public right-of-way. To meet the objective of encouraging broadband deployments, Tilson does not recommend utilizing the adoption of this ordinance as an occasion to increase any current fee levels.

- elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet.
- b. The diameter of the Antenna or Antenna enclosure should not exceed the diameter of the top of the Wireless Support Structure pole, and to the maximum extent practical, should appear as a seamless vertical extension of the pole.
 - c. Where maximum shroud diameter exceeds diameter of the top of the pole, the shroud shall be tapered to meet the top of the pole.
 - d. In no case shall the maximum diameter of the shroud be wider than one- and one-half times the diameter of the top of the pole.
2. Associated Wireless Equipment All wireless equipment associated with the Small Cell Facility shall not cumulatively exceed twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
 3. Pole Height New or replacement poles, together with all Small Cell Facilities and associated equipment shall not exceed 50-feet. Small Cell Facilities placed on existing poles shall not extend the height by more than 10%, or to a height greater than 50-feet, whichever is less.
 4. Color and Concealment
 - a. Color for all Small Cell Facilities shall match the color of the associated Wireless Support Structure.
 - b. Metal flaps or “wings” shall extend from the enclosure to the pole to conceal any gap between the enclosures and the pole. The design of the flaps shall be integrated with the design of the enclosure.
 - c. Screening of ground mounted Small Cell Facility cabinets with a variety of plant material may be required based on the characteristics of the surrounding area. All proposed ground mounted equipment cabinets shall be reviewed for determination of applicability of the landscape screening requirement based on the surrounding context, and where required, for appropriateness of the proposed planting plan and plant specifications.
 5. Owner Identification A four-inch by six-inch (maximum) plate with the Carrier’s name, location, identifying information, and emergency telephone number shall be permanently fixed to the enclosure on the side of the cabinet opposite the direction of vehicular traffic of the adjacent roadway.
 6. Site Distance Small Wireless Facilities shall comply with City of Topeka and Shawnee County regulations regarding sight distance triangles.
 7. Independent Power and Communication Sources Required Small Cell Facilities located on City and County owned Utility Poles or Wireless Support Structures shall not use the same power or communication source providing power and/or communication for the existing facility original to the purposes of the support structure. The independent power source must be contained within a separate

conduit inside the support structure. The Applicant shall coordinate, establish, maintain and pay for all power and communication connections with private utilities.

8. Utility Undergrounding Required All service lines from the power source to the Small Cell Facilities shall be located underground.
9. Wiring, Cables and Conduit Requirements All wiring and cables must be housed within the Wireless Support Structure or Utility Pole or extended vertically within a flexible conduit. Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the Small Cell Facility except completely within the approved enclosures or cabinets. Exposed wires, cables, connections and external conduit are prohibited.
10. Lighting Lighting associated with Small Cell Facilities is prohibited. Any internal lights associated with electronic equipment shall be shielded from public view.
11. Signage Signage is prohibited on all Small Cell Facilities and Wireless Support Structures, including stickers, logos, text, and other non-essential graphics and information other than the owner identification unless required by FCC.
12. New Structures All new Utility Poles and Wireless Support Structures shall conform to the following requirements.
 - a. New Wireless Support Structures and Utility Poles shall not be sited directly in front of a building entrance or storefront, or in conflict with any existing City, County or business signs.
 - b. New Wireless Support Structures, Utility Poles and Antennas should be no taller than functionally necessary, and coordinate with the height of existing poles in the same Right-of-Way to the maximum extent practicable.

B. Design Standards for Small Wireless Facilities on Existing, Replacement or New Utility Poles

These design standards shall apply when an Applicant proposes to attach a Small Cell Facility to an existing, replacement or new Utility Pole.

1. No portion of a Small Cell Facility cabinet or enclosure may encroach at grade or within the airspace beyond the Right-of-Way or over the travel-way.
2. All Small Cell Facilities shall provide a minimum clearance of 10 feet above established grade.
3. Small Cell Facility equipment enclosures shall not protrude more than eighteen (18) inches beyond the face of the Utility Pole to the outermost portion of the enclosure.
4. Small Cell Facility equipment enclosures should be installed flush with the Utility Pole to the maximum extent practicable. In no case shall an enclosure be installed more than four inches from the Utility Pole.
5. All Small Cell Facilities and equipment enclosures shall be mounted on the side of the pole opposite the direction of vehicular traffic of the adjacent roadway.
6. Where multiple enclosures are proposed on a Wireless Support Structure pole, the enclosures shall be grouped as closely together as possible on the same side of the pole.
7. Equipment enclosures should generally be no wider than the maximum outside diameter of the Utility Pole to which it is attached, to the maximum extent possible.

C. Design Standards for Small Wireless Facilities in Integrated Lighted or Unlighted Wireless Support Structures.

These design standards shall apply when Applicant proposes a new or replacement decorative lighting fixture, or other free-standing integrated stealth pole.

1. No attachments may be made to existing decorative light poles. New and replacement light poles are permitted provided they meet the design criteria included in Section 4 of this Ordinance.
2. New and replacement decorative light poles shall match the color, material and design of the existing light poles and Lumineers in the surrounding areas to the maximum extent practicable. Designs shall require approval by the City or County Engineer prior to Application.
3. Equipment cabinets integrated into the support structure base shall have a maximum height of five (5) feet with a total volume of twenty-eight (28) cubic feet or less.
4. The top of the equipment cabinet shall have no flat horizontal surface greater than two (2) inches wide as measured outward from the pole to the edge of the cabinet to prevent objects from being placed on top the equipment cabinet.
5. Transformer base/cabinet shall feature a breakaway design in the event of collisions.

D. Design Standards for Strand Mounted Facilities

1. Antennas and Associated Equipment attached to strands shall not exceed 24 inches in length, 15 inches in width, and 12 inches in height. Exterior antennas, if any, shall not exceed 12 inches.
2. Associated Equipment mounted to Utility Poles shall not exceed the dimensions set forth in Section 4(A)(2) of this Ordinance.

E. Design Standards for Ground Mounted Accessory Equipment

1. In urban areas with curb and gutter, ground mounted Small Cell Facility Accessory Equipment cabinets shall not be located closer than four-feet from the travel-way, edge line, face of curb OR two-feet from a sidewalk, bike lane, or shared-use path as measured to the nearest part of the ground mounted cabinet.
2. In rural sections with open ditches, a ground mounted Small Cell Facility Accessory Equipment cabinet shall be located one (1) foot inside the Right-of-Way line.
3. Ground-mounted Small Cell Facility Accessory Equipment cabinets shall be located a minimum of twelve-feet from any permanent object or existing lawful encroachment in the Right-of-Way to allow for access.
4. Ground-mounted Small Cell Facility Accessory Equipment cabinet locations shall be located a minimum of twelve-feet from driveway aprons as measured parallel to the Right-of-Way.
5. Attachment to Foundation/Slab: Accessory Equipment cabinets must be secured to a concrete foundation or slab with a breakaway design in the event of collisions.
6. Ground mounted Accessory Equipment cabinets must meet required setbacks from the travel way and sidewalks and multi-use paths.
7. Ground mounted Accessory Equipment cabinets shall not exceed three-feet as measured from established grade at the foundation/pad to the top of the cabinet without concealment measures, which shall be approved prior to Application by the City or County Engineer.

F. Special Design Standards for Small Cell Facilities in Areas with Underground Utilities

1. New Utility Poles are prohibited in areas with underground utilities.
2. All new proposed structures shall be designed to integrate all wireless equipment into the structure and shall meet the standards set forth in section 4(c) of this Ordinance.
3. The structure shall be designed to blend into the existing streetscape to the maximum extent practicable and shall require design approval by the City or County Engineer prior to Application.

G. Special Design Standards for Small Cell Facilities in Historic Districts

1. Collocation of a Small Cell Facility on an Existing Utility Pole on a side street or alleyway is preferred in historic districts. All Accessory Equipment should be attached to the Utility Pole when possible.
2. All installations shall require reasonable design or concealment measures such as camouflage to minimize the impact on aesthetics in a Historic District and shall be designed to blend into the existing streetscape to the maximum extent practicable. Design and concealment measures require approval by the City or County Engineer prior to Application.
3. New Utility Poles are prohibited in Historic Districts. All new Wireless Support Structures shall be designed to integrate all wireless equipment into the structure and shall meet the standards set forth in section 4(c) of this Ordinance.
4. Small Cell Wireless Facilities are prohibited within 50-feet of a historic site or structure or historic landmark recognized by the City, County, State or Federal Government.
5. Applicant shall certify that proposed Small Cell Facility installations comply with all applicable City, County, State and Federal historic preservation requirements.

Section 4. Permit Conditions

The Wireless Provider shall install, maintain, repair its Small Cell Facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance and its license agreement. The Wireless Provider shall ensure that its employees, agents or contractors that perform work in connection with its Small Cell Facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

The City and County may require a Wireless Provider to repair all damage to a public Right-of-Way caused by the activities of that Wireless Provider, or of any agent, affiliate, employee or subcontractor of that Wireless Provider, while occupying, installing, repairing or maintaining facilities in a public Right-of-Way and to return the Right-of-Way to the condition in which it existed prior to the damage. If a Wireless Provider fails to make the repairs required by the City or County, the City or County may undertake to complete those repairs and charge the Wireless Provider for the reasonable cost of those repairs.

Section 5. Severability

If any provision of this Ordinance or Application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or Applications of this Ordinance that can be given effect without the invalid Application or provision, and each invalid provision or invalid Application of this Ordinance is severable.



Agenda Item No. 3G

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

**APPROVAL of transfer of liquidated damage funds
to Washburn Tech – Washburn Tech East Project Update**

Washburn Tech East
Extraordinary cost summary
12/19/2018

Rent (50% Nov 2018, plus Dec 2018 - May 2019)	\$	9,100
Temporary furniture		1,245
Antioch facility updates		7,935
Temporary signage & advertising		10,100
Temporary classroom materials		2,500
Salaries - moving and facility updates		5,882
Other additional moving costs		625
WU ITS		4,810
WU ITS - Restoring to original		2,405
Facilities - Restoring to original		<u>5,441</u>
Total	\$	<u><u>50,043</u></u>



Washburn Tech East Project Update

May 8, 2019

submitted by Barbara Stapleton, VP Business Retention & Talent Initiatives

Recommendation: Liquidated Damages from The Hartford related to the ETLC Project

As part of the settlement agreement with the bond company for the original general contractor, the bond company paid an additional \$58,750.00 for contractual liquidated damages on the project. Those funds were deposited in the account for the ETLC project. Washburn Tech was asked to document its liquidated damages due to the delay of the completion of the project. That spreadsheet is attached and documents \$50,043.00 in liquidated damages. It is the recommendation of the Shawnee County Counselor that JEDO authorize the transfer of \$50,043.00 from the project account to Washburn Tech as reimbursement for its liquidated damages.

Design and Construction

While some rain delays continue to slow external completion items, work has continued and is on track for completion in late spring at the Washburn Tech East campus site. Gas and heat have been setup, which allows for interior completion to progress, glass is fully installed, doors are hung, and the exterior EIFS finish is complete and roofing finishing on the exterior structure is occurring, with visible progress throughout.

Washburn Tech East Recruitment Report

In total, 94 students began classes this semester at the temporary location at Antioch Family Life Center and orientation days for new enrollments continue.



Agenda Item No. 4A

**JEDO Board Meeting
May 8, 2019 - 6:00 P.M.**

PRESENTATION GO Topeka 1st Quarter Report

A nighttime photograph of a bridge over a river. The bridge has a stone railing and is illuminated by streetlights. In the background, a city skyline is visible with various buildings and lights. A red banner is in the top left corner, and a red banner is in the bottom right corner.

GO TOPEKA

JEDO Q1 REPORT

January - March, 2019





GO TOPEKA
785.234.2644
GOTopeka.com
719 S Kansas Ave. Ste. 100
Topeka, KS 66603

COVER AND LEFT PHOTO:

Cover: The Topeka Ave. bridge creates a visually appealing, open doorway to Topeka.

Left and below: Topeka & Shawnee County enjoyed the beauty of several snow storms in the first quarter of 2019.



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BOARD OF DIRECTORS

KEY

Momentum 2022 focuses on five key elements to make Topeka & Shawnee County a better place to live, work, play and do business.



Develop
Homegrown
Talent



Create Vibrant
& Attractive
Places



Grow a
Diverse
Economy



Promote a
Positive Image



Collaborate
for a Strong
Community

TOPEKA & SHAWNEE COUNTY VITAL STATS

Updated 2.25.19



DEVELOP HOMEGROWN TALENT

GRADUATION RATE - FOUR-YEAR ADJUSTED COHORT FORMULA (ALL SCHOOLS 2017-2018)(1)

STATE OF KANSAS
87.5%

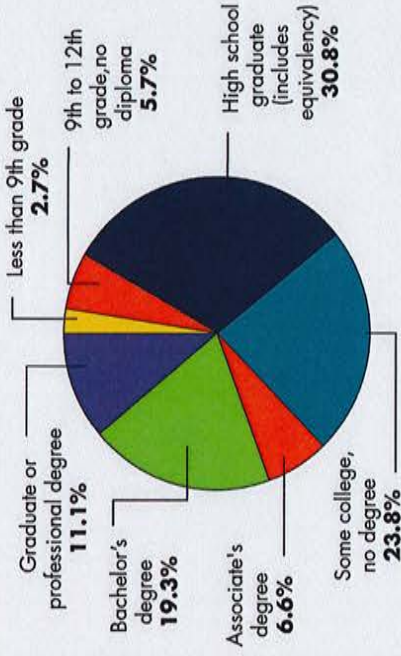
SHAWNEE COUNTY
88.3%

STUDENT-LEVEL METRICS IN SHAWNEE COUNTY (2018)(1)



EDUCATIONAL ATTAINMENT IN SHAWNEE COUNTY (2017) (2)

(Population 25 years and older)



TOTAL CERTIFICATES EARNED IN SHAWNEE COUNTY LESS THAN A 2-YEAR DEGREE (2017)

1,284



CREATE VIBRANT & ATTRACTIVE PLACES

AARP LIVABILITY INDEX(3)

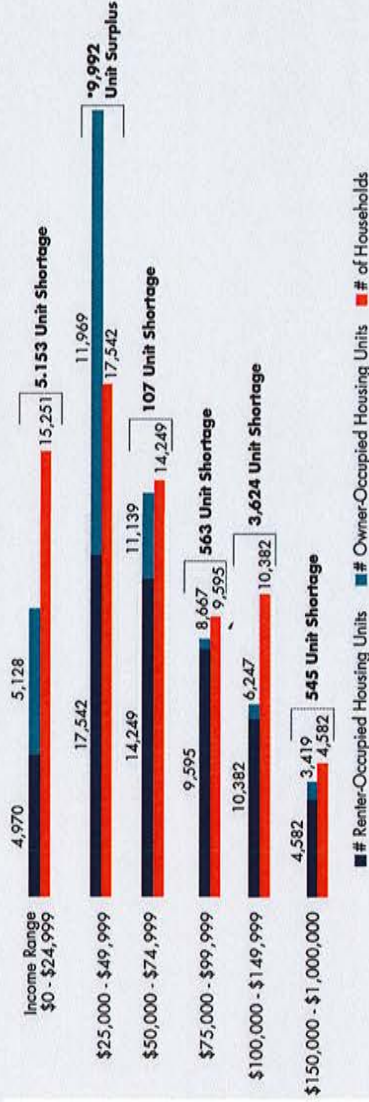
This score rates the overall livability of Shawnee County on a scale from 0 to 100. It is based on the average score of seven livability categories—housing, neighborhood, transportation, environment, health, engagement, and opportunity—which also range from 0 to 100.



PEDESTRIAN FRIENDLY SHAWNEE COUNTY (2017) (4)



AFFORDABLE HOUSING ANALYSIS (2017) (2)



ATTENDANCE AT FESTIVALS AND EVENTS (2017)

481,974
PEOPLE

Ticketed event information provided by Kansas ExpoCentre, Topeka Civic Theatre as well as all Greater Topeka Partnership organizations. Crowd estimation of GTP operated festivals is calculated using the Jacobs Method.

2022 Target: 664,000 people

*The analysis does not account for age or quality of housing units, and there is the possibility that upper income households are likely outcompeting lower income households for the same housing units.

PROMOTE A POSITIVE IMAGE

® **NET PROMOTER SCORE (NPS) (7)**

An index ranging from -100 to 100 that measures the willingness of customers to recommend a product or experience to others.



GROW A DIVERSE ECONOMY

SHARE OF EMPLOYMENT AT BUSINESSES LESS THAN 5-YEARS OLD (2017 Q4) (8)

7,235 OR 9.58% PEOPLE WORK AT A NEW BUSINESS

2022 Target: 7,093 people

ANNUAL MEDIAN WAGE IN TOPEKA (2017) (6)

\$36,000

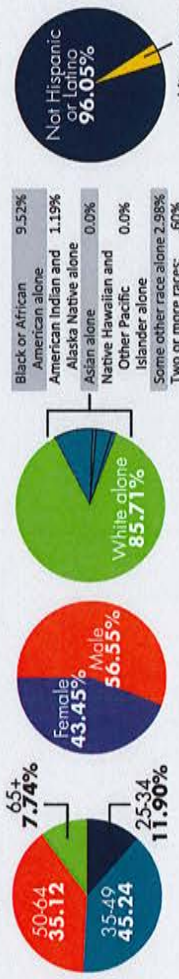
2022 Target: \$39,000



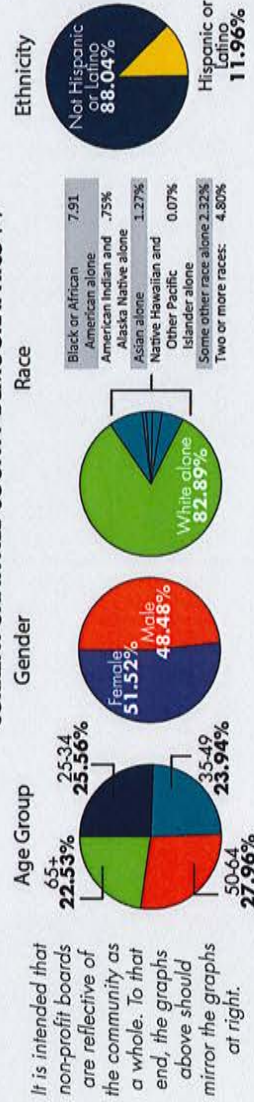
COLLABORATE FOR STRONG COMMUNITY

SURVEY RESULTS ON LOCAL NON-PROFIT BOARD DIVERSITY (2018) (7)

Age Group Gender Race Ethnicity



CURRENT SHAWNEE COUNTY DEMOGRAPHICS (2)



It is intended that non-profit boards are reflective of the community as a whole. To that end, the graphs above should mirror the graphs at right.

PHYSICAL AND MENTAL HEALTH IN SHAWNEE COUNTY (2018) (9)

3.1 POOR PHYSICAL HEALTH DAYS

3.5 POOR MENTAL HEALTH DAYS

Average number of physically/mentally unhealthy days reported in past 30 days (age-adjusted)

INFANT MORTALITY RATE IN SHAWNEE COUNTY (2018) (10)

6.6 WITHIN 1 YEAR, PER 1,000 LIVE BIRTHS

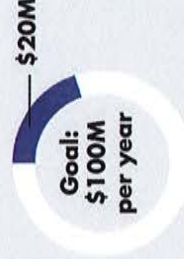
TOTAL PRIVATE JOBS IN SHAWNEE COUNTY (JUNE 2018) (5)

Private = Non-Government Jobs

75,692

2022 Target: 79,000 jobs

PRIVATE CAPITAL INVESTMENT IN SHAWNEE COUNTY (2018) (7)



Capital investment is the amount of money new or current businesses spend to create, expand or improve facilities. For this report, capital investment is captured by GO Topeka during regular communications with companies or when companies work with GO Topeka to receive an incentive for an investment. The numbers are self-reported and exclude the cost of maintenance. GO Topeka makes every attempt to gather this info for all companies in Shawnee County, however some will not be captured due to lack of awareness of the investment.

2022 Target: \$500M

GLOBAL METRICS

GDP IN BILLIONS OF CURRENT DOLLARS (10)

\$10.491 BILLION IN 2016

Gross domestic product (GDP) is equal to the sum of personal consumption expenditures, gross private domestic investment, net exports of goods and services, and government consumption expenditures and gross investment.

\$10.655 BILLION IN 2017

2022 Target: \$11.500 GDP in billions of current dollars

PERCENT OF STUDENTS ELIGIBLE FOR FREE OR REDUCED LUNCHES (1)

51.9%

2022 Target: 33%

NUMBER OF PEOPLE WORKING, BUT NOT LIVING IN SHAWNEE COUNTY (2015) (8)

37,123 OR 36.8%

PER CAPITA INCOME IN SHAWNEE COUNTY (2017) (10)

\$44,834

2022 Target: \$50,000

POVERTY RATE IN SHAWNEE COUNTY (2017) (11)

11.7% TOTAL POVERTY RATE

15.3% CHILD POVERTY RATE

2022 Target: 10%

Sources: 1 Kansas State Department of Education, 2 U.S. Census Bureau, ACS 5-Year Estimates, 3 AARP Livability Index, 4 City of Topeka Planning Department, 5 Quarterly Census of Employment and Wages, 6 Occupational Employment Statistics, 7 GO Topeka, 8 U.S. Census Bureau, Longitudinal Employer-Household Dynamics, 9 County Health Ranking, 10 Bureau of Economic Analysis, 11 U.S. Census Bureau, Small Area Income and Poverty Estimates

PROVIDED BY





RETENTION & EXPANSION PROJECT APPROVALS

During the first quarter, Projects Sherwood and Blueberry received funding approval, and Project Jingle announced capital investment plans as well as jobs at Hill's Pet Nutrition.

Project Sherwood is an existing manufacturing/distribution company looking to expand in our community. An investment of **\$17.7 million** in plant and distribution center additions and improvement expenditures will occur. Over the next 5 years, they will also be adding **47 new jobs** with an **average wage of \$40K annually plus benefits**. At the February meeting, JEDO approved up to **\$206,800 in incentives**.

Project Blueberry is a manufacturing company that will be expanding in the community. They have committed to investing **\$30 million** in plant equipment additions and improvement expenditures will occur. At a special March meeting, JEDO approved up to **\$66,000 in incentives**.

All incentives for projects are performance based, to be paid out as earned. The details of the agreements for both Projects Sherwood and Blueberry will be outlined via formal contracts and presented for JEDO's approval at a future JEDO meeting.

Hill's Pet Nutrition, known as **Project Jingle**, announced plans to make a **capital investment of \$20 million** to expand its research and development facility, adding six full-time jobs with benefits and bringing an **economic impact of \$55.7 million to Shawnee County**. Project Jingle received funding approval in 2018 from JEDO and contract approval in February 2019 from JEDO. The expansion **supports the animal health industry** and promotes Topeka & Shawnee County's unique position along the Animal Health Corridor.



CAPITAL INVESTMENT

PROJECT
SHERWOOD
\$17.7M

PROJECT
BLUEBERRY
\$30M

PROJECT
JINGLE
\$20M

BUSINESS ATTRACTION

Business Attraction prospects of all sizes and industries are looking at Shawnee County as potential opportunities for growth. Deal flow has been steady with GO Topeka's partner the Kansas City Area Development Council (KCADC) as the source of the majority of the new business leads. Staff is also working on a couple major projects that came directly to GO Topeka. There were **four new projects** in the first quarter and there are currently **29 new business projects in the pipeline**.



PROJECT
PIPELINE
29



NEW
PROJECTS
IN Q1
4

RETENTION & EXPANSION



PROJECT
PIPELINE
17



NEW
PROJECTS
IN Q1
2



ONSITE
VISITS
IN Q1
24

UPDATES



GO Topeka welcomed Rhiannon Friedman to the staff. Rhiannon will work on both new and existing business projects as the business development manager.

During the first quarter, the GO Topeka Board of Directors held the first of a series of retreats. JEDO members were also invited to attend. The retreat focused on incentive guidelines and target industries. The group also helped to draft a new vision and mission for GO Topeka that will be formally adopted later this year.



On February 13, the Greater Topeka Partnership hosted a Business Unwind to show off the new combined home of the Chamber, GO Topeka, Downtown Topeka, Inc. and Visit Topeka.

ENTREPRENEURIAL & MINORITY BUSINESS DEVELOPMENT

SMALL BUSINESS INCENTIVES



INCENTIVES
ISSUED YTD
\$60,380



INCENTIVES
ISSUED YTD
25



CURRENTLY
IN PIPELINE
30

FASTTRAC NEW VENTURE



STUDENTS
CURRENTLY
ACTIVE IN THE
PROGRAM
15



ACTIVELY IN
BUSINESS
29

TSC3 PLEDGE CAMPAIGN



CURRENTLY
CONDUCTING
STARTUP SURVEY

THA EMPOWERMENT



26
ATTENDEES
INTERESTED IN
STARTING A
BUSINESS



PTAC

(PROCUREMENT TECHNICAL ASSISTANCE CENTER)



NEW
CLIENTS
10



COUNSELING
HOURS
74

TOTAL CONTRACT AWARDS FOR KS PTAC SUBCENTER TOPEKA

(Service area covers 26 counties in NE KS)

\$ 360,726 = FEDERAL

\$ 76,046 = STATE & LOCAL

\$436,772 TOTAL AWARDS

SOCIO-ECONOMIC STATS ON FEDERAL CONTRACT AWARDS

SMALL DISADVANTAGED BUSINESS **5**

WOMAN OWNED SMALL BUSINESS **2**

HUBZone **1**

SERVICE DISABLED VETERAN OWNED SMALL BUSINESS **2**

SHAWNEE COUNTY WAS AWARDED



CONTRACT
AWARDS
30.8%



VALUE
\$134,362

RETURN ON INVESTMENT (ROI)

FOR EVERY \$1 JEDO INVESTS, PTAC GENERATES

\$6.24

(This will increase as small businesses win contracts, last year it grew to a \$347 return.)

INNOVATION & ENTREPRENEURSHIP

The Innovation & Entrepreneurship group has hit the ground running in 2019, kicking the year off with four Task Forces under the leadership of the Innovation Advisory Board (IAB): (1) Ecosystems Best Practices, (2) Space, (3) Innovation Fund and Incentives and (4) Organizational Structure. Each Task Force is drafting specific objectives, measures and initiatives that will serve the vision of building a high-performance, innovation-based entrepreneurial ecosystem.

This quarter has also been focused on communicating this strategic framework to many of Topeka & Shawnee County's stakeholders. As a result, the Momentum 2022 Entrepreneurship Workgroup saw a greatly increased number of interested community volunteers ready to help build our entrepreneurial ecosystem. Five new working committees were formed: (1) Community Building, (2) Communication, (3) Mentorship Network, (4) Smart City and (5) Events.

This quarter has seen an increased sense of urgency of finding ways to not only catch up with regional efforts but to leapfrog and create a true hub of innovation right here in Topeka. The IAB visited the Bioscience Technology Business Center in Lawrence, KS and the K-State Foundation Office Park in Manhattan, KS as well as many other incubators, accelerators and office parks to benchmark ourselves and to find needs in the region that could turn into Topeka's opportunities. The upcoming months will see more exploration of how Topeka can tie into regional economic development efforts and how it can capitalize on its location in the Animal Health Corridor. One focus of the strategy is to create a space where innovative organizations can flourish and grow. The IAB is in the process of evaluating locations for a downtown innovation center and an innovation campus with wet lab and office space. This due diligence process will continue in Q2 of this year.

There were a number of key regional events that are relevant to Topeka's entrepreneurial ecosystem, our team attended the Road to Global Entrepreneurship Summit (GES) Heartland, InvestMidwest and the Innovation and Bioscience Day at the Capitol.

The Road to GES Heartland event in Overland Park, KS, brought together around 600 entrepreneurs, investors and public and private sector leaders from across the Heartland who are building innovative solutions in agriculture, health and connectivity. The event was designed to build excitement for the ninth GES in the Netherlands in June 2019. The GTP attended the GES Heartland event on behalf of Topeka & Shawnee County and was able to discuss the vision of a thriving entrepreneurial ecosystem with many of the key leaders in attendance, including Secretary Pompeo.

In March, Kansas City hosted the 20th annual InvestMidwest Forum, a venture capital conference that showcased pitches from 36 companies from throughout the Midwest in three industry tracks: life sciences, technology and food/ag/bioenergy. Over 300 attendees including investors from top venture capital firms joined the event. InvestMidwest has helped generate over \$1 billion of investment in the past 17 years and is therefore an important venue to connect to funding resources for Topeka & Shawnee County's entrepreneurs. GTP was in attendance to strengthen the investor network in the region. Only 4 of the 36 companies are from Kansas – there is lots of opportunity to grow this number!

BioKansas, the Kansas affiliate of the Biotechnology Industry Organization, hosted a diverse delegation of entrepreneurs, investors, community supporters and innovation champions at the Topeka Capitol in March, collectively educating legislators on the need for resources and continued support for innovators and innovative tech and life science companies in the state of Kansas. The group specifically discussed the need for state matching grants for federal SBIR/STTR grants targeted at early stage startups to make Kansas more competitive in attracting and retaining entrepreneurs in the biosciences in comparison to neighboring states and emphasized that the Angel Investor Tax Credit program was an effective tool for startups to attract angel investment dollars and that it should be continued. The discussions were well received by legislators; GTP will continue to advocate on behalf of local entrepreneurs and businesses at state and federal levels.

712 INNOVATIONS

COWORK | INCUBATOR



February 8-10, Topeka joined 193k+ alumni communities in over 150 countries by hosting its first Techstars Topeka Startup Weekend (SUW), an exciting event for communities ready to make a big impact on their entrepreneurship ecosystem and entrepreneurs.

The event had two objectives.

1. After 54 hours of collaboration, participants pitched a company they just created - moving from idea to minimum viable product and customer validation to prototype - with team members they have only met the previous Friday.

2. For participants and community volunteers

to have fun learning and growing together a fantastic entrepreneurship ecosystem that knows how to support successful entrepreneurs! The event attracted 31 entrepreneurs from as far away as Dallas to work with our facilitator, Michael Ryan Norton. An experienced founder-entrepreneur from San Diego, CA., Michael was also instrumental in developing TechStars' SUW format. He was excited to learn more about Topeka's ecosystem and by facilitating SUW Topeka he checked Kansas off his bucket list, he is now only 2 away from having facilitated a SUW in ALL 50 states!

712 Innovations is developing a Business Incubator that will launch in August 2019. Momentum 2022 Mentorship, Community Development and Events committees have been engaged to bring community support into the design of a catalyst tool for local and regional economic development. Continuing to spearhead downtown Topeka's nascent Innovation District the Incubator's focus will be on providing founders of startup and early-stage scalable-companies business assistance services and programming to fast-track growth. The cohort program under development will use a founder-led mentor model with a personalized plan tailored to the founder's business goals. The incubator will also include extensive networking opportunities and office space if needed to develop a growth track for founders with a passion for building their business surrounded by a like-minded, supportive environment.

MONTHLY EVENTS

CoWork Wednesdays – Wednesdays, 9 a.m. – 5 p.m.

SCORE at 712 Innovations – Thursdays, 9 a.m. – 12 p.m.

1MC TOP – 1st Wednesday, 9 – 10 a.m.

Topeka Social Media Club – 4th Wednesday, 12 – 1 p.m.

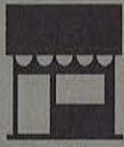
Audio Workshop – 3rd Thursday, 6:30 p.m.

Teen STEAM – 3rd Wednesday, 4 – 5 p.m.

Teen Science Café – 3rd Thursday, Boys/Girls Club Teen Center



FORGE



19
Events/meetings
in Q1



2,017
Members attended events
YTD



1,998
Members YTD



222
Volunteers at events
YTD

Forge wrapped up the first quarter of 2019 with eight events ranging from Zumba to volunteering with KTWU and everything in between.

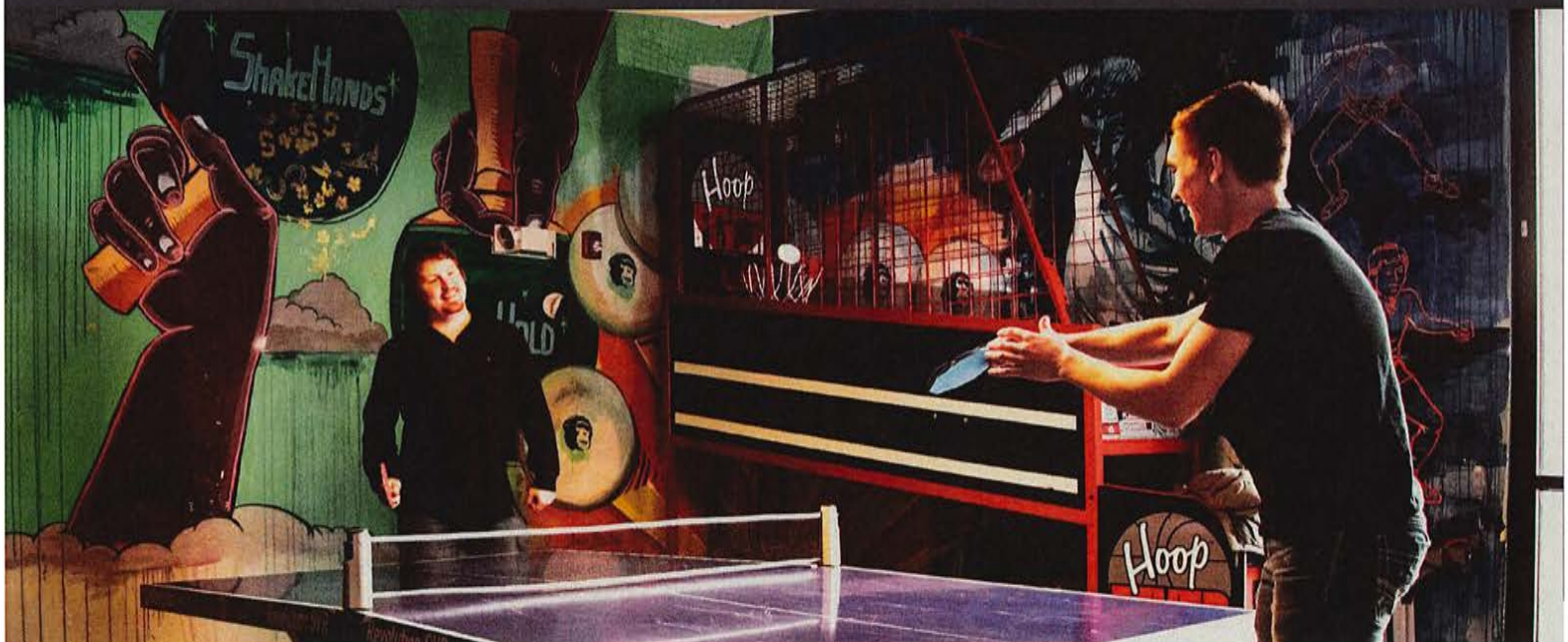
To kick off the month, Forge let the good times roll and turned the GTP office into an apartment on Bourbon St. complete with homemade gumbo, kings cake, masks and live jazz music from Jasper Shrake!

Forge's Diversity and Inclusion herd hosted Cue-Up with Forge, a billiard tournament at the Viking Grille. They worked with the union at Goodyear to help get the word out to their young talent that Forge was coming to their neck of the woods. This is all a part of our D&I Herds mission to not only diversify Forge's events, but the community as well.

Forge packed in Dillon House for their first New Member Welcome of the year where 68 new faces got a crash course in Forge 101. Each chair of the 7 herds of Forge got a chance to talk about what their mission is and how they go about implementing it throughout the community.

The Topeka Youth Commission hosted a press conference as well as their first meeting this month. This diverse group of motivated high school students are gung-ho and ready to have their voices heard.

"We are thrilled to join forces with the newly formed Topeka Youth Commission," said Lindsay Lebahn. "This partnership will help ensure Topeka's emerging talent roots run deep throughout the community. The future of Topeka is now, and we are doing everything we can to make sure Topeka is a place where all young talent want to come, stay, work, play, connect and lead."



WORKFORCE & TALENT

2019 Q1 NUMBERS

TOTAL POPULATION*

124,538 in Topeka
175,276 in SNCO

Topeka down **.2%** from last year
SNCO down **.1%** from last year

2,843,739 in Kansas
258,392,000 in USA

JOBS

86,522 in Topeka
102,848 in SNCO

Topeka up **.1%** from last year
SNCO up **.8%** from last year
1,517,656 in Kansas
159,469,452 in USA

AVERAGE WAGES

\$45,757 in Topeka
\$45,689 in SNCO

Topeka up **3.5%** from last year
SNCO up **3.5%** from last year
\$45,740 in Kansas
\$55,713 in USA

LABOR FORCE PARTICIPATION

63,547 in Topeka
91,662 in SNCO

Topeka up **.9%** from last year
SNCO up **1.0%** from last year

1,478,977 in Kansas
162,793,000 in USA

LABOR FORCE PARTICIPATION RATE

51.03% in Topeka
52.30% in SNCO

Topeka up **1.2%** from last year
SNCO up **1.1%** from last year
52.01% in Kansas
63.00% in USA

EMPLOYMENT-POPULATION RATIO

48.85% in Topeka
50.18% in SNCO

Topeka up **1.0%** from last year
SNCO up **.9%** from last year
50.02% in Kansas
60.44% in USA

EMPLOYMENT

60,835 in Topeka
87,951 in SNCO

Topeka up **.8%** from last year
SNCO up **.8%** from last year

1,422,531 in Kansas
156,167,000 in USA

UNEMPLOYMENT RATE

4.3% in Topeka
4.0% in SNCO

Topeka up **3.7%** from last year
SNCO up **5.5%** from last year
3.8% in Kansas
4.1% in USA

*Total Civilian Noninstitutionalized Population



iNCLUDED DIVERSITY BUSINESS COUNCIL

iNCLUDED seeks to foster inclusiveness in the business community, which means aligning programming with others doing the work in the community, as well as hosting programming such as panels and guest speakers on topics like supplier diversity, legal education equity, unconscious bias, building critical relations, innovation and resourcing, business collaboration, employee relations, and diverse and cultural understandings. In the first quarter of 2019, iNCLUDED hosted a series of listening sessions to engage, share and listen to feedback about the direction and work in the community to move our business community forward and create a more inclusive and competitive business climate from a talent and business attraction, expansion and retention perspective. The sessions garnered a great amount of information and feedback. A subsequent survey sought input to build concepts and support for moving iNCLUDED's strategy and work forward and those outcomes were shared in a follow up meeting in March.



JEDO SCHOLARSHIPS

48

Students assisted
by JEDO
scholarships

\$27,250

In scholarships
awarded

SOTO RIDE TO-WORK

2,617

SOTO trips
in Q1

12,078

TRIPS TOTAL
SINCE PROGRAM
BEGAN

NeTO RIDE TO-WORK

2,012

NeTO trips
in Q1

CaRE PROGRAM 309

CaRE bus passes
used program to
date

25

CaRE bus passes
used YTD





WASHBURN TECH EAST

In the first quarter of 2019, Washburn Tech moved forward with classes beginning on January 7, in the temporary location at Antioch Family Life Center. Washburn Tech East's commitment to beginning classes on time ensured that 94 students began their semester course work in the first month of the year. In addition, Student Orientation Days continue to occur

for incoming students in the following programs at Washburn Tech East: Building Technology, Commercial Truck Driving, Healthcare, Adult Education and ESL. Based upon student interest and beginning enrollment numbers, Washburn forecasts that the student orientations will continue to be well attended. Construction also began again during the first quarter with a new general contractor. While some rain delays slowed some external completion items, work has continued and is on track for completion in late Spring. Gas and temporary heat has been setup, which allows for interior completion to progress, glass is fully installed, doors are hung and more EIFS finishing and roofing finishing on the exterior structure is occurring, with visible progress throughout.



The priority goals for TogetherTopeka in Q1 have centered around an effort to grow our network allowing us to build capacity by identifying individuals and organizations who support the goal of aligning the talent pipeline in Topeka and Shawnee County.

- TogetherTopeka hosted all area superintendents in January to discuss continuous improvement efforts throughout Shawnee County, an integral part of the state accreditation model.
- 616 future students at Washburn Institute of Technology signed letters of intent to participate in career programs designed to meet future workforce needs.
- In February, the focus was on collective impact striving to identify opportunities for systems change that will be significant and lasting for the community.
- TogetherTopeka wrapped up March bringing together community stakeholders to take a look at existing needs to determine priority outcomes.



HIGHLIGHTED UPCOMING EVENTS

MAY

- 7 PTAC Procurement Fair
- 9 **Small Business Council Reception**
- 11 Country & Food Truck Festival
- 14 **Small Business Awards**
- 15 Leadership Greater Topeka Graduation
- 22 **Business Unwind @ Washburn Tech East**

JUNE

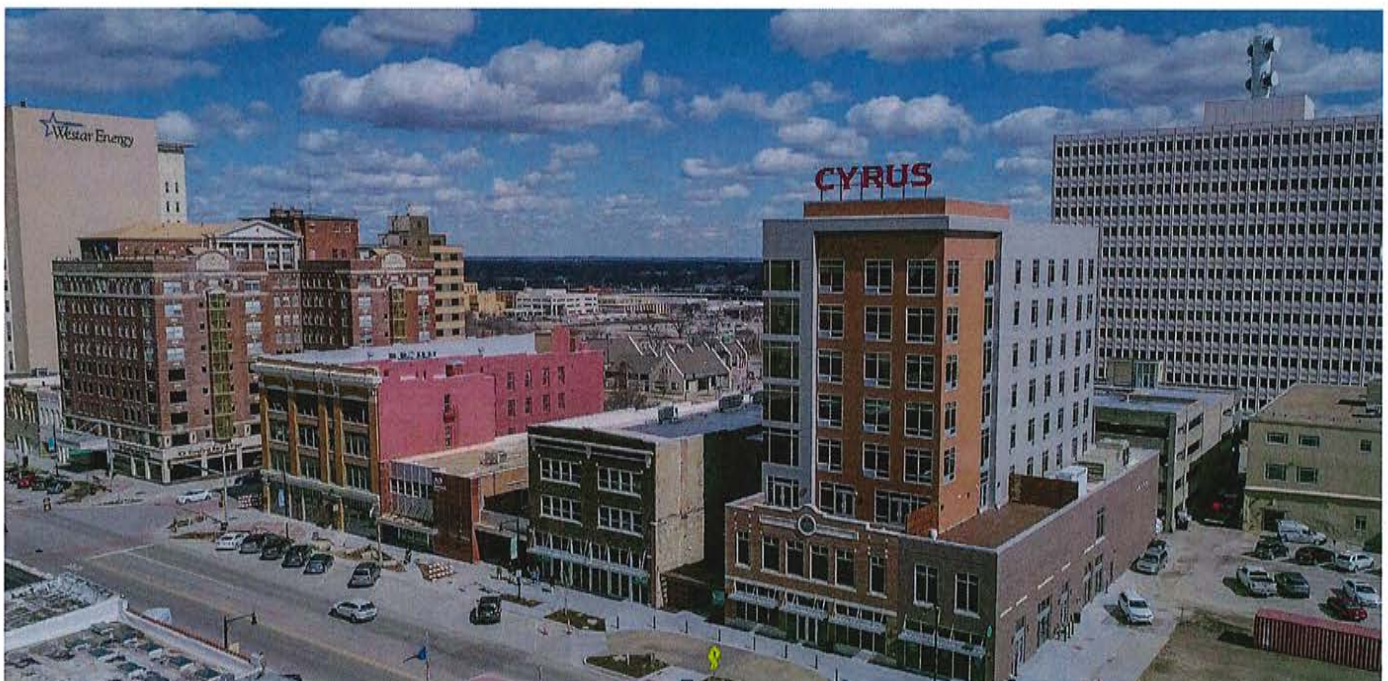
- 4 Top City Interns Kick Off
- 6 **Quarterly Entrepreneurship Meetup**
- 12 MO22 Investors Briefing

JULY

- 18 **Business Unwind @ Westar**
- 23 Business Unwind @ Lake Shawnee

AUGUST

- 27 **Rock & Food Truck**
- 2 Top City Teachers Reception
- 5 **GTP Golf Tournament**
- 10 Cruisin' the Capitol
- 17 **Taste of Topeka**
- 20 Business Unwind @ Lewis Toyota
- 22 **Women of Influence**
- 31 Touch-A-Truck



COMMUNITY SPOTLIGHT

Betty Phillips Park Basketball Court Mural Project



The basketball court at Betty Phillips Park received a makeover in 2018. The Basketball Court Mural Project is located at 3301 SE Irvingham St. and is the first of several courts to receive this attention and creativity.

This community-wide project was designed to encourage community engagement, increase neighborhood pride & safety, provide an improved outdoor space for youth of all ages, encourage recreation and healthy activities. It will also serve to enhance the quality of life and quality of place in this very deserving Hi-Crest community.

Inspired by projects completed by a national organization called Project Backboard, the Community Engagement, Pride, & Service Work Group of Momentum 2022 spearheaded this collaborative project.

Participating as core partners in the project were the Hi-Crest NIA, ARTSConnect, Heartland Visioning/Momentum 2022, Shawnee County Parks + Recreation, Spectrum Paints and Federal Home Loan Bank Topeka.

Lead artists Oshara Hayes and Robert Tapley Bustamante worked with ideas and sketch concepts from youth artists of the community, staff of Shawnee County Parks + Recreation and members of the Hi-Crest NIA to create the design.

Some of the features of the design include pieces for all ages to enjoy:

- Heart shaped basketball
- Quote - "Dare to Dream" in English and Spanish
- Quote - "You're More than a Kid" - Center of the Heart Shaped Graphic
- Signing of community kids initials on the stars
- this will be an ongoing activity to keep the community engaged
- Four by Four Game
- Hopscotch Game

The Betty Phillips Park Basketball Court Mural Project's Community Dedication and Celebration was held on Saturday, November 3, 2018 with Commissioner Cook officiating. Children and residents are finally able to get out and enjoy this new feature of their neighborhood.

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INDEX

1 Million Cups Topeka

1MC TOP is a free networking event designed to engage and connect entrepreneurs with the greater business community. The first Wednesday (9 - 10 a.m.) every month, two startups present their business model in a friendly, fast-paced pitch session.

712 Innovations

The mission of 712 Innovations is to target programs, resources and services that accelerate the successful development of start-up and fledgling founder-operated small business entrepreneurs and entrepreneur teams building scalable high-growth businesses. 712 Innovations is the hub of the Topeka & Shawnee County entrepreneur ecosystem and works closely with its ecosystem and corporate partners to connect entrepreneurs with our network to accelerate knowledge, growth and revenue.

712i Incubator

A three month to two-year program for businesses in their late first or second stage. This program helps them scale up by providing goal analysis, dedicated focused mentoring and facilitated networking opportunities.

712i Pre-Incubator

Supports nascent entrepreneurs by providing an office space for developing and testing a fledgling business idea. This most commonly occurs while working with the Washburn Small Business Development Center or GO Topeka's Entrepreneurial & Minority Business Development programs.

Business Attraction & Retention

Business Attraction focuses on enticing new businesses and organizations to select Topeka & Shawnee County as their home, encouraging them to invest in the community as a viable place to grow. Marketing the community's assets and putting Topeka & Shawnee County in the best light possible during the site selection process are key components of business attraction.

Business Retention & Expansion's (BRE) role is to ensure existing Topeka & Shawnee County businesses have every opportunity to grow and thrive in the community. The BRE program utilizes a variety of tools and resources to assist the community's corporate citizens. Building strong partnerships with businesses supports the prosperity of the community's private sector while growing a more diverse economy.

CoWork Space

Attractive to work-at-home professionals, independent contractors and workers whose career requires frequent travel.

Employment-Population Ratio

A measure of labor market strength; it is calculated by dividing the number of employed workers in an area by the total civilian non-institutionalized population aged 16 and over in that region.

Entrepreneurial and Minority Business Development

Ensures small businesses in Topeka & Shawnee County constantly receive the support they need to start, grow and sustain their businesses. Incentive programs, educational sessions and counseling are provided to help them flourish.

Entrepreneurship Ecosystem

The social and economic environment affecting local/regional entrepreneurs and entrepreneurial businesses. Topeka & Shawnee County's Entrepreneurship Ecosystem has 40 organizations working to provide financing, training, or resources to entrepreneurs at all stages of their ventures.

Forge

The mission of Forge is to attract and retain young talent. The viability of the community is dependent upon its ability to recruit, retain and train young talent. But the mission is not simply about the replacement of current workforce - it is about driving the innovation and creativity that moves us forward.

HUBZone

A United States Small Business Administration (SBA) program for small companies that operate and employ people in Historically Underutilized Business Zones

INCLUDED

Backed by GO Topeka and the Greater Topeka Partnership, INCLUDED aims to be the authority on diversity and inclusion within businesses and organizations throughout the region.

Innovation

Defined as executing an idea which addresses a specific challenge and achieves value for both the company and customer. Entrepreneurship describes the capacity and willingness to develop, organize and manage a business venture along with any of its risks. Entrepreneurship and Innovation are very closely related. In combination, they are aimed at creating value and bettering people's lives. An entrepreneurial ecosystem allows for the fast flow of talent, information, and resources so that entrepreneurs can quickly find what they need at each stage of growth. As a result, the whole is greater than the sum of its parts.

JEDO ROI

Total contracted awards divided by \$70,000 (JEDO Investment in Kansas PTAC) = ROI

JEDO Scholarships

JEDO Scholarships are awarded to Washburn Institute of Technology students in high demand fields from programs like practical nursing and advanced systems technology. These scholarships impact students' lives, helping to grow our workforce and support those students to earn a certificate and obtain well paying positions.

Labor Force Participation Rate

A measure of the active portion of an economy's labor force. It refers to the number of people who are either employed or actively looking for work. Labor Force Participation Rate. A measure of the active portion of an economy's labor force. It refers to the number of people who are either employed or actively looking for work.

Procurement Technical Assistance Center (PTAC)

Created by congress in the 1980s to assist businesses involved in government contracts. Today, Kansas PTAC assists qualified businesses in locating, obtaining and performing federal, state and local government contracts. Kansas PTAC is funded through a partnership that also includes Pittsburg State University, Johnson County Community College, Wichita State University and GO Topeka.

Project Pipeline

The projects Business Attraction and BRE are working on

SOTO | NeTO

The SOTO (South Topeka) and NeTO (North & East Topeka) Ride to Work programs are pilot transportation initiatives for South Topeka and North & East Topeka employers. The programs help remove transportation barriers for employers along the South Topeka corridor and in the East and North Topeka communities.

TogetherTopeka

TogetherTopeka is the brand creation of collective impact initiatives in the Momentum 2022 Strategy, incorporating all education and training providers, from cradle through career, non-profits, social service providers, faith-based organizations and the business community.

Topeka Rescue Mission's Career Readiness Education program (CaRE)

The Topeka Rescue Mission's Career Readiness Education program provides workforce training for TRM residents. The bus pass program assists TRM in ensuring students in the program have transportation access to internships and employment opportunities in the community.

Workforce & Talent

Focuses on convening partners from businesses to talk through their current and upcoming needs. As a result, schools can educate and train students to go from graduation to the workforce and companies and organizations get the satisfaction of hiring a locally-educated workforce.



A Greater Topeka Partnership Organization



Prepared for JEDO
Joint Economic Development Organization