

**Joint Economic Development Organization Board Minutes
July 11, 2011**

City of Topeka Council Chambers, 214 SE 7th Street, Topeka, Kansas, Monday, July 11, 2011.

The Joint Economic Development Organization (JEDO) Board members met at 5:00 p.m. with the following Board members present: City of Topeka Councilmembers John Alcala, Denise Everhart, Andrew Gray; City of Topeka Mayor William W. Bunten; and Shawnee County Commissioners Vic Miller, Shelly Buhler and Ted Ensley -7.

Also present were nonvoting JEDO Board members: Councilmembers Bob Archer (Chairman), Karen Hiller, Larry Wolgast and Chad Manspeaker.

Absent: Councilmembers Ortiz and Harmon.

Chairman Bob Archer called the meeting to order.

APPROVAL of the Minutes of the JEDO Board meeting of May 12, 2011 was presented.

Councilmember Alcala moved to approve the Minutes of the May 12, 2011 JEDO Board meeting. The motion was seconded by Councilmember Everhart.

Joseph Ledbetter expressed concern with studies and claims made by GO Topeka representatives throughout pages 1 through 8 in the Minutes. He requested a list of the independent sources that provided the figures and claims being substantiated be provided to him before the next JEDO Board meeting.

The motion to approve the Minutes of the May 12, 2011 JEDO Board meeting carried unanimously. (7-0-0)

CONSIDERATION of the MARS Chocolate North America, L.L.C., Incentive Agreement was presented. (Project Pepper)

Steve Jenkins, GO Topeka Economic Development Senior Vice President provided an overview of what the facility will mean to the company and the community. He reported the Mars Chocolate North America facility will be the first facility built in 30 years by the Company, and it will play a significant role in their overall global strategy. He stated initially there were 82 sites considered in 13 states and he is happy to announce the Company chose to build their new facility in the Kanza Fire Commerce Park in Topeka, Kansas. He referenced "The Five Principles" of the Mars Company including Quality, Responsibility, Mutuality, Efficiency and Freedom. He noted the Company lives, speaks and applies the principles to every aspect of the business. He stated the Company appreciated the neutrality displayed throughout the Topeka-Shawnee County community and believes we will make a good partner as they move forward with their new facility. He briefly discussed the following:

Project Impact

- Employment: 425 jobs (up to 100 in Phase 1)
- Facility size: initially 350,000 square feet
- The average wage: \$43,000 annually plus benefits

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- Employee approach is applied through the five main company principles and they invest personally in employees growth and development
- Direct and Indirect jobs: 974
- Direct and Indirect payroll: \$584.4 million (67:1 Return On Investment)
- Taxable Sales and Purchases: \$269.7 million (31:1 Return On Investment)
- NET Revenues to City and County: \$31.2 million (3.6:1 Return On Investment)

Proposed Incentives

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|--|-------------|
| • Land: 150 acres in Kansas Fire Commerce Park | \$1,520,775 |
| • Possible 40 acres for wind farm | \$ 400,000 |
| • Performance-Based Job Creation Cash Incentive
(6,000 x 425 jobs) | \$2,550,000 |
| • Building Permit Waiver Fee | \$ 200,000 |
| • Utility Connection Fee Waiver | \$ 30,000 |
| • Railroad with Switch
(Cost absorbed by BNSF/State of Kansas) | \$1,300,000 |
| • Innovation Parkway
(Cost paid by KDOT except \$100,000) | \$ 100,000 |
| • Renewable Energy Facilities
(Paid by GO Topeka and State of Kansas) | \$1,100,000 |
| • Workforce Development
(Hybrid Technologist Support Training provided by Washburn Tech) | \$1,700,000 |
| • Water/Sewer Service Lines to Facility
(Department of Public Works will reimburse a portion of the cost for installation of oversize pipe) | \$ 217,000 |

TOTAL PROJECT INVESTMENT \$9,117,775

Councilmember Ortiz entered the room at 5:17 p.m.

Steve Jenkins recognized the 82 community partners that made the project possible and commended them for their ability to work together and bring such an important economic development project to the area. He stated a solution was always found when an obstacle appeared. He reported the agreement has provisions outlined in regards to the use of local contractors whenever possible and noted general contractor(s) would hire qualified subcontractor(s) that offer competitive prices. He stated the Mars Company understands the importance of local resourcing as outlined in the agreement; the majority of the new jobs would be offered to local people in the community with the exception of up to five managers that would be relocated from another facility.

Chairman Archer commended GO Topeka for the team effort. He asked Mr. Jenkins to explain the claw back provision in regards to the economic development process.

Steve Jenkins stated the provision states if the company opts not to build the plant after they have executed the agreement, or if they do not occupy the facility after it is built, then the claw back provision would be used as a recovery mechanism to get the money or the land back if this project does not work.

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Jeff Wietharn, Coffman, DeFries & Nothern, GO Topeka Legal Counsel clarified a portion of the funds for position incentives would be required to be refunded; the land would be returned to the seller, as well as, any funding incentives associated with the land would have to be refunded, or they could buy the land back. He also stated the claw back provision is over a ten year period and any refunds would be proportionate to the benefits received.

Chairman Archer asked if the investment in the training at Washburn University Technical School would be offered to other employer prospects or just this employer.

Steve Jenkins reported the \$1.7 million invested in Washburn University Technical School for training is dedicated for this employer to create a work force for the Mars Company; however, the hope is it will create a foundational training program for other existing area facilities.

Councilmember Gray commended GO Topeka for the new development. He asked what the bidding process would be for local labor; and would they be provided the opportunity to work on the facility from start to finish. He also asked how many local contractors were used to build the New Jersey Mars facility. He stated it was his understanding the Mars Company is vested in revitalizing the downtown area and if the revitalization projected is voted down would the Mars Company withdraw from the agreement. He stated when public money is being utilized he prefers the use of local laborers first; however, he is concerned this may not happen because the Mars Company have no one to answer to.

Steve Jenkins stated the bidding process would take place between GO Topeka and the Mars Company. He reported the Company would negotiate with a qualified general contractor who would decide what subcontractors would be needed to support the project and then they would begin to talk with local contractors who could meet their needs. He stated the Company and GO Topeka are committed to using local contractors. He noted the New Jersey facility is 50 years old and it would be difficult to find out if local contractors were used to build the facility. He stated he does not believe this is a factor as the Mars Company is a strong company with more fiber to their existence than most companies. He reported this would be the biggest project the community would see in the next 3 to 4 years and representatives from the Company would attend the Shawnee County 4-H Fair to introduce themselves to the community. He stated he believes the Mars Company would be a charitable company and it is the best company he has worked with in years. He noted because it is a private company they will be a much better competitor with performance measures they have to meet and people to answer to.

Councilmember Wolgast asked how they would monitor the employment for incentive purposes and what are the track records of similar organizations.

Steve Jenkins reported there is a third party auditor that reports to GO Topeka on the employment incentives. He stated they have not had more than 2% to 3% of area companies that do comply with incentive requirements.

Councilmember Everhart stated she appreciates what the Mars Company believes in and noted they are considered a Gold Standard Company. She asked Mr. Jenkins what his opinion was in regards to what has happened in the past with companies that are labeled as "Gold Standard."

Steve Jenkins reported 52% of the contractors used for the Bimbo Bakery Company were local contractors, and 54% of the contractors used to build the Home Depot facility were local. He stated "Gold Standard" relates to the use of water, wastewater and electrical power and how these things are used in the facility. He noted the

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oversized waterline would be used for the fire flow and process water, with very little waste from the facility, He stated the oversized waterline would be paid through incentives and administered through an agreement with the City of Topeka.

Councilmember Manspeaker asked if there is not a wind farm created would they still spend the \$400,000 to create a solar farm; what is the minimum job creation requirement; why are they not paying for water and sewer hook ups; and why are they not paying for the rail line to be used by Burlington Northern Santa Fe Railroad. He recognized local union workers present at the meeting. He stated he believes local contractors should do the work and as they move forward with the project; and the City and County need to make sure every dollar is leveraged and area folks are working the jobs and taking pride in the community. He asked how fire service would be provided to the facility.

Steve Jenkins stated they would not spend \$400,000 if it is not necessary and there is no wind farm, the minimum job creation requirement is 180; the creation of a rail yard is part of the facility which is why Burlington Northern Santa Fe Railroad is paying for the rail switch. He stated GO Topeka and the Mars company are just as concerned as anyone else and will talk with local companies regarding the use of local workers. He referenced paragraph 6 of the agreement and stated the Mars Company would reimburse 10% of construction cost for the of fire facility.

Councilmember Alcalá expressed concern with potential fire hazards of the facility and emergency response time and noted most large facilities are equipped with equipment to keep fire from spreading but not putting it out. He encouraged the Mars Company to try and make sure local contractors are taken care of during the construction phase, as well as, provide training in-house to make sure it is an on-going process.

Steve Jenkins stated they are working on a training process to ensure success. He asked the Board to keep in mind the Company would always be replacing employees as years go by and they would make sure a foundational program is place to move the Company forward and develop a specialty workforce.

Councilmember Hiller questioned if the Mars Company has agreed to annexation.

Steve Jenkins stated the annexation process in underway. He reported all of the companies they have worked with so far have expressed the desire to be located inside the city's corporate boundaries; however, the final decision will be determined by the Shawnee County Commission.

Commissioner Miller noted annexation requires approval by both the City and County.

Commissioner Ensley noted all tax abatements come before the Shawnee County Commission annually, and they could review the Mars Company commitment and make sure they are doing what they said they would do before the tax abatement is authorized, enforcing accountability by the Company. He requested the following statement be placed on record, "while he is voting in favor of these JEDO incentives, in no way does this bind his vote on any zoning issue that may come before him at a later date. He will hear any other zoning request in a quasi judicial capacity and will consider the evidence placed before him at the hearing, independent of his decision to vote in favor of these incentives." He stated this development is a great opportunity for the community.

Commissioner Miller clarified that tax abatement is primarily an administrative matter unless it is tied to a claw back provision included in the incentives, in which case it becomes more subsidized. He stated this has

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occurred in the past, and if it would come before the Shawnee County Commission, any incentives given would be tied to a claw back provision, contingent upon the commitment to employment.

Chairman Archer opened the floor for public comment.

Joseph Ledbetter requested an amendment to the incentive agreement on page 3, paragraph 1, Section C. The amendment would include a reporting requirement of the average number of full-time employment positions maintained in the previous calendar year to be provided to GO Topeka, JEDO, City of Topeka Clerk and the Shawnee County Clerk. He asked who the third party auditor is that monitors the employment incentives. He stated he is not thrilled with island annexation, and noted the cost of keeping emergency facilities staffed far out weighs the expense of building the facilities.

Steve Jenkins stated the third party financial auditor is Myers McCain.

Neil Fisher, Vice President and co-owner of KBS Constructors stated he has been a general contractor for 22 years and understands the importance of local preference of labor and stated the Mars Company should be encouraged to use local contractors. He reported there has been a big shift in last 20 years in regards to integrated delivery systems for the private and public sectors. He stated in his opinion the planning and design for this facility has been taking place for years and he believes the Mars Company already have a contractor on this project. He also stated he supports using as much local labor as possible; however, he would not insist on it because there may be special skills requirements which could require outside expertise.

Commissioner Miller reported Mr. Fisher has been the third local contractor today that has verbally endorsed the current language of the agreement and not making it a requirement to use local contractors.

Councilmember Manspeaker asked Mr. Fisher if he as workers working on the new most specialized “National Bio and Agro-Defense Facility (NBAF) in the state.

Mr. Fisher reported he has spoke with the company and they may in the future; however, there will be a lot of out of state specialized workers on the job site as well.

Amber Gentry-Bullock, Networks Plus reported after meeting Mars Company representatives she is confident this is very important from a young professionals stand point. She stated the Mars Company represents innovation, growth, and change and encouraged the Board to fully understand that this project is bigger than anyone could imagine. She also stated the project goes beyond just an incentive, it is stability for the community.

Andy Sanchez, Kansas AFLCIO Executive Secretary Treasurer commended those involved in the Mars Company Development. He encouraged the Board to make sure local trade workers are utilized because local jobs should be preserved for local workers. He understands approximately 42% of the work will be performed by outside workers; however, it is important to re-circulate money back into the local economy. He noted construction can be a powerful tool to generate the local economy. He stated if local contractors are provided the opportunity to compete, they will make the community proud.

Councilmember Manspeaker stated local workers would make a real investment in the community and he believes the Mars Company needs to make the same kind of commitment to the community and the people.

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Kirk Miller, Plumbing, Heating and Cooling Local Union No. 441 stated the development would provide several life time careers of man hours building and maintaining the facility. He stated if the money cycles back through the community one time it would be worth it. He encouraged the use of local workers and stated they know how to perform all jobs if given the chance because they have a vested interest in the community.

Councilmember Gray stated the incentive agreement is in essence just a matter of trust. He also stated it would be a wonderful testimony of trust if the Mars Company listened to the local people.

Steve Briman, GO Topeka Volunteer Chair commended GO Topeka for landing a major company in very tough economic times. He stated they should work to make this plant a showcase facility with more production lines, more capital investment and more employees. He asked them to make a strong connection with the community and urged the Board to approve the agreement as proposed. He noted the benefits would far extend beyond the investment of the incentive agreement.

Brian Threadgold, Northeast Kansas Building and Construction Trades and Business Manager and Financial Secretary of the IBEW Local Union No. 226 requested an agreement be reached with the Mars Company to make certain local labors are used because they can and will perform. He questioned the training of hybrid techs through Washburn University Technical School.

Councilmember Everhart asked how local contractors would find the information they would need to bid jobs and have a fair opportunity to work.

Brian Threadgold stated he believes there may be some hurdles in regards to contacting Mars Company representatives.

Commissioner Miller reported the hybrid tech training is not related to the construction of the facility it is related to the operation of the facility.

Steve Jenkins stated they have already provided the Mars Company with a list of vendors and contractors and they have requested GO Topeka be the central point of contact.

Glenda Overstreet, National Association for the Advancement of Colored People stated she is very excited about the new development and requested that minority representation be included in the process. She stated the Association supports and encourages money to be generated back into the local community by hiring local contractors. She reported the current minority unemployment rate is 16% and they would like to consider a partnership with Washburn University Technical School.

Councilmember Manspeaker noted the City of Kansas City, Kansas has been very successful with this same request.

Jim Hastings expressed concern with the secrecy of meetings between GO Topeka and the Mars Company. He stated local tradesmen are more than capable of performing the tasks needed to build the facility and because taxpayer money is being used they need to listen to local trade workers.

Councilmember Manspeaker suggested Mr. Hastings have training facilities located in Topeka to provide for rapid fire training.

Mr. Hastings stated a training facility is already in place.

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Chairman Archer thanked those individuals who provided comments and feedback on the matter.

Commissioner Miller moved to amend page 3, paragraph 1, Section C of the incentive agreement to include a reporting requirement of the average number of full-time employment positions maintained in the previous calendar year to be provided to GO Topeka, JEDO, the City of Topeka Clerk and the Shawnee County Clerk. The motion was seconded by Councilmember Gray.

Mayor Bunten urged the Board to approve the agreement as presented and stated he would not want to jeopardize the agreement in any way.

The motion to amend the agreement carried. Mayor Bunten abstained. (6-0-1)

Councilmember Gray stated he agrees with the amendment because transparency is very important and has been needed for a long time.

Commissioner Ensley moved to approve the agreement as amended. The motion was seconded by Commissioner Buhler.

Commissioner Miller stated he would never make an amendment that would jeopardize an agreement such as this one. He stated the amendment was not unreasonable and believes the Mars Company would not have a problem with the amendment, as it is consistent with the agreement. He stated the Mars Company has not said they would not come to the Topeka-Shawnee County area if we do not do certain things. He stated in his opinion the discussion regarding local contractors was good; however, they need to be careful not to despair their new partners. He stated the Mars Company has stated they have every intention to hire local contractors; voters have twice stated they support economic development and this development is a prime example of how the money should be used; therefore, he will vote in favor of the agreement.

The motion to approve the agreement as amended carried unanimously. (7-0-0)

APPROVAL of the appointment of Rich Eckert, Shawnee County Attorney as the attorney of record representing the Mars North America Company Incentive Agreement, was presented.

Chairman Archer stated he was contacted by Doug Kinsinger regarding the attorney of record for the Mars Development Project. He reported he asked Mr. Rich Eckert, Shawnee County Counsel to accept the appointment because he has vast experience in these types of agreements and developments.

Steve Jenkins, GO Topeka Economic Development Senior Vice President stated Mr. Eckert has been involved with other similar deals and this agreement would benefit from his great expertise and he believes Mr. Eckert is a good selection.

Commissioner Miller stated he believes action is not necessary to declare attorney responsibility of the contract.

Councilmember Everhart stated she has no objection with the appointment of Mr. Eckert; however, she supports Acting City Attorney Catherine Walter and believes she is more than capable of performing the duty.

Mayor Bunten stated he concurs with Councilmember Everhart and believes the appointment is not necessary.

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Councilmember Alcalá stated he supports changing the attorney of record.

Councilmember Alcalá moved to approve the appointment. The motion was seconded by Commissioner Ensley.

Commissioner Miller requested that the meeting agenda reflect the company's name after it has been revealed to the public. He stated he would not support the appointment of Mr. Rich Eckert because the contract is already negotiated.

The motion to approve the appointment carried. Councilmember Everhart and Commissioner Miller voted "no." (5-2-0)

Joseph Ledbetter appeared to speak under public comment. He questioned the following items:

- Who is the L.P. Steel Company listed on page 5 of the financial report referenced in the May 12, 2011 JEDO Board minutes.
- He referenced Section 7 of the contract between GO Topeka and JEDO in regards to providing quarterly reports. He referenced the term "Statement of Income - Public" on pages 1 and 4 of the quarterly report listed in the May 12, 2011 JEDO Board minutes. He commented on the fact JEDO funds are considered public money even according to the financial auditors.
- He cautioned the Board in regards to following the Kansas Open Meetings Act (KOMA) and noted denying public comment at a public meeting regulated by KOMA could be considered a due process violation of a person's right to speak. He stated he hopes they continue to have public comment in the future; he believes it is important to have transparency
- He requested a list of the objective independent sources of the goals and things they listed in the May 12, 2011 JEDO Meeting minutes be provided to him before the next JEDO Board meeting.
- He requested JEDO Board meetings be scheduled on a regular basis.
- He asked when the next JEDO Board meeting would be scheduled.

Steve Jenkins, GO Topeka Economic Development Senior Vice President reported L.P. Steele company is also know as "Topeka Metals" and is located on South Topeka Boulevard.

Chairman Archer stated the next JEDO Board meeting would be scheduled when they have business to discuss.

No further business appearing the meeting was adjourned at 6:48 p.m.