

INCENTIVE AGREEMENT

This Incentive Agreement is effective December 21, 2020, and is entered into between the following parties:

GO TOPEKA: GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

719 S. Kansas Ave., Suite 100
Topeka, KS 66603
Phone: (785) 234-2644
Fax: (785)234-8656
Contact Person/Title: Molly Howey, President

HILLS: HILL' S PET NUTRITION, INC.

400 SW 8th Avenue
Topeka, KS 66603
Phone: (785) 354-8523
Fax: (785)

Contact Person/Title: Ed Oblon, Vice President, Hill's Pet Nutrition

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

WHEREAS, HILL' S is contemplating in vesting approximately Thirty-One Million Four Hundred Thousand Dollars (\$31,400,000.00) to construct improvements to its facilities, and equip additional production space in Shawnee County, Kansas; and

WHEREAS, HILL'S intends to expand its operations and, in the process, create thirty-three (33) full time jobs over the next approximately five (5) years; and

WHEREAS, GO TOPEKA desires to assist and promote HILL' S by offering up to Three Hundred Forty-One Thousand Dollars (\$341,000.00) in employment, training and investment incentives; and

WHEREAS, HILL'S acting in reliance upon the incentive s 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. Local Employment Incentive. GO TOPEKA agrees to provide to HILL’S an employment incentive of up to Two Hundred Fourteen Thousand Five Hundred Dollars (\$214,500) (the “Employment Incentive”) for new Full Time Employment Positions created by HILL’S over five (5) years, subject to the limitations and requirements outlined herein. The eligibility for Employment Incentive for a new Full Time Employment Position is based on annual employee compensation as follows:

<u>Annual Compensation</u>	<u>Total Employment Incentive</u>	<u>Per Year</u>
• \$56,000 or more	\$6,500	\$1,300

A Full Time Employment Position receiving compensation of less than \$56,000.00 annually is not eligible for an Employment Incentive.

As used in this agreement, a “Full Time Employment Position” is an employee position that includes approximately 2080 paid hours of service in Shawnee County, Kansas, during each calendar year. For purposes of determining eligibility for Employment Incentives (and the amount thereof), compensation includes salary, overtime, vacation (and/or paid time off), holidays, bonuses or other cash incentives paid by HILL’S to a full-time employee in a calendar year, but does not include benefits. Each position shall be eligible to receive health insurance benefits, at least part of the premiums of which are paid by HILL’S, and paid time off. Nothing herein shall require that a Full Time Employment Position be held by the same person, nor shall this Agreement preclude HILL’S from changing the title, purpose or utility of a position (as long as it meets the other requirements identified herein, including compensation). Each Full Time Employment Position must be one in which HILL’S withholds and pays all federal, state and local employment taxes attributable to the employee. More than one position cannot be aggregated to qualify for an Employment Incentive.

Only new Full Time Employment Positions shall be eligible for the Employment Incentive. A “new” Full Time Employment Position is an otherwise eligible Full Time Employment Position that is in excess of and in addition to the 172 Full Time Employees employed by HILL’S as of February 4, 2020.

A Full Time Employment Position shall not fail to qualify for the Employment Incentive if the position is vacated (voluntarily or otherwise) and HILL’S is undertaking an open and active search and such position is filled within one hundred eighty (180) days after the vacancy during the calendar year. If unfilled for longer than one hundred eighty (180) days during a calendar year, the position will cease to qualify as Full Time Employment Position and will not be eligible for an Employment Incentive for that year.

Notwithstanding anything to the contrary herein, a maximum Employment Incentive available hereunder shall not exceed Two Hundred Fourteen Thousand Five Hundred Dollars (\$214,500) in the aggregate. To qualify for the Employment Incentive, the Full Time Employment Positions must commence on or after February 4, 2020 and be hired and receiving compensation by February 3, 2025. The Employment Incentives shall not exceed Forty-Two Thousand Nine Hundred Dollars (\$42,900) in any one calendar year.

GO TOPEKA will endeavor to make incentive payments according to the following schedule:

- New Full Time Employment Positions hired between February 4, 2020 and December 31, 2020 will be eligible to receive the first incentive payment installment in 2021;
- New Full Time Employment Positions hired between January 1, 2021 and December 31, 2021 will be eligible to receive the first incentive payment installment in 2022;
- New Full Time Employment Positions hired between January 1, 2022 and December 31, 2022 will be eligible to receive the first incentive payment installment in 2023;
- New Full Time Employment Positions hired between January 1, 2023 and December 31, 2023 will be eligible to receive the first incentive payment installment in 2024;
- New Full Time Employment Positions hired between January 1, 2024 and February 3, 2025 will be eligible to receive the first incentive payment installment in 2025;

provided, however, that HILL'S must first provide GO TOPEKA with sufficient documentation relating to such employment levels (as required elsewhere herein). GO TOPEKA shall make all reasonable efforts to complete payment of all incentive payments within sixty (60) days of the receipt and verification of such sufficient documentation relating to employment levels.

The parties recognize there may be some turnover and fluctuations in HILL'S employment levels. Therefore, subject to the termination provision, a position may qualify for an Employment Incentive in one year after failing to qualify in a prior year.

For purposes of illustration, if HILL'S hires throughout the period between February 4, 2020 and December 31, 2020 six (6) new Full Time Employment Positions receiving compensation of at least \$56,000, it would be eligible to receive an Employment Incentive installment in the amount of \$7,800 (6 x \$1,300) in 2021 upon receipt and verification of appropriate documentation.

2. Employment Incentive Calculation Documentation. When and as reasonably requested by GO TOPEKA, HILL'S shall provide GO TOPEKA with state and federal employment tax returns and/or other information reasonably necessary to establish employment levels in Shawnee County, Kansas, for purposes of calculating Employment Incentives and monitoring HILL'S performance hereunder. During the term of this Agreement, GO TOPEKA shall have the right at reasonable times (during normal business hours), subject to at least 48 hours advance notice, to audit payroll and human resources records to demonstrate compliance with this Agreement. GO TOPEKA is granted the right to reduce payments made to HILL'S by amounts found to be improper, unauthorized or unsubstantiated. GO TOPEKA shall have sole authority in this regard and shall base its decision upon information submitted, including absence of documents to substantiate expenditure. To the extent permitted under the laws of the state of Kansas and pursuant to a mutually agreeable non-disclosure agreement, GO TOPEKA agrees that all information provided under this Section shall be confidential and not be disclosed to third parties or used for any purpose other than in performing GO TOPEKA's duties with respect to

this Agreement, or enforcing GO TOPEKA's rights or remedies under this Agreement.

3. Employee Training Incentive. HILL'S may earn an Employee Training Incentive in an amount not to exceed Thirty-Three Thousand Dollars (\$33,000.00) (the "Employee Training Incentive"). GO Topeka shall reimburse HILL'S for verifiable training costs including, but not limited to, tuition, registration fees, computer software for in-house training and other direct training costs incurred from February 4, 2020 to February 3, 2025 in accordance with the following provisions. HILL'S shall be eligible for up to One Thousand Dollars \$1,000 in Employee Training Incentive for each new Full Time Employment Position (as defined in Section 1 "Local Employment Incentive"), up to thirty-three (33), created by HILL'S. An Employee Training Incentive payment may be made to HILL'S starting in 2021 for training costs incurred by any full time employee (new or existing) at HILL'S after February 4, 2020 upon proof of approved training expenses in the form of paid invoices, or other verifiable records confirming payment for approved training expenses. The amount of Employee Training Incentive available in a particular year will be based on new Full Time Employment Positions created by HILL'S in the previous eligible year (for example, if HILL'S created six (6) new Full Time Employment Positions in 2020, HILL'S could receive a reimbursement of up to \$6,000 in 2021, for expenses incurred to train any existing or new full time employee). Payment for training expenses incurred shall be available on a yearly basis thereafter through February 3, 2025 based on the previous year's job creation and verifiable training costs. GO TOPEKA shall not reimburse HILL'S for incidental costs associated with training such as travel expenses, meals, and lodging.

4. Facilities and Equipment Investment Incentive. For each Three Million One Hundred Forty Dollars (\$3,140,000.00) in expenditure for the improvement of facilities made by HILL'S in Topeka, Shawnee County, Kansas, including the purchase of equipment to be housed at its facilities located in Shawnee County, Kansas, up to but not to exceed a total capital investment of Thirty-One Million Four Hundred Thousand Dollars (\$31,400,000.00), GO TOPEKA shall pay an incentive to HILL'S of Nine Thousand Three Hundred Fifty Dollars (\$9,350.00) (The "Real Estate and Equipment Investment Incentive"). The aggregate of said real estate and equipment investment incentive payments shall not exceed Ninety-Three Thousand Five Hundred Dollars (\$93,500.00). The Real Estate and Equipment Investment Incentive payments shall be made to HILL'S upon GO TOPEKA's receipt of sufficient documentation showing capital investment in the facilities for the construction or renovation of improvements thereon and the purchase of said equipment.

5. Use of Funds. The funds received by HILL'S pursuant hereto shall be used for the purpose of improving facilities and purchasing equipment to be installed in Shawnee County, Kansas and for the employment and training of persons to be employed in Shawnee County, Kansas.

6. Termination. This Agreement shall be deemed terminated and GO TOPEKA shall not be required to make any further Employment Incentive, Employee Training Incentive or Real Estate and Equipment Investment Incentive payments to HILL'S under this Agreement upon the occurrence of any of the following:

a. HILL'S failure to maintain at least a minimum of 172 Full Time Employment

Position in Shawnee County, Kansas, in any calendar year, between February 4, 2020 and February 3, 2025 (which is the date to qualify for an Employment Incentive), subject to HILL'S right to engage in an active search for 180 days to fill any vacancy pursuant to Section 1;

b. HILL'S failure to perform any obligation, other than as set forth in (a) above, or breach of any covenant or representation under this Agreement and such failure or breach remains uncured for 30 days upon receipt of notice from GO TOPEKA;

c. GO TOPEKA's failure to perform any obligation or breach of any covenant or representation under this Agreement and such failure or breach remains uncured for 30 days upon receipt of notice from HILL'S; and

d. 60 days after GO TOPEKA'S receipt of notice from HILL'S of its intent to terminate this Agreement without cause.

Termination does not relieve GO TOPEKA of its obligation to make any Employment Incentive, Employee Training Incentive or Real Estate and Equipment Investment Incentive payments earned by HILL'S through the termination date.

7. **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.

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

a. HILL'S agrees to make every reasonable effort to use, if qualified, Shawnee County residents to fill the new Full Time Employment Positions in Shawnee County, Kansas.

b. HILL'S shall provide prompt advance notice to GO TOPEKA of any material change in HILL'S ownership, control or management, including issues of insolvency or bankruptcy, or other material changes that could reasonably result in (a) a default by HILL'S under any agreement to which it is a party related to the matters set forth herein, or (b) a material change in the Full Time Employment Positions maintained in Shawnee County, Kansas.

c. During the term of this Agreement, HILL'S agrees to participate in a public event with GO TOPEKA in Shawnee County, Kansas, celebrating the employment expansion contemplated by this Agreement. Such event would include general recognition of 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. If for any reasons any non-material provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

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 waiver of any covenant or agreement contained in this Agreement shall be effective unless in writing. 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 HILL'S 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 HILL'S.

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 HILL'S advance notice of any reduction of funds when practical. HILL'S 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 HILL'S. 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 HILL'S 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, HILL'S 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. HILL'S agrees to make a good faith effort to provide relocating information to existing employees, and/or new employees with information/relocation materials regarding Topeka and Shawnee County, that support and promote residency within the Topeka/Shawnee County limits. Annual reporting of these efforts shall be provided to GO TOPEKA during the incentivized period defined in this Agreement.

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

r. Nothing herein contained shall be construed or held to make any party a partner, joint 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.

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

t. HILL'S shall not be liable for failure of performance hereunder if occasioned by war, declared or undeclared; fire; flood; interruption of transportation; embargo; accident; explosion; inability to procure or shortage of supply, materials, equipment or production facilities; pandemic; governmental order, regulations, restrictions, priorities or rationing; or by strike, lock out, or other labor troubles interfering with the supplies of materials; or other cause beyond the control of the parties. Suspension of performance by reason of this Section shall be limited to the period during which such cause of failure exists.

u. In any proceed brought to resolve a dispute or that otherwise arises under, relates to or is filed in connection with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, all reasonable costs and expenses incurred, including reasonable attorneys' fees, in connection with such proceeding.

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

"HILL'S"

HILL'S PET NUTRITION, INC.

By: Ed Oblon
Ed Oblon (Jan 5, 2021 09:32 CST)

05-Jan-2021

Ed Oblon, Vice President, Hill's Pet Nutrition, Inc.

“GO TOPEKA”

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By: 

Molly Howey, President