

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda

WEDNESDAY, JANUARY 20, 2010

4:00 p.m. – County Commission Meeting

-Convene

-Consider approval of a proclamation honoring Ellie Ott

-Consider approval of the minutes of December 16, 2009

CONSENT AGENDA

- (1)(a) Consider approval of Commission Orders;
- (b) Consider resolution requesting recommendation from Planning Commission regarding removal of minimum maintenance designation for E1800 Road (between 774 N and 791 N) (Michael Kelly);
- (c) Consider approval of Bids for Crushed Rock for Road Maintenance (Keith Browning);
- (d) Consider approval of renewal of maintenance contract for SUNGARD, (computer aided dispatch/911 mapping/medical priority) (Selma Southard);
- (e) Consider approval of Home Rule Resolution making technical amendments to Access Management Standards, as adopted by Resolution No. HR 06-10-7 and amended by Resolution No. HR 07-1-1, as codified at Article 5 of Chapter IX of the Douglas County Code (Linda Finger); and
- (f) Consider approval resolution for Cereal Malt Beverage Licenses for The Clinton Store (Clerk's Office)

REGULAR AGENDA

- (2) Consider request from Tenants to Homeowners (TTH) to revise agreements on 1120 Rhode Island Street, enabling TTH to complete sale of property (Rebecca Buford, Executive Director TTH)
- (3) Reconsider lease between the City, County and LDCBA regarding the operation and maintenance of the West Lawrence Labs Building, 4950 Research Parkway, to remove option to purchase provision (Weinaug and Diane Stoddard)
- (4) Consider approval to place a concrete slab and other temporary structures upon the vacant land located east of the United Way Building, 2518 Ridge Court in Lawrence, KS. (Muriel Cowgill)
- (5) Consider authorizing 2010 dust palliative program (Terese Gorman/Doug Stephens)
- (6) Consider approval of changes in pharmaceutical benefits (Pam Madl)
- (7) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment
- (8) Adjourn

WEDNESDAY, JANUARY 27, 2010

FRIDAY, JANUARY 29, 2010

-6:00-9:00 Lawrence Chamber of Commerce Annual Meeting at the Lawrence Holiday Inn (two or more Commissioners may attend, no Commission meeting will be held.)

WEDNESDAY, FEBRUARY 3, 2010

-Consider request from the City of Lawrence to share in the cost of Kasold 31st Street intersection construction project (Weinaug/Chuck Soules)

WEDNESDAY, FEBRUARY 10, 2010

WEDNESDAY, FEBRUARY 17, 2010

WEDNESDAY, FEBRUARY 24, 2010

Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.

**A PROCLAMATION TO HONOR
ELLIE OTT**

WHEREAS: *This proclamation is to honor, Ellie Ott for being named a 2010 Rhodes Scholar; and*

WHEREAS: *Born and raised in Lawrence, Kansas, Ms. Ott attended the following Lawrence Public Schools: Hillcrest Elementary, West Junior High, and Lawrence Free State; and was also a 2008 Harry S. Truman Scholarship winner; and*

WHEREAS: *One of 32 U.S. winners from 23 institutions of higher learning, Ms. Ott came from a pool of 216 interviewees from 97 colleges and universities. She is a recent graduate of the University of Pittsburgh; and*

WHEREAS: *Ms. Ott plans to study migration and evidence-based social intervention, refugee and migration studies, and social science research methods at the University of Oxford in England; and*

WHEREAS: *Ms. Ott is currently working in Washington, DC as a social science research analyst in the U.S. Department of Health and Human Services in the Administration for Children and Families; and*

WHEREAS: *Her dream is to become a UN High Commissioner for refugees. More practically, her plan is to work in the U.S. Government, developing and overseeing social policy based on evidence, ideally with the Office of Refugee Resettlement.*

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, *that we honor Ellie Ott for her outstanding achievements.*

ADOPTED *this 6th day of January 2010.*

**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS**

Nancy Thellman, Chairman

Jim Flory, Vice-Chair

Mike Gaughan, Member



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

TO : Douglas County Commission

FROM : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*
Michael D. Kelly, L.S., County Surveyor *MK*

DATE : January 15, 2010

RE : E1800 Road; Proposed rescinding of "minimum maintenance"

A property owner, Jeff Seabaugh, has requested the existing minimum maintenance designation for a portion of E1800 Road, between 774N and 791N, be rescinded. To that end the Palmyra Township Board held a public hearing and has submitted their recommendation to the County Commission regarding the issue.

The next step in the process requires a recommendation from the Planning Commission. A resolution requesting such a recommendation is attached.

ACTION REQUIRED: Receive the recommendation from the Palmyra Township Board. A motion is then required to enact a "request for recommendation" resolution initiating action from the Planning Commission.

Attachments:

- Township Recommendation
- Timeline
- Location Map
- Resolution
- Aerial photo

March 10, 2008

Douglas County Public Works
1242 Massachusetts
Lawrence, KS 66044

Attn: Keith Browning, Douglas County Engineer

Dear Mr. Browning:

The Palmyra Township board met on February 26, 2008, and discussed the existing Minimum Maintenance designation for a portion of E 1800 Road between N 700 and N 800 Roads. It is our understanding the Minimum Maintenance designation on E 1800 Road begins approximately 480 feet south of N 800 Road. It is our desire that E 1800 Road be full maintenance from N 800 Road south to a point approximately 1400 feet south of N 800 Road.

This request is due to Jeff Seabaugh's desire to build a cabin on his property. His entrance is located approximately 1355 feet south of N 800 Road on the west side of E 1800 Road.

The Palmyra Township Board hereby requests Douglas County initiate the process to remove Minimum Maintenance designation from a portion of E 1800 Road, as described above.

Respectfully,

Rex Hagerman, Trustee
Palmyra Township

A handwritten signature in black ink, appearing to read 'Rex Hagerman', with a long horizontal line extending to the right.

BOARD OF HIGHWAY COMMISSIONERS OF PALMYRA TOWNSHIP

CERTIFICATE OF OPINION

We, the undersigned Board of Highway Commissioners, having held a public hearing, and taken comment(s) on Road I.D. E1800: from Road I.D. N800 South approximately 0.17 mile;

More particularly described as: that part of Road No. 566, commencing at a point on the West line of Section 11, Township 14 South, Range 20 East, said point of beginning at 480.00 feet South of the Northwest corner of said Section 11, thence South following the section line to a point 1400.00 feet South of the Northwest corner of said Section 11 and terminating at said point.

and are of the opinion the "minimum maintenance" designation for said road portion should:

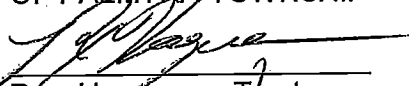
(check box)

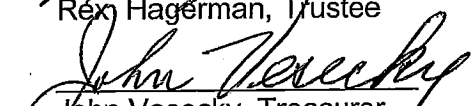
not be rescinded.

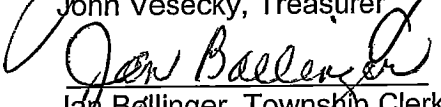
be rescinded as described.

have only a portion rescinded described as follows:

BOARD OF HIGHWAY COMMISSIONERS
OF PALMYRA TOWNSHIP


Rex Hagerman, Trustee


John Vesecky, Treasurer


Jan Bellinger, Township Clerk

PROCESS FOR REVERSING A DECLARATION OF "MINIMUM MAINTENANCE"

*** CITIZEN INITIATED ***

E1800 Rd. (Palmyra Township)

1. Township chooses to proceed with the process of reversing a Minimum Maintenance Designation. **Completed**

2. Public Works Department researches and prepares,

- a. legal description of requested road; **Completed**
- b. ownership map of adjacent properties; **Completed**

The Public Works Department prepares a map showing ownership of all properties abutting the road in question. The ownership research shall reflect the names shown on the tax roll.

- c. draft timeline; and, **Completed**

The Public Works Department performs an analysis of the process (including conformance with K.S.A. 68-5,102 and HR-94-2-1 and HR-92-10-2) as it pertains to the particular location(s) in question and prepares an estimate of the process duration.

- d. draft notice and transmittal letters to adjacent owners. **Completed**

The Public Works Department reviews the location of the roadway, researches the ownership of adjacent property for mailing addresses and landlocking issues. The information is then forwarded to the pertinent township.

3. The Township:

- a. publishes notice of a public hearing in the Journal World; **Completed**
- b. sends notice by first class mail to adjacent landowners; **Completed**
- c. holds public hearing; **Completed**
- d. negotiates terms of reversal; and **Completed**
- e. makes recommendation to the County Commission. **Completed**

The township must publish and mail notice to the landowners "no less than ten (10) days prior to the public hearing". During the hearing the township and person(s) requesting the reversal negotiate the improvements needed to allow the township to assume normal maintenance of the road. After the hearing, if the township chooses to pursue the reversal of declaration of minimum maintenance process a recommendation is then forwarded to the County Commission.

4. The County Commission **January 20, 2010**

- a. reviews Township recommendations;

The County Commission reviews Township request.

- b. signs "request for recommendation" resolution;

The County Commission enacts "request for recommendation" resolution as submitted, or directs Public Works Department to revise resolution.

- c. directs Public Works to transmit resolution to Planning.

Public Works Department sends "request for recommendation" resolution with supporting documentation to Planning Commission.

5. Planning Commission: **March 24, 2010**

- a. reviews citizen's request based on K.S.A. 68-5,102 and HR-92-10-2;

The Planning Commission reviews location(s) and prepares a recommendation for the County Commission.

- b. verifies hearing date;

The Planning Commission staff contacts the Public Works Department when their review is complete to place hearing/recommendation on BOCC agenda.

6. Public Works:

- a. coordinates setting hearing date;

The Public Works Department coordinates hearing date with enough time to allow for publication in the official county newspaper and mailing notice.

- b. publishes notice in county newspaper; **April 3, 2010 (submit by 3/30/10)**

The Public Works Department prepares notice, attaches to "request for recommendation" resolution and transmits to Journal World.

- c. notifies adjoining landowners by mail; **April 1, 2010**

The Public Works Department informs pertinent landowners of impending hearing via first class mail >10 days before the hearing.

7. County Commission: **April 14, 2010**

- a. reviews Planning Commission's recommendation;
- b. holds hearing;

The County Commission accepts the Planning Commission's recommendation and receives public comment.

- c. at the County Commission's discretion, views the road(s) under consideration;
- d. signs final Resolution.

The County Commission takes action based on previous process.

8. Township removes existing sign(s), after roadway has been improved to the standard needed to assume normal maintenance.

RESOLUTION NO. _____

**A RESOLUTION REQUESTING A RECOMMENDATION FROM
THE PLANNING COMMISSION REGARDING RESCINDING THE "MINIMUM MAINTENANCE"
DESIGNATION FOR A PORTION OF N1800 ROAD**

WHEREAS, The Board of County Commissioners, pursuant to HR-94-2-1 and HR-92-10-2, may rescind a "minimum maintenance" designation of a road; and

WHEREAS, The Board of County Commissioners, has received a request from the Palmyra Township Board to rescind the "minimum maintenance" designation of a portion of E1800 Road: from 774N to 791N a distance of 900 feet;

more particularly described as: that part of permanent Road No. 566, commencing at the northwest corner of Section 11, Township 14 South, Range 20 East of the Sixth Principal Meridian in Douglas County, Kansas, thence South on the west line of said Section 11, a distance of 480 feet to the point of beginning, thence continuing South on the west line of said Section 11 a distance of 900 feet and terminating at said point, and

WHEREAS, pursuant to HR-92-10-2, the process to rescind a "minimum maintenance" designation is the same as that used to establish a "minimum maintenance" designation; and,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, the process to consider rescinding the "minimum maintenance" designation for the above described road be initiated; and

BE IT FURTHER RESOLVED that the Planning Commission provide a recommendation to the Board of County Commissioners concerning such.

SIGNED this _____ day of _____, 2010.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

Nancy Thellman, Chair

ATTEST:

Jim Flory, Member

Jamie Shew, County Clerk

Mike Gaughan, Member



N1800 Road Proposed Rescinding of Minimum Maintenance

DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
www.douglas-county.com

1 inch = 300 feet

Date: photo April 2006
Produced By: mdk



MAP DISCLAIMER: All data, information, and maps are provided "as is" without warranty or any representation of accuracy, timeliness of completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requester. Douglas County makes no warranties, express or implied, as to the use of the information obtained here. There are no implied warranties of merchantability or fitness for a particular purpose.

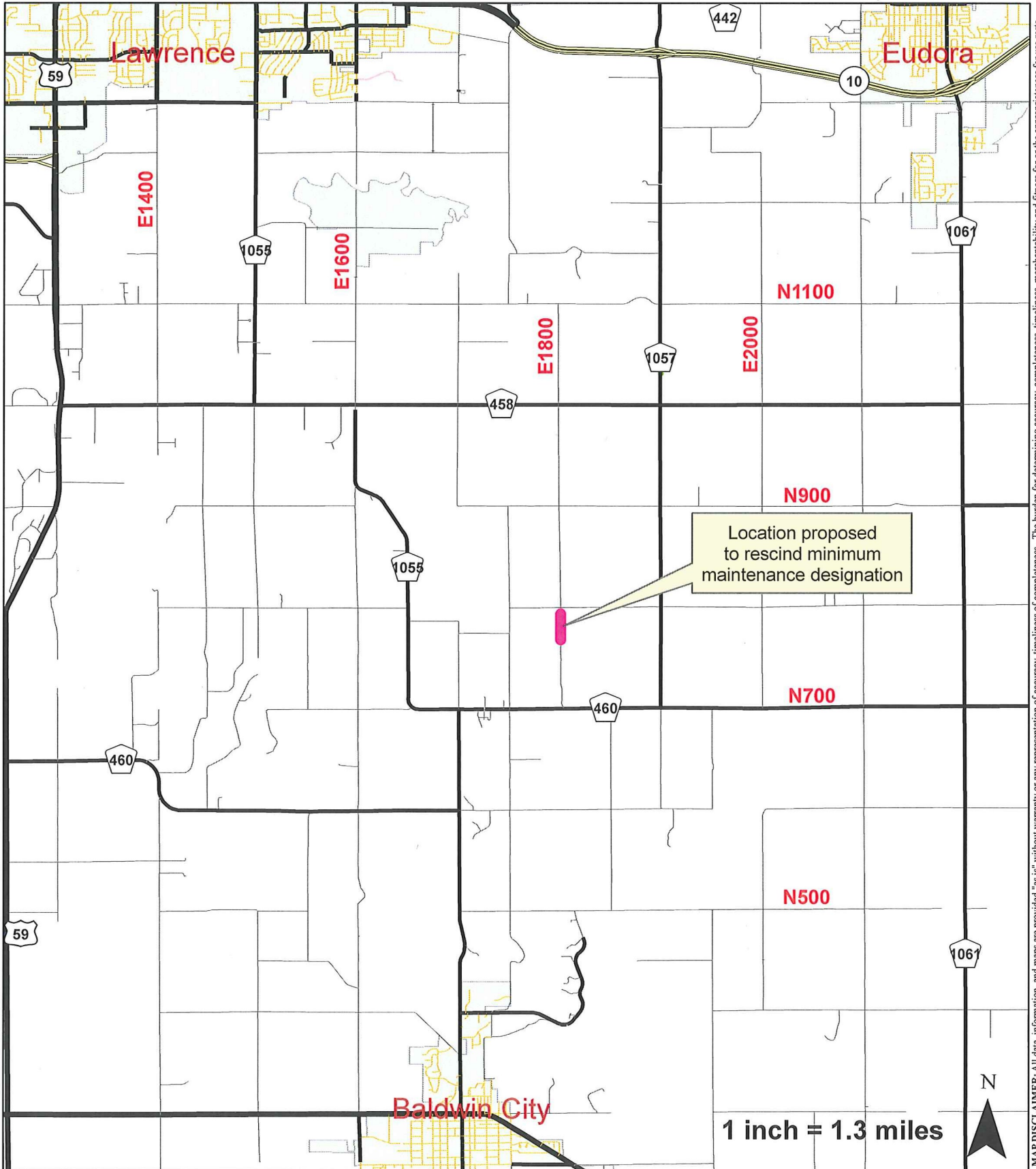


N1800 Road Proposed Rescinding of Minimum Maintenance

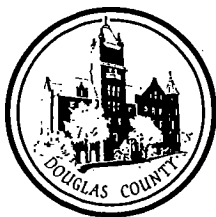
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Keith A. Browning, P.E.
Director of Public Works/County Engineer

1(C)

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : January 13, 2010

Re : Consent Agenda Approval of Bids for Crushed Rock for Road Maintenance

Sealed bids were opened January 5th for crushed rock aggregates used for road maintenance. A bid tabulation is attached.

This department requests the BOCC accept the following bids:

Aggregate	Vendor	Quantity (tons)	Quarry	Unit Price
Shot Rock	Mid-States	1,000-3,000	Big Springs	\$10.65
AB-3	Mid-States	3,000-7,500	Big Springs	\$8.50
AB-3	Hamm	7,501-12,000	Harrell	\$7.75
SS-3	Hamm	100-3,000	Harrell	\$8.50
Road Rock (Special)	Hamm	3000-7500	Harrell	\$8.50
Rip Rap	Mid-States	500-1,500	Big Springs	\$18.50
	Hamm	500-1,500	N. Lawrence	\$18.50

Accepting bids from two vendors for AB-3 and Rip Rap allows us to consider haul costs to the project site when determining where to obtain rock.

Road & Bridge Fund 201 has \$218,912 allocated in the Road Rock and Rip Rap line items. There is an additional \$11,700 in the Parks budget for Rip Rap.

Action Required: Consent Agenda acceptance of the bids from Mid-States Materials (Big Springs quarry) for the supply of 1,000-3,000 tons Shot Rock, 3,000-7,500 tons AB-3, and 500-1,500 tons Rip Rap, and the bids from Hamm Quarries (Harrell quarry) for the supply of 7,501-12,000 tons AB-3 base rock, 100-3,000 tons SS-3 road rock, and 3,000-7,500 tons Road Rock Special, and the bid from Hamm (North Lawrence quarry) for 500-1,500 tons Rip Rap.

Bid No. 09018 Monday, January 5, 2010 @ 3:00 P.M.

SHOT ROCK

		Quarry # 1	Quarry # 2	Quarry # 3
VENDOR	QTY/TON	\$/Ton	\$/Ton	\$/Ton
		Big Springs		
Mid States	1000-3000	\$ 10.65		
		N. Law.		
Hamm	1000-3000	\$ 12.00		
		Ottawa	Sunflower	
Hunt Martin	1000-3000	\$ 9.00	\$ 9.25	

AB-3

AB-3

		Quarry #1	Quarry #2	Quarry #3		Quarry # 1	Quarry # 2	Quarry # 3
VENDOR	QTY/TON	\$/Ton	\$/Ton	\$/Ton	QTY/TON	\$/Ton	\$/Ton	\$/Ton
		Big Springs						
Mid States	3000-7500	\$ 8.50			7501-12000			
		N. Law.	Eudora	Harrell		N. Law.	Eudora	Harrell
Hamm	3000-7500	\$ 8.00	\$ 8.00	\$ 8.00	7501-12000	\$ 7.75	\$ 7.75	\$ 7.75
		Ottawa	Sunflower			Ottawa	Sunflower	
Hunt Martin	3000-7500	\$ 7.20	\$ 7.60		7501-12000	\$ 7.00	\$ 7.40	

SS-3

SS-3

		Quarry #1	Quarry #2	Quarry #3		Quarry #1	Quarry #2	Quarry #3
VENDOR	QTY/TON	\$/Ton	\$/Ton	\$/Ton	QTY/TON	\$/Ton	\$/Ton	\$/Ton
		Big Springs						
Mid States	100-3000	\$ 9.90			3001-10000			
		N. Law.	Eudora	Harrell		N. Law.	Eudora	Harrell
Hamm	100-3000	\$ 8.50	\$ 8.50	\$ 8.50	3001-10000	\$ 8.30	\$ 8.30	\$ 8.30
		Ottawa	Sunflower			Ottawa	Sunflower	
Hunt Martin	100-3000	\$ 8.00	\$ 8.00		3001-10000	\$ 7.80	\$ 7.80	

ROAD ROCK SPECIAL

ROAD ROCK SPECIAL

		Quarry # 1	Quarry # 2	Quarry # 3		Quarry # 1	Quarry # 2	Quarry # 3
VENDOR	QTY/TON	\$/Ton	\$/Ton	\$/Ton	QTY/TON	\$/Ton	\$/Ton	\$/Ton
		Big Springs						
Mid States	3000-7500	\$ 11.05			7501-12000			
			Eudora	Harrell				Harrell
Hamm	3000-7500		\$ 8.50	\$ 8.50	7501-12000			\$ 8.30
		Ottawa	Sunflower			Ottawa	Sunflower	
Hunt Martin	3000-7500	\$ 8.00	\$ 8.00		7501-12000	\$ 7.80	\$ 7.80	

STONE FOR RIP RAP

		Quarry # 1	Quarry # 2	Quarry # 3
VENDOR	QTY/TON	\$/Ton	\$/Ton	\$/Ton
		Big Springs		
Mid States	500-1500	\$ 18.50		
		N Law.		
Hamm	500-1500	\$ 18.50		
Hunt Martin	500-1500			

Keith A. Browning, P.E.
 Director of Public Works

Jamison Shew
 Douglas' County Clerk

Mid-States

DOUGLAS COUNTY, KANSAS

BID DOCUMENTS

FOR

VARIOUS AGGREGATES

BID NO. 09018

DOUGLAS COUNTY, KANSAS

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

PUBLIC WORKS DEPARTMENT

VARIOUS AGGREGATES

BID NO. 09018

BY

THE DOUGLAS COUNTY COMMISSIONERS

Mike Gaughan
Member

James Flory
Member

Nancy Thellman
Chairman

Jamie Shew
County Clerk

Keith A. Browning, P.E.
Director of Public Works

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
NOTICE TO BIDDERS
Bid # 09018**

Notice is hereby given that Douglas County is accepting sealed bids for Various Aggregates, for use at various locations throughout Douglas County by the Department of Public Works. Bids will be received in the Office of the Douglas County Clerk until 3:00 P.M., Tuesday, January 5, 2010 and then publicly opened in the Office of the Douglas County Clerk.

Bids must be submitted on forms obtainable at either the Office of the Director of Public Works/County Engineer, 1242 Massachusetts Street, Lawrence, Kansas, or on the Internet @ www.demandstar.com. The bids shall be submitted in sealed envelopes, addressed to the Office of the County Clerk, Courthouse, 1100 Massachusetts Street, Lawrence, Kansas 66044, upon which is clearly written or printed "Various Aggregates", along with the name and address of the bidder. Any bid received by the Office of the County Clerk after the closing date and time will be returned unopened. Faxed bids will not be accepted. Douglas County is not responsible for lost or misdirected bids, whether lost or misdirected by the postal or courier service of the bidder or the Douglas County mail room.

The awarded bidder shall agree to offer the prices and the terms and conditions herein to other government agencies who wish to participate in a cooperative purchase program with Douglas County. Other agencies will be responsible for entering into separate agreements with the awarded bidder and for all payments thereunder.

The Douglas County Board of Commissioners reserves the right to reject any or all bids, waive technicalities, and to purchase the product, which in the opinion of the Board, is best suited to the work for which it is intended.

DATED: 12/15/2009

DOUGLAS COUNTY PUBLIC WORKS
Keith A. Browning, P.E.
Director of Public Works

Published: Sunday, December 20, 2009
Tuesday, December 29, 2009

cc: Lawrence Journal World
Public Works Accounting
Board of County Commissioners
County Clerk
County Administrator
County Shop
Purchasing Department
File

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
STANDARD TERMS AND CONDITIONS
DOUGLAS COUNTY, KANSAS
BID NO. 09018**

1. **SCOPE:** The following terms and conditions shall prevail unless otherwise modified by Douglas County within this bid document. Douglas County reserves the right to accept or reject any or all bids received, waive technicalities, and to purchase the product, which in the opinion of the Board of County Commissioners, is best suited to the work for which it is intended.
2. **DEFINITIONS AS USED HEREIN:**
 - a. The term "bid request" means a solicitation of a formal sealed bid.
 - b. The term "bid" means the price offered by the bidder.
 - c. The term "bidder" means the offer or vendor.
 - d. The term "County" means Douglas County, Kansas.
 - e. The term "Board of County Commissioners or "BOCC" means the governing body of Douglas County, Kansas.
 - f. The term "awarded bidder" means any bidder awarded a contract pursuant to its bid.
3. **COMPLETING BID:** Bids must be submitted only on the forms (or reproductions thereof) provided in this document. All information must be legible. Any and all corrections and/or erasures must be initialed. Each bid sheet must be signed by the authorized bidder and all required information must be provided.
4. **CONFIDENTIALITY OF BID INFORMATION:** Each bid must be sealed and submitted in an envelope clearly marked "Various Aggregates" to provide confidentiality of the bid information prior to the bid opening. Supporting documents and/or descriptive literature may be submitted with the bid. Do not indicate bid prices on literature.

All bids and supporting bid documents become public information after the bid opening and are available for public inspection by the general public in accordance with the Kansas Open Records Act.
5. **ACCURACY OF BID:** Each bid is publicly opened in the presence of the Douglas County Clerk. It is required that any and all information presented is accurate and/or will be that by which the bidder will perform if awarded a contract.
6. **SUBMISSION OF BID:** Bids must be sealed and received in the Douglas County Clerk's Office, Douglas County Courthouse, 1100 Massachusetts, Lawrence, Kansas 66044, prior to 3:00 P.M., Tuesday, January 5, 2010. Faxed bids will not be accepted. The County is not responsible for lost or misdirected bids, whether lost or misdirected by the postal or carrier service of the bidder or the County mail room.
7. **ADDENDA:** All changes in connection with this bid will be issued in the form of a written addendum. Signed acknowledgment of receipt of each addendum must be submitted with the bid.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
STANDARD TERMS AND CONDITIONS
DOUGLAS COUNTY, KANSAS
BID NO. 09018**

8. **LATE BIDS, CHANGES OR WITHDRAWALS:** Bids received after the deadline designated in this bid document shall not be considered and shall be returned unopened.

Bids may be changed or withdrawn prior to the bid opening. All such transaction must be submitted in writing and received by the County Clerk's Office prior to the bid deadline. Changes or withdrawals may be made after the bid deadline only with the approval of the Board of County Commissioners. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted.

9. **BIDS BINDING:** All bids submitted shall be binding upon the bidder if accepted by the County within twenty (20) working days after the bid opening.

10. **WARRANTY:** Supplies or services furnished as a result of this bid shall be covered by the most favorable commercial warranties, expressed or implied, that the bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the County by any other clause of this bid. The County reserves the right to request from bidders a separate manufacturer certification of all statements made in the proposal.

11. **METHOD OF AWARD AND NOTIFICATION:** Bids will be evaluated and the award made to the lowest and best, responsive and responsible bidder(s) whose bid conforms to the specifications and whose bid is considered to be the best value in the opinion of the Board of County Commissioners.

The County reserves the right to accept or reject any or all bids and any part of a bid; to waive informalities, technical defects, and minor irregularities in bids received; and, to award the bid on an item by item basis, by specified groups of items or to consider bids submitted on an "all or nothing" basis if the bid is clearly designated as such or when it is determined to be in the best interest of the County.

The signed bid shall be considered an offer on the part of the bidder; such offer shall be deemed accepted upon issuance by the County of a Purchase Order or other contractual document.

12. **CREDIT TERMS:** Bidder shall indicate all discounts for full and/or prompt payment. Discounts offered shall be computed from date of receipt of correct invoice or receipt and acceptance of products, whichever is later.

13. **SELLERS INVOICE:** Invoices shall be prepared and submitted in at least two copies to the address shown on the Purchase Order or bid document. Separate invoices are required for each Purchase Order or bid document. Invoices shall contain the following information: Purchase Order Number, contract number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price, extended totals and date of purchase/order.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
STANDARD TERMS AND CONDITIONS
DOUGLAS COUNTY, KANSAS
BID NO. 09018**

14. **TAX EXEMPT:** The County and its agencies are exempt from State and local sales taxes by K.S.A. 79-3606, as amended. Situs of all transactions under the order(s) that shall be derived from this request shall be deemed to have been accomplished within the State of Kansas.
15. **SAFETY:** All practices, materials, supplies and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, state and/or local safety or environmental codes.
16. **DISCLAIMER OF LIABILITY:** The County, or any of its agencies, will not hold harmless or indemnify any bidder for any liability whatsoever.
17. **HOLD HARMLESS:** The awarded bidder agrees to protect, defend, indemnify and hold the Board of County Commissioners, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, and all such claims, etc., relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The awarded bidder further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.
18. **LAW GOVERNING:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
19. **ANTI-DISCRIMINATION CLAUSE:** No bidder on this request shall in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
20. **CONTRACT:** The unit price bid and accepted shall remain in effect from date of acceptance until December 31, 2010. The awarded bidder shall invoice the County in accordance with Section 13, based upon such unit price, at such time as the County accepts delivery of the materials but not to exceed one invoice per month.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
PROPOSAL
BID NO. 09018**

Proposal of Mid-States Materials, to supply Various Aggregates to the
(Name of Firm)

Douglas County Public Works Department for 2010 County wide maintenance.

ITEM DESCRIPTION AND SPECIFICATIONS

I – SHOT ROCK (SELECTABLE) QUARRY RUN

- 1) Material shall consist of durable limestone, reasonably free from earth, soapstone, shale, shale like or other easily disintegrated material that will tend to decrease the durability of the material after placement.
- 2) The aggregate size shall be reasonably well graded from 3” to 24”, with not more than 10% by weight passing the 3” sieve.
- 3) The nominal size of aggregate may be selected from material available at time of loading to best accommodate the needs for the particular work locations.

II - COMBINED MATERIAL (AB-3)

- 1) Combined Material (AB-3) shall meet all applicable specifications listed in Sections 1101 & 1104 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007.

III - SURFACING MATERIAL (SS-3)

- 1) Surfacing Material (SS-3) shall meet all applicable specifications listed in sections 1101 & 1112 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007, with the following exception: The amount of material passing the 200 mesh sieve by the wash method shall be between 7% and 10%.

IV - SURFACING MATERIAL (ROAD ROCK SPECIAL)

- 1) Surfacing Material (Road Rock Special) shall meet all applicable specifications listed in sections 1101 & 1112 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007, with the following exception:

The percent retained on standard square mesh sieves shall be as follows:

<u>Sieve</u>	<u>% Retained</u>
1.5”	0
1”	0-5
3/8”	45-85
#30	90-100
% Wash	7-10

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
PROPOSAL
BID NO. 09018**

**ITEM DESCRIPTIONS SPECIFICATIONS
(continued)**

V – STONE FOR RIP RAP (LIGHT 18”)

- 1) Stone for Rip Rap (Light 18”) shall meet all applicable specifications listed in sections 1101 & 1114 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007:

GENERAL SPECIFICATIONS

- 1) Douglas County will make a minimum of 1 process-control gradation per 5,000-ton lot.
- 2) Material to be loaded by supplier into Douglas County trucks between 8:00 a.m. and 4:30 p.m. Monday through Friday.
- 3) Truck scales must be provided at the quarry.
- 4) Douglas County reserves the right to use previously stockpiled material of the same specification as soon as the bid is approved and the material is available.
- 5) In analyzing bids, Douglas County will consider the probable cost to the County of hauling this material to the anticipated areas of use (including the opportunity cost of reduced production due to longer hauls) and any listed exceptions, in addition to the unit price.
- 6) Payment for material used will be by invoice submitted by supplier, not to exceed one per month.

AWARD OF CONTRACT

The County reserves the right to reject any and all bids. The County also reserves the right to split the contract award. The basis for awarding more than one contract for the total quantity specified shall be multiple sources for assurance of continuous supply, consideration of the County's expense for transporting the materials to various sectors of Douglas County, and the price per ton of the various aggregate. Locations of use have not been specifically determined at this time, but some use is anticipated throughout the County.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
BID FORM FOR 2010 VARIOUS AGGREGATE BID**

(Page #1)

BID NO. 09018

I - SHOT ROCK (SELECTABLE) QUARRY RUN

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Shot Rock (Sel.) Qry Run	1,000-3,000 Tons	#1 <u>Big Springs</u>	\$ <u>10.65</u>
Shot Rock (Sel.) Qry Run	1,000-3,000 Tons	#2 _____	\$ _____
Shot Rock (Sel.) Qry Run	1,000-3,000 Tons	#3 _____	\$ _____

X

II - COMBINED MATERIAL (AB-3)

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Combined Mat'l (AB-3)	3,000-7,500 Tons	#1 <u>Big Springs</u>	\$ <u>8.50</u>
Combined Mat'l (AB-3)	3,000-7,500 Tons	#2 _____	\$ _____
Combined Mat'l (AB-3)	3,000-7,500 Tons	#3 _____	\$ _____
Combined Mat'l (AB-3)	7,501-12,000 Tons	#1 _____	\$ _____
Combined Mat'l (AB-3)	7,501-12,000 Tons	#2 _____	\$ _____
Combined Mat'l (AB-3)	7,01-12,000 Tons	#3 _____	\$ _____

X

III - SURFACING MATERIAL (SS-3)

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Surfacing Mat'l (SS-3)	100-3,000 Tons	#1 <u>Big Springs</u>	\$ <u>9.90</u>
Surfacing Mat'l (SS-3)	100-3,000 Tons	#2 _____	\$ _____
Surfacing Mat'l (SS-3)	100-3,000 Tons	#3 _____	\$ _____
Surfacing Mat'l (SS-3)	3,001-10,000 Tons	#1 _____	\$ _____
Surfacing Mat'l (SS-3)	3,001-10,000 Tons	#2 _____	\$ _____
Surfacing Mat'l (SS-3)	3,001-10,000 Tons	#3 _____	\$ _____



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**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
BID FORM FOR 2010 VARIOUS AGGREGATE BID
 (Page # 2)**

BID NO. 09018

IV - SURFACING MATERIAL (ROAD ROCK SPECIAL)

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Surfacing Mat'l (Rd Rock Special)	3,000-7,500 Ton #1	<u>Big Springs</u>	\$ 11.05
Surfacing Mat'l (Rd Rock Special)	3,000-7,500 Tons #2		\$
Surfacing Mat'l (Rd Rock Special)	3,000-7,500 Tons #3		\$
Surfacing Mat'l (Rd Rock Special)	7,501-12,000 Tons #1		\$
Surfacing Mat'l (Rd Rock Special)	7,501-12,000 Tons #2		\$
Surfacing Mat'l (Rd Rock Special)	7,501-12,000 Tons #3		\$

V. STONE FOR RIP RAP (LIGHT 18")

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Stone for Rip Rap (Light 18")	500-1,500 Ton #1	<u>Big Springs</u>	\$ 18.50 X
Stone for Rip Rap (Light 18")	500-1,500 Ton #1		\$
Stone for Rip Rap (Light 18")	500-1,500 Ton #1		\$

List any exceptions to specifications:

Quarry Hours (Summer) 6:00 - 4:30
(Winter) 7:00 - 4:00

ER

RJ

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
BID FORM FOR 2010 VARIOUS AGGREGATE BID**

(Page # 3)

BID NO. 09018

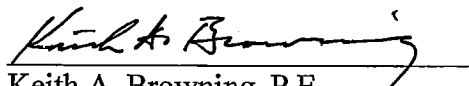
Bids are due by: 3:00 P.M., Tuesday, January 5, 2010.

Supplier: Mid States Materials

By: Adam Gray

Date: 1.4.2010

RECOMMENDED FOR APPROVAL:



Keith A. Browning, P.E.

Director of Public Works

ACCEPTED:

DOUGLAS COUNTY

BOARD OF COUNTY COMMISSIONERS

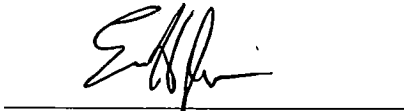
Nancy Thellman, Chairman

Mike Gaughan, Member

James Flory, Member

Date

Approved as to Form:



Douglas County Counselor

NR Hamm Quarry

DOUGLAS COUNTY, KANSAS

BID DOCUMENTS

FOR

VARIOUS AGGREGATES

BID NO. 09018

DOUGLAS COUNTY, KANSAS

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

PUBLIC WORKS DEPARTMENT

VARIOUS AGGREGATES

BID NO. 09018

BY

THE DOUGLAS COUNTY COMMISSIONERS

Mike Gaughan
Member

James Flory
Member

Nancy Thellman
Chairman

Jamie Shew
County Clerk

Keith A. Browning, P.E.
Director of Public Works

DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
NOTICE TO BIDDERS
Bid # 09018

Notice is hereby given that Douglas County is accepting sealed bids for Various Aggregates, for use at various locations throughout Douglas County by the Department of Public Works. Bids will be received in the Office of the Douglas County Clerk until 3:00 P.M., Tuesday, January 5, 2010 and then publicly opened in the Office of the Douglas County Clerk.

Bids must be submitted on forms obtainable at either the Office of the Director of Public Works/County Engineer, 1242 Massachusetts Street, Lawrence, Kansas, or on the Internet @ www.demandstar.com. The bids shall be submitted in sealed envelopes, addressed to the Office of the County Clerk, Courthouse, 1100 Massachusetts Street, Lawrence, Kansas 66044, upon which is clearly written or printed "Various Aggregates", along with the name and address of the bidder. Any bid received by the Office of the County Clerk after the closing date and time will be returned unopened. Faxed bids will not be accepted. Douglas County is not responsible for lost or misdirected bids, whether lost or misdirected by the postal or courier service of the bidder or the Douglas County mail room.

The awarded bidder shall agree to offer the prices and the terms and conditions herein to other government agencies who wish to participate in a cooperative purchase program with Douglas County. Other agencies will be responsible for entering into separate agreements with the awarded bidder and for all payments thereunder.

The Douglas County Board of Commissioners reserves the right to reject any or all bids, waive technicalities, and to purchase the product, which in the opinion of the Board, is best suited to the work for which it is intended.

DATED: 12/15/2009

DOUGLAS COUNTY PUBLIC WORKS

Keith A. Browning, P.E.
Director of Public Works

Published: Sunday, December 20, 2009
Tuesday, December 29, 2009

cc: Lawrence Journal World
Public Works Accounting
Board of County Commissioners
County Clerk
County Administrator
County Shop
Purchasing Department
File

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
STANDARD TERMS AND CONDITIONS
DOUGLAS COUNTY, KANSAS
BID NO. 09018**

1. **SCOPE:** The following terms and conditions shall prevail unless otherwise modified by Douglas County within this bid document. Douglas County reserves the right to accept or reject any or all bids received, waive technicalities, and to purchase the product, which in the opinion of the Board of County Commissioners, is best suited to the work for which it is intended.
2. **DEFINITIONS AS USED HEREIN:**
 - a. The term "bid request" means a solicitation of a formal sealed bid.
 - b. The term "bid" means the price offered by the bidder.
 - c. The term "bidder" means the offer or vendor.
 - d. The term "County" means Douglas County, Kansas.
 - e. The term "Board of County Commissioners or "BOCC" means the governing body of Douglas County, Kansas.
 - f. The term "awarded bidder" means any bidder awarded a contract pursuant to its bid.
3. **COMPLETING BID:** Bids must be submitted only on the forms (or reproductions thereof) provided in this document. All information must be legible. Any and all corrections and/or erasures must be initialed. Each bid sheet must be signed by the authorized bidder and all required information must be provided.
4. **CONFIDENTIALITY OF BID INFORMATION:** Each bid must be sealed and submitted in an envelope clearly marked "Various Aggregates" to provide confidentiality of the bid information prior to the bid opening. Supporting documents and/or descriptive literature may be submitted with the bid. Do not indicate bid prices on literature.

All bids and supporting bid documents become public information after the bid opening and are available for public inspection by the general public in accordance with the Kansas Open Records Act.
5. **ACCURACY OF BID:** Each bid is publicly opened in the presence of the Douglas County Clerk. It is required that any and all information presented is accurate and/or will be that by which the bidder will perform if awarded a contract.
6. **SUBMISSION OF BID:** Bids must be sealed and received in the Douglas County Clerk's Office, Douglas County Courthouse, 1100 Massachusetts, Lawrence, Kansas 66044, prior to 3:00 P.M., Tuesday, January 5, 2010. Faxed bids will not be accepted. The County is not responsible for lost or misdirected bids, whether lost or misdirected by the postal or courier service of the bidder or the County mail room.
7. **ADDENDA:** All changes in connection with this bid will be issued in the form of a written addendum. Signed acknowledgment of receipt of each addendum must be submitted with the bid.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
STANDARD TERMS AND CONDITIONS
DOUGLAS COUNTY, KANSAS
BID NO. 09018**

8. **LATE BIDS, CHANGES OR WITHDRAWALS:** Bids received after the deadline designated in this bid document shall not be considered and shall be returned unopened.

Bids may be changed or withdrawn prior to the bid opening. All such transaction must be submitted in writing and received by the County Clerk's Office prior to the bid deadline. Changes or withdrawals may be made after the bid deadline only with the approval of the Board of County Commissioners. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted.

9. **BIDS BINDING:** All bids submitted shall be binding upon the bidder if accepted by the County within twenty (20) working days after the bid opening.
10. **WARRANTY:** Supplies or services furnished as a result of this bid shall be covered by the most favorable commercial warranties, expressed or implied, that the bidder and/or manufacturer gives to any customer. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the County by any other clause of this bid. The County reserves the right to request from bidders a separate manufacturer certification of all statements made in the proposal.
11. **METHOD OF AWARD AND NOTIFICATION:** Bids will be evaluated and the award made to the lowest and best, responsive and responsible bidder(s) whose bid conforms to the specifications and whose bid is considered to be the best value in the opinion of the Board of County Commissioners.

The County reserves the right to accept or reject any or all bids and any part of a bid; to waive informalities, technical defects, and minor irregularities in bids received; and, to award the bid on an item by item basis, by specified groups of items or to consider bids submitted on an "all or nothing" basis if the bid is clearly designated as such or when it is determined to be in the best interest of the County.

The signed bid shall be considered an offer on the part of the bidder; such offer shall be deemed accepted upon issuance by the County of a Purchase Order or other contractual document.

12. **CREDIT TERMS:** Bidder shall indicate all discounts for full and/or prompt payment. Discounts offered shall be computed from date of receipt of correct invoice or receipt and acceptance of products, whichever is later.
13. **SELLERS INVOICE:** Invoices shall be prepared and submitted in at least two copies to the address shown on the Purchase Order or bid document. Separate invoices are required for each Purchase Order or bid document. Invoices shall contain the following information: Purchase Order Number, contract number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price, extended totals and date of purchase/order.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
STANDARD TERMS AND CONDITIONS
DOUGLAS COUNTY, KANSAS
BID NO. 09018**

14. **TAX EXEMPT:** The County and its agencies are exempt from State and local sales taxes by K.S.A. 79-3606, as amended. Situs of all transactions under the order(s) that shall be derived from this request shall be deemed to have been accomplished within the State of Kansas.
15. **SAFETY:** All practices, materials, supplies and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, state and/or local safety or environmental codes.
16. **DISCLAIMER OF LIABILITY:** The County, or any of its agencies, will not hold harmless or indemnify any bidder for any liability whatsoever.
17. **HOLD HARMLESS:** The awarded bidder agrees to protect, defend, indemnify and hold the Board of County Commissioners, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, and all such claims, etc., relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The awarded bidder further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.
18. **LAW GOVERNING:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
19. **ANTI-DISCRIMINATION CLAUSE:** No bidder on this request shall in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
20. **CONTRACT:** The unit price bid and accepted shall remain in effect from date of acceptance until December 31, 2010. The awarded bidder shall invoice the County in accordance with Section 13, based upon such unit price, at such time as the County accepts delivery of the materials but not to exceed one invoice per month.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
PROPOSAL
BID NO. 09018**

Proposal of N.R. HAMM QUARRY, INC, to supply Various Aggregates to the
(Name of Firm)

Douglas County Public Works Department for 2010 County wide maintenance.

ITEM DESCRIPTION AND SPECIFICATIONS

I – SHOT ROCK (SELECTABLE) QUARRY RUN

- 1) Material shall consist of durable limestone, reasonably free from earth, soapstone, shale, shale like or other easily disintegrated material that will tend to decrease the durability of the material after placement.
- 2) The aggregate size shall be reasonably well graded from 3” to 24”, with not more than 10% by weight passing the 3” sieve.
- 3) The nominal size of aggregate may be selected from material available at time of loading to best accommodate the needs for the particular work locations.

II - COMBINED MATERIAL (AB-3)

- 1) Combined Material (AB-3) shall meet all applicable specifications listed in Sections 1101 & 1104 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007.

III - SURFACING MATERIAL (SS-3)

- 1) Surfacing Material (SS-3) shall meet all applicable specifications listed in sections 1101 & 1112 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007, with the following exception: The amount of material passing the 200 mesh sieve by the wash method shall be between 7% and 10%.

IV - SURFACING MATERIAL (ROAD ROCK SPECIAL)

- 1) Surfacing Material (Road Rock Special) shall meet all applicable specifications listed in sections 1101 & 1112 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007, with the following exception:

The percent retained on standard square mesh sieves shall be as follows:

<u>Sieve</u>	<u>% Retained</u>
1.5”	0
1”	0-5
3/8”	45-85
#30	90-100
% Wash	7-10

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
PROPOSAL
BID NO. 09018**

ITEM DESCRIPTIONS SPECIFICATIONS

(continued)

V – STONE FOR RIP RAP (LIGHT 18”)

- 1) Stone for Rip Rap (Light 18”) shall meet all applicable specifications listed in sections 1101 & 1114 of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, Edition 2007:

GENERAL SPECIFICATIONS

- 1) Douglas County will make a minimum of 1 process control gradation per 5,000 ton lot.
- 2) Material to be loaded by supplier into Douglas County trucks between 8:00 a.m. and 4:30 p.m. Monday through Friday.
- 3) Truck scales must be provided at the quarry.
- 4) Douglas County reserves the right to use previously stockpiled material of the same specification as soon as the bid is approved and the material is available.
- 5) In analyzing bids, Douglas County will consider the probable cost to the County of hauling this material to the anticipated areas of use (including the opportunity cost of reduced production due to longer hauls) and any listed exceptions, in addition to the unit price.
- 6) Payment for material used will be by invoice submitted by supplier, not to exceed one per month.

AWARD OF CONTRACT

The County reserves the right to reject any and all bids. The County also reserves the right to split the contract award. The basis for awarding more than one contract for the total quantity specified shall be multiple sources for assurance of continuous supply, consideration of the County's expense for transporting the materials to various sectors of Douglas County, and the price per ton of the various aggregate. Locations of use have not been specifically determined at this time, but some use is anticipated throughout the County.

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
BID FORM FOR 2010 VARIOUS AGGREGATE BID**

(Page #1)

BID NO. 09018

I - SHOT ROCK (SELECTABLE) QUARRY RUN

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Shot Rock (Sel.) Qry Run	1,000-3,000 Tons	#1 NORTH LAWRENCE QUARRY	\$ 12. ⁰⁰
Shot Rock (Sel.) Qry Run	1,000-3,000 Tons	#2	\$
Shot Rock (Sel.) Qry Run	1,000-3,000 Tons	#3	\$

II - COMBINED MATERIAL (AB-3)

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Combined Mat'l (AB-3)	3,000-7,500 Tons	#1 NORTH LAWRENCE QUARRY	\$ 8.00
Combined Mat'l (AB-3)	3,000-7,500 Tons	#2 EUDORA QUARRY	\$ 8.00
Combined Mat'l (AB-3)	3,000-7,500 Tons	#3 HARRELL QUARRY	\$ 8.00
Combined Mat'l (AB-3)	7,501-12,000 Tons	#1 NORTH LAWRENCE QUARRY	\$ 7.75
Combined Mat'l (AB-3)	7,501-12,000 Tons	#2 EUDORA QUARRY	\$ 7.75
Combined Mat'l (AB-3)	7,501-12,000 Tons	#3 HARRELL QUARRY	\$ 7.75

7501

III - SURFACING MATERIAL (SS-3)

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Surfacing Mat'l (SS-3)	100-3,000 Tons	#1 NORTH LAWRENCE QUARRY	\$ 8.50
Surfacing Mat'l (SS-3)	100-3,000 Tons	#2 EUDORA QUARRY	\$ 8.50
Surfacing Mat'l (SS-3)	100-3,000 Tons	#3 HARRELL QUARRY	\$ 8.50
Surfacing Mat'l (SS-3)	3,001-10,000 Tons	#1 NORTH LAWRENCE QUARRY	\$ 8.30
Surfacing Mat'l (SS-3)	3,001-10,000 Tons	#2 EUDORA QUARRY	\$ 8.30
Surfacing Mat'l (SS-3)	3,001-10,000 Tons	#3 HARRELL QUARRY	\$ 8.30

[Handwritten signature]

X

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
BID FORM FOR 2010 VARIOUS AGGREGATE BID**

(Page # 2)

BID NO. 09018

IV - SURFACING MATERIAL (ROAD ROCK SPECIAL)

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Surfacing Mat'l (Rd Rock Special)	3,000-7,500 Ton #1		\$ _____
Surfacing Mat'l (Rd Rock Special)	3,000-7,500 Tons #2	EUDOPA QUARRY	\$ 8.50 X
Surfacing Mat'l (Rd Rock Special)	3,000-7,500 Tons #3	HARRELL QUARRY	\$ 8.50
Surfacing Mat'l (Rd Rock Special)	7,501-12,000 Tons #1	_____	\$ _____
Surfacing Mat'l (Rd Rock Special)	7,501-12,000 Tons #2	_____	\$ _____
Surfacing Mat'l (Rd Rock Special)	7,501-12,000 Tons #3	HARRELL QUARRY	\$ 8.30

V. STONE FOR RIP RAP (LIGHT 18")

ITEM	QUANTITY	QUARRY LOCATION(S)	UNIT PRICE
Stone for Rip Rap (Light 18")	500-1,500 Ton #1	NORTH LAWRENCE QUARRY	\$ 18.50 X
Stone for Rip Rap (Light 18")	500-1,500 Ton #1	_____	\$ _____
Stone for Rip Rap (Light 18")	500-1,500 Ton #1	_____	\$ _____

List any exceptions to specifications:

All Quarries hours of operation will be M-F between the
times of 7:30 am and 3:30 pm

**DOUGLAS COUNTY DEPARTMENT OF PUBLIC WORKS
BID FORM FOR 2010 VARIOUS AGGREGATE BID**

(Page # 3)

BID NO. 09018

Bids are due by: 3:00 P.M., Tuesday, January 5, 2010.

Supplier: N.R. HAMM QUARRY, INC

By: RAMON GONZALEZ

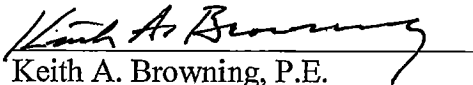
Date: 12-29-2009

RECOMMENDED FOR APPROVAL:

ACCEPTED:

DOUGLAS COUNTY

BOARD OF COUNTY COMMISSIONERS



Keith A. Browning, P.E.

Director of Public Works

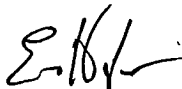
Nancy Thellman, Chairman

Mike Gaughan, Member

James Flory, Member

Date

Approved as to Form:



Douglas County Counselor

1(d)

**Douglas County 9-1-1
Emergency Communications**

January 14, 2010

To: Commissioner Nancy Thellman
Commissioner Jim Flory
Commissioner Mike Gaughan

From: Selma Southard, Director,
Douglas County Emergency Communications

Re: Maintenance Contract payments for approval

The Computer Aided Dispatch System (CAD) has existed since 1975 and is proprietary; we contract annually with this company for the software maintenance. Included in this amount is the GTG 911 Mapping and Medical Priority (EMD) CAD interfaces.

Emergency Communications personnel use the CAD system to assist the agencies we support. We use CAD to initiate, dispatch, monitor and record emergency and non-emergency calls for service, self-initiated and incoming CAD activity from field mobile data terminals. Calls are entered and dispatched according to established protocols and procedures. After a call for service is entered, CAD recommends the type of response needed, the agency to send, the appropriate number of units to assign to the call and the type of units to send. CAD bases the recommendation on the response information that each agency (DGSO, including Baldwin PD and Eudora PD; LKPD; LDCFM, including township fire and EMS groups) has programmed into the CAD system.

If authorized it is a legitimate use of 911 Fee Fund money to pay this maintenance agreement. The annual support agreement with SUNGARD/HTE begins 01/Jan/2009, and ends 31/Dec/2009 for the amount of \$34,115.34. We currently have a credit balance in the amount of \$1,280.00 which will be applied to this payment which will bring our cost to \$32,835.34. The Lawrence Police Department will be billed \$3,536.00 for the Crimes Management portion of this maintenance agreement as they provide records management for all of the Law Enforcement agencies. **After all of the reimbursements are made, we will actually only have paid \$29,299.34 this year on this agreement.**

I am submitting the following recommendations for your consideration:

1. Authorization to execute the contract
2. Approval to pay attached maintenance agreement with SUNGARD/HTE Public Sector utilizing 911 Fee Fund money

COPY

Invoice

SUNGARD® PUBLIC SECTOR

1000 Business Center Drive
 Lake Mary, FL 32746
 800-727-8088
 www.sungard.com/publicsector

Company	Document No	Date	Page
LG	12733	16/Dec/2009	1 of 1

Bill To: Douglas County-Crimes
 Lawrence Police Department
 111 E. 11th Street
 LAWRENCE, KS 66044
 United States
 Attn: Selma M. Southard 785-838-2470

Ship To: Douglas County-Crimes
 Lawrence Police Department
 111 E. 11th Street
 LAWRENCE, KS 66044
 United States
 Attn: Selma M. Southard 785-838-2470

Customer Grp/No.	Customer Name	Customer PO Number	Currency	Terms	Due Date
1 1352LG	Douglas County-Crimes		USD	NET30	15/Jan/2010

No	SKU Code/Description/Comments	Units	Rate	Extended
Contract No. 1352-Mod				
5	Retrofit Modification Option Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	1.00	0.00	0.00
Contract No. 6051				
1	CAD 400 Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	1.00	12,698.40	12,698.40
2	CAD400 - Redundancy Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	1.00	4,232.80	4,232.80
3	CRIMES Management System Maintenance Start: 01/Jan/2010, End: 31/Dec/2010 <i>LPD</i>	1.00	3,536.00	3,536.00
4	E911-CAD400 Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	1.00	1,164.80	1,164.80

Page Total **21,632.00**

Remit Payment To: SunGard Public Sector Inc.
 Bank of America
 12709 Collection Center Drive
 Chicago, IL 60693

Subtotal	21,632.00
Sales Tax	0.00
Invoice Total	21,632.00
Payment Received	0.00
Balance Due	21,632.00

PSA Reference Number:

235 2100 60983

COPY

SUNGARD PUBLIC SECTOR

1000 Business Center Drive
 Lake Mary, FL 32746
 800-727-8088
 www.sungard.com/publicsector

Invoice

Company	Document No	Date	Page
LG	12719	16/Dec/2009	1 of 1

Bill To: Douglas County
 111 East 11th St.
 LAWRENCE, KS 66044
 United States
 Attn: Selma M. Southard 785-838-2470

Ship To: Douglas County
 111 East 11th St.
 LAWRENCE, KS 66044
 United States
 Attn: Selma M. Southard 785-838-2470

Customer Grp/No.	Customer Name	Customer PO Number	Currency	Terms	Due Date
1 1348LG	Douglas County		USD	NET30	15/Jan/2010

No	SKU Code/Description/Comments	Units	Rate	Extended
Contract No. 20021155				
1	CAD 400-SCA Interface Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	1.00	3,296.80	3,296.80
Contract No. 20040538				
2	Medical Priority (ProQA) CAD400 Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	1.00	2,823.60	2,823.60

Page Total 6,120.40

Remit Payment To: SunGard Public Sector Inc.
 Bank of America
 12709 Collection Center Drive
 Chicago, IL 60693

Subtotal	6,120.40
Sales Tax	0.00
Invoice Total	6,120.40
Payment Received	0.00
Balance Due	6,120.40

PSA Reference Number:

240 21000 60933

COPY

SUNGARD PUBLIC SECTOR

1000 Business Center Drive
Lake Mary, FL 32746
800-727-8088
www.sungard.com/publicsector

Invoice

Company	Document No	Date	Page
LG	11854	30/Nov/2009	1 of 1

Bill To: Douglas County
111 East 11th St.
LAWRENCE, KS 66044
United States
Attn: Selma M. Southard 785-838-2470

Ship To: Douglas County
111 East 11th St.
LAWRENCE, KS 66044
United States
Attn: Selma M. Southard 785-838-2470

Customer Grp/No.	Customer Name	Customer PO Number	Currency	Terms	Due Date
1	1348LG Douglas County		USD	NET30	30/Dec/2009

*pay in 30
per cycle
in acct
pay*

No	SKU Code/Description/Comments	Units	Rate	Extended
Contract No. 20021155				
1	3rd Party Mapping - Dispatch Base Maintenance Start: 01/Jan/2010, End: 31/Dec/2010	6.00	1,060.49	6,362.94

Page Total 6,362.94

Remit Payment To: SunGard Public Sector Inc.
Bank of America
12709 Collection Center Drive
Chicago, IL 60693

Subtotal	6,362.94
Sales Tax	0.00
Invoice Total	6,362.94
Payment Received	0.00
Balance Due	6,362.94

PSA Reference Number:

240 21000 6093.3

Douglas County, KS

COPY

Pay to: Sungard HTE Inc.
1000 Business Center Dr.
Lake Mary FL 32746

Inv Date	Invoice #	Fund	Acct	Line	Description	Dept Code	Amount
11/30/2009	11854	240	21000	60933	Maintenance Contract #20021155-3rd Party Mapping 1/1/10-12/31/10	ECC	\$6,362.94
12/16/2009	12719	240	21000	60933	Maintenance Contract #20021155 for 1/1/10-12/31/10 CAD 400-SCA Interface & Contract #20040538 for 1/1/10-12/31/10 for Medical Priority (ProQA)CAD400	ECC	\$6,120.40
12/16/2009	12733	235	21000	60933	Maintenance Contract 1/1/10-12/31/10 CAD400, CAD400-Redundancy, CRIMES Management System & E911-CAD400	ECC	\$21,632.00
Total Voucher							\$34,115.34

I do hereby certify that the above bill is true and correct and remains due and unpaid and the amount claimed herein is actually due according to law.

BUDGET YEAR

2010

1/4/2010

1(e)

RESOLUTION NO. HR 10-_____

A Home Rule Resolution of the Board of County Commissioners of Douglas County, Kansas, Making Technical Amendments to Access Management Standards, As Adopted By Resolution No. HR 06-10-7 and Amended By Resolution No. HR 07-1-1, as Codified at Article 5 of Chapter IX of the Douglas County Code

WHEREAS, K.S.A. 19-101a, and amendments thereto, authorizes the Board of County Commissioners (hereinafter after the "Board") to transact all County business and perform all powers of local legislation and administration it deems appropriate.

WHEREAS, by Resolution No. 06-10-7, as amended by Resolution No. 07-1-1, as Codified at Article 5 of Chapter IX of the Douglas County Code, the Board has adopted Douglas County Access Management Standards, which establish (i) initial road classifications for roads in the unincorporated areas of Douglas County, (ii) minimum frontage requirements depending upon the functional classification of the road, and (iii) minimum entrance spacing standards for driveways and public road spacing requirements depending upon the functional classification of the road (hereinafter "Access Management Standards").

WHEREAS, the Board desires to make technical amendments to the Access Management Standards to remedy typographical errors and to comply with the Board's original intent.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION THIS 20th DAY OF JANUARY 2010 AND INTENDING TO EXERCISE THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

1. Amendment to Section 9-502. Section 9-502 of the County Code is amended to read as follows:

9-502. No property for which a deed, an affidavit of equitable interest, or plat of survey is recorded with the Office of the Douglas County Register of Deeds on or before October 25, 2006, which instrument identifies the property as a separate tract of real estate, shall be denied an entrance permit onto a public road classified as Minor Collector or Local for purposes of construction of a residential dwelling solely for the reason that the property does not have sufficient frontage along a public road if the property has not been further divided since the effective date of Section 9-501 and any of the following apply with respect to the subject property:

- a. It has 250 feet of frontage along a public road right-of-way and the dwelling or mobile home gains its primary access directly to and from an existing public roadway within such public road right-of-way; or
- b. It has 250 feet of frontage along a public road right-of-way and the dwelling or mobile home will gain its primary access directly to and from a public roadway to be constructed within such public road right-of-way if (1) engineered plans for construction or improvement of the public roadway to current county standards have been approved by the County Engineer, and (2) a sufficient bond or letter of credit, in an amount determined by the County Engineer, is provided to ensure construction or improvement of the public roadway to current County standards; or
- c. It has access to a public road by virtue of a private road approved by the Board prior to October 30, 2006; or
- d. Is located within a subdivision which has been platted as provided in the Subdivision Regulations for the unincorporated area of Douglas County; or
- e. A deed or an affidavit of equitable interest for the property was recorded with the Register of Deeds on or before August 17, 1994 describing the property as a single tract under one ownership and the property would have been eligible for a residential entrance permit on the date of recordation; or
- f. A variance of the above requirements is granted by the Board of Douglas County Commissioners, based upon a finding that all of the following conditions have been met:
 - (1) That the variance requested arises from such condition which is unique and is created by this Article and not by an action or actions of the property owner;
 - (2) That the granting of this variance will not adversely affect the rights of adjacent property owners or residents;
 - (3) That the strict application of the provisions of this Article will constitute unnecessary hardships upon the property owner represented in the application;
 - (4) That the variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare; and
 - (5) That granting the variance desired will not be opposed to the general spirit and intent of this Article.

The provisions of this Section shall not apply to property divided after October 30, 2006.

2. Amendment to Section 9-512. Section 9-512 of the County Code is amended to read as follows:

9-512

If any owner of a tract of property is denied an entrance permit onto a public road for purposes of construction of a residential dwelling pursuant to the provisions of Section 9-502 *solely* for the reason that the property does not have sufficient frontage along a public road, and that the property is located on a public road classified as anything other than a Local or Minor Collector road (in other words, the property satisfies one of the criteria in 9-502 but is not located on a Local or Minor Collector road), the owner may file an application with the Douglas County Department of Public Works for a variance to the strict application of this Article. Such request shall provide justification for the requested variance and shall be heard by the designee of the Board of County Commissioners within a reasonable time after the filing of the application. In addition to other relevant issues, the person hearing the owner's application may consider and require alternatives to the requested entrance permit so as to reduce the number of entrances onto the public road, including but not limited to requiring shared entrances, frontage roads, obtaining an entrance from a different road, or combining adjacent tracts of property under the same ownership or control into one tract. In reaching a decision on the owner's application, the designee of the Board of County Commissioners shall consider the economic impact of the denial of an entrance permit or the requirement of an alternative entrance, the extent to which the denial or alternative requirement interferes with the owner's reasonable investment-backed expectations, and the adverse impacts of the proposed access to the safety of the public road. The designee's decision shall be in writing and shall be promptly conveyed to the owner. Any owner adversely affected by the decision of the designee of the Board of County Commissioners may appeal the decision to the Board of County Commissioners by written notice filed with the Board within 30 days of the written decision of the designee, specifically stating the basis for the appeal and the requested relief. The Board of County Commissioners may affirm, reverse, or affirm in part and reverse in part the decision of the designee, or may remand the application back to the designee for further consideration in accordance with instructions provided by the Board.

3. Repeal. Sections 9-502 and 9-512 of the Douglas County Code, as in existence immediately prior to the effective date of this Resolution are hereby repealed.

4. Effective Date. This Resolution shall take effect and be in force from and after its adoption and publication once in the official County newspaper.

IN WITNESS WHEREOF, the foregoing Resolution was adopted this 20th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS

ATTEST:

Jameson D. Shew, County Clerk

Nancy Thellman, Chair

Jim Flory, Commissioner

Mike Gaughan, Commissioner

RESOLUTION _____

WHEREAS, on the 20th of January 2010, the same being a regular session of the Board of County Commissioners of the County of Douglas, the application of Clinton Store for a cereal malt beverage license came up for considerations by the above board and

WHEREAS, the Board does find that said Clinton Store is qualified under the law to sell cereal malt beverages not for consumption on the premises located **598 N 1190 Rd, Lawrence, Kansas**

WHEREAS, the Board further finds that due and legal notice has been given the Clinton Township Board and that ten days has expired from the giving of said notice and that no written objection has been filed by the Clinton Township Board protesting the granting of a cereal malt beverage license.

NOW THEREFORE, BE IT RESOLVED that the applicant, **The Clinton Store** granted a license to sell cereal malt beverage not for consumption on the premises located at **598 N 1190 Rd, Lawrence, Kansas**

BE IT FURTHER RESOLVED, that Jameson Shew, County Clerk of Douglas County, Kansas be directed to issue said license.

Chairman

Member

Member

ATTEST:

Jameson Shew, Douglas County Clerk

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIME

RETAIL

Fee \$75.00

NO.

DEALER'S 2010 LICENSE

TO ALL WHOM IT MAY CONCERN:

License is hereby granted to: **The Clinton Store**

**TO SELL CEREAL MALT BEVERAGES AT RETAIL IN ORIGINAL AND UNOPENED
CONTAINERS AND NOT FOR CONSUMPTION ON PREMISES**

(State if for consumption on the premises, or for sale in original and unopened containers and not for consumption on premises)

598 N 1190 Rd, LAWRENCE, KS. Application therefore on file in the office of the County Clerk of Douglas County, having been approved by the governing body of said County, as provided by Laws of Kansas and the regulations of the board of County Commissioners.

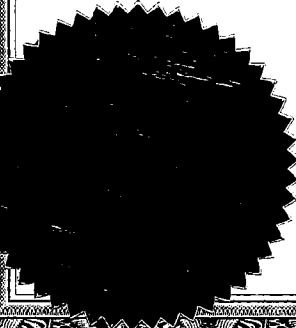
This License will expire 12:00 midnight December 31, 2010 unless sooner revoked, is not transferable, nor will any refund be allowed thereon.

Done by the Board of County Commissioners of Douglas County, Kansas

This 20th Day of January 2010

Attest: _____
County Clerk

Chairman





www.kansasyouth.org
2518 Ridge Court, Suite 212
Lawrence, KS 66046
785-550-8951

January 3, 2010

Douglas County Commission
1100 Massachusetts St.
Lawrence, KS 66044

Dear County Commissioners:

I am writing to this letter on behalf of Northeast Kansas Youth Inc. (NKY Inc.) to request permission to place a concrete slab and other temporary structures upon the vacant land located east of the United Way Building, 2518 Ridge Court in Lawrence, KS.

Before I describe this project in more detail, I would like to give you a brief introduction to my organization, NKY Inc. We are a Christian faith-based nonprofit organization formed in 2005 for the purpose of benefiting children, youth and families in Lawrence and the surrounding area. The vision of NKY Inc. includes building and establishing facilities where NKY Inc. and other community organizations can implement programs focused on improving the likelihood of success for all youth, with an emphasis on the development of strong leaders within our youth population here in Lawrence.

Currently NKY Inc. leases office space in the United Way Building at 2518 Ridge Court, giving our organization the ability to operate a few programs and launch new community efforts. Through our collaboration with other organizations with similar missions, we continue to develop ideas, resources and strategic planning for the youth facilities mentioned in the paragraph above.

Although we lease space from the United Way and we are a tax-exempt organization, NKY Inc. is not a United Way Agency. We operate solely from individual, corporate and in-kind contributions.

NKY Inc. sponsors a program for children ages 5-12 we call Power Camp (for Kids). Power Camp takes place on a bi-monthly basis on Saturday evenings from 6:00-8:30 in our office space and meeting rooms at the United Way Building on Ridge Court. Power Camp meetings consist of outdoor and indoor activities and games, computer lab, creative arts, life-lessons and a pizza meal. All Power Camp activities are offered free to all children. At least 50% of the children currently attending Power Camp come from single parent or low income families, although we do not ask for financial information.

As NKY Inc. is in our fourth year of sponsoring and operating Power Camp for Kids, we have grown from six children in 2006 to currently serving about 60 children. Our growth has caused us to look at more creative ways to use our space and resources.

The vacant lot behind the United Way Building is used for many of our outdoor games and activities. For this reason, NKY is asking you for permission to use this lot to develop a temporary location for some of our activities and the activities of other organizations in the community or neighborhood. Specifically, we would like to place upon this lot, a 50' x 100' concrete slab and six basketball goals for basketball courts, 4-square, etc.; lights; and to landscape the remaining area into a more level grass playground area and practice field for youth football, soccer, batting practice, etc. We would also like to ask you to consider granting NKY Inc. permission to locate a modular building for after school/summer programs, tutoring, computer lab, Power Camp meetings and other community programs.

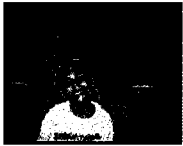
NKY Inc. will need approximately six to twelve months to raise the finances required for this project.

I have enclosed a brochure for your information. Our website is www.kansasyouth.org

Sincerely yours,

Muriel Cowgill, President
Northeast Kansas Youth

Power Camp



Power Camp for Kids is a program sponsored by NKY Inc. and is offered to children in Lawrence, Kansas and the surrounding area, ages 5-12 years old. 2009 marks the fourth year for Power Camp to be in session.

We want to reach children in the early stages of their lives in order to help and encourage them to grow in the joy of the Lord and to see how God works in every circumstance of life.



There is no charge to attend the program and all services, food and projects supplies are offered free of charge.

Camps are held twice each month on Saturday evenings at the United Way Building, 2518 Ridge Court in Lawrence. For more information please contact us at:

kansasyouth@sunflower.com.



2518 Ridge Court, #212
Lawrence, Kansas 66046

Phone: 785-550-8951
Fax: 785-856-0791
kansasyouth@sunflower.com




"THE SPIRIT OF THE LORD GOD IS UPON ME, BECAUSE THE LORD HAS ANOINTED ME TO PREACH GOOD TIDINGS TO THE POOR; HE HAS SENT ME TO HEAL THE BROKENHEARTED, TO PROCLAIM LIBERTY TO THE CAPTIVES, AND THE OPENING OF THE PRISON TO THOSE WHO ARE BOUND."
ISAIAH 61:1

Northeast Kansas Youth
www.kansasyouth.org

Tel: 785-550-8951



NKY inc.



Northeast Kansas Youth (NKY Inc.) is a faith-based non-profit agency, formed in 2005, for the purpose of serving the needs of children, youth and their families in this area.

We are committed to strengthening our community and helping young people have greater opportunities for success by offering activities and programs like mentoring, job and skill training, teaching God's word and ministering to their physical, educational and financial needs.

We, here at NKY Inc., are excited to see the youth of our community know that God has a plan to prosper them and give them a hope for the future.

MENTORING & RELATIONSHIP BUILDING

NKY Inc. collaborates with other ministries to mentor and build relationships with young people and their families including providing food, clothing, other essentials and sharing the Gospel.

FOOD & CLOTHING

In Lawrence alone there are over 2000 children ages five to 12 whose families are near or under the poverty guidelines. NKY Inc. can use your contribution to help these families.

RESOURCE SHARING

NKY Inc. meets the first Tuesday of each month to join together with others in this area who serve youth, gather resources and ideas, develop strategies and find new ways to reach the youth of our city.

BIBLES

NKY Inc. receives donations of Bibles from ministries across the nation and distributes them to children, youth and families in the community.

YOUTH CENTER

NKY Inc. plans to establish community and youth centers in Lawrence in order to build relationships across the generations and to help children be successful in their goals and lives.

CHILDCARE CENTER

NKY Inc. plans to establish a 24-7 childcare center to increase employment possibilities for single-parents and shift

Your tax-deductible donations are accepted

Northeast Kansas Youth Inc.
www.kansasyouth.org

2518 Ridge Court, #212
Lawrence, Kansas 66046

Phone: 785-550-8951
Fax: 785-856-0791
kansasyouth@sunflower.com

They will rebuild the ancient ruins and restore the places long desolate. They will renew the ruined cities that have been destroyed, and raise up their foundations. They will rebuild the ancient ruins and restore the places long desolate. They will renew the ruined cities that have been destroyed, and raise up their foundations. They will rebuild the ancient ruins and restore the places long desolate. They will renew the ruined cities that have been destroyed, and raise up their foundations.



**Tenants to Homeowners, Inc.
The Lawrence Community Housing Trust Program
2518 Ridge Court, Suite 209, Lawrence, Kansas 66046**

842.5494 ♦ FAX 785.842.7570 ♦ lawrencelandtrust@yahoo.com ♦ www.tenants-to-homeowners.org

January 11, 2010

Craig Weinaug
County Administrator
1100 Massachusetts
Lawrence, KS 66044

Dear Craig Weinaug:

With the completion of the historic rehabilitation project at 1120 Rhode Island, I would like to request that the county convey the property to TTH, the community not-for-profit. Unfortunately, under the current 30-year lease, we are not able to convey the property or allow a homebuyer to get financing as they usually do with our First Time Homebuyer Program. Given that the aim of the project was owner-occupied housing in the neighborhood, given that the home has been completely refurbished and should be maintained by an owner, given that the Housing Trust will steward this property for many other first time buyers, and given that homebuyers have a unique opportunity until April 30, 2010 to qualify for a tax credit, TTH would like to be able to convey this property under the Housing Trust Program by May, 2010.

This bungalow is a contributing property to the Rhode Island National Historic District, which began as a semi-rural "Merchant's Row" neighborhood in the early 1860's as tradesmen settled in Lawrence. Eventually abandoned, 1120 Rhode Island became the property of Douglas County. By 2008, when Rhode Island Street joined the National Historic Register, this home was a notorious eyesore. Indignant members of the East Lawrence Neighborhood Association pushed for a solution. Demolition was impossible due to the bungalow's status as a historic property, and the County lacked a budget for historic rehabilitation. Tenants to Homeowners, Inc. offered to renovate and place 1120 in its stock of permanently affordable homes, and the previous County Commissioners leased the home to TTH, Inc. for rehabilitation. The project was completed in December 2009 with TTH, Inc. funds; the Lawrence Preservation Alliance worked as the general contractor.

Now completely transformed, this bungalow already has an interested buyer that has qualified for the Housing Trust Program, which empowers families with low and moderate incomes to become homeowners. In return, when they move on, the home is resold at an affordable price to another income-eligible buyer. This ensures continuous affordability and owner-occupancy. Therefore, the county would be conveying a community resource to a community program that helps continuous working class families in Lawrence. This conveyance also meets the East Lawrence Neighborhood's goals of maintained housing. TTH had originally settled for renting the home, but given that our main mission is owner occupied housing and stewardship of affordable homeownership for working families, we believe that putting first time homebuyers in this \$150,000 rehabilitation project would be a great ending to a collaborative community effort between TTH, the LPA, state historic tax credit financing and the county.

Thank you.

Rebecca Buford, Executive Director, TTH, Inc.

AD - Crabtree, Robin

From: AD - Weinaug, Craig
Sent: Thursday, January 14, 2010 3:10 PM
To: Nancy Thellman; James Flory; Mike Gaughan
Cc: AD - Crabtree, Robin
Subject: FW: Item for County agenda 1/20/10 re West Lawrence labs Lease

This will be on next Wednesday's agenda.

At this point it looks like the meeting will be a 4 pm meeting only that will probably be over by five-thirty or six. I'll know for sure tomorrow before noon.

Craig

-----Original Message-----

From: Diane Stoddard [mailto:dstoddard@ci.lawrence.ks.us]
Sent: Thursday, January 14, 2010 3:06 PM
To: AD - Weinaug, Craig
Cc: David L. Corliss; Roger Zalneraitis; 'elepp@ldcba.org'; 'EIce@stevensbrand.com'; 'RIEKHOF, GINA'; Toni Wheeler
Subject: Item for County agenda 1/20/10 re West Lawrence labs Lease

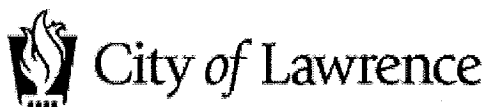
Craig,

As we have discussed, the City Commission took action at its meeting this week to remove the option to purchase provision from the lease with the LDCBA on the West Lawrence Labs building. There were concerns about the complexity of the provision, that this was a new provision since the item had been discussed originally back in November and early December, that the provision would enable the purchase in the future at a cost less than market value, and the point was made that the LDCBA has the ability to propose a purchase in the future and, at that time, the City and County can chose how to respond to such a request.

Based upon this City action, I am requesting that the County Commission reconsider the amended version of the lease, which strikes Sections 3.6 and 3.7, which deal with the option to purchase. All other provisions remain unchanged. Should the County Commission approve this change, the plan will then be for the LDCBA to consider the lease and the City Commission will have the lease on its consent agenda on January 26 for final consideration.

Please feel free to pass this along to the County Commissioners and place in the packet with the revised lease documents that I provided to you. Thank you for your assistance!

Thanks, Diane



Diane Stoddard, Assistant City Manager - dstoddard@ci.lawrence.ks.us
City Manager's Office | City of Lawrence, KS
P.O Box 708, Lawrence, KS 66044

Gilmore & Bell, P.C.
Draft Dated January ~~5~~¹², 2010
Lease ~~v8y9~~

**CITY OF LAWRENCE, KANSAS,
and
DOUGLAS COUNTY, KANSAS,
As Lessors**

AND

**LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY,
As Lessee**

LEASE AGREEMENT

Dated as of January 1, 2010

LEASE AGREEMENT

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Field Code Changed

Field Code Changed

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Field Code Changed

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Exhibit A Leased Premises

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Schedule I – Schedule of Basic Rent Payments

LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of January 1, 2010 (the "Lease"), between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the "City") and **DOUGLAS COUNTY, KANSAS**, a body corporate and politic organized and existing under the laws of the State of Kansas (the "County"), as lessors, and **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a Kansas not for profit corporation ("LDCBA"), as lessee;

WITNESSETH:

WHEREAS, the City is authorized pursuant to Ordinance No. 8480 (the "Ordinance") and Article 12, Section 5 of the Constitution of the State of Kansas (the "Home Rule Amendment"), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes, and to issue general obligation bonds for the purpose of paying the cost of such facilities;

WHEREAS, the County is authorized pursuant to Resolution No. HR-09-12-4 (the "Resolution") and K.S.A. 19-101 (K.S.A. 19-101, the Ordinance, the Resolution and the Home Rule Amendment collectively referred to here in as the "Act") to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes; and

WHEREAS, pursuant to the foregoing, the City and the County desire to acquire and lease the Leased Premises to the LDCBA and the LDCBA desires to lease the Leased Premises from the City and the County, for the rentals and upon the terms and conditions hereinafter set forth; and

WHEREAS, pursuant to this Lease, and so long as there is no default hereunder, the parties desire that the LDCBA manage the day-to-day operations of the Leased Premises so as to encourage economic development of bioscience and technology components of the local economy.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City, the County and the LDCBA do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease, the following words and terms as used in this Lease shall have the following meanings:

"Additional Rent" means the additional rental described in **Sections 4.1, 5.2 and 6.2** of this Lease.

"Annual Interest Rate" means the lesser of (a) an interest rate equal to the City's average annual investment rate for the City's idle funds for the previous calendar year plus 50 basis points, or (b) 4.00%.

“**Authorized City Representative**” means the City Manager or his or her designee.

“**Authorized County Representative**” means the County Administrator or his or her designee.

“**Authorized LDCBA Representative**” means the President of the LDCBA or his or her designee.

“**Basic Rent**” means the rental described in **Section 5.1** of this Lease.

“**Bonds**” means the City’s Taxable General Obligation Bonds (Lawrence-Douglas County Bioscience Project), Series 2010-A in the estimated principal amount of \$2,900,000.

“**Cooperation Agreement**” means that certain Cooperation Agreement between the City and the County dated as of January 1, 2010.

“**Event of Default**” means any Event of Default as described in **Section 12.1** of this Lease.

“**Expenses**” means all expenses of any kind incurred with respect to the Leased Premises and paid by LDCBA, the City or the County.

“**Full Insurable Value**” means the full replacement cost of the Leased Premises, as determined by the City and the County.

“**Lease**” means this Lease Agreement, between the City and the County, as lessors, and the LDCBA, as lessee, as from time to time amended and supplemented in accordance with the provisions of this Lease.

“**Lease Term**” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** of this Lease.

“**Leased Premises**” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof, including all buildings, structures, improvements, fixtures, machinery and equipment related thereto.

“**Leasehold Improvements**” means certain upgrades to the HVAC system on the Leased Premises and other improvements as proposed by LDCBA to the Management Committee in accordance with **Section 4.1** hereof.

“**Net Proceeds**” means, when used with respect to any insurance or condemnation award with respect to the Leased Premises, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the County) incurred in the collection of such gross proceeds.

“**Net Revenues**” means, for the period of determination, all Revenues less all Expenses.

“**Rent**” means Basic Rent and Additional Rent.

“**Revenues**” means all revenues of any kind generated by the Leased Premises and paid to LDCBA.

Section 1.2. Rules of Interpretation.

- (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.
- (c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.
- (d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.
- (e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City hereby represents and warrants that the City is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

Section 2.2. Representations by the County. The County hereby represents and warrants that the County is a body corporate and politic duly organized and validly existing under the laws of the State of Kansas. The County has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the County has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

Section 2.3. Representations by the LDCBA. The LDCBA makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The LDCBA is a 501(c)(6) not for profit corporation validly existing and in good standing under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.
- (b) The LDCBA has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper corporate action of its Board of Directors, the LDCBA

has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the LDCBA will not conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other corporate restrictions or any agreement or instrument to which the LDCBA is a party or by which it or any of its property is bound, or the LDCBA's Articles of Incorporation or Bylaws or any order, rule or regulation applicable to the LDCBA or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the LDCBA under the terms of any instrument or agreement to which the LDCBA is a party.

(d) The Leased Premises will comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of its knowledge, without independent investigation, the Leased Premises will comply with all other applicable laws, rules and regulations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City and the County hereby rent, lease and let the Leased Premises to the LDCBA, and the LDCBA hereby rents, leases and hires the Leased Premises from the City and the County, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term.

(a) This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the date the City and the County take title to the Leased Premises, which date is expected to be on or about January 26, 2010, and terminating on January 31, 2035.

(b) The City and the County may terminate this Lease upon no less than five years' written notice to LDCBA.

Section 3.3. Possession and Use of the Leased Premises.

(a) The City and the County covenant and agree that as long as neither the City nor the County has exercised any of the remedies set forth in **Section 12.2(c)** following the occurrence and continuance of an Event of Default, the LDCBA shall have sole and exclusive possession of the Leased Premises (subject to the City's and the County's right of access and inspection pursuant to this Lease) and shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the Lease Term. The City and the County covenant and agree that they will not take any action, other than expressly pursuant to **Article XII** of this Lease, to prevent the LDCBA from having quiet and peaceable possession and enjoyment of the Leased

Premises during the Lease Term and will, at the request and expense of the LDCBA, cooperate with the LDCBA in order that the LDCBA may have quiet and peaceable possession and enjoyment of the Leased Premises.

(b) Subject to the provisions of this Section, the LDCBA shall have the right to use the Leased Premises for a bioscience and technology incubator and/or graduation facility, and/or for any other purpose that is consistent with the economic development mission of the LDCBA.

(c) The LDCBA shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Leased Premises or to any adjoining public ways, as to the manner of use or the condition of the Leased Premises or of adjoining public ways. The LDCBA shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The LDCBA shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the LDCBA to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the LDCBA shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the LDCBA may refrain from complying therewith; provided, however that (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment related to such contest and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

(d) Neither the City nor the County shall be liable for any loss or damage to the property of LDCBA or any sublessee or any other personal property in or about the premises, regardless of the cause of such loss or damage.

Section 3.4. Funds and Accounts; Use of Revenues and Payment of Expenses.

(a) **Establishment of Operating Fund; Annual Budget.** Upon commencement of this Lease, the LDCBA shall create an Operating Fund with respect to the Leased Premises, which shall be separately accounted for and budgeted each year by the LDCBA. Annually, by each June 1, the LDCBA shall submit a budget to the Management Committee created pursuant to the Cooperation Agreement showing all expected Revenues and Expenses of the Leased Premises for the following calendar year.

(b) **Revenues of Leased Premises; Deposit to Operating Fund.** All Revenues generated by LDCBA from LDCBA's possession and use of the Leased Premises shall be deposited to the Operating Fund and shall be held by the LDCBA in escrow for the benefit of the LDCBA, the City and the County.

(c) **Expenses of Leased Premises; Payment from Operating Fund.** All moneys in the Operating Fund shall be used by the LDCBA solely and only to pay management, operation and maintenance expenses and Rent required to be paid by the LDCBA pursuant to this Lease. Any Expenses in excess of the total amount of aggregate Expenses shown in the then current budget, as approved by the Management Committee, shall require the approval of the Management Committee before such Expenses are paid from the Operating Fund. If LDCBA fails to pay any Rent when due pursuant to this agreement, the

amount of any unpaid Rent shall accrue as a deficit in the Operating Fund. For purposes of approval of any budget under this **Section 3.4(c)**, the Authorized LDCBA Representative shall be considered an *ex officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the budget, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such budget.

Section 3.5. Accounting; Reports. On each February 1 and August 1, LDCBA shall transmit to the City and the County a report showing an accounting of all Revenues and Expenses deposited to and paid from the Operating Fund. Such semi-annual report shall also describe maintenance performed on the Leased Premises during the prior six-month period, and an estimate of maintenance to be performed on the Leased Premises, including the estimated costs thereof, during the twelve months following such report.

~~**Section 3.6. Option to Purchase the Leased Premises.** LDCBA shall have, and is hereby granted, the option to purchase the Leased Premises at any time, prior to the expiration of the Lease Term, and so long as the LDCBA is not in default under this Lease and/or the City and the County have not entered into a contract for sale of the Leased Premises to a third party, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to the Ordinance and Resolution of the City authorizing the issuance of such Bonds. To exercise such option the LDCBA shall give written notice to the City and to the County, and shall specify therein the date of closing such purchase, which date shall be not less than 30 nor more than 180 days from the date such notice is mailed. The purchase price payable by the LDCBA in the event of its exercise of the option granted in this Section shall be the sum of the following:~~

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- ~~(a) \$2,375,000.00, which amount equals the price that the City and County paid to acquire the Leased Premises including related legal fees and financing costs; plus~~
- ~~(b) \$600,000.00 (or actual costs, if different), which amount equals the cost the City and the County pay for the Leasehold Improvements described in **Section 4.1** hereof; plus~~
- ~~(c) an amount of money equal to the "Expenses" (as that term is defined in the Cooperation Agreement) that are (i) capital expenses paid by the City and the County with respect to the Leased Premises and (ii) payments by the City and the County of interest on the Bonds that are attributable to underpayment of Basic Rent by the LDCBA, and that are shown on the ledger kept by the City pursuant to the Cooperation Agreement, so long as such amounts have not been previously reimbursed by LDCBA; plus~~
- ~~(d) an amount of money which will be sufficient to pay the interest (but not the principal) to accrue on all the then outstanding Bonds on the earliest redemption date next succeeding the closing date; plus~~
- ~~(e) an amount of money equal to reasonable fees and expenses of the City and the County accrued and to accrue with respect to the Bonds until redemption of the Bonds and accrued or to accrue with respect to the Leased Premises until the closing date of such purchase by the LDCBA; less~~
- ~~(f) the sum of all of the Principal Portion of Basic Rent previously paid by LDCBA pursuant to this lease.~~

~~Section 3.7. Conveyance of the Leased Premises. At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the LDCBA documents conveying to the LDCBA legal title to the Leased Premises, as it then exists, subject to the following: (1) those liens and encumbrances, if any, to which title to the Leased Premises was subject when conveyed to the City and the County; (2) those liens and encumbrances created by the LDCBA or to the creation or suffering of which the LDCBA consented; and (3) those liens and encumbrances resulting from the failure of the LDCBA to perform or observe any of the agreement on its part contained in this Lease.~~

ARTICLE IV

INITIAL IMPROVEMENTS

Section 4.1. Initial Improvements to Leased Premises. As soon as practical after execution of this Lease, the LDCBA shall submit a plan for the Leasehold Improvements to the Management Committee for approval. Following approval, the LDCBA shall cause the Leasehold Improvements to be completed. LDCBA may submit up to \$600,000.00 of the costs of such Leasehold Improvement to the Management Committee for payment and/or reimbursement, and any costs in excess thereof shall be paid by LDCBA.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent.

(a) The LDCBA covenants and agrees to pay as Basic Rent to the City and the County on each February 1 and August 1 (each, a "Rent Payment Date") beginning August 1, 2010 through and including August 1, 2014, the sum of \$12,500.00. On each Rent Payment Date thereafter, the LDCBA shall pay as Basic Rent to the City and the County the Principal Portion of Basic Rent as shown on **Schedule I** hereto plus the Interest Portion of Basic Rent. The Interest Portion of Basic Rent on each Rent Payment Date shall be determined by (a) multiplying the Cumulative Outstanding Principal Amount as shown on **Schedule I** hereto on each Rent Payment Date by the Annual Interest Rate, as determined from time to time, and (b) dividing such amount by two. The City shall give notice of the Annual Interest Rate to LDCBA and the County by January 15 of each year.

(b) All payments of Basic Rent provided for in this Section shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

Section 5.2. Additional Rent.

(a) The LDCBA shall pay as Additional Rent the following amounts:

(1) all expenses reasonably incurred in connection with the enforcement of any rights against the LDCBA or the Leased Premises under this Lease by the City or the County, except for such expenses as may be incurred solely as a result of the gross negligence or wrongful misconduct of the City, the County or both;

(2) an amount sufficient to reimburse the City for all expenses reasonably incurred by the City hereunder and in connection with the performance of its obligations under this Lease;

(3) an amount sufficient to reimburse the County for all expenses reasonably incurred by the County hereunder and in connection with the performance of its obligations under this Lease;

(4) all general ad valorem and personal property taxes, including any special assessments levied against the Leased Premises and/or any payments in lieu of taxes;

(5) all other payments of whatever nature which the LDCBA has agreed to pay or assume under the provisions of this Lease.

(b) Except as otherwise provided in this Section, Additional Rent shall be payable within 10 days of notice thereof from the City or the County, or by such later date specified in notice provided by the City or the County to LDCBA. All payments of Additional Rent provided for in this Section shall be paid directly to the person or entity owed, except that any payments to be made to the City or the County shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

Section 5.3. Obligations of LDCBA Absolute and Unconditional.

(a) The obligations of the LDCBA under this Lease are intended to be absolutely net to the City and the County, and the obligations of the LDCBA under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and notwithstanding any damage to, loss, theft or destruction of, the Leased Premises or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Leased Premises, legal curtailment of the LDCBA's use thereof, the eviction or constructive eviction of the LDCBA, any change in the tax or other laws of the United States of America, the State of Kansas or any political subdivision thereof, any change in the City's or the County's legal organization or status, or any default of the City or the County hereunder, and regardless of the invalidity of any action of the City or the County, and regardless of the invalidity of any portion of this Lease.

(b) Nothing in this Lease shall be construed to release the City or the County from the performance of any agreement on its part herein contained or as a waiver by the LDCBA of any rights or claims the LDCBA may have against the City or the County under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City or the County separately, it being the intent of this Lease that the LDCBA shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent). The LDCBA may, however, at its own cost and expense and in its own name or in the name of the City or the County, prosecute or defend any action or proceeding or take any other action involving third persons which the LDCBA deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City and the County hereby agree to cooperate fully with the LDCBA and to take all action necessary to effect the substitution of the LDCBA for the City and the County in any such action or proceeding if the LDCBA shall so request.

ARTICLE VI

MANAGEMENT, MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Management of the Leased Premises. The LDCBA may, at any time during the Lease Term, employ an individual or firm to manage the Leased Premises. Such individual or firm shall have experience managing facilities such as the Leased Premises, and shall be subject to review and approval by the City and the County.

Section 6.2. Maintenance and Repairs. Throughout the Lease Term the LDCBA shall, at its own expense, keep the Leased Premises in as reasonably safe condition as the operation thereof will permit, and keep the Leased Premises in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof. LDCBA shall not commit waste of the Leased Premises.

Section 6.3. Taxes, Assessments and Other Governmental Charges.

(a) The LDCBA shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against the Leased Premises, or any part thereof or interest therein (including the leasehold estate of the LDCBA therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the LDCBA, or the income therefrom or Basic Rent and other amounts payable under this Lease, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would materially encumber the City's or the County's title to the Leased Premises; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the LDCBA shall be obligated to pay only such installments thereof as become due and payable during the Lease Term; except, provided that the first and last installments thereof shall be prorated according to the Lease Term.

(b) The LDCBA shall have the right, in its own name or in the City's and the County's name, to contest the validity or amount of any tax, assessment or other governmental charge which the LDCBA is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City and the County agree to cooperate fully with the LDCBA in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

Section 6.4. Utilities. All utilities and utility services used by the LDCBA in, on or about the Leased Premises shall be paid for by the LDCBA and shall be contracted for by the LDCBA in the LDCBA's own name, and the LDCBA shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.5. Ad Valorem Taxes. The City, the County and the LDCBA acknowledge that the Leased Premises shall pay general ad valorem and property taxes (including special assessments levied on account of special benefits) on real and personal property. The City, the County and LDCBA covenant that they will not voluntarily take any action which may be reasonably construed as tending to abate the levy or assessment of such ad valorem or property taxes on the Leased Premises during the Lease Term.

ARTICLE VII

INSURANCE

Section 7.1. Property Insurance. The City will obtain and shall maintain throughout the Lease Term, property insurance insuring the Leased Premises (excluding foundations), and business income (including extra expense) insurance for a period of not less than 12 months, against loss or damage resulting from perils covered by the causes of loss – special form (or the equivalent ISO form in use from time to time in Kansas). The property insurance shall be written on a replacement cost basis for the Full Insurable Value, with an agreed amount endorsement to prevent coinsurance and with deductibles not to exceed \$100,000. The insurance required pursuant to this Section shall be maintained at the LDCBA's sole cost and expense, which LDCBA shall pay to the City and the County as Additional Rent pursuant to Section 5.2(a) hereof, shall be maintained with generally recognized responsible insurance company or companies rated A(X) or better in the most current issue of Best's Insurance Reports and authorized to do business in the State of Kansas as may be selected by the City and the County. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City, the County and the LDCBA as insureds as their respective interests may appear, and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA, and shall be payable to the City and the County. In the event of loss or damage to the Leased Premises, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid over and applied as provided in **Article IX** of this Lease.

Section 7.2. Public Liability Insurance.

(a) LDCBA shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance, or the equivalent ISO form in use from time to time in Kansas, naming the City and the County, their respective employees, and the managing agent for the Leased Premises, each as additional insured parties, insuring against claims for bodily injury, personal injury and property damage arising out of or in any way related to the use and occupancy of the Leased Premises by LDCBA or its agents, contractors, employees, servants, subtenants, licensees or concessionaires (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), with a combined single limit of not less than \$1,000,000 per occurrence with a \$3,000,000 aggregate for this location and a deductible not to exceed \$100,000. The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA. Such policies or copies or certificates thereof shall be furnished to the City and County. LDCBA's insurance shall provide primary coverage to the City and the County when any policy issued to

the City and the County provides duplicate or similar coverage, and in such circumstance the policies of the City and the County will be excess over LDCBA's policy. If LDCBA has other locations that it owns or leases that are covered by such insurance, such policies shall include an aggregate limit per location endorsement, and such limit for the Leased Premises shall not be less than that specified above, so that losses at other properties cannot decrease the amount of insurance available for the Leased Premises below the limits specified above. In no event shall the limits of such insurance be considered as limiting the liability of LDCBA under this Lease.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.3. Blanket Insurance Policies. The LDCBA may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

ARTICLE VIII

ALTERATION OF THE LEASED PREMISES

Section 8.1. Additions, Modifications and Improvements of the Leased Premises. Except as provided in **Section 4.1** hereof, and except for (i) any structural changes to the Leased Premises, (ii) any changes that affect the building systems (including, but not limited to, electrical, HVAC, or plumbing), or (iii) changes with a total cost in excess of \$200,000.00, all of which shall be subject to review and prior approval of the Management Committee, the LDCBA shall have and is hereby given the right to make such additions, modifications and improvements in and to any part of the Leased Premises as the LDCBA from time to time may deem necessary or desirable for its business purposes. All such additions, modifications and improvements shall be made at LDCBA's sole cost and expense. All additions, modifications and improvements made by the LDCBA pursuant to the authority of this Section shall (a) be made in workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Leased Premises.

Section 8.2. Permits and Authorizations. The LDCBA shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, restoration, replacement, modification or addition to the Leased Premises, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

Section 8.3. Mechanics' Liens.

(a) The LDCBA shall not do or suffer anything to be done whereby the Leased Premises, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Leased Premises, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about

the Leased Premises, the LDCBA shall discharge the same of record within 90 days after the date of filing. Notice is hereby given that the City and the County shall not be liable for any labor or materials furnished the LDCBA or anyone claiming by, through or under the LDCBA upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City or the County in and to the Leased Premises or any part thereof.

(b) Notwithstanding paragraph (a) above, the LDCBA shall have the right to contest any such mechanics' or other similar lien if within said 90-day period stated above it notifies the City and the County in writing of its intention so to do and posts bond sufficient to cover such lien, and provided the LDCBA diligently prosecutes such contest, at all times effectively stays or prevents any official or judicial sale of the Leased Premises, or any part thereof or interest therein, under execution or otherwise, and pays or otherwise satisfies any final judgment enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any loss, costs or expenses the City or the County may incur related to any such contest. The City and the County shall cooperate fully with the LDCBA in any such contest.

ARTICLE IX

DAMAGE OR DESTRUCTION

Section 9.1. Damage or Destruction.

(a) If the Leased Premises shall be damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the LDCBA, as promptly as practicable, shall either repair, restore, replace or rebuild the same to as nearly as may be practicable their condition and character immediately prior to such damage or destruction, and so that upon completion of such repairs, restoration, replacement or rebuilding such Leased Premises shall be of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction. The City and the County shall have the right to review and approve the plans and specifications related to such improvement of the Leased Premises.

The Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Leased Premises shall be paid to the Building Fund and shall be applied in the following manner:

(A) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of making such temporary repairs or doing such other work, as, in the LDCBA's reasonable opinion, may be necessary in order to protect the Leased Premises pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding;

(B) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of repairing, restoring, replacing or rebuilding the Leased Premises or any part thereof;

(C) payment to the LDCBA pursuant to subdivisions (A) or (B) of this subsection (a)(ii) from such Net Proceeds shall be made to the LDCBA from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, the architects' and engineers' fees, and other charges in connection with such work, upon

delivery to the City and the County of a certificate of the LDCBA's architect or general contractor, as the case may be, in charge of such work, certifying: (1) that the amounts so to be paid to the LDCBA are payable to the LDCBA in accordance with the provisions of this Article and that such amounts are then due and payable by the LDCBA or have theretofore been paid by the LDCBA; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications approved by the City and the County therefor and all insurance requirements of **Article VII** hereof; (4) that the sum requested when added to all sums previously paid out under this Article for the work does not exceed the value of the work done to the date of such certificate; (5) the estimated cost of completing the work, in reasonable detail; and (6) that the remaining Net Proceeds are sufficient to pay the estimated cost of completing the work;

(D) at the request of the City or the County, the LDCBA shall furnish to the person requesting the same, at the time of any such payment, with an official search, or other evidence reasonably satisfactory to such person, that there has not been filed with respect to the Leased Premises any mechanic's or other lien which has not been discharged of record, in respect of any work, labor, services or materials performed, furnished or supplied, in connection with the work and that all of said materials have been purchased free and clear of all security interest or other encumbrances. The City shall not pay out any such sum when the Leased Premises shall be encumbered with any such security interest or encumbrance.

(b) The insurance monies, if any, paid to the LDCBA as provided under this Article, on account of any loss or destruction to the Leased Premises, shall be held by it in trust and applied only for the purposes of repairing, reconstructing or restoring the Leased Premises or constructing new buildings and improvements and installing new machinery, equipment and fixtures thereto.

(c) If any of the insurance monies paid by the insurance company to the City or the LDCBA as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease shall not have terminated, the excess shall be used by the City and the County for any purpose permitted by law. If the Net Proceeds shall be insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the LDCBA shall pay the deficiency.

(d) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the LDCBA shall remain and continue liable for the payment of all Basic Rent and Additional Rental and all other charges required hereunder to be paid by the LDCBA, as though no damage by fire or any other casualty has occurred.

(e) The City, the County and the LDCBA agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(f) The LDCBA agrees to give prompt notice to the City and the County with respect to all fires and any other casualties occurring in, on, at or about the Leased Premises.

(g) If the LDCBA shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the LDCBA may elect to terminate this Lease. In the event LDCBA elects to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic

Rent, (2) pay any Additional Rent due an owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The LDCBA agrees to be reasonable in exercising its judgment pursuant to this subsection (g).

(h) If the City and the County shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the City and the County may elect to terminate this Lease. In the event the City and the County elect to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due an owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The City and the County agree to be reasonable in exercising its judgment pursuant to this subsection (h).

(i) The LDCBA shall not, by reason of its inability to use all or any part of the Leased Premises during any period in which the Leased Premises is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or the County or to any abatement or diminution of the rentals payable by the LDCBA under this Lease or of any other obligations of the LDCBA under this Lease except as expressly provided in this Section.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the Lessors; Exculpation and Indemnification.

(a) The City and the County make no warranty, either express or implied, as to the condition of the Leased Premises or that it will be suitable for the LDCBA's purposes or needs. The LDCBA releases the City and the County from, agrees that the City and the County shall not be liable for and agrees to hold the City and the County harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Leased Premises or the use thereof; unless such loss is the result of the City's or the County's gross negligence or willful misconduct.

(b) The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein ad the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that LDCBA has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. LDCBA further acknowledges and agrees that except as may otherwise be specifically provided herein, LDCBA accepts the Leased Premises in "as-is" condition and agrees that neither the City nor the County make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG

or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. If necessary, LDCBA shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

Section 10.2. Surrender of Possession. Upon accrual of the City's or the County's right of re-entry because of the LDCBA's default hereunder or upon the cancellation or termination of this Lease for any reason, the LDCBA shall peacefully surrender possession of the Leased Premises to the City and the County in good condition and repair, ordinary wear and tear excepted; provided, however, the LDCBA shall have the right within 90 days prior to the termination of this Lease to remove from the Leased Premises any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and not constituting part of the Leased Premises. All repairs to and restorations of the Leased Premises required to be made because of such removal shall be made by and at the sole cost and expense of the LDCBA, and during said 90-day (or extended) period the LDCBA shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and which are not so removed from the Leased Premises prior to the expiration of said period shall be the separate and absolute property of the City and the County.

Section 10.3. Lessors' Right of Access to the Leased Premises. The LDCBA agrees that the City and the County and their duly authorized agents shall have the right to enter upon the Leased Premises Site after giving notice to the LDCBA and with appropriate advance notice so as to allow LDCBA to comply with any confidentiality agreements contained in any subleases, all (a) as may be reasonably necessary to cause to be completed the acquisition, purchase, construction, improving, equipping or remodeling provided for in **Section 4.1** hereof, (b) to perform such work in and about the Leased Premises made necessary by reason of the LDCBA's default under any of the provisions of this Lease, and (c) following an Event of Default, to exhibit the Leased Premises to prospective purchasers, lessees or trustees.

Section 10.4. Indemnification of City and County. The LDCBA shall indemnify and save the City and the County harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Leased Premises during the Lease Term, and against and from all claims arising during the Lease Term from (a) any condition of the Leased Premises caused by the LDCBA or its sublessees, (b) any breach or default on the part of the LDCBA in the performance of any of its obligations under this Lease, (c) any contract entered into in by the LDCBA or its sublessee, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Leased Premises, (d) any act of negligence of the LDCBA or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the LDCBA, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the LDCBA; provided, however, the indemnification contained in this **Section 10.4** shall not extend to the City or the County if (i) such claim is the result of work being performed at the Leased Premises by employees of the City or the County, or (ii) such claim is the result of the City's or the County's gross negligence or willful misconduct. The LDCBA shall indemnify and save the City and the County harmless from and against all costs and expenses (except those which have arisen from the willful misconduct or gross negligence of the City or the County) incurred in or in connection with any action or proceeding brought in connection with claims arising from circumstances described in clauses (a) through (e), and upon notice from the City or the County, the LDCBA shall defend them or either of them in any such action or proceeding.

Section 10.5. LDCBA to Maintain its Corporate Existence. The LDCBA agrees that throughout Lease Term, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets.

ARTICLE XI

HAZARDOUS MATERIALS

Section 11.1. Defined Terms. The following words and terms, as used in this Article, shall have the following meanings:

b. **“Claim”** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

c. **“Environmental Laws”** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“TSCA”), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

d. **“Hazardous Materials”** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

e. **“Manage” or “Management”** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

f. **“Release” or “Released”** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “environment” is defined in CERCLA.

g. **“Response” or “Respond”** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

Section 11.2. LDCBA’s Obligations with Respect to Environmental Matters. During the Term of this Agreement, (i) LDCBA shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) LDCBA shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by LDCBA in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, without prior written disclosure to and prior written approval by the City and the County; (iii) LDCBA shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, LDCBA shall not dispose of Hazardous Materials in dumpsters provided by the City and the County for tenant use; (v) LDCBA shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) LDCBA shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) LDCBA shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, LDCBA shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

Section 11.3 Copies of Notices. During the Term of this Lease, as extended, if applicable, LDCBA shall provide the City and the County promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Department of Health and Environment, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, LDCBA shall provide the City and the County promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

Section 11.4 City and County’s Right to Inspect. The City and the County and their employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to LDCBA (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with LDCBA’s business in the Leased Premises, for the purpose of (i) determining LDCBA’s compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. The City and the County and their agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased

Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by LDCBA or its agents, employees, contractors or invitees. LDCBA agrees to cooperate with such investigations by providing any relevant information requested by the City and the County. LDCBA may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the Management Committee's prior written consent.

Section 11.5 Tests and Reports. Within ten (10) days of LDCBA's receipt of a written request by the City and the County, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event the City and the County hereby reserves the right to request the following described documents more often, LDCBA shall provide the City and the County with (i) copies of all environmental reports and tests obtained by LDCBA; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information) entered into or obtained by LDCBA with respect to any Hazardous Materials; (iii) copies of any permits issued to LDCBA under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by LDCBA to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. LDCBA shall provide the City and the County with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that LDCBA complies with all Environmental Laws relating to the Leased Premises.

Section 11.6 LDCBA's Obligation to Respond. If LDCBA's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, LDCBA shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

Section 11.7 City and County's Right to Act. In the event that LDCBA shall fail to comply with any of its obligations under this Paragraphs as and when required hereunder, the City and the County shall have the right (but not the obligation) to take such action as is required to be taken by LDCBA hereunder and in such event, LDCBA shall be liable and responsible to the City and the County for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by the City and the County in connection with such matters. LDCBA shall reimburse the City and the County immediately upon demand for all such amounts for which LDCBA is liable.

Section 11.8 Indemnification. Notwithstanding anything contained in this Agreement to the contrary, LDCBA shall reimburse, defend, indemnify and hold the City and the County, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

1. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually or allegedly Managed, released or disposed of on or from the Leased Premises (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or

- remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and
- 2. Any actual or alleged illness, disability, injury, or death of any person in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials Managed or Released on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and
- 3. Any actual or alleged failure of LDCBA or the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under Paragraph 11(b); and
- 4. Any failure by LDCBA to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of LDCBA under this Lease shall expressly exclude any obligation for any pre-existing environmental condition prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against the City and the County for which the City and the County are entitled to indemnity hereunder, the City and the County shall notify LDCBA of such Claim or assertion of liability and thereupon LDCBA shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of LDCBA under this Paragraph shall survive any termination or expiration of this Lease.

Section 11.9 Environmental Assessment Requirement. LDCBA shall timely provide a Phase I environmental report of reasonable scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a qualified environmental consultant reasonably approved by the City and the County, as to (1) any matter, to the extent such matter is attributable to events or conditions which arise during the Term, as extended, if applicable, and (2) the general environmental condition of the Leased Premises (the “Environmental Assessment”), within 60 days prior to termination or expiration of this Lease. If the Environmental Assessment is not delivered prior to such 60th day, then the City and the County may arrange for completion of same. The reasonable cost of any Environmental Assessment completed by the City and the County or LDCBA pursuant to this provision shall be paid by LDCBA or reimbursable to the City and the County by LDCBA (if completed by the City and the County) promptly upon the City and the County furnishing LDCBA with evidence of costs incurred therefor.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” or “default” under this Lease:

- (a) Default in the due and punctual payment of Basic Rent for two consecutive Rent Payment Dates, upon five days written notice to the LDCBA by the City or the County or default in the due and punctual payment Additional Rent for a period of 30 days following written notice to the LDCBA by the City or the County; or
- (b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the LDCBA’s part to be observed or performed, and such default shall continue for 30 days after the City or the County has given the LDCBA written notice specifying such default (or such longer period as shall be reasonably required to cure such default;

provided that (1) the LDCBA has commenced such cure within said 30-day period, and (2) the LDCBA diligently prosecutes such cure to completion); or

(c) The LDCBA shall: (1) admit in writing its inability to pay its debts as they become due; or (2) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have the appointment of any trustee, receiver or liquidator made without the LDCBA's consent or acquiescence, vacated or set aside; or (5) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) be subject to any proceeding, or suffer the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, shall not be dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (7) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) The LDCBA shall vacate or abandon the Leased Premises, and the same shall remain uncured for a period of 60 days.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof shall have occurred and be continuing, then the City or the County may at the City's or County's election, then or at any time thereafter, and while such default shall continue, take any one or more of the following actions:

(a) cause all Basic Rent payable for the remainder of the term of this Lease to become due and payable;

(b) give the LDCBA written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the LDCBA's rights to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated, and the City and the County may re-enter and take possession of the Leased Premises; or

(c) without terminating this Lease, re-enter the Leased Premises to take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County shall use reasonable diligence to relet the Leased Premises, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the City and the County may deem advisable, with the right to make alterations and repairs to the Leased Premises, and no such re-entry or taking of possession of the Leased Premises by the City or the County shall be construed as an election on the City's or the County's part to terminate this Lease, and no such re-entry or taking of possession by the City or the County shall relieve the LDCBA of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or any of its other

obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the LDCBA shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of this Lease Term, whether or not the Leased Premises shall have been relet, less the Net Proceeds, if any, of any reletting of the Leased Premises after deducting all of the City's and County's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County may, by notice to the LDCBA given at any time thereafter following an Event of Default, elect to terminate this Lease on a date to be specified in such notice, which date shall be not earlier than 30 days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the City and the County shall have the right to elect to re-enter and take possession of the Leased Premises, the City and the County may enter and expel the LDCBA and those claiming through or under the LDCBA and remove the property and effects of both or either (forcibly if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The City and the County may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the LDCBA under this Lease.

Section 12.3. Survival of Obligations. The LDCBA covenants and agrees with the City and County that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the LDCBA shall continue to pay the Basic Rent and Additional Rent and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease.

Section 12.4. Performance of the LDCBA's Obligations by the City and the County. If the LDCBA shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City or the County, may (but shall not be obligated so to do) upon the continuance of such failure on the LDCBA's part for 30 days after written notice of such failure is given the LDCBA by the City or the County, and without waiving or releasing the LDCBA from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the County and all necessary incidental reasonable costs and expenses incurred by the City or the County in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the County on demand, and if not so paid by the LDCBA, the City or the County shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the LDCBA in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City, the County and the LDCBA hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City, the County and the LDCBA shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the LDCBA of any

covenant, agreement or undertaking by the LDCBA, the City and the County may nevertheless accept from the LDCBA any payment or payments hereunder without in any way waiving City's or the County's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the LDCBA which were in existence at the time such payment or payments were accepted by the City or the County.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The LDCBA shall not have the right to assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof, except that LDCBA shall have the right to enter into subleases with such subtenants and on such terms as approved by the Management Committee. Such approval shall be handled by the Management Committee as expediently as possible under the circumstances. The Management Committee's approval of such subleases shall be evidenced by the written consent of the Authorized City Representative and the Authorized County Representative. For purposes of approval of any sublease under this **Section 13.1**, the Authorized LDCBA Representative shall be considered an *ex officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the sublease, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such sublease. If the Management Committee and the Authorized LDCBA Representative cannot reach a successful resolution of issues related to such sublease, the approval of such sublease shall be presented to the governing bodies of the City and the County, respectively. No sublease of the Leased Premises shall release or discharge the LDCBA from its primary liability for the payment of the Basic Rent and Additional Rent hereunder and the performance of each and all of the covenants and agreements herein contained, and its duties and obligations under this Lease shall continue as if no such sublease had been made. The LDCBA shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the County a true and correct copy of each such sublease.

(b) All subleases presented to and approved by the Management Committee shall include the provisions regarding insurance, damage or destruction of the subleased premises, hazardous materials, the Americans with Disabilities Act, indemnification and acknowledgement of this Lease in substantially the form attached hereto as **Exhibit A**. In no event shall the term of any sublease be in excess of five years for extend beyond the final term of this Lease.

Section 13.2. Assignment of Sublease Revenues by LDCBA. The LDCBA shall assign and pledge any rents, revenues and receipts receivable under any sublease, to the City and the County as security for payments due under this Lease.

Section 13.3. Assignment of Revenues by County. The County shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the City pursuant to the Cooperation Agreement as security for payments due under the Cooperation Agreement and the LDCBA hereby consents to such pledge and assignment.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of all parties hereto.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

- (a) To the City: City of Lawrence, Kansas
City Hall
6 East 6th Street
Lawrence, Kansas 66044
Attention: City Clerk

- (b) To the County: Douglas County, Kansas
Douglas County Courthouse
1100 Massachusetts Street
Lawrence, Kansas 66044
Attention: County Administrator

- (c) To the LDCBA: Lawrence-Douglas County Bioscience Authority
1617 St. Andrews Drive
Lawrence, Kansas 66047
Attention: President

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by any party hereto shall also be given to all other parties. The City, the County and the LDCBA may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 15.2. Lessors Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City and the County shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City and the County shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules.

Section 15.3. No Pecuniary Liability. No provision, covenant or agreement contained in this Lease, or any obligation herein or therein imposed upon the City or the County, or the breach thereof, shall

constitute or give rise to or impose upon the City or the County a pecuniary liability or a charge upon the general credit or taxing powers of the City, the County or the State of Kansas.

Section 15.4. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Kansas.

Section 15.5. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City, the County and the LDCBA and their respective permitted successors and assigns.

Section 15.6. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. City and County Sale of the Leased Premises. The City or County may, at any time, contract to sell their respective interests in the Leased Premises. From and after such a sale, the City and County shall be released from all liability to LDCBA and its successors and assigns arising from this Lease because of any act, occurrence or omission of the City or County occurring after such sale, and LDCBA shall look solely to the City's or County's successor in connection with the same; provided however, that the City and County shall not be released from liability to LCDBA and its successors and assigns under this Lease because of any act, occurrence or omission of occurring prior to such sale, unless such liability is expressly assumed by the City's or County's successor-in-interest in and to the Leased Premises.

Section 15.10. Limitation of City and County Liability. Notwithstanding anything in this Lease to the contrary, the City's and County's liability under this Lease shall be limited to their respective interests in the Leased Premises.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF LAWRENCE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the Mayor of the **CITY OF LAWRENCE, KANSAS**, a municipal corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed in behalf of said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

DOUGLAS COUNTY, KANSAS

By: _____
Chair of Board of County Commissioners

[SEAL]

ATTEST:

County Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared **Nancy Thellman**, to me personally known, who, being by me duly sworn, did say that (s)he is the Chair of the Board of County Commissioners of **DOUGLAS COUNTY, KANSAS**, a body corporate and politic duly organized and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said County, and that said instrument was signed and sealed in behalf of said County by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

**LAWRENCE-DOUGLAS COUNTY
BIOSCIENCE AUTHORITY, INC.**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the _____ of the **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a not for profit corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said organization, and that said instrument was signed and sealed in behalf of said organization by authority of its Board of Directors, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said organization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

EXHIBIT A

FORM OF SUBLEASE TERMS

DEFINED TERMS.

“Landlord” means the LDCBA.

“Leased Premises” means that portion of the Research Laboratory Facility and the Common Areas, which are leased by LDCBA to the subtenant.

“Master Lease” means that certain Lease Agreement between the Owners and LANDLORD, dated as of January 1, 2010.

“Owners” means the City of Lawrence, Kansas (the “City”) and Douglas County, Kansas (the “County.”)

“Research Laboratory Facility” means the following described real property, to-wit: LOT 2, BLOCK ONE, IN OREAD CENTER (A REPLAT OF LOT 1B OF A LOT SPLIT OF LOT ONE, OREAD WEST NO. 8), A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.

“Tenant” means the subtenant.

INSURANCE.

a. TENANT shall be solely responsible for obtaining insurance coverage for its personal property and/or trade fixtures located on the Leased Premises, business interruption coverage, leasehold coverage, or any additional insurance coverage TENANT deems necessary.

b. TENANT agrees to secure and keep in force during the term of this Agreement, at TENANT’s sole cost and expense, the following insurance policies and/or pay insurance costs as hereinafter set forth:

i. a Commercial General Liability policy with a combined single limit of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate limit for this location and a deductible not to exceed \$100,000. The policy shall name LANDLORD, LANDLORD’s employees, LANDLORD’s managing agent for the Research Laboratory Facility (if any), the Owners and their employees and agents, and any other persons, firms or corporations designated by LANDLORD, and TENANT as insured, and shall contain a clause that the insured will not cancel or change the insurance without first giving LANDLORD and the Owners fifteen (15) days prior written notice. TENANT’s insurance shall provide primary coverage to the Owners or LANDLORD when any policy issued to the Owners or LANDLORD, as applicable, provides duplicate or similar coverage, an in such circumstance the Owners’ or the LANDLORD’s policy will be excess over TENANT’s policy. The insurance shall be provided by an insurance company approved by LANDLORD and a copy of the policy or a certificate of insurance shall be delivered to LANDLORD and the Owners prior to the Effective Date and annually thereafter at least 30 day prior to the expiration date of the expiring policy. If TENANT refuses or neglects to secure and maintain insurance policies complying with the provisions of this paragraph, LANDLORD may, but shall not be required to do so, secure and maintain such insurance policies and TENANT shall pay the cost thereof to LANDLORD, as Additional Rent, upon demand. The insurance required by this paragraph is deemed a material aspect of this Agreement. TENANT’s

failure to provide insurance as described herein shall be deemed a breach of this Agreement and cause for cancellation upon three (3) days written notice by LANDLORD to TENANT.

ii. Workers' compensation insurance in accordance with statutory law, and employers' liability insurance with a limit of not less than \$500,000 per occurrence, on which the LANDLORD and the Owners are named as additional insureds.

iii. Such other insurance as LANDLORD reasonably deems necessary and prudent, or as required by Owners.

TOTAL OR PARTIAL DAMAGE.

a. TENANT will promptly notify LANDLORD in writing of any event, damage or condition to which this Paragraph is or may be applicable.

b. In the event of the total destruction of the Research Laboratory Facility, so that the same cannot be occupied by TENANT, this Agreement shall terminate including TENANT's obligation to pay any further Rent hereunder. Total destruction shall mean damage that will not be repaired in 180 days.

c. In the event of partial destruction, LANDLORD may make such repairs, at LANDLORD's expense, as are necessary to place the property in substantially the same condition as prior to the destruction. If LANDLORD and the Owners determine that such repairs shall not be made, this Agreement shall terminate, including TENANT's obligation to pay any further Rent hereunder. If LANDLORD and the Owners determine that such repairs shall be made, TENANT's rent shall be proportionately reduced in the event that a portion of the Leased Premises is not fit for occupancy for a portion of the term hereof; provided, however, that in the event that the repairs cannot be substantially completed within one hundred and eighty (180) days of the date that the partial destruction first occurred, then TENANT shall have the right to terminate this Lease Agreement including all further obligations created upon it hereunder, or to continue occupying the Leased Premises with a pro-rata reduction of the rent. TENANT will assign to LANDLORD and the Owners (or to any party designated by LANDLORD and the Owners) all insurance proceeds payable to TENANT under TENANT's insurance required under this Agreement with respect to the TENANT's improvements in the Leased Premises.

d. Repair or replacement of TENANT's trade fixtures and personal property shall be at TENANT's expense, unless such expense arises as the result of an intentional, reckless or negligent act or omission of LANDLORD, its agents, employees or representatives, in which case, such expense shall be borne solely by LANDLORD.

INDEMNIFICATION.

TENANT shall hold LANDLORD and the Owners and their successors, assigns, officers, directors, employees and agents harmless from and indemnify and defend each against any and all claims, demands, actions and suits and all costs, loss, damage, liability, expense (including attorneys' fees) penalties, and fines which may arise from or be claimed against any or all of TENANT, LANDLORD, the Owners, the Leased Premises or the Research Laboratory Facility, arising directly or indirectly from (a) the use or occupancy of the Leased Premises by TENANT, or (b) the failure of TENANT to comply with any and all laws, statutes, ordinances, rules or regulations applicable to the Research Laboratory Facility or Leased Premises, or (c) any third party claims based upon TENANT's breach of warranty, covenant, liability or obligation under this Lease Agreement.

HAZARDOUS MATERIALS.

a. **Defined Terms.** The following words and terms, as used in this Paragraph 11, shall have the following meanings:

i. **“Claim”** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

ii. **“Environmental Laws”** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“TSCA”)(, 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

iii. **“Hazardous Materials”** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

iv. **“Manage” or “Management”** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

v. **“Release” or “Released”** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “environment” is defined in CERCLA.

vi. **“Response” or “Respond”** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

b. **Tenant’s Obligations with Respect to Environmental Matters.** During the Term of this Agreement, (i) TENANT shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) TENANT shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by TENANT in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, without prior written disclosure to and prior

written approval by LANDLORD and the Owners; (iii) TENANT shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, TENANT shall not dispose of Hazardous Materials in dumpsters provided by LANDLORD for tenant use; (v) TENANT shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) TENANT shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) TENANT shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, TENANT shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

c. **Copies of Notices.** During the Term of this Lease, as extended, if applicable, TENANT shall provide LANDLORD promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Environmental Protection Agency, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, TENANT shall provide LANDLORD promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

d. **Landlord's Right to Inspect.** LANDLORD and LANDLORD's employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to TENANT (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with TENANT's business in the Leased Premises, for the purpose of (i) determining TENANT's compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. LANDLORD and its agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by TENANT or its agents, employees, contractors or invitees. TENANT agrees to cooperate with such investigations by providing any relevant information requested by LANDLORD. TENANT may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the LANDLORD's prior written consent.

e. **Tests and Reports.** Within ten (10) days of TENANT's receipt of a written request by LANDLORD, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event LANDLORD hereby reserves the right to request the following described documents more often, TENANT shall provide LANDLORD with (i) copies of all environmental reports and tests obtained by TENANT; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information) entered into or obtained by TENANT with respect to any Hazardous Materials; (iii) copies of any permits issued to TENANT under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by

TENANT to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. TENANT shall provide LANDLORD with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that TENANT complies with all Environmental Laws relating to the Leased Premises.

f. **Tenant's Obligation to Respond.** If TENANT's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, TENANT shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

g. **Landlord's Right to Act.** In the event that TENANT shall fail to comply with any of its obligations under this Paragraph as and when required hereunder, LANDLORD shall have the right (but not the obligation) to take such action as is required to be taken by TENANT hereunder and in such event, TENANT shall be liable and responsible to LANDLORD for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by LANDLORD in connection with such matters. TENANT shall reimburse LANDLORD immediately upon demand for all such amounts for which TENANT is liable.

h. **Indemnification.** Notwithstanding anything contained in this Agreement to the contrary, TENANT shall reimburse, defend, indemnify and hold LANDLORD and Owners, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

i. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually Managed, released or disposed of on or from the Leased Premises by TENANT (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and

ii. Any actual illness, disability, injury, or death of any person in any manner arising out of exposure to Hazardous Materials Managed or Released by TENANT on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and

iii. Any actual failure of TENANT on the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under subparagraph (b) of this [Section][Paragraph]; and

iv. Any failure by TENANT to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of TENANT under this Lease shall expressly exclude any obligation for pre-existing environmental conditions prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against LANDLORD for which LANDLORD is entitled to indemnity hereunder, LANDLORD shall notify TENANT of such Claim or assertion of liability and thereupon TENANT shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of TENANT under this Paragraph shall survive any termination or expiration of this Lease.

i. **Environmental Assessment Requirement.** TENANT shall, within 60 days of the expiration of the Lease, provide documentation in such form reasonably acceptable to LANDLORD, that the general environmental condition of the Leased Premises is in compliance with all Environmental Laws and are in at least the same condition as shown in the Phase I Environmental Assessment provided by LANDLORD to TENANT at the commencement of this Sublease Agreement. If such documentation is not delivered prior to such 60th day, then LANDLORD may arrange for completion of same. The reasonable cost of such documentation obtained by LANDLORD or TENANT pursuant to this provision shall be paid by TENANT or reimbursable to LANDLORD by TENANT (if completed by LANDLORD) promptly upon LANDLORD's furnishing TENANT with evidence of costs incurred therefor.

AMERICANS WITH DISABILITIES ACT.

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that TENANT has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. TENANT further acknowledges and agrees that except as may otherwise be specifically provided herein, TENANT accepts the Leased Premises in "as-is" condition and agrees that neither LANDLORD no Owners make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or ay other requirements under the ADA pertaining to the accessibility of the Leased Premises. If required by TENANT, TENANT shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

MASTER LEASE.

a. This Agreement is and shall at all times be subject and subordinate to the Master Lease. Nothing in this Agreement shall be deemed to amend or modify any of the terms contained in the Master Lease, and to the extent any of the terms contained herein purport to grant TENANT greater rights than LANDLORD has been granted pursuant to the terms of the Master Lease, the rights herein granted shall be strictly limited so as not to exceed the rights of LANDLORD under the Master Lease.

b. TENANT agrees not to do or omit to do anything that would cause a default under the Master Lease. During the Initial Term and any renewal terms of this Agreement and for all periods subsequent for obligations which arise prior to the termination of this Agreement, TENANT does hereby expressly assume and agree to perform and comply with, for the benefit of LANDLORD, each and every obligation of LANDLORD under the Master Lease to the extent that the same relate to the Leased Premises ("TENANT'S Assumed Obligations").

c. TENANT shall hold LANDLORD free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, arising out of TENANT'S failure to comply with or perform TENANT'S Assumed Obligations.

OWNERS CONSENT.

By signing below, the Authorized City Representative and Authorized County Representative (as defined in the Master Lease) consent to this Agreement pursuant to Section 13.1(a) of the Master Lease, but such consent shall not: (a) except for obligations of TENANT under this Agreement in favor of Owners, create privity of contract between Owners and TENANT; (b) be deemed to have amended the Master Lease in any regard; (c) be construed as a waiver of Owners' right to consent to any assignment or further sublease of the Master Lease by LANDLORD; or (d) relive LANDLORD of any of its obligations under the Master Lease.

TERMINATION OF MASTER LEASE.

TENANT agrees that in the event that (i) LANDLORD breaches any covenant or fails to satisfy any contingency set forth in the Master Lease, or (ii) Owners assert any right of cancellation or termination given to Owners under the Master Lease, and any of the foregoing events under clauses (i) and (ii) results in the cancellation or termination of the Master Lease, or (iii) the Master Lease is terminated, cancelled, or surrendered for any other reason, then this Agreement shall likewise be cancelled and terminated.

SCHEDULE I

Schedule of Basic Rent Payments
--

Rental Payment Date	Principal Portion	Cumulative Outstanding Principal	Estimated Interest Portion*	Estimated Total Payment
8/1/2010	-	n/a	-	\$ 12,500.00
2/1/2011	-	n/a	-	12,500.00
8/1/2011	-	n/a	-	12,500.00
2/1/2012	-	n/a	-	12,500.00
8/1/2012	-	n/a	-	12,500.00
2/1/2013	-	n/a	-	12,500.00
8/1/2013	-	n/a	-	12,500.00
2/1/2014	-	n/a	-	12,500.00
8/1/2014	-	\$2,975,000.00	-	12,500.00
2/1/2015	\$55,000.00	2,920,000.00	\$59,500.00	114,500.00
8/1/2015	55,000.00	2,865,000.00	58,400.00	113,400.00
2/1/2016	55,000.00	2,810,000.00	57,300.00	112,300.00
8/1/2016	55,000.00	2,755,000.00	56,200.00	111,200.00
2/1/2017	57,500.00	2,697,500.00	55,100.00	112,600.00
8/1/2017	57,500.00	2,640,000.00	53,950.00	111,450.00
2/1/2018	57,500.00	2,582,500.00	52,800.00	110,300.00
8/1/2018	57,500.00	2,525,000.00	51,650.00	109,150.00
2/1/2019	60,000.00	2,465,000.00	50,500.00	110,500.00
8/1/2019	60,000.00	2,405,000.00	49,300.00	109,300.00
2/1/2020	62,500.00	2,342,500.00	48,100.00	110,600.00
8/1/2020	62,500.00	2,280,000.00	46,850.00	109,350.00
2/1/2021	62,500.00	2,217,500.00	45,600.00	108,100.00
8/1/2021	62,500.00	2,155,000.00	44,350.00	106,850.00
2/1/2022	65,000.00	2,090,000.00	43,100.00	108,100.00
8/1/2022	65,000.00	2,025,000.00	41,800.00	106,800.00
2/1/2023	67,500.00	1,957,500.00	40,500.00	108,000.00
8/1/2023	67,500.00	1,890,000.00	39,150.00	106,650.00
2/1/2024	70,000.00	1,820,000.00	37,800.00	107,800.00
8/1/2024	70,000.00	1,750,000.00	36,400.00	106,400.00
2/1/2025	72,500.00	1,677,500.00	35,000.00	107,500.00
8/1/2025	72,500.00	1,605,000.00	33,550.00	106,050.00
2/1/2026	75,000.00	1,530,000.00	32,100.00	107,100.00
8/1/2026	75,000.00	1,455,000.00	30,600.00	105,600.00

2/1/2027	77,500.00	1,377,500.00	29,100.00	106,600.00
8/1/2027	77,500.00	1,300,000.00	27,550.00	105,050.00
2/1/2028	82,500.00	1,217,500.00	26,000.00	108,500.00
8/1/2028	82,500.00	1,135,000.00	24,350.00	106,850.00
2/1/2029	85,000.00	1,050,000.00	22,700.00	107,700.00
8/1/2029	85,000.00	965,000.00	21,000.00	106,000.00
2/1/2030	87,500.00	877,500.00	19,300.00	106,800.00
8/1/2030	87,500.00	790,000.00	17,550.00	105,050.00
2/1/2031	92,500.00	697,500.00	15,800.00	108,300.00
8/1/2031	92,500.00	605,000.00	13,950.00	106,450.00
2/1/2032	97,500.00	507,500.00	12,100.00	109,600.00
8/1/2032	97,500.00	410,000.00	10,150.00	107,650.00
2/1/2033	100,000.00	310,000.00	8,200.00	108,200.00
8/1/2033	100,000.00	210,000.00	6,200.00	106,200.00
2/1/2034	105,000.00	105,000.00	4,200.00	109,200.00
8/1/2034	105,000.00	-	2,100.00	107,100.00
Totals	\$2,975,000.00		\$1,359,850.00	\$4,447,350.00

* Interest rate is estimated at 4.0%. Actual interest portion will be determined pursuant to **Section 5.1** of the Lease.

**CITY OF LAWRENCE, KANSAS,
and
DOUGLAS COUNTY, KANSAS,
As Lessors**

AND

**LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY,
As Lessee**

LEASE AGREEMENT

Dated as of January 1, 2010

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of January 1, 2010 (the “Lease”), between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the “City”) and **DOUGLAS COUNTY, KANSAS**, a body corporate and politic organized and existing under the laws of the State of Kansas (the “County”), as lessors, and **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a Kansas not for profit corporation (“LDCBA”), as lessee;

WITNESSETH:

WHEREAS, the City is authorized pursuant to Ordinance No. 8480 (the “Ordinance”) and Article 12, Section 5 of the Constitution of the State of Kansas (the “Home Rule Amendment”), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes, and to issue general obligation bonds for the purpose of paying the cost of such facilities;

WHEREAS, the County is authorized pursuant to Resolution No. HR-09-12-4 (the “Resolution”) and K.S.A. 19-101 (K.S.A. 19-101, the Ordinance, the Resolution and the Home Rule Amendment collectively referred to here in as the “Act”) to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes; and

WHEREAS, pursuant to the foregoing, the City and the County desire to acquire and lease the Leased Premises to the LDCBA and the LDCBA desires to lease the Leased Premises from the City and the County, for the rentals and upon the terms and conditions hereinafter set forth; and

WHEREAS, pursuant to this Lease, and so long as there is no default hereunder, the parties desire that the LDCBA manage the day-to-day operations of the Leased Premises so as to encourage economic development of bioscience and technology components of the local economy.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City, the County and the LDCBA do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 4.1, 5.2 and 6.2** of this Lease.

“Annual Interest Rate” means the lesser of (a) an interest rate equal to the City’s average annual investment rate for the City’s idle funds for the previous calendar year plus 50 basis points, or (b) 4.00%.

“Authorized City Representative” means the City Manager or his or her designee.

“Authorized County Representative” means the County Administrator or his or her designee.

“Authorized LDCBA Representative” means the President of the LDCBA or his or her designee.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Bonds” means the City’s Taxable General Obligation Bonds (Lawrence-Douglas County Bioscience Project), Series 2010-A in the estimated principal amount of \$2,900,000.

“Cooperation Agreement” means that certain Cooperation Agreement between the City and the County dated as of January 1, 2010.

“Event of Default” means any Event of Default as described in **Section 12.1** of this Lease.

“Expenses” means all expenses of any kind incurred with respect to the Leased Premises and paid by LDCBA, the City or the County.

“Full Insurable Value” means the full replacement cost of the Leased Premises, as determined by the City and the County.

“Lease” means this Lease Agreement, between the City and the County, as lessors, and the LDCBA, as lessee, as from time to time amended and supplemented in accordance with the provisions of this Lease.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** of this Lease.

“Leased Premises” means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof, including all buildings, structures, improvements, fixtures, machinery and equipment related thereto.

“Leasehold Improvements” means certain upgrades to the HVAC system on the Leased Premises and other improvements as proposed by LDCBA to the Management Committee in accordance with **Section 4.1** hereof.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Leased Premises, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the County) incurred in the collection of such gross proceeds.

“Net Revenues” means, for the period of determination, all Revenues less all Expenses.

“Rent” means Basic Rent and Additional Rent.

“Revenues” means all revenues of any kind generated by the Leased Premises and paid to LDCBA.

Section 1.2. Rules of Interpretation.

- (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.
- (c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.
- (d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.
- (e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City hereby represents and warrants that the City is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

Section 2.2. Representations by the County. The County hereby represents and warrants that the County is a body corporate and politic duly organized and validly existing under the laws of the State of Kansas. The County has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the County has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

Section 2.3. Representations by the LDCBA. The LDCBA makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The LDCBA is a 501(c)(6) not for profit corporation validly existing and in good standing under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.
- (b) The LDCBA has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper corporate action of its Board of Directors, the LDCBA

has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the LDCBA will not conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other corporate restrictions or any agreement or instrument to which the LDCBA is a party or by which it or any of its property is bound, or the LDCBA's Articles of Incorporation or Bylaws or any order, rule or regulation applicable to the LDCBA or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the LDCBA under the terms of any instrument or agreement to which the LDCBA is a party.

(d) The Leased Premises will comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of its knowledge, without independent investigation, the Leased Premises will comply with all other applicable laws, rules and regulations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City and the County hereby rent, lease and let the Leased Premises to the LDCBA, and the LDCBA hereby rents, leases and hires the Leased Premises from the City and the County, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term.

(a) This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the date the City and the County take title to the Leased Premises, which date is expected to be on or about January 26, 2010, and terminating on January 31, 2035.

(b) The City and the County may terminate this Lease upon no less than five years' written notice to LDCBA.

Section 3.3. Possession and Use of the Leased Premises.

(a) The City and the County covenant and agree that as long as neither the City nor the County has exercised any of the remedies set forth in **Section 12.2(c)** following the occurrence and continuance of an Event of Default, the LDCBA shall have sole and exclusive possession of the Leased Premises (subject to the City's and the County's right of access and inspection pursuant to this Lease) and shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the Lease Term. The City and the County covenant and agree that they will not take any action, other than expressly pursuant to **Article XII** of this Lease, to prevent the LDCBA from having quiet and peaceable possession and enjoyment of the Leased

Premises during the Lease Term and will, at the request and expense of the LDCBA, cooperate with the LDCBA in order that the LDCBA may have quiet and peaceable possession and enjoyment of the Leased Premises.

(b) Subject to the provisions of this Section, the LDCBA shall have the right to use the Leased Premises for a bioscience and technology incubator and/or graduation facility, and/or for any other purpose that is consistent with the economic development mission of the LDCBA.

(c) The LDCBA shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Leased Premises or to any adjoining public ways, as to the manner of use or the condition of the Leased Premises or of adjoining public ways. The LDCBA shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The LDCBA shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the LDCBA to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the LDCBA shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the LDCBA may refrain from complying therewith; provided, however that (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment related to such contest and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

(d) Neither the City nor the County shall be liable for any loss or damage to the property of LDCBA or any sublessee or any other personal property in or about the premises, regardless of the cause of such loss or damage.

Section 3.4. Funds and Accounts; Use of Revenues and Payment of Expenses.

(a) ***Establishment of Operating Fund; Annual Budget.*** Upon commencement of this Lease, the LDCBA shall create an Operating Fund with respect to the Leased Premises, which shall be separately accounted for and budgeted each year by the LDCBA. Annually, by each June 1, the LDCBA shall submit a budget to the Management Committee created pursuant to the Cooperation Agreement showing all expected Revenues and Expenses of the Leased Premises for the following calendar year.

(b) ***Revenues of Leased Premises; Deposit to Operating Fund.*** All Revenues generated by LDCBA from LDCBA's possession and use of the Leased Premises shall be deposited to the Operating Fund and shall be held by the LDCBA in escrow for the benefit of the LDCBA, the City and the County.

(c) ***Expenses of Leased Premises; Payment from Operating Fund.*** All moneys in the Operating Fund shall be used by the LDCBA solely and only to pay management, operation and maintenance expenses and Rent required to be paid by the LDCBA pursuant to this Lease. Any Expenses in excess of the total amount of aggregate Expenses shown in the then current budget, as approved by the Management Committee, shall require the approval of the Management Committee before such Expenses are paid from the Operating Fund. If LDCBA fails to pay any Rent when due pursuant to this agreement, the

amount of any unpaid Rent shall accrue as a deficit in the Operating Fund. For purposes of approval of any budget under this **Section 3.4(c)**, the Authorized LDCBA Representative shall be considered an *ex officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the budget, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such budget.

Section 3.5. Accounting; Reports. On each February 1 and August 1, LDCBA shall transmit to the City and the County a report showing an accounting of all Revenues and Expenses deposited to and paid from the Operating Fund. Such semi-annual report shall also describe maintenance performed on the Leased Premises during the prior six-month period, and an estimate of maintenance to be performed on the Leased Premises, including the estimated costs thereof, during the twelve months following such report.

ARTICLE IV

INITIAL IMPROVEMENTS

Section 4.1. Initial Improvements to Leased Premises. As soon as practical after execution of this Lease, the LDCBA shall submit a plan for the Leasehold Improvements to the Management Committee for approval. Following approval, the LDCBA shall cause the Leasehold Improvements to be completed. LDCBA may submit up to \$600,000.00 of the costs of such Leasehold Improvement to the Management Committee for payment and/or reimbursement, and any costs in excess thereof shall be paid by LDCBA.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent.

(a) The LDCBA covenants and agrees to pay as Basic Rent to the City and the County on each February 1 and August 1 (each, a "Rent Payment Date") beginning August 1, 2010 through and including August 1, 2014, the sum of \$12,500.00. On each Rent Payment Date thereafter, the LDCBA shall pay as Basic Rent to the City and the County the Principal Portion of Basic Rent as shown on **Schedule I** hereto plus the Interest Portion of Basic Rent. The Interest Portion of Basic Rent on each Rent Payment Date shall be determined by (a) multiplying the Cumulative Outstanding Principal Amount as shown on **Schedule I** hereto on each Rent Payment Date by the Annual Interest Rate, as determined from time to time, and (b) dividing such amount by two. The City shall give notice of the Annual Interest Rate to LDCBA and the County by January 15 of each year.

(b) All payments of Basic Rent provided for in this Section shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

Section 5.2. Additional Rent.

(a) The LDCBA shall pay as Additional Rent the following amounts:

(1) all expenses reasonably incurred in connection with the enforcement of any rights against the LDCBA or the Leased Premises under this Lease by the City or the County, except for such expenses as may be incurred solely as a result of the gross negligence or wrongful misconduct of the City, the County or both;

(2) an amount sufficient to reimburse the City for all expenses reasonably incurred by the City hereunder and in connection with the performance of its obligations under this Lease;

(3) an amount sufficient to reimburse the County for all expenses reasonably incurred by the County hereunder and in connection with the performance of its obligations under this Lease;

(4) all general ad valorem and personal property taxes, including any special assessments levied against the Leased Premises and/or any payments in lieu of taxes;

(5) all other payments of whatever nature which the LDCBA has agreed to pay or assume under the provisions of this Lease.

(b) Except as otherwise provided in this Section, Additional Rent shall be payable within 10 days of notice thereof from the City or the County, or by such later date specified in notice provided by the City or the County to LDCBA. All payments of Additional Rent provided for in this Section shall be paid directly to the person or entity owed, except that any payments to be made to the City or the County shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

Section 5.3. Obligations of LDCBA Absolute and Unconditional.

(a) The obligations of the LDCBA under this Lease are intended to be absolutely net to the City and the County, and the obligations of the LDCBA under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and notwithstanding any damage to, loss, theft or destruction of, the Leased Premises or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Leased Premises, legal curtailment of the LDCBA's use thereof, the eviction or constructive eviction of the LDCBA, any change in the tax or other laws of the United States of America, the State of Kansas or any political subdivision thereof, any change in the City's or the County's legal organization or status, or any default of the City or the County hereunder, and regardless of the invalidity of any action of the City or the County, and regardless of the invalidity of any portion of this Lease.

(b) Nothing in this Lease shall be construed to release the City or the County from the performance of any agreement on its part herein contained or as a waiver by the LDCBA of any rights or claims the LDCBA may have against the City or the County under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City or the County separately, it being the intent of this

Lease that the LDCBA shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent). The LDCBA may, however, at its own cost and expense and in its own name or in the name of the City or the County, prosecute or defend any action or proceeding or take any other action involving third persons which the LDCBA deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City and the County hereby agree to cooperate fully with the LDCBA and to take all action necessary to effect the substitution of the LDCBA for the City and the County in any such action or proceeding if the LDCBA shall so request.

ARTICLE VI

MANAGEMENT, MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Management of the Leased Premises. The LDCBA may, at any time during the Lease Term, employ an individual or firm to manage the Leased Premises. Such individual or firm shall have experience managing facilities such as the Leased Premises, and shall be subject to review and approval by the City and the County.

Section 6.2. Maintenance and Repairs. Throughout the Lease Term the LDCBA shall, at its own expense, keep the Leased Premises in as reasonably safe condition as the operation thereof will permit, and keep the Leased Premises in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof. LDCBA shall not commit waste of the Leased Premises.

Section 6.3. Taxes, Assessments and Other Governmental Charges.

(a) The LDCBA shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against the Leased Premises, or any part thereof or interest therein (including the leasehold estate of the LDCBA therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the LDCBA, or the income therefrom or Basic Rent and other amounts payable under this Lease, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would materially encumber the City's or the County's title to the Leased Premises; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the LDCBA shall be obligated to pay only such installments thereof as become due and payable during the Lease Term; except, provided that the first and last installments thereof shall be prorated according to the Lease Term.

(b) The LDCBA shall have the right, in its own name or in the City's and the County's name, to contest the validity or amount of any tax, assessment or other governmental charge which the LDCBA is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or

prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City and the County agree to cooperate fully with the LDCBA in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

Section 6.4. Utilities. All utilities and utility services used by the LDCBA in, on or about the Leased Premises shall be paid for by the LDCBA and shall be contracted for by the LDCBA in the LDCBA's own name, and the LDCBA shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.5. Ad Valorem Taxes. The City, the County and the LDCBA acknowledge that the Leased Premises shall pay general ad valorem and property taxes (including special assessments levied on account of special benefits) on real and personal property. The City, the County and LDCBA covenant that they will not voluntarily take any action which may be reasonably construed as tending to abate the levy or assessment of such ad valorem or property taxes on the Leased Premises during the Lease Term.

ARTICLE VII

INSURANCE

Section 7.1. Property Insurance. The City will obtain and shall maintain throughout the Lease Term, property insurance insuring the Leased Premises (excluding foundations), and business income (including extra expense) insurance for a period of not less than 12 months, against loss or damage resulting from perils covered by the causes of loss – special form (or the equivalent ISO form in use from time to time in Kansas). The property insurance shall be written on a replacement cost basis for the Full Insurable Value, with an agreed amount endorsement to prevent coinsurance and with deductibles not to exceed \$100,000. The insurance required pursuant to this Section shall be maintained at the LDCBA's sole cost and expense, which LDCBA shall pay to the City and the County as Additional Rent pursuant to Section 5.2(a) hereof, shall be maintained with generally recognized responsible insurance company or companies rated A(X) or better in the most current issue of Best's Insurance Reports and authorized to do business in the State of Kansas as may be selected by the City and the County. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City, the County and the LDCBA as insureds as their respective interests may appear, and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA, and shall be payable to the City and the County. In the event of loss or damage to the Leased Premises, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid over and applied as provided in **Article IX** of this Lease.

Section 7.2. Public Liability Insurance.

(a) LDCBA shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance, or the equivalent ISO form in use from time to time in Kansas, naming the City and the County, their respective employees, and the managing agent for the Leased Premises, each as additional insured parties, insuring against claims for bodily injury, personal injury and property damage arising out of or in any way related to the use and occupancy of the

Leased Premises by LDCBA or its agents, contractors, employees, servants, subtenants, licensees or concessionaires (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), with a combined single limit of not less than \$1,000,000 per occurrence with a \$3,000,000 aggregate for this location and a deductible not to exceed \$100,000. The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA. Such policies or copies or certificates thereof shall be furnished to the City and County. LDCBA's insurance shall provide primary coverage to the City and the County when any policy issued to the City and the County provides duplicate or similar coverage, and in such circumstance the policies of the City and the County will be excess over LDCBA's policy. If LDCBA has other locations that it owns or leases that are covered by such insurance, such policies shall include an aggregate limit per location endorsement, and such limit for the Leased Premises shall not be less than that specified above, so that losses at other properties cannot decrease the amount of insurance available for the Leased Premises below the limits specified above. In no event shall the limits of such insurance be considered as limiting the liability of LDCBA under this Lease.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.3. Blanket Insurance Policies. The LDCBA may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

ARTICLE VIII

ALTERATION OF THE LEASED PREMISES

Section 8.1. Additions, Modifications and Improvements of the Leased Premises. Except as provided in **Section 4.1** hereof, and except for (i) any structural changes to the Leased Premises, (ii) any changes that affect the building systems (including, but not limited to, electrical, HVAC, or plumbing), or (iii) changes with a total cost in excess of \$200,000.00, all of which shall be subject to review and prior approval of the Management Committee, the LDCBA shall have and is hereby given the right to make such additions, modifications and improvements in and to any part of the Leased Premises as the LDCBA from time to time may deem necessary or desirable for its business purposes. All such additions, modifications and improvements shall be made at LDCBA's sole cost and expense. All additions, modifications and improvements made by the LDCBA pursuant to the authority of this Section shall (a) be made in workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Leased Premises.

Section 8.2. Permits and Authorizations. The LDCBA shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, restoration, replacement, modification or addition to the Leased Premises, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and

regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

Section 8.3. Mechanics' Liens.

(a) The LDCBA shall not do or suffer anything to be done whereby the Leased Premises, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Leased Premises, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Leased Premises, the LDCBA shall discharge the same of record within 90 days after the date of filing. Notice is hereby given that the City and the County shall not be liable for any labor or materials furnished the LDCBA or anyone claiming by, through or under the LDCBA upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City or the County in and to the Leased Premises or any part thereof.

(b) Notwithstanding paragraph (a) above, the LDCBA shall have the right to contest any such mechanics' or other similar lien if within said 90-day period stated above it notifies the City and the County in writing of its intention so to do and posts bond sufficient to cover such lien, and provided the LDCBA diligently prosecutes such contest, at all times effectively stays or prevents any official or judicial sale of the Leased Premises, or any part thereof or interest therein, under execution or otherwise, and pays or otherwise satisfies any final judgment enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any loss, costs or expenses the City or the County may incur related to any such contest. The City and the County shall cooperate fully with the LDCBA in any such contest.

ARTICLE IX

DAMAGE OR DESTRUCTION

Section 9.1. Damage or Destruction.

(a) If the Leased Premises shall be damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the LDCBA, as promptly as practicable, shall either repair, restore, replace or rebuild the same to as nearly as may be practicable their condition and character immediately prior to such damage or destruction, and so that upon completion of such repairs, restoration, replacement or rebuilding such Leased Premises shall be of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction. The City and the County shall have the right to review and approve the plans and specifications related to such improvement of the Leased Premises.

The Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Leased Premises shall be paid to the Building Fund and shall be applied in the following manner:

(A) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of making such temporary repairs or doing such other work, as, in the LDCBA's reasonable opinion, may be necessary in order to protect the Leased Premises pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding;

(B) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of repairing, restoring, replacing or rebuilding the Leased Premises or any part thereof;

(C) payment to the LDCBA pursuant to subdivisions (A) or (B) of this subsection (a)(ii) from such Net Proceeds shall be made to the LDCBA from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, the architects' and engineers' fees, and other charges in connection with such work, upon delivery to the City and the County of a certificate of the LDCBA's architect or general contractor, as the case may be, in charge of such work, certifying: (1) that the amounts so to be paid to the LDCBA are payable to the LDCBA in accordance with the provisions of this Article and that such amounts are then due and payable by the LDCBA or have theretofore been paid by the LDCBA; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications approved by the City and the County therefor and all insurance requirements of **Article VII** hereof; (4) that the sum requested when added to all sums previously paid out under this Article for the work does not exceed the value of the work done to the date of such certificate; (5) the estimated cost of completing the work, in reasonable detail; and (6) that the remaining Net Proceeds are sufficient to pay the estimated cost of completing the work;

(D) at the request of the City or the County, the LDCBA shall furnish to the person requesting the same, at the time of any such payment, with an official search, or other evidence reasonably satisfactory to such person, that there has not been filed with respect to the Leased Premises any mechanic's or other lien which has not been discharged of record, in respect of any work, labor, services or materials performed, furnished or supplied, in connection with the work and that all of said materials have been purchased free and clear of all security interest or other encumbrances. The City shall not pay out any such sum when the Leased Premises shall be encumbered with any such security interest or encumbrance.

(b) The insurance monies, if any, paid to the LDCBA as provided under this Article, on account of any loss or destruction to the Leased Premises, shall be held by it in trust and applied only for the purposes of repairing, reconstructing or restoring the Leased Premises or constructing new buildings and improvements and installing new machinery, equipment and fixtures thereto.

(c) If any of the insurance monies paid by the insurance company to the City or the LDCBA as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease shall not have terminated, the excess shall be used by the City and the County for any purpose permitted by law. If the Net Proceeds shall be insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the LDCBA shall pay the deficiency.

(d) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the LDCBA shall remain and continue liable for the payment of all Basic Rent and Additional Rental and all other charges required hereunder to be paid by the LDCBA, as though no damage by fire or any other casualty has occurred.

(e) The City, the County and the LDCBA agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the

event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(f) The LDCBA agrees to give prompt notice to the City and the County with respect to all fires and any other casualties occurring in, on, at or about the Leased Premises.

(g) If the LDCBA shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the LDCBA may elect to terminate this Lease. In the event LDCBA elects to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due an owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The LDCBA agrees to be reasonable in exercising its judgment pursuant to this subsection (g).

(h) If the City and the County shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the City and the County may elect to terminate this Lease. In the event the City and the County elect to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due an owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The City and the County agree to be reasonable in exercising its judgment pursuant to this subsection (h).

(i) The LDCBA shall not, by reason of its inability to use all or any part of the Leased Premises during any period in which the Leased Premises is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or the County or to any abatement or diminution of the rentals payable by the LDCBA under this Lease or of any other obligations of the LDCBA under this Lease except as expressly provided in this Section.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the Lessors; Exculpation and Indemnification.

(a) The City and the County make no warranty, either express or implied, as to the condition of the Leased Premises or that it will be suitable for the LDCBA's purposes or needs. The LDCBA releases the City and the County from, agrees that the City and the County shall not be liable for and agrees to hold the City and the County harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Leased Premises or the use thereof; unless such loss is the result of the City's or the County's gross negligence or willful misconduct.

(b) The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be

amended and supplemented from time to time (collectively referred to herein as the “ADA”) establish requirements under Title III of the ADA (“Title III”) pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that LDCBA has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines (“ADAAG”) or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. LDCBA further acknowledges and agrees that except as may otherwise be specifically provided herein, LDCBA accepts the Leased Premises in “as-is” condition and agrees that neither the City nor the County make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. If necessary, LDCBA shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

Section 10.2. Surrender of Possession. Upon accrual of the City’s or the County’s right of re-entry because of the LDCBA’s default hereunder or upon the cancellation or termination of this Lease for any reason, the LDCBA shall peacefully surrender possession of the Leased Premises to the City and the County in good condition and repair, ordinary wear and tear excepted; provided, however, the LDCBA shall have the right within 90 days prior to the termination of this Lease to remove from the Leased Premises any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and not constituting part of the Leased Premises. All repairs to and restorations of the Leased Premises required to be made because of such removal shall be made by and at the sole cost and expense of the LDCBA, and during said 90-day (or extended) period the LDCBA shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and which are not so removed from the Leased Premises prior to the expiration of said period shall be the separate and absolute property of the City and the County.

Section 10.3. Lessors’ Right of Access to the Leased Premises. The LDCBA agrees that the City and the County and their duly authorized agents shall have the right to enter upon the Leased Premises Site after giving notice to the LDCBA and with appropriate advance notice so as to allow LDCBA to comply with any confidentiality agreements contained in any subleases, all (a) as may be reasonably necessary to cause to be completed the acquisition, purchase, construction, improving, equipping or remodeling provided for in **Section 4.1** hereof, (b) to perform such work in and about the Leased Premises made necessary by reason of the LDCBA’s default under any of the provisions of this Lease, and (c) following an Event of Default, to exhibit the Leased Premises to prospective purchasers, lessees or trustees.

Section 10.4. Indemnification of City and County. The LDCBA shall indemnify and save the City and the County harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Leased Premises during the Lease Term, and against and from all claims arising during the Lease Term from (a) any condition of the Leased Premises caused by the LDCBA or its sublessees, (b) any breach or default on the part of the LDCBA in the performance of any of its obligations under this Lease, (c) any contract entered into in by the LDCBA or its sublessee, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Leased Premises, (d) any act of negligence of the LDCBA or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the LDCBA, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the LDCBA; provided, however, the indemnification contained in this **Section 10.4** shall not extend to the City or the County if (i) such claim is the result of work being performed at the Leased

Premises by employees of the City or the County, or (ii) such claim is the result of the City's or the County's gross negligence or willful misconduct. The LDCBA shall indemnify and save the City and the County harmless from and against all costs and expenses (except those which have arisen from the willful misconduct or gross negligence of the City or the County) incurred in or in connection with any action or proceeding brought in connection with claims arising from circumstances described in clauses (a) through (e), and upon notice from the City or the County, the LDCBA shall defend them or either of them in any such action or proceeding.

Section 10.5. LDCBA to Maintain its Corporate Existence. The LDCBA agrees that throughout Lease Term, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets.

ARTICLE XI

HAZARDOUS MATERIALS

Section 11.1. Defined Terms. The following words and terms, as used in this Article, shall have the following meanings:

b. **"Claim"** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

c. **"Environmental Laws"** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

d. **"Hazardous Materials"** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced,

regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

e. **“Manage” or “Management”** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

f. **“Release” or “Released”** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “environment” is defined in CERCLA.

g. **“Response” or “Respond”** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

Section 11.2. LDCBA’s Obligations with Respect to Environmental Matters. During the Term of this Agreement, (i) LDCBA shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) LDCBA shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by LDCBA in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, without prior written disclosure to and prior written approval by the City and the County; (iii) LDCBA shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, LDCBA shall not dispose of Hazardous Materials in dumpsters provided by the City and the County for tenant use; (v) LDCBA shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) LDCBA shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) LDCBA shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, LDCBA shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

Section 11.3 Copies of Notices. During the Term of this Lease, as extended, if applicable, LDCBA shall provide the City and the County promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Department of Health and Environment, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, LDCBA shall provide the City and the County promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

Section 11.4 City and County’s Right to Inspect. The City and the County and their employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to LDCBA

(except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with LDCBA's business in the Leased Premises, for the purpose of (i) determining LDCBA's compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. The City and the County and their agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by LDCBA or its agents, employees, contractors or invitees. LDCBA agrees to cooperate with such investigations by providing any relevant information requested by the City and the County. LDCBA may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the Management Committee's prior written consent.

Section 11.5 Tests and Reports. Within ten (10) days of LDCBA's receipt of a written request by the City and the County, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event the City and the County hereby reserves the right to request the following described documents more often, LDCBA shall provide the City and the County with (i) copies of all environmental reports and tests obtained by LDCBA; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information) entered into or obtained by LDCBA with respect to any Hazardous Materials; (iii) copies of any permits issued to LDCBA under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by LDCBA to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. LDCBA shall provide the City and the County with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that LDCBA complies with all Environmental Laws relating to the Leased Premises.

Section 11.6 LDCBA's Obligation to Respond. If LDCBA's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, LDCBA shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

Section 11.7 City and County's Right to Act. In the event that LDCBA shall fail to comply with any of its obligations under this Paragraphs as and when required hereunder, the City and the County shall have the right (but not the obligation) to take such action as is required to be taken by LDCBA hereunder and in such event, LDCBA shall be liable and responsible to the City and the County for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by the City and the County in connection with such matters. LDCBA shall reimburse the City and the County immediately upon demand for all such amounts for which LDCBA is liable.

Section 11.8 Indemnification. Notwithstanding anything contained in this Agreement to the contrary, LDCBA shall reimburse, defend, indemnify and hold the City and the County, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

1. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually or allegedly Managed, released or disposed of on or from the Leased Premises (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and
2. Any actual or alleged illness, disability, injury, or death of any person in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials Managed or Released on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and
3. Any actual or alleged failure of LDCBA or the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under Paragraph 11(b); and
4. Any failure by LDCBA to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of LDCBA under this Lease shall expressly exclude any obligation for any pre-existing environmental condition prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against the City and the County for which the City and the County are entitled to indemnity hereunder, the City and the County shall notify LDCBA of such Claim or assertion of liability and thereupon LDCBA shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of LDCBA under this Paragraph shall survive any termination or expiration of this Lease.

Section 11.9 Environmental Assessment Requirement. LDCBA shall timely provide a Phase I environmental report of reasonable scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a qualified environmental consultant reasonably approved by the City and the County, as to (1) any matter, to the extent such matter is attributable to events or conditions which arise during the Term, as extended, if applicable, and (2) the general environmental condition of the Leased Premises (the “Environmental Assessment”), within 60 days prior to termination or expiration of this Lease. If the Environmental Assessment is not delivered prior to such 60th day, then the City and the County may arrange for completion of same. The reasonable cost of any Environmental Assessment completed by the City and the County or LDCBA pursuant to this provision shall be paid by LDCBA or reimbursable to the City and the County by LDCBA (if completed by the City and the County) promptly upon the City and the County furnishing LDCBA with evidence of costs incurred therefor.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” or “default” under this Lease:

- (a) Default in the due and punctual payment of Basic Rent for two consecutive Rent Payment Dates, upon five days written notice to the LDCBA by the City or the County or default in

the due and punctual payment Additional Rent for a period of 30 days following written notice to the LDCBA by the City or the County; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the LDCBA's part to be observed or performed, and such default shall continue for 30 days after the City or the County has given the LDCBA written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the LDCBA has commenced such cure within said 30-day period, and (2) the LDCBA diligently prosecutes such cure to completion); or

(c) The LDCBA shall: (1) admit in writing its inability to pay its debts as they become due; or (2) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have the appointment of any trustee, receiver or liquidator made without the LDCBA's consent or acquiescence, vacated or set aside; or (5) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) be subject to any proceeding, or suffer the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, shall not be dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (7) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) The LDCBA shall vacate or abandon the Leased Premises, and the same shall remain uncured for a period of 60 days.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof shall have occurred and be continuing, then the City or the County may at the City's or County's election, then or at any time thereafter, and while such default shall continue, take any one or more of the following actions:

(a) cause all Basic Rent payable for the remainder of the term of this Lease to become due and payable;

(b) give the LDCBA written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the LDCBA's rights to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated, and the City and the County may re-enter and take possession of the Leased Premises; or

(c) without terminating this Lease, re-enter the Leased Premises to take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City

and the County shall use reasonable diligence to relet the Leased Premises, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the City and the County may deem advisable, with the right to make alterations and repairs to the Leased Premises, and no such re-entry or taking of possession of the Leased Premises by the City or the County shall be construed as an election on the City's or the County's part to terminate this Lease, and no such re-entry or taking of possession by the City or the County shall relieve the LDCBA of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the LDCBA shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of this Lease Term, whether or not the Leased Premises shall have been relet, less the Net Proceeds, if any, of any reletting of the Leased Premises after deducting all of the City's and County's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County may, by notice to the LDCBA given at any time thereafter following an Event of Default, elect to terminate this Lease on a date to be specified in such notice, which date shall be not earlier than 30 days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the City and the County shall have the right to elect to re-enter and take possession of the Leased Premises, the City and the County may enter and expel the LDCBA and those claiming through or under the LDCBA and remove the property and effects of both or either (forcibly if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The City and the County may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the LDCBA under this Lease.

Section 12.3. Survival of Obligations. The LDCBA covenants and agrees with the City and County that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the LDCBA shall continue to pay the Basic Rent and Additional Rent and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease.

Section 12.4. Performance of the LDCBA's Obligations by the City and the County. If the LDCBA shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City or the County, may (but shall not be obligated so to do) upon the continuance of such failure on the LDCBA's part for 30 days after written notice of such failure is given the LDCBA by the City or the County, and without waiving or releasing the LDCBA from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the County and all necessary incidental reasonable costs and expenses incurred by the City or the County in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the County on demand, and if not so paid by the LDCBA, the City or the County shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the LDCBA in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City, the County and the LDCBA hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City, the County and the LDCBA shall each be entitled to specific performance and injunctive or other

equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the LDCBA of any covenant, agreement or undertaking by the LDCBA, the City and the County may nevertheless accept from the LDCBA any payment or payments hereunder without in any way waiving City's or the County's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the LDCBA which were in existence at the time such payment or payments were accepted by the City or the County.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The LDCBA shall not have the right to assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof, except that LDCBA shall have the right to enter into subleases with such subtenants and on such terms as approved by the Management Committee. Such approval shall be handled by the Management Committee as expeditiously as possible under the circumstances. The Management Committee's approval of such subleases shall be evidenced by the written consent of the Authorized City Representative and the Authorized County Representative. For purposes of approval of any sublease under this **Section 13.1**, the Authorized LDCBA Representative shall be considered an *ex officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the sublease, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such sublease. If the Management Committee and the Authorized LDCBA Representative cannot reach a successful resolution of issues related to such sublease, the approval of such sublease shall be presented to the governing bodies of the City and the County, respectively. No sublease of the Leased Premises shall release or discharge the LDCBA from its primary liability for the payment of the Basic Rent and Additional Rent hereunder and the performance of each and all of the covenants and agreements herein contained, and its duties and obligations under this Lease shall continue as if no such sublease had been made. The LDCBA shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the County a true and correct copy of each such sublease.

(b) All subleases presented to and approved by the Management Committee shall include the provisions regarding insurance, damage or destruction of the subleased premises, hazardous materials, the Americans with Disabilities Act, indemnification and acknowledgement of this Lease in substantially the form attached hereto as **Exhibit A**. In no event shall the term of any sublease be in excess of five years for extend beyond the final term of this Lease.

Section 13.2. Assignment of Sublease Revenues by LDCBA. The LDCBA shall assign and pledge any rents, revenues and receipts receivable under any sublease, to the City and the County as security for payments due under this Lease.

Section 13.3. Assignment of Revenues by County. The County shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the City pursuant to the Cooperation Agreement as security for payments due under the Cooperation Agreement and the LDCBA hereby consents to such pledge and assignment.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of all parties hereto.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

- | | | |
|-----|----------------|---|
| (a) | To the City: | City of Lawrence, Kansas
City Hall
6 East 6 th Street
Lawrence, Kansas 66044
Attention: City Clerk |
| (b) | To the County: | Douglas County, Kansas
Douglas County Courthouse
1100 Massachusetts Street
Lawrence, Kansas 66044
Attention: County Administrator |
| (c) | To the LDCBA: | Lawrence-Douglas County Bioscience Authority
1617 St. Andrews Drive
Lawrence, Kansas 66047
Attention: President |

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by any party hereto shall also be given to all other parties. The City, the County and the LDCBA may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 15.2. Lessors Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City and the County shall, may or must give its approval or consent, or

execute supplemental agreements or schedules, the City and the County shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules.

Section 15.3. No Pecuniary Liability. No provision, covenant or agreement contained in this Lease, or any obligation herein or therein imposed upon the City or the County, or the breach thereof, shall constitute or give rise to or impose upon the City or the County a pecuniary liability or a charge upon the general credit or taxing powers of the City, the County or the State of Kansas.

Section 15.4. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Kansas.

Section 15.5. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City, the County and the LDCBA and their respective permitted successors and assigns.

Section 15.6. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. City and County Sale of the Leased Premises. The City or County may, at any time, contract to sell their respective interests in the Leased Premises. From and after such a sale, the City and County shall be released from all liability to LDCBA and its successors and assigns arising from this Lease because of any act, occurrence or omission of the City or County occurring after such sale, and LDCBA shall look solely to the City's or County's successor in connection with the same; provided however, that the City and County shall not be released from liability to LCDBA and its successors and assigns under this Lease because of any act, occurrence or omission of occurring prior to such sale, unless such liability is expressly assumed by the City's or County's successor-in-interest in and to the Leased Premises.

Section 15.10. Limitation of City and County Liability. Notwithstanding anything in this Lease to the contrary, the City's and County's liability under this Lease shall be limited to their respective interests in the Leased Premises.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF LAWRENCE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the Mayor of the **CITY OF LAWRENCE, KANSAS**, a municipal corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said City, and that said instrument was signed and sealed in behalf of said City by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

DOUGLAS COUNTY, KANSAS

By: _____
Chair of Board of County Commissioners

[SEAL]

ATTEST:

County Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared **Nancy Thellman**, to me personally known, who, being by me duly sworn, did say that (s)he is the Chair of the Board of County Commissioners of **DOUGLAS COUNTY, KANSAS**, a body corporate and politic duly organized and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said County, and that said instrument was signed and sealed in behalf of said County by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

**LAWRENCE-DOUGLAS COUNTY
BIOSCIENCE AUTHORITY, INC.**

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) **SS.**
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public, appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the _____ of the **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a not for profit corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said organization, and that said instrument was signed and sealed in behalf of said organization by authority of its Board of Directors, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said organization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Printed Name: _____
Notary Public in and for said State
Commissioned in Douglas County

(SEAL)

My commission expires: _____

EXHIBIT A

FORM OF SUBLEASE TERMS

DEFINED TERMS.

“Landlord” means the LDCBA.

“Leased Premises” means that portion of the Research Laboratory Facility and the Common Areas, which are leased by LDCBA to the subtenant.

“Master Lease” means that certain Lease Agreement between the Owners and LANDLORD, dated as of January 1, 2010.

“Owners” means the City of Lawrence, Kansas (the “City”) and Douglas County, Kansas (the “County.”

“Research Laboratory Facility” means the following described real property, to-wit: LOT 2, BLOCK ONE, IN OREAD CENTER (A REPLAT OF LOT 1B OF A LOT SPLIT OF LOT ONE, OREAD WEST NO. 8), A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.

“Tenant” means the subtenant.

INSURANCE.

a. TENANT shall be solely responsible for obtaining insurance coverage for its personal property and/or trade fixtures located on the Leased Premises, business interruption coverage, leasehold coverage, or any additional insurance coverage TENANT deems necessary.

b. TENANT agrees to secure and keep in force during the term of this Agreement, at TENANT’s sole cost and expense, the following insurance policies and/or pay insurance costs as hereinafter set forth:

i. a Commercial General Liability policy with a combined single limit of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate limit for this location and a deductible not to exceed \$100,000. The policy shall name LANDLORD, LANDLORD’s employees, LANDLORD’s managing agent for the Research Laboratory Facility (if any), the Owners and their employees and agents, and any other persons, firms or corporations designated by LANDLORD, and TENANT as insured, and shall contain a clause that the insured will not cancel or change the insurance without first giving LANDLORD and the Owners fifteen (15) days prior written notice. TENANT’s insurance shall provide primary coverage to the Owners or LANDLORD when any policy issued to the Owners or LANDLORD, as applicable, provides duplicate or similar coverage, in such circumstance the Owners’ or the LANDLORD’s policy will be excess over TENANT’s policy. The insurance shall be provided by an insurance company approved by LANDLORD and a copy of the policy or a certificate of insurance shall be delivered to LANDLORD and the Owners prior to the Effective Date and annually thereafter at least 30 day prior to the expiration date of the expiring policy. If TENANT refuses or neglects to secure and maintain insurance policies complying with the provisions of this paragraph, LANDLORD may, but shall not be required to do so, secure and maintain such insurance policies and TENANT shall pay the cost thereof to LANDLORD, as Additional Rent, upon demand. The insurance required by this paragraph is deemed a material aspect of this Agreement. TENANT’s

failure to provide insurance as described herein shall be deemed a breach of this Agreement and cause for cancellation upon three (3) days written notice by LANDLORD to TENANT.

ii. Workers' compensation insurance in accordance with statutory law, and employers' liability insurance with a limit of not less than \$500,000 per occurrence, on which the LANDLORD and the Owners are named as additional insureds.

iii. Such other insurance as LANDLORD reasonably deems necessary and prudent, or as required by Owners.

TOTAL OR PARTIAL DAMAGE.

a. TENANT will promptly notify LANDLORD in writing of any event, damage or condition to which this Paragraph is or may be applicable.

b. In the event of the total destruction of the Research Laboratory Facility, so that the same cannot be occupied by TENANT, this Agreement shall terminate including TENANT's obligation to pay any further Rent hereunder. Total destruction shall mean damage that will not be repaired in 180 days.

c. In the event of partial destruction, LANDLORD may make such repairs, at LANDLORD's expense, as are necessary to place the property in substantially the same condition as prior to the destruction. If LANDLORD and the Owners determine that such repairs shall not be made, this Agreement shall terminate, including TENANT's obligation to pay any further Rent hereunder. If LANDLORD and the Owners determine that such repairs shall be made, TENANT's rent shall be proportionately reduced in the event that a portion of the Leased Premises is not fit for occupancy for a portion of the term hereof; provided, however, that in the event that the repairs cannot be substantially completed within one hundred and eighty (180) days of the date that the partial destruction first occurred, then TENANT shall have the right to terminate this Lease Agreement including all further obligations created upon it hereunder, or to continue occupying the Leased Premises with a pro-rata reduction of the rent. TENANT will assign to LANDLORD and the Owners (or to any party designated by LANDLORD and the Owners) all insurance proceeds payable to TENANT under TENANT's insurance required under this Agreement with respect to the TENANT's improvements in the Leased Premises.

d. Repair or replacement of TENANT's trade fixtures and personal property shall be at TENANT's expense, unless such expense arises as the result of an intentional, reckless or negligent act or omission of LANDLORD, its agents, employees or representatives, in which case, such expense shall be borne solely by LANDLORD.

INDEMNIFICATION.

TENANT shall hold LANDLORD and the Owners and their successors, assigns, officers, directors, employees and agents harmless from and indemnify and defend each against any and all claims, demands, actions and suits and all costs, loss, damage, liability, expense (including attorneys' fees) penalties, and fines which may arise from or be claimed against any or all of TENANT, LANDLORD, the Owners, the Leased Premises or the Research Laboratory Facility, arising directly or indirectly from (a) the use or occupancy of the Leased Premises by TENANT, or (b) the failure of TENANT to comply with any and all laws, statutes, ordinances, rules or regulations applicable to the Research Laboratory Facility or Leased Premises, or (c) any third party claims based upon TENANT's breach of warranty, covenant, liability or obligation under this Lease Agreement.

HAZARDOUS MATERIALS.

a. **Defined Terms.** The following words and terms, as used in this Paragraph 11, shall have the following meanings:

i. **“Claim”** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

ii. **“Environmental Laws”** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“TSCA”), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

iii. **“Hazardous Materials”** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

iv. **“Manage” or “Management”** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

v. **“Release” or “Released”** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “environment” is defined in CERCLA.

vi. **“Response” or “Respond”** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

b. **Tenant’s Obligations with Respect to Environmental Matters.** During the Term of this Agreement, (i) TENANT shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) TENANT shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by TENANT in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, without prior written disclosure to and prior

written approval by LANDLORD and the Owners; (iii) TENANT shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, TENANT shall not dispose of Hazardous Materials in dumpsters provided by LANDLORD for tenant use; (v) TENANT shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) TENANT shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) TENANT shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, TENANT shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

c. **Copies of Notices.** During the Term of this Lease, as extended, if applicable, TENANT shall provide LANDLORD promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Environmental Protection Agency, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, TENANT shall provide LANDLORD promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

d. **Landlord's Right to Inspect.** LANDLORD and LANDLORD's employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to TENANT (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with TENANT's business in the Leased Premises, for the purpose of (i) determining TENANT's compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. LANDLORD and its agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by TENANT or its agents, employees, contractors or invitees. TENANT agrees to cooperate with such investigations by providing any relevant information requested by LANDLORD. TENANT may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the LANDLORD's prior written consent.

e. **Tests and Reports.** Within ten (10) days of TENANT's receipt of a written request by LANDLORD, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event LANDLORD hereby reserves the right to request the following described documents more often, TENANT shall provide LANDLORD with (i) copies of all environmental reports and tests obtained by TENANT; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information) entered into or obtained by TENANT with respect to any Hazardous Materials; (iii) copies of any permits issued to TENANT under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by

TENANT to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. TENANT shall provide LANDLORD with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that TENANT complies with all Environmental Laws relating to the Leased Premises.

f. **Tenant's Obligation to Respond.** If TENANT's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, TENANT shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

g. **Landlord's Right to Act.** In the event that TENANT shall fail to comply with any of its obligations under this Paragraph as and when required hereunder, LANDLORD shall have the right (but not the obligation) to take such action as is required to be taken by TENANT hereunder and in such event, TENANT shall be liable and responsible to LANDLORD for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by LANDLORD in connection with such matters. TENANT shall reimburse LANDLORD immediately upon demand for all such amounts for which TENANT is liable.

h. **Indemnification.** Notwithstanding anything contained in this Agreement to the contrary, TENANT shall reimburse, defend, indemnify and hold LANDLORD and Owners, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

i. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually Managed, released or disposed of on or from the Leased Premises by TENANT (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and

ii. Any actual illness, disability, injury, or death of any person in any manner arising out of exposure to Hazardous Materials Managed or Released by TENANT on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and

iii. Any actual failure of TENANT on the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under subparagraph (b) of this [Section][Paragraph]; and

iv. Any failure by TENANT to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of TENANT under this Lease shall expressly exclude any obligation for pre-existing environmental conditions prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against LANDLORD for which LANDLORD is entitled to indemnity hereunder, LANDLORD shall notify TENANT of such Claim or assertion of liability and thereupon TENANT shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of TENANT under this Paragraph shall survive any termination or expiration of this Lease.

i. **Environmental Assessment Requirement.** TENANT shall, within 60 days of the expiration of the Lease, provide documentation in such form reasonably acceptable to LANDLORD, that the general environmental condition of the Leased Premises is in compliance with all Environmental Laws and are in at least the same condition as shown in the Phase I Environmental Assessment provided by LANDLORD to TENANT at the commencement of this Sublease Agreement. If such documentation is not delivered prior to such 60th day, then LANDLORD may arrange for completion of same. The reasonable cost of such documentation obtained by LANDLORD or TENANT pursuant to this provision shall be paid by TENANT or reimbursable to LANDLORD by TENANT (if completed by LANDLORD) promptly upon LANDLORD's furnishing TENANT with evidence of costs incurred therefor.

AMERICANS WITH DISABILITIES ACT.

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that TENANT has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. TENANT further acknowledges and agrees that except as may otherwise be specifically provided herein, TENANT accepts the Leased Premises in "as-is" condition and agrees that neither LANDLORD nor Owners make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. If required by TENANT, TENANT shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

MASTER LEASE.

a. This Agreement is and shall at all times be subject and subordinate to the Master Lease. Nothing in this Agreement shall be deemed to amend or modify any of the terms contained in the Master Lease, and to the extent any of the terms contained herein purport to grant TENANT greater rights than LANDLORD has been granted pursuant to the terms of the Master Lease, the rights herein granted shall be strictly limited so as not to exceed the rights of LANDLORD under the Master Lease.

b. TENANT agrees not to do or omit to do anything that would cause a default under the Master Lease. During the Initial Term and any renewal terms of this Agreement and for all periods subsequent for obligations which arise prior to the termination of this Agreement, TENANT does hereby expressly assume and agree to perform and comply with, for the benefit of LANDLORD, each and every obligation of LANDLORD under the Master Lease to the extent that the same relate to the Leased Premises ("TENANT'S Assumed Obligations").

c. TENANT shall hold LANDLORD free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, arising out of TENANT'S failure to comply with or perform TENANT'S Assumed Obligations.

OWNERS CONSENT.

By signing below, the Authorized City Representative and Authorized County Representative (as defined in the Master Lease) consent to this Agreement pursuant to Section 13.1(a) of the Master Lease, but such consent shall not: (a) except for obligations of TENANT under this Agreement in favor of Owners, create privity of contract between Owners and TENANT; (b) be deemed to have amended the Master Lease in any regard; (c) be construed as a waiver of Owners' right to consent to any assignment or further sublease of the Master Lease by LANDLORD; or (d) relive LANDLORD of any of its obligations under the Master Lease.

TERMINATION OF MASTER LEASE.

TENANT agrees that in the event that (i) LANDLORD breaches any covenant or fails to satisfy any contingency set forth in the Master Lease, or (ii) Owners assert any right of cancellation or termination given to Owners under the Master Lease, and any of the foregoing events under clauses (i) and (ii) results in the cancellation or termination of the Master Lease, or (iii) the Master Lease is terminated, cancelled, or surrendered for any other reason, then this Agreement shall likewise be cancelled and terminated.

SCHEDULE I

Schedule of Basic Rent Payments
--

Rental Payment Date	Principal Portion	Cumulative Outstanding Principal	Estimated Interest Portion*	Estimated Total Payment
8/1/2010	-	n/a	-	\$ 12,500.00
2/1/2011	-	n/a	-	12,500.00
8/1/2011	-	n/a	-	12,500.00
2/1/2012	-	n/a	-	12,500.00
8/1/2012	-	n/a	-	12,500.00
2/1/2013	-	n/a	-	12,500.00
8/1/2013	-	n/a	-	12,500.00
2/1/2014	-	n/a	-	12,500.00
8/1/2014	-	\$2,975,000.00	-	12,500.00
2/1/2015	\$55,000.00	2,920,000.00	\$59,500.00	114,500.00
8/1/2015	55,000.00	2,865,000.00	58,400.00	113,400.00
2/1/2016	55,000.00	2,810,000.00	57,300.00	112,300.00
8/1/2016	55,000.00	2,755,000.00	56,200.00	111,200.00
2/1/2017	57,500.00	2,697,500.00	55,100.00	112,600.00
8/1/2017	57,500.00	2,640,000.00	53,950.00	111,450.00
2/1/2018	57,500.00	2,582,500.00	52,800.00	110,300.00
8/1/2018	57,500.00	2,525,000.00	51,650.00	109,150.00
2/1/2019	60,000.00	2,465,000.00	50,500.00	110,500.00
8/1/2019	60,000.00	2,405,000.00	49,300.00	109,300.00
2/1/2020	62,500.00	2,342,500.00	48,100.00	110,600.00
8/1/2020	62,500.00	2,280,000.00	46,850.00	109,350.00
2/1/2021	62,500.00	2,217,500.00	45,600.00	108,100.00
8/1/2021	62,500.00	2,155,000.00	44,350.00	106,850.00
2/1/2022	65,000.00	2,090,000.00	43,100.00	108,100.00
8/1/2022	65,000.00	2,025,000.00	41,800.00	106,800.00
2/1/2023	67,500.00	1,957,500.00	40,500.00	108,000.00
8/1/2023	67,500.00	1,890,000.00	39,150.00	106,650.00
2/1/2024	70,000.00	1,820,000.00	37,800.00	107,800.00
8/1/2024	70,000.00	1,750,000.00	36,400.00	106,400.00
2/1/2025	72,500.00	1,677,500.00	35,000.00	107,500.00
8/1/2025	72,500.00	1,605,000.00	33,550.00	106,050.00
2/1/2026	75,000.00	1,530,000.00	32,100.00	107,100.00
8/1/2026	75,000.00	1,455,000.00	30,600.00	105,600.00

2/1/2027	77,500.00	1,377,500.00	29,100.00	106,600.00
8/1/2027	77,500.00	1,300,000.00	27,550.00	105,050.00
2/1/2028	82,500.00	1,217,500.00	26,000.00	108,500.00
8/1/2028	82,500.00	1,135,000.00	24,350.00	106,850.00
2/1/2029	85,000.00	1,050,000.00	22,700.00	107,700.00
8/1/2029	85,000.00	965,000.00	21,000.00	106,000.00
2/1/2030	87,500.00	877,500.00	19,300.00	106,800.00
8/1/2030	87,500.00	790,000.00	17,550.00	105,050.00
2/1/2031	92,500.00	697,500.00	15,800.00	108,300.00
8/1/2031	92,500.00	605,000.00	13,950.00	106,450.00
2/1/2032	97,500.00	507,500.00	12,100.00	109,600.00
8/1/2032	97,500.00	410,000.00	10,150.00	107,650.00
2/1/2033	100,000.00	310,000.00	8,200.00	108,200.00
8/1/2033	100,000.00	210,000.00	6,200.00	106,200.00
2/1/2034	105,000.00	105,000.00	4,200.00	109,200.00
8/1/2034	105,000.00	-	2,100.00	107,100.00
Totals	\$2,975,000.00		\$1,359,850.00	\$4,447,350.00

* Interest rate is estimated at 4.0%. Actual interest portion will be determined pursuant to **Section 5.1** of the Lease.



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5329 Fax (785) 832-5320
www.douglas-county.com

Pamela J. Madl
Assistant County Administrator

MEMO TO: Board of County Commissioners

FROM: Pam Madl

SUBJECT: Changes in Pharmaceutical Benefits

DATE: January 19, 2010

A couple of months ago we learned that the Third Party Administrator for our pharmaceutical plan was not willing to switch to AWP pricing which did not include cost neutrality for their network pharmacies. The result for us would be paying pharmaceutical prices that we believe were too high. RESTAT recommended that we look for another TPA with an effective date of February 1, 2009.

We went back to the responses to our RFP in May 2009, and contacted MedTrak, who was our second (but very close second) choice. We have been able to work out a contract with them with the use of a network of pharmacies who are willing to use the AWP pricing structure that we prefer. The disadvantage is that this network does not include some of the larger chain stores who were not willing to reduce their pricing structure. However, we feel that overall this is a positive change for Douglas County and should result in lower pharmaceutical costs for our plan.

The following is a basic list (the official list will come out before the end of January) of the pharmacies that will be in the network:

Lawrence: Dillons, HyVee, Jayhawk, Medical Arts, Sunflower, Haskell, Watkins
Baldwin: Roberts
Eudora: Byrnes
Ottawa: there will be 2 pharmacies, which we will identify later

The new pharmacy plan also only has two tiers (generic and brand names), as opposed to the three we currently have. We will be really emphasizing the use of generics. The copays will also change as follows:

Currently: Tier 1 (generic) \$8.00 Tier 2 (brand name, no generic) \$25.00 Tier 3: \$40.00 +
difference between generic/other brand name & cost of Tier 3 medication

New Plan: Generics: \$8.00 Brand Names: \$35.00 + difference between generic & cost of brand name.

Evan has had a chance to review the contract and changes were made pursuant to his recommendations. I am seeking your approval of the contract and the health insurance plan changes as described above, effective February 1, 2010.

Thank you for your consideration.

Pjm
Attachment

SERVICE AGREEMENT

THIS AGREEMENT, made effective this 1st day of February, 2010, by and between DOUGLAS COUNTY or its successors or assigns (hereinafter referred to as "Client"), and MEDTRAK SERVICES LLC, a Missouri limited liability company, or its successors or assigns (hereinafter referred to as "MedTrak").

WHEREAS, Client is a Plan Sponsor that desires to provide a Pharmacy Benefit to its Eligible Members; and

WHEREAS, Client desires to engage MedTrak to administer Client's Pharmacy Benefit; and

WHEREAS, MedTrak is engaged in the business of administering a Pharmacy Benefit for Plan Sponsors in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. DEFINITIONS

1.1 "Agent" shall mean a third party administrator ("TPA"), consultant, trustee(s), or any other party or entity appointed or authorized by Client to represent Client in its relationship with MedTrak.

1.2 "Agreement" shall mean this Service Agreement between Client and MedTrak and the Exhibits to the Agreement, as may be amended and modified.

1.3 "Average Wholesale Price" or "AWP" shall mean the current wholesale price of a Drug Product as established by its manufacturer and as reported by Medispan.

1.4 "Brand Drug Product" shall mean a Drug Product with a proprietary name or trademark assigned to it by the manufacturer or distributor.

1.5 "Brand Maintenance Drug Product" shall mean a Brand Drug Product that is routinely prescribed for a chronic condition and is listed in a nationally recognized drug database as a maintenance drug.

1.6 "Cardholder" shall mean an Eligible Member to whom Client (or its Agent) or MedTrak has issued an identification card (or form), whose name and identification number appear on the identification card (or form), and whose identification card (or form) is valid.

1.7 "Claim" shall mean a request from a Participating Pharmacy or a Cardholder to process and adjudicate a Covered Medication for an Eligible Member.

1.8 "Copayment" or "Deductible" shall mean the amount an Eligible Member is required to pay a Participating Pharmacy, in accordance with the terms of the Plan, for a Covered Medication dispensed by the Participating Pharmacy.

1.9 "Covered Medication" shall mean any Drug Product that is ordered by a Physician by means of a Prescription Order or Refill and that meets the requirements for coverage as set forth in the Pharmacy Benefit.

1.10 "Dependent" shall mean an Eligible Member who is related to a Cardholder, as identified by Client (or its Agent).

1.11 "Drug Product" shall mean any medication or medical device, as described by its manufacturer and reported in a nationally recognized drug database.

1.12 "Eligible Member" shall mean an individual that is enrolled in a Plan and who is entitled to receive reimbursement for, or payment of, Covered Medications under the Pharmacy Benefit for the Plan in which the individual is enrolled.

1.13 "Formulary" shall mean a standard preferred list of Covered Medications, as determined by the MedTrak Pharmacy & Therapeutics Committee (or such other Pharmacy & Therapeutics Committee as designated by MedTrak and agreed to by Client), and provided, as necessary, to Physicians, Participating Pharmacies and/or Eligible Members as a guide to the prescribing, dispensing, and purchasing of Covered Medications.

1.14 "Formulary Program" shall mean a program established by MedTrak under which pharmaceutical manufacturers provide MedTrak with discounts, which are (i) due and payable to MedTrak pursuant to the terms of MedTrak's contracts with pharmaceutical manufacturers; and (ii) directly attributable to the dispensing of Covered Medications on the Formulary to Eligible Members.

1.15 "Generic Drug Product" shall mean a drug identified by its chemical or non-proprietary name (as determined by the United States Adopted Names Council) and included in the U.S. Food and Drug Administration's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" (Orange Book) and considered to be therapeutically equivalent.

1.16 "Generic Maintenance Drug Product" shall mean a Generic Drug Product that is routinely prescribed for a chronic condition and is listed in a nationally recognized drug database as a maintenance drug.

1.17 "Limited Distribution Drug" or "LDD" shall mean a Specialty Drug that is only available through a limited number of specialty pharmacies.

1.18 "Participating Pharmacy" shall mean a duly licensed pharmacy that has signed a Pharmacy Services Agreement with MedTrak to provide Pharmacy Services to Eligible Members in accordance with the requirements in the Pharmacy Services Agreement.

1.19 "Pharmacy Benefit" shall mean the inclusions, limitations and exclusions in coverage of Eligible Members, Participating Pharmacies, Physicians, and Covered Medications as set forth in the Plan and as may be amended from time to time by Plan Sponsor.

1.20 "Pharmacy Services" shall include the dispensing of a Drug Product by a Participating Pharmacy, in accordance with all applicable state and federal laws governing the practice of pharmacy and in accordance with the standards of practice in the communities in which the Participating Pharmacy operates.

1.21 "Physician" shall mean any Doctor of Medicine or other health care practitioner who is legally authorized to prescribe Drug Products in the state(s) in which he/she is licensed.

1.22 "Plan" shall mean the agreement or other arrangement between an Eligible Member and his/her Plan Sponsor that entitles the Eligible Member to receive reimbursement for, or payment of, medical expenses, including, without limitation, Covered Medications.

1.23 "Plan Sponsor" shall mean an employer, employer coalition, health insurer, managed care organization, association, union health and welfare trust, government agency, third party administrator, or other such organization that is obligated to pay for Covered Medications dispensed to Eligible Members.

1.24 "Point-of-Sale" or "POS" shall mean the on-line, real-time telecommunication system used by MedTrak to communicate information regarding eligibility, Claims, drug utilization, and other information to Participating Pharmacy.

1.25 "Prescription Order or Refill" shall mean the request made to Participating Pharmacy by the Eligible Member's Physician to dispense a Covered Medication.

1.26 "Specialty Drug" shall mean a high-cost, complex pharmaceutical that has unique clinical, administration, distribution, or handling requirements and is not commonly available through traditional retail or mail pharmacies. A list of Specialty Drugs is included with this Agreement (Exhibit B), and it shall be updated from time to time.

1.27 "System" shall mean the hardware and the software used to process Claims.

1.28 "Therapeutic Intervention Program" shall mean a proprietary program created by MedTrak to educate Eligible Members and their Physicians about preferred Drug Products on the Formulary and encourage Physicians to prescribe and Eligible Members to use said Drug Products.

2. DUTIES OF MEDTRAK

2.1 MedTrak agrees to provide, through its Participating Pharmacies, upon the receipt of a Prescription Order or Refill, Covered Medications to Eligible Members in accordance with the terms of this Agreement, if such Eligible Members present a valid and current identification card (or form) at Participating Pharmacies signifying their entitlement to such Covered Medications.

2.2 MedTrak agrees to provide Pharmacy Benefit "Administration Services," as described in Exhibit A, including, but not limited to, the processing and adjudication of Claims for Covered Medications submitted by Participating Pharmacies for Eligible Members.

2.3 MedTrak agrees to allow Client to participate in the Formulary Program in Client's sole discretion, and MedTrak agrees to pay Formulary Program discounts to Client to the extent such Formulary Program discounts are attributable to Client's participation in the Formulary Program and Eligible Members' use of the Formulary, and as are described in Exhibit C, but if and only if Client meets its obligations under this Section 2.3 and Exhibit C of this Agreement, and if and only if Client meets such other reasonable and generally applicable requirements for participation in the Formulary Program and associated parameters as may be communicated by MedTrak to Client from time to time.

2.3.1 Client (or its Agent) shall have sole discretion regarding participation in MedTrak's Formulary Program, which may include, but is not limited to, the distribution of Formularies to Cardholders prior to the "Start Date" and as necessary thereafter, and which participation shall require Client's conformance to the Formulary. By choosing to participate in the Formulary Program, Client further warrants that Client is not participating in any other formulary program and that Client's Agent is not participating in any other formulary program on behalf of Client.

2.3.2 Client understands that its eligibility to receive payments from MedTrak under this Section 2.3 may change over time due to changes in Client's Plan; changes in MedTrak's contracts with pharmaceutical manufacturers or rebate intermediaries; changes in laws, including but not limited to laws affecting prescription drug benefits, benefits structure, or pricing (including rebates); the selection of certain services, such as prior authorization or open formulary management; or any change in the Formulary Program.

2.3.3 Subject to Client's participation in the Formulary Program and compliance with Sections 2.3.1 and 2.3.2, above, MedTrak shall pay to Client all payments it receives pursuant to the Formulary Program from drug manufacturers or intermediaries that are denominated as rebates by such manufacturers or intermediaries and that are attributable to Pharmacy Services utilized by Eligible Members, all as provided for and in accordance with Exhibit C. Client

acknowledges and agrees that it shall not have a right to interest on, or the time value of, any rebate or other payments received by MedTrak during the collection period for monies payable to Client under this Section 2.3. Client acknowledges that rebate payments from manufacturers or intermediaries are received on a periodic basis by MedTrak and relate to earlier months' claims. MedTrak reserves the right to delay payment of rebate amounts and to offset any rebate payments otherwise due to allow for final adjustments upon termination of this Agreement.

2.3.4 Client acknowledges that it may be eligible for rebate payments under this Section 2.3 only so long as Client (or its Agent) does not contract directly or indirectly with anyone else for discounts, utilization limits, rebates or other financial incentives on pharmaceutical products or formulary programs without MedTrak's prior written consent. In the event that Client negotiates or arranges with a pharmaceutical manufacturer or intermediary for rebates or similar discounts, but without limiting MedTrak's right to other remedies, MedTrak may immediately terminate Client's participation in the Formulary Program, terminate this Agreement according to the terms of Section 5.2 hereof, and/or recover from Client all rebates paid by MedTrak for claims submitted by Client (or on behalf of Client) other than through MedTrak for rebates from manufacturers or intermediaries.

2.3.5 Client hereby represents and warrants, and shall recertify on a periodic basis in a form acceptable to MedTrak, with respect to any Plan which receives funding from Medicare/Medicaid, Title V, Children's Medical Services, or another government healthcare program as defined in Section 1128(h) of the Social Security Act (or any successor thereto) ("Government Programs") and for which the Client receives rebates attributable to such Plan, each such Plan is operating under a risk contract with the Centers for Medicare and Medicaid Services ("CMS") or a state Medicaid program, and operates in accordance with §§ 1876(g) or 1903(m) of the Social Security Act, under a federal statutory demonstration authority or successor statute or authority. Client agrees to notify MedTrak in writing of any such Plan that does not meet any of the criteria set forth herein, and MedTrak, in compliance with applicable law, shall not submit prescription drug claims for any Eligible Members in such Plan for prescriptions filled by a Participating Pharmacy. Nothing herein prohibits a Client that receives the retiree drug subsidy ("RDS") from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R) from receiving rebates relating to such eligible Plan Participants' prescription drug claims under this Agreement. The parties hereto acknowledge and agree that any rebate reimbursement provided to Client pursuant to this Agreement is a "discount" under 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952(h) (the "Discount Safe Harbor"). For the purpose of complying with the Discount Safe Harbor, MedTrak shall clearly denote in invoices and other statements amounts that constitute rebate reimbursement hereunder. Client shall properly disclose and appropriately reflect all rebate reimbursement in the costs claimed or the charges made to any Government Program. Without limiting the foregoing, if Client claims a subsidy from CMS for eligible Plan Participants under the Medicare Part D Rules (42 C.F.R. Part 423, Subpart R), Client shall properly disclose and appropriately reflect any rebate reimbursement paid by MedTrak to Client in the Allowable Retiree Costs (as defined at 42 C.F.R. § 423.882) and other information submitted to CMS for payment of such subsidy in accordance with the Medicare Part D Rules, all applicable sub-regulatory guidance and CMS policies.

2.4 MedTrak shall allow Client (and its Agent) to use the name of MedTrak for purposes of marketing, informing Eligible Members and others of the identity of Participating Pharmacies and otherwise to carry out the terms of this Agreement.

2.5 MedTrak shall use reasonable efforts to provide Client with assistance in coordinating and responding to formal complaints or appeals from Eligible Members under the Plan; however, MedTrak will not be responsible or liable in any manner for Client's compliance or non-compliance with the terms and conditions of the Plan or applicable laws or regulations regarding responding to Eligible Members' complaints or appeals. Client is solely responsible for the review and appeal of denied claims and for the final resolution of complaints from Eligible Members.

2.6 MedTrak acknowledges that in administering Client's Pharmacy Benefit, MedTrak will receive health information from Client such that MedTrak will be considered to be Client's "Business Associate," as that term is defined by the Health Insurance Portability and Accountability Act of 1996, and the implementation regulations governing privacy and security of certain information thereunder ("HIPAA"). Specifically, with respect to protected health information ("PHI") as that term is defined by HIPAA, MedTrak agrees to comply with the provisions in the Business Associate Addendum set forth on Exhibit D, attached hereto and incorporated by this reference.

2.7 MedTrak may, at its sole discretion, audit Participating Pharmacies to ensure the Participating Pharmacies' compliance with their contracts with MedTrak. Selection of Participating Pharmacies and the method of audit shall be determined solely by MedTrak. MedTrak, in its discretion, may perform the audit or select an outside firm to perform the audit. To compensate MedTrak for the cost of conducting such audits, MedTrak shall be entitled to retain twenty percent (20%) of any overpayment to any Participating Pharmacy that is detected and recovered as a result of any such audit, and which is attributable to a Plan or its Eligible Members; provided that MedTrak shall pay the balance of any such recovered overpayment to Client, pro rated to the amount attributable to Client's Plan or Eligible Members.

3. DUTIES OF CLIENT

3.1 Client agrees and expressly acknowledges that in the event an Agent shall be appointed by Client, MedTrak shall deal with Agent in all respects as if it were the Client for purposes of this Agreement and Client waives any right to the contrary. Client further expressly acknowledges any act or omission by such Agent shall be within the scope and authority of such Agent and binding upon Client and that any agreement Client shall have with Agent shall have no bearing or effect on this Agreement.

3.2 Client (or its Agent) agrees to provide MedTrak five (5) days prior to the "Start Date" and as necessary thereafter, Eligible Member information, including, but not necessarily limited to, Cardholder name, Cardholder identification number, Cardholder address, Cardholder birth date, Cardholder eligibility begin date, Cardholder eligibility end date, Dependent name(s), Dependent birth date(s), Dependent eligibility begin date, and Dependent eligibility end date. Client (or its Agent) shall provide such information in a format agreeable to MedTrak. Client agrees that MedTrak may act in reliance upon the accuracy of all Eligible Member information received from Client (or its Agent).

3.3 Client (or its Agent) agrees to distribute, or pay MedTrak to distribute in accordance with Exhibit C, "Cardholder Information", as described in Exhibit A, to Cardholders upon receipt from MedTrak or Agent, at Client's discretion.

3.4 Client (and its Agent) agrees to grant Participating Pharmacies the status of "Client Participating Pharmacies" and to identify such Participating Pharmacies as "Preferred Pharmacies", or other language of like import, on informational materials distributed to Eligible Members and others.

3.5 Client (and its Agent) understands and agrees that MedTrak shall have the right to collect and use aggregate data on Covered Medications. Client (and its Agent) further understands and agrees that, in order to participate in the Formulary Program, MedTrak must submit data on Covered Medications to pharmaceutical manufacturers pursuant to the terms of agreements with those pharmaceutical

manufacturers, provided, however, that such information furnished to pharmaceutical manufacturers shall not identify Eligible Members by name or otherwise except in connection with any audit required by such pharmaceutical manufacturers.

3.6 Client (and its Agent) shall not constrain MedTrak from communicating with Eligible Members and/or their Physicians, when necessary, to carry out its obligations as set forth in this Agreement.

3.7 Client shall comply with the HIPAA provisions included in the Business Associate Addendum set forth on Exhibit D, attached hereto and incorporated by this reference.

4. MEDTRAK COMPENSATION

4.1 Client agrees to pay MedTrak by wire transfer or check the "Paid Claim Charges", "Administration Charges", and all other applicable charges, which Client is obligated to pay, as defined and described in Exhibit C. Payment of Paid Claim Charges, Administration Charges, and all other applicable charges, shall be made twice a month within ten (10) days of the invoice statement date. Client acknowledges that, in the event Client fails to pay any Paid Claim Charges, Administration Charges, other applicable charges, or interest due within thirty (30) days of the invoice statement date, MedTrak reserves the right to immediately suspend all POS system activity until Client makes payment to MedTrak in full.

4.2 Client acknowledges that, in the event Client requests MedTrak to provide services that are not defined in this Agreement, Client shall pay additional charges, which shall be mutually agreed upon by both parties in writing.

4.3 MedTrak uses AWP as its commercially published Drug Product pricing statistic to calculate and negotiate "Paid Claim Charges," as defined and described in Exhibit C all in accordance with MedTrak's response to Client's request for proposal. If, for any reason, MedTrak decides to change its Drug Product pricing statistic from AWP to some other independent source, or if the independent source(s) used by MedTrak for AWP pricing change(s) the methodology by which AWP is calculated ("Change Event"), then MedTrak shall notify Client sixty (60) days prior to the implementation date of such change ("Change Date"). If the methodology for calculating Paid Claim Charges using the new Drug Product pricing source would result in a material increase or decrease in Paid Claim Charges to Client, the parties shall mutually agree on an adjustment factor to be applied to the Paid Claim Charges incurred on and after the Change Date that is equivalent to the Paid Claim Charges increase or decrease experienced by Client due to the Change Event. If the parties cannot mutually agree to an adjustment factor by the Change Date, then either party hereto may terminate this Agreement upon thirty (30) days' prior written notice.

5. TERM

5.1 The term of this Agreement shall commence on the "Start Date", which shall be the 1st day of February, 2010, and shall continue until May 31, 2010. Thereafter, Client may renew and extend this Agreement for up to four (4) additional successive periods of one (1) year each (each, a "Renewal Term") until June 1, 2014. If either party hereto shall give to the other at least thirty (30) days' written notice, prior to the expiration of the then-current term, of its intention to either terminate this Agreement or to renegotiate the provisions thereof.

5.2 Either party hereto may terminate this Agreement if the other party materially breaches its obligations. The termination must be by written notice specifically identifying the breach, and such termination shall become effective thirty (30) days after the notice, unless the breach is corrected during the thirty (30)-day period (the "Cure Period"). MedTrak shall provide Pharmacy Benefit Administration Services on all Covered Medications submitted prior to the termination date.

5.3 MedTrak is the exclusive provider to Client of the Pharmacy Benefit Administration Services as described in this Agreement. During the term of this Agreement, Client shall not engage directly or indirectly any individual, proprietorship, partnership or corporation operating the same or

similar business as MedTrak, including, without limitation, Pharmacy Services provided through the mail or other similar delivery system.

5.4 A breach by MedTrak of any material provision of this Agreement shall constitute a material breach of the Agreement and shall provide grounds for termination of the Agreement by the Client; provided MedTrak is unable to cure such breach within the applicable Cure Period provided in Section 5.2 of the Agreement. Notwithstanding the foregoing, the Client may terminate the Agreement, without penalty, effective immediately, if (i) MedTrak is named as a defendant in a criminal proceeding for a violation of HIPAA; or (ii) a finding or stipulation that MedTrak violated any standard or requirement of HIPAA or any other applicable laws relating to the security or privacy of PHI, or which is entered against MedTrak in any administrative or civil proceeding in which MedTrak has been joined.

6. CONFIDENTIALITY

6.1 MedTrak retains the exclusive rights to the names MedTrak Services LLC, MedTrak Services, and MedTrak, together with any distinctive trademark and/or service mark that may hereinafter be adopted.

6.2 All confidential and proprietary information of MedTrak, including, but not limited to, MedTrak's System information, reporting packages, proprietary software and user documentation, manuals, Formulary documents, Participating Pharmacy and Formulary Program agreements, any information about MedTrak's rates, fees or charges, and this Agreement and its terms and conditions, are confidential and proprietary to MedTrak. Client (and its Agent) shall not use any MedTrak confidential and proprietary information or disclose it to any third party, at any time during or after termination of this Agreement, except as specifically contemplated in this Agreement or upon MedTrak's prior written consent. Upon termination of this Agreement, Client (and its Agent) shall cease using all MedTrak confidential and proprietary information provided to Client (or its Agent) by MedTrak and shall return such information to MedTrak immediately upon MedTrak's request.

6.3 The parties shall maintain the confidentiality of any information relating to Eligible Members in accordance with any applicable laws and regulations. It is contemplated, however, that, in providing services under this Agreement, MedTrak shall obtain confidential information about Eligible Members and may distribute such confidential information to Client (and its Agent), Participating Pharmacies, and Physicians. Client shall insure that there is adequate release from Eligible Members, or that release of confidential information relating to Eligible Members is otherwise proper, in regard to any information about Eligible Members provided to MedTrak or by MedTrak to Client (or its Agent), Participating Pharmacies, or Physicians. Client (and its Agent) shall also insure that its use of Eligible Member information is in compliance with applicable laws and regulations.

6.4 The parties hereto shall maintain appropriate records relating to their responsibilities under this Agreement. Once per Agreement year and once during the year immediately following termination of this Agreement, each party hereto may have reasonable access to the records of the other party relating to such other party's responsibilities and performance under this Agreement during normal business hours and upon reasonable prior notice. The scope of an audit hereunder will be limited to Eligible Member Claims adjudicated in the Agreement year immediately preceding the year in which the audit is conducted. Each party hereto shall pay the reasonable cost of copying records requested from the other party during an audit hereunder, and any other reasonable reproduction costs incurred by the other party in complying with the audit request. A third party may be allowed or designated by the auditing party hereunder to conduct an audit with the prior written consent of the party hereto whose records are to be audited, which consent shall not be unreasonably withheld; provided, however, that the audited party shall have the right to refuse the auditing party's auditor if the proposed auditor reasonably may acquire a competitive advantage by gaining access to the audited party's confidential information as described in this Section 6. In addition, the third party auditor shall enter into a reasonable confidentiality agreement with the audited party prior to conducting any audit hereunder.

7. RELATIONSHIP OF THE PARTIES

7.1 Client and MedTrak are separate and independent entities. They recognize that they are neither partners nor joint venturers and that they are not liable for the debts and obligations of each other. Client specifically acknowledges that MedTrak shall have no fiduciary duties whatsoever to Client or any Eligible Member either arising under this Agreement or under any Plan. Client and MedTrak acknowledge and agree that MedTrak has no discretionary authority or discretionary control to negotiate on behalf of Client, its Agent, any Plan or Plan Sponsor, any prices, rates, rebates, discounts or other terms for Pharmacy Services or otherwise relating to the Formulary Program. Client acknowledges that it, or its Agent or Plan Sponsor, will retain at all times sole authority to control and administer its Plan and its Pharmacy Benefit, including without limitation any Eligible Member complaints or appeals under such Plan, and to choose whether or not to participate in the Formulary Program. Client and MedTrak each agree to indemnify and hold the other harmless from and against any liabilities, claims, damages, injuries, costs, expenses and fees, including without limitation reasonable attorneys' fees, whether relating to persons or property, and which arise out of or are otherwise attributable to the acts or omissions of MedTrak or Client, respectively, and each of their respective employees, agents, representatives or other persons in the performance of any work, activities, obligations or responsibilities of MedTrak or Client under this Agreement. It is also understood by the parties that they are not assuming nor guaranteeing any debts or obligations of the other.

7.2 No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between Client and MedTrak other than that of independent entities contracting with each other solely for the purpose of fulfilling the provisions of this Agreement. Neither of the parties hereto, nor any of their respective representatives, shall be construed to be the agent, the employer, or the representative of the other except for the limited purpose stated in Section 7.3 and 7.4 below.

7.3 Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Client, MedTrak and their respective successors or assigns, any rights, remedies, obligation, or liabilities whatsoever.

7.4 Client acknowledges, agrees and understands that MedTrak (i) is acting solely in the capacity as Client's paying agent in processing claims and making payments from funds provided by Client as part of its Administrative Services as described in Exhibit A, and (ii) will not provide 1099 forms to any Participating Pharmacy or claim recipient who is paid by MedTrak. The Client shall be responsible for filing all state and federal reporting forms, if any, with respect to such claim payments.

8. MISCELLANEOUS

8.1 The terms of this Agreement shall be governed by the laws of the state of Kansas.

8.2 This Agreement may not be amended, supplemented or changed in any manner except by a written instrument executed by both parties.

8.3 This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, executors, administrators, successors and assigns. Either party hereto may assign its respective rights hereunder to any successor or assign as long as such successor or assign also assumes all of the obligations of the party making such assignment. Client acknowledges that persons and entities under contract with MedTrak may perform certain administrative services pursuant to this Agreement, provided that MedTrak (or its assignee) shall remain responsible for the proper performance of its obligations in accordance with the terms of this Agreement. The obligations of Client hereunder may not be assigned nor any portions of Client's duties subcontracted without the prior written consent of MedTrak, which shall not be unreasonably withheld.

8.4 The use of the masculine, feminine or neuter gender and the use of the singular and plural shall not be to give the effect of any exclusion or limitation herein.

8.5 Any notices required to be given pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid. Any such notice from Client shall be sent to the office of MedTrak. Any such notice from MedTrak shall be sent to the office of Client.

8.6 In the event of the unenforceability or invalidity of any section or provision of this Agreement, such section or provision shall be enforceable in part to the fullest extent permitted by law, and such invalidity or unenforceability shall not otherwise affect any other section or provision of this Agreement, and this Agreement shall otherwise remain in full force and effect.

8.7 Exclusive jurisdiction and venue for any litigation arising out of or related to this Agreement shall reside in the Kansas State courts located in Douglas County, Kansas.

8.8 This agreement is entered into as a result of clients request for proposal No. 09010 and MedTrak's response thereto, and said documents are incorporated herein by reference. The terms, provisions, and obligations of the parties contained in said documents shall prevail over conflicting terms, provisions, and obligations in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this contract at the City of Lawrence, the County of Douglas, the State of Kansas, this 1st day of February, 2010.

DOUGLAS COUTNY:

By: _____

Name: _____

Title: _____

MEDTRAK SERVICES, LLC:

By: _____

Name: Larkin O'Keefe _____

Title: President _____

Exhibit A
Administration Services

MedTrak will:

1. Maintain a network of independently contracted Participating Pharmacies to provide Covered Medications to Eligible Members.
2. Design the Pharmacy Benefit in the System and activate the POS system on the Start Date.
3. Load and test Eligible Member information in the System. MedTrak requires a minimum of five days to test the accuracy of the initial Eligible Member information provided. MedTrak is not responsible for inaccuracies in initial Eligible Member information in the System until such time as MedTrak has tested it.
4. Process and adjudicate Claims for Covered Medications submitted by Participating Pharmacies for Eligible Members, including:
 - a. Verification that the Eligible Member is eligible on the date the Drug Product is dispensed.
 - b. Verification that the Drug Product dispensed is a Covered Medication.
 - c. Verification that the supply of the Drug Product dispensed is in the quantity permitted under the Plan Sponsor's Plan.
 - d. Pricing of the Claim.
 - e. Production and issuance of explanations of benefits (EOBs) for out-of-network Claims.
 - f. Production and issuance of Claims checks.
 - g. Tracking or application of any Eligible Member Deductible, Copayment, or Pharmacy Benefit maximum.
5. Maintain the Claims data supporting the invoice statements for Covered Medications dispensed by Participating Pharmacies and by non-Participating Pharmacies.
6. Provide Plan Sponsor with access to standard management reports.
7. Produce and distribute Cardholder Information, which includes:
 - a. Identification Cards (or Forms)
 - b. Plan information
 - c. Participating Pharmacy directory
 - d. Formulary (if necessary)
8. Conduct retrospective and concurrent drug utilization review.
9. Implement a Formulary Program.
10. Implement a Therapeutic Intervention Program, when specifically requested by Client.
11. Conduct an annual member satisfaction survey and report results to Client if Client agrees to distribute the survey instrument through Client's internal email system.

Exhibit B
Specialty Drugs

Anemia

Aranesp
Epogen
Feraheme
Procrit

Cystic Fibrosis

Colistimethate
Coly-Mycin-M
Pulmozyme
Tobi

Deep Vein Thrombosis

Arixtra
Fragmin
Heparin
Innohep
Lovenox

Growth Hormone

Deficiency

Genotropin
Humatrope
Increlex
Norditropin
Nutropin AQ
Omnitrope
Saizen
Tev-Tropin

Hematologic Disorders

Advate
Alphanate
Alphanine SD
Bebulin VH
Benefix
Ceprotin
Cyklokapron
Cystadane
Febia VH
Helixate/ FS
Hemofil M
Humate-P
HyperRho
Koate-DVI
Kogenate FS
Michrogam
Monarc-M
Monoclote-P
Mononine
NovoSeven
Profilnine
Proplex T

Recombinate
Refacto
Rhogam
Rhophylac
Stimate
Thrombate
WinRho SD
Xyntha

Hepatitis B

Baraclude
Hepagam B
Hepsera
Hyperhep B S/D
Nabi-Hb
Tyzeka

Hepatitis C

Copegus
Infergen
Intron-A
Pegasys
Peg-Intron
Rebetol
Riba-Pak
Ribavirin

HIV & HIV Wasting

Agenerase
Aptivus
Atripla
Combivir
Crixivan
Cytovene
Didanosine
Emtriva
Epivir
Epzicom
Fuzeon
Ganciclovir
Intelence
Invirase
Isentress
Kaletra
Lexiva
Norvir
Prezista
Rescriptor
Retrovir
Reyataz
Selzentry
Serostim

Stavudine
Sustiva
Trizivir
Truvada
Valcyte
Videx
Viracept
Viramune
Viread
Vistide
Zerit
Ziagen
Zidovudine

Immune Deficiency

Actimmune
Atgam
Carimune NF
Cytogam
Flebogamma
Gamastan SD
Gammagard SD
Gamunex
Iveegam EN
Octagam
Panglobulin
Polygam
Privigen
Thymoglobulin
Venoglobul-S
Vivaglobin

Infertility

Bravelle
Cetrotide
Chorionic Gondaotropin
Follistim AQ
Ganirelix
Gonal-F
Leuprolide
Lupron/ Depot
Luveris
Menopur
Novarel
Ovidrel PF
Repronex

Lysosomal Storage

Disorders

Aldurazyme
Ceredase
Cerezyme
Fabrazyme*

Orfadin*
Zavesca*

Macular Degeneration

Lucentis
Macugen
Visudyne

Multiple Sclerosis

Avonex
Betaseron
Copaxone
Rebif
Tysabri

Neurologic

Botox
D.H.E.
Lioresal Int.
Myobloc
Prialt

Neutropenia

Leukine
Neulasta
Neupogen

Oncology

Abraxane
Adriamycin
Adrucil
Afinitor
Alimta
Alkeran
Amifostine
Anzemet
Aredia
Arimidex
Aromasin
Arranon
Avastin
Bexxar
Bicnu
Blenoxane
Bleomycin
Busulfex
Campath
Camptosar
Carboplatin
CEENU
Cerubidine
Cisplatin
Cladribine
Clofar
Cosmegen
Cyclophosphamide

Cytarabine
Dacarbazine
Dacogen
Daunorubicin
DaunoXome
Depocyt
Dexrazoxane
Doxil
Doxorubicin
DTIC-Dome
Eligard
Elitek
Ellence
Eloxatin
Elspar
Emcyt
Epirubicin
Eribitux
Ethyol
Etopophos
Etoposide
Fareston
Faslodex
Femara
Floxuridine
Fludara
Fludarabine
Fluorouracil
FU DR
Ganite
Gemzar
Gleevec
Herceptin
Hexalen
Hycamtin
Idamycin PFS
Idarubicin
Ifex
Ifex/Mesnex
Ifosfamide
Ifosfamide/Mesna
Intron-A
Iressa
Irinotecan
Ixempra
Leucovorin Calcium
Leukeran
Leukine
Leuprolide
Leustatin
Lupron
Lupron Depot/Ped
Matulane
Mesna
Mesnex
Mitomycin

Mitoxantron
Mustargen
Mutamycin
Myleran
Mylotarg
Navelbine
Nexavar
Nilandron
Nipent
Novantrone
Octreotide
Oncaspar
Ontak
Onxol
Pacliitaxel
Pamidronate
Panretin
Paraplatin
Pentostatin
Photofrin
Platinol-AQ
Plenaxis
Proleukin
Revlimid
Rituxan
Roferon-A
Sandostatin
Sprycel
Supprelin LA
Sutent
Synarel
Tabloid
Tarceva
Targretin
Tasigna
Taxol
Taxotere
Temodar
Thalomid
TheraCys
Thiotepa
Tice BCG
Toposar
Torisel
Totect
Treanda
Trelstar Depot/LA
Tretinoin
Trisenox
Tykerb
Vantas
Vectibix VL
Velcade
Vepesid
Vesanoid
Viadur

Vidaza
Vinblastine
Vincasar Pfs
Vincristine
Vinorelbine
Vumon
Xeloda
Zanosar
Zinecard
Zoladex
Zolinza
Zometa

Organ Rejection

Azasan
Azathioprine
Cellcept
Cyclosporine
Gengraf
Mycophenolate
Myfortic
Neoral
Prograf
Rapamune
Sandimmune
Tacrolimus

Osteoarthritis

Euflexxa
Hyalgan
Orthovisc
Supartz
Synvisc/One

Osteoporosis

Boniva
Forteo
Reclast

Other

Acthar-HP-Acute MS
Alferon N-Genital warts

Amicar-bleeding
Aminocaproic Acid-bleeding
Apokyn* – Parkinsons
Aralast/NP α -1-antitrypsin def
Arcalyst-CAPS*
Cimzia/ Kit-Crohn's
DexFerrum-iron deficiency
Elaprase-Hunters Syndrome*
Exjade-iron overload
HyperRab-Rabies
Ilaris*
Imogam-Rabies
Imovax-Rabies
Implanon*
Invega Susten
Kuvan-HPhA
Mirena - contraception
Myozyme-Pompe disease
Octreotide-acromegaly
Onsolis*
Prolastin- α -1-antitrypsin def
Rabavert-Rabies
Relistor-opoid constipation
Retisert-uveitis
Rilutek-ALS
Risperdal-schizophrenia
Sabril- Infantile Seizures
Sandostatin LAR-acromegaly
Sensipar-
hyperparathyroidism
Soliris-PNH
Somatuline-acromegaly
Somavert-acromegaly
Sucraid*-Enzyme
Replacement
Xenazine – Huntington's
chorea
Xolair-asthma
Xyrem*-narcolepsy
Zorbtive-short bowel
syndrome

Psoriasis
Amevivic
Raptiva

Pulmonary Artery

Hypertension

Epoprostenol
Sterile Diluent for
Epoprostenol
Flolan*
Sterile Diluent for Flolan*
Letairis
Remodulin*
Revatio
Tracleer
Tyvaso*
Ventavis*

Rheumatoid Arthritis

Enbrel
Humira
Kineret
Orencia
Remicade
Simponi

RSV

Synagis
Virazole

Thrombocytopenia

Neumega
Nplate
Promacta

Diagnostic Agents

Thyrogen

*Limited Distribution Drug

Exhibit C
Financial Terms

Retail Participating Pharmacy Paid Claim Charge

For each Covered Medication (for both Brand Drug Products and Generic Drug Products) dispensed to an Eligible Member, Client agrees to pay MedTrak the rates (including both ingredient and dispensing fees) the Participating Pharmacy has agreed with MedTrak to accept rates as specifically agreed to with Douglas County only (net of any co-payments, coinsurances or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charges (as determined by law). MedTrak shall not retain any margin or spread on such in-network Retail Participating Pharmacy claims. Accordingly, any amount billed by MedTrak to be paid to Participating Pharmacies shall be paid fully to such Participating Pharmacies.

If at any time applicable laws, regulations or administrative or judicial interpretations or rulings increase the amounts MedTrak must pay to Participating Pharmacies, the amounts owed to MedTrak by Client shall be automatically amended to reflect such increase. Certain conditions such as pharmacies with "most favored pricing" contract obligations, remote area pharmacies, and Client requests for additions to a selected network may result in a rate change or differential with respect to the affected pharmacy(ies) that will be passed on to Client.

Best-In-Class Specialty Participating Pharmacy Paid Claim Charge

For each Covered Medication that is a Specialty Drug listed on the Best-In-Class Specialty Drug List and dispensed by the Best-In-Class Specialty Participating Pharmacy listed on the Best-In-Class Specialty Drug List, Client agrees to pay MedTrak the Paid Claim charge, which is the "Pharmacy Service Fee" (net of any co-payments, coinsurances or deductible amounts), plus any applicable sales or excise tax or other handling or governmental charges (as determined by law). The Pharmacy Service Fee is as listed on the Best-In-Class Specialty Drug List. The Pharmacy Service Fee includes the cost of certain "Ancillary Supplies", including syringes, needles, and alcohol swabs. The Pharmacy Service Fee does not include the cost of home infusion supplies, devices and in-home nursing services. MedTrak shall not retain any margin or spread on such Specialty Participating Pharmacy claims. Accordingly, any amount billed by MedTrak to be paid to the Specialty Participating Pharmacy shall be paid fully to such pharmacy. MedTrak reserves the right to modify the Best-In-Class Specialty Drug List from time to time.

The Best-In-Class Specialty Participating Pharmacy listed on the Best-In-Class Specialty Drug List is the exclusive provider for the Specialty Drug indicated. In the event that a Best-In-Class Specialty Drug is dispensed from a pharmacy other than the Best-In-Class Specialty Participating Pharmacy listed on the Best-In-Class Specialty Drug List, Client agrees to pay MedTrak the Paid Claim Charge for a Non-Best-In-Class Specialty Participating Pharmacy, as indicated below.

Administration Charge

- For each Paid Claim, Client agrees to pay MedTrak \$2.75.
- For each Non-Paid Claim, Client agrees to pay MedTrak \$0.00.
- For each U&C Claim, Client agrees to pay MedTrak \$2.75.
- For each Claim for an Eligible Member that requires prior authorization ("Prior Authorization Claim"), Client agrees to pay MedTrak an additional Administration Charge of \$0.00.
- For each Claim submitted manually by MedTrak ("Keyed Claim"), Client agrees to pay MedTrak an additional Administration Charge of \$2.50.
- For access to the ScriptCHOICE Program, Client agrees to pay MedTrak an additional Administration Charge of \$0.15 per Claim.
- If MedTrak is not able to get Wal-Mart Pharmacies into the customized Douglas County Network, MedTrak will drop Client's administrative fee per paid claim by \$0.10 from the current rate. If MedTrak is able to get Wal-Mart Pharmacies into the customized Douglas County Network during the year, MedTrak will move the administrative fee back to \$2.75 per paid claim plus the \$0.15 per paid claim for ScriptChoice.

Miscellaneous Charges

- FMH will produce ID Cards starting on February 1, 2010 for Douglas County at a rate of \$0.50 per ID. MedTrak will pay FMH the \$0.50 per ID card for the initial card print and FMH will bill Douglas County \$0.50 directly for any additional or lost ID Cards for the remainder of the contract.
- Appeal of Coverage Denial – When requested by the Client and approved by the Client, MedTrak will seek an outside opinion from an independent medical review company. MedTrak will ask the reviewer for an opinion regarding the medically appropriate use of the prescribed drug, and an evaluation of, and/or interpretation of, the language in the SPD regarding the use of the drug in question. This process will take between 3-7 business days to complete, and MedTrak will charge the Client \$250 per appeal.

Formulary Program Discounts

MedTrak will pay Formulary Program discounts, in the form of rebates, to Client pursuant to Section 2.3 of this Agreement. Subject to Client's participation in the Formulary Program and overall compliance with Section 2.3, all payments to MedTrak by pharmaceutical manufacturers or intermediaries that are denominated by such manufacturers or intermediaries as rebates in agreements with MedTrak and that are attributed directly to the claims for Pharmacy Services paid by Client shall be transferred to Client. Client agrees that rebate payments are based upon Plan design over which MedTrak has no discretionary control or authority, and such rebate payments are subject to change due to various factors, as described in this Agreement. Rebate payments are made six months after the end of the quarter in which Paid Claims were incurred.

Client's Obligation of Confidentiality Regarding Pharmacy Services Rates and Formulary Program Discounts and Rebates

Client acknowledges and agrees that the rates at which MedTrak pays retail and mail order pharmacies for Pharmacy Services and the rebate amounts received by MedTrak from manufacturers or intermediaries constitute highly proprietary and confidential information. As a result, Client agrees that such information shall be disclosed only to Client's essential personnel and used by such essential personnel solely to perform accounting and payment functions relating to this Agreement. Client shall advise such personnel of the proprietary and confidential nature of this information, and shall be responsible for its personnel's compliance with the requirement for confidentiality. If information regarding the rates at which MedTrak pays pharmacies for Pharmacy Services and/or the rebate amounts received by MedTrak from manufacturers or intermediaries are requested by the government or subpoena or otherwise from the Client, Client shall notify MedTrak immediately upon receipt of such request so that MedTrak may pursue an injunction, protective order, or another prohibition on disclosure.

Client Signature

MedTrak Representative Signature

Client Name (Please Print)

Larkin O'Keefe

Date

Date

Exhibit D
Business Associate Addendum

THIS BUSINESS ASSOCIATE ADDENDUM (“Addendum”) sets forth the parties’ obligations and duties as they relate to the privacy and security of PHI provided by Client to MedTrak, or created or received by MedTrak on behalf of Client:

1. MedTrak may use and/or disclose PHI received by MedTrak from Client, or created or received by MedTrak on behalf of Client, to perform functions, activities, or services for, or on behalf of, Client in accordance with the specifications set forth in the Agreement, provided that such use or disclosure would not violate HIPAA if done by Client. Notwithstanding any other provision herein to the contrary, MedTrak agrees to use or disclose only the minimum necessary amount of information required to conduct the authorized activities herein. Permitted uses and/or disclosures of PHI by MedTrak include, but are not limited to: providing PHI to any person who is a subject of the Client’s PHI (an “Individual”) on behalf of Client; providing PHI to Individuals’ physicians and pharmacies for payment, treatment and healthcare operations purposes; performing data aggregation services on behalf of Client as permitted by 42 CFR § 164.504(c)(2)(i)(B); performing appropriate administrative or management activities of MedTrak under the Agreement; carrying out the legal responsibilities of MedTrak; and reporting violations of law to appropriate federal and state authorities, consistent with 42 CFR § 164.502(j)(1).
2. MedTrak may also remove identifiers from PHI to “de-identify” such PHI in accordance with 42 CFR § 164.514(b)(2), and use or disclose such de-identified information as permitted by law and the Agreement. In addition, MedTrak may use or disclose PHI in any other manner consistent with a legally sufficient authorization executed by the Individual who is the subject of such information.
3. MedTrak agrees that it will comply with the following requirements with respect to the PHI:
 - (a) Not use or further disclose the PHI other than for performing its obligations under the Agreement or as required by law;
 - (b) Implement appropriate administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity, and availability of PHI which are equivalent to those required of Client under HIPAA;
 - (c) Promptly report to Client any of the following Security Incidents, as defined by HIPAA, of which MedTrak becomes aware: (a) any attempted or successful unauthorized access, use, disclosure, modification or destruction of electronic PHI; or (b) any interference with system operations in MedTrak’s information system;
 - (d) Promptly report to Client any unauthorized use or disclosure of the PHI by MedTrak, of which MedTrak becomes aware, and the remedial action taken by MedTrak with respect to such use or disclosure;
 - (e) Promptly notify Client following the discovery of a breach of unsecured PHI (i.e., PHI that is not encrypted or destroyed). To the extent possible, such notification shall include: the identification of each Individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used or disclosed during the breach; a brief description of what happened, including the date of the breach and the date of discovery of the breach; a description of the types of unsecured PHI involved; and the steps that MedTrak has taken to investigate and mitigate the breach and to protect against any future breaches. Following the initial notice provided to Client, MedTrak shall continuously be obligated to promptly provide additional information to Client as it becomes available. For purposes of this Paragraph, the terms “breach” and “unsecured PHI” shall have the meaning given to such terms at 45 C.F.R. § 164.402.
 - (f) Ensure that any agents, including subcontractors, to whom MedTrak discloses the PHI agree to the same restrictions that apply to MedTrak under this Addendum with respect to such PHI;
 - (g) Make the PHI available to the Individual who is the subject of the PHI to the extent required under HIPAA;
 - (h) Make available PHI for amendment to the extent required under HIPAA;

(i) Not receive any remuneration, directly or indirectly, in exchange for any PHI unless so allowed by the terms of the Agreement.

(j) Not engage in any marketing activities or communications with any Individual unless such marketing activities or communications are allowed by the terms of the Agreement and are made in accordance with the provisions of the American Recovery and Reinvestment Act of 2009. MedTrak may not receive direct or indirect payment for communicating with an Individual that encourages the Individual to purchase or use a specific product, unless such communication is limited to the description of a drug or biologic that the Individual is currently being prescribed and such payment is reasonable in amount.

(k) Document (for a reasonable cost-based fee from Client) and promptly make available upon Client's request all disclosures of PHI and information related to such disclosures as are required for Client to respond to a request by an Individual for an accounting of disclosures of such Individual's PHI in compliance with HIPAA.

(l) Cooperate with Client as necessary to mitigate the extent of any unauthorized disclosures of PHI or any damages or potential damages and liability under HIPAA caused by any violation of this Addendum or unauthorized use of PHI.

(m) Make its internal practices, books, and records relating to the use and disclosure of PHI received by MedTrak from Client, or created or received by MedTrak on behalf of Client, available to the Secretary of the United States Department of Health and Human Services, or his or her designee, for purposes of determining Client's compliance with HIPAA; and

(n) Upon termination of the Agreement for any reason, return or destroy all copies of the PHI and retain no copies thereof or, to the extent returning or destroying all copies is not feasible (as mutually determined by the parties), extend the protections of this Addendum to the PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the information infeasible.

The provisions of Paragraphs 3(m) and 3(n) shall expressly survive the termination of this Agreement.

4. Client agrees that it will comply with the following requirements with respect to the PHI:

(a) Provide MedTrak with the notice of privacy practices that Client produces in accordance with 45 CFR § 164.520, as well as any changes to such notice;

(b) Provide MedTrak with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect MedTrak's permitted required uses and disclosures; and

(c) Notify MedTrak of any restrictions to the use or disclosure of PHI that Client has agreed to in accordance with 45 CFR § 164.522.

5. To the extent that MedTrak conducts an electronic transaction with or on behalf of Client for which an implementation specification has been adopted pursuant to 45 C.F.R. Part 162, as may be amended from time to time (the "Standard Transaction"), MedTrak will comply, and will require any subcontractor or agent involved with the conduit of such Standard Transaction to comply with each applicable requirement of 45 C.F.R. Part 162. MedTrak will not enter into, or authorize its subcontractors or agents to enter into, any agreement in connection with the conduct of a Standard Transaction for or on behalf of Client that:

(a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

(b) Adds any data elements or segments to the maximum defined data set;

(c) Uses any code or data element that is marked "not used" in a Standard Transaction's implementation specification or is not in a Standard Transaction's implementation specification; or

(d) Changes the meaning or intent of a Standard Transaction's implementation specification.

6. Any breach of the covenants contained in this Addendum shall result in termination of the Addendum by either party upon 30 days written notice to the breaching party, if such breach is not cured within such time period; provided, however, the Addendum may be terminated immediately if the Addendum has been breached and cure is not possible.

7. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to ensure compliance with such developments. In the event Client determines in its sole discretion that amendments to this Addendum are necessary to comply with HIPAA, upon the Client's request, MedTrak agrees to promptly enter into negotiations with Client concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA or other applicable laws. Notwithstanding any other provision herein, Client may terminate the Addendum, without penalty upon thirty (30) days written notice in the event (i) MedTrak does not promptly enter into negotiations to amend this Addendum when requested by Client pursuant to this Paragraph; or (ii) MedTrak does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI that Client, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA or any other applicable laws relating to the security or privacy of PHI.

8. This Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA.

9. To the fullest extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party, its officers, directors, agents, affiliates and employees against any claims, arising in whole or in part, from the negligent or intentional acts of the party, its employees or agents in violation of this Addendum and/or HIPAA. Each party shall promptly notify the other party of the existence of a third party claim, demand or other action giving rise to a claim for indemnification under this paragraph and shall give the other party a reasonable opportunity to defend the same at its own expense and with its own counsel. The parties shall cooperate in the investigation, settlement and defense of such claims.