

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is dated as of June 13, 2006, by and between FI Kansas Remediation Trust ("Trust"), acting by and through SELS Administrative Services, L.L.C. ("Trustee"), acting solely in its representative capacity as trustee of the Trust (collectively, "TRUST"), and Douglas County, Kansas, and the City of Lawrence, Kansas (collectively, the "City/County") with reference to the following:

RECITALS

A. The parties would like to explore strategic alternatives, including sale, development, and/or a "public-private partnership" ("Transaction(s)") with respect to the property described on Exhibit A (the "Property"); and,

B. Some or all of the "Evaluation Materials" (as hereafter defined) are confidential and property of TRUST and/or protected from disclosure under the Kansas Open Records Act (the "Act"), K.S.A. 45-215 et seq., including, without limitation, under Sections 45-221 (13), (14), (18), (20), (21), (22), (25), (31), and (32). Although TRUST understands that because City/County are public agencies, neither of City/County can enter into a definitive contract for a Transaction without first discussing the matter at a public meeting to approve a Transaction and without a public vote of the commissioners of each of City/County, and in connection with any such public meeting and the public vote, the results of the City/County's investigations may be made publicly available to the extent City/County believe desirable to obtain public trust and confidence in entering into any such contract. Nevertheless, it is the desire and intent of TRUST and City/County to prevent premature disclosure of Evaluation Material and to avoid prejudicing the ability of the TRUST to enter into other Transactions with other parties should TRUST and City/County be unable to close a Transaction.

C. TRUST and City/County have entered into that certain Entry Permit of the same date (the "**Entry Permit**") concerning the Property.

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.

2. **Evaluation Material, Representatives.** In order to assist in the evaluation of the Transaction(s), the parties are prepared to make available to each other certain confidential, non-public or proprietary information regarding the property and its improvements, whether produced or generated by the TRUST, the City/County, or their respective Representatives (the "Evaluation Material"). Either party may be the "Disclosing Party" or the "Recipient" of Evaluation Material under this Agreement. Evaluation Material shall include:

- all due diligence materials and data, including screening and similar forms, techniques,

and cost and pricing data, plans for potential development and/or disposition of the Property, preliminary or final proposals, engineering plans and estimates, plans for remedial action (including communications with environmental regulators), whether any of the foregoing are in draft or preliminary or in final versions;

- other technical, business or financial information which relates to the Transaction which is not generally available to others or is protected by Disclosing Party against unrestricted disclosure to third parties;
- correspondence or other communications between the TRUST and the City/County or their respective Representatives concerning the Transaction(s) or Evaluation Material;
- any Evaluation Material of Trustee and/or any of its affiliates.

As a condition to Evaluation Material being furnished to Recipient and its directors, officers, employees, agents, advisors, attorneys, accountants, consultants, contractors, bankers, financial advisors and other "Outside Representative(s)" (as hereafter defined) (collectively, "Representatives"), Recipient agrees to treat Evaluation Material in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth. "Outside Representatives," with respect to the City/County, includes members of local economic development groups, such as the Lawrence Chamber of Commerce and Douglas County Development, Inc., and commissions advising Recipient on economic development and open space preservation issues, such as ECO2 Commission.

3. Excluded Information. Evaluation Material shall not include documents which are subject to work product and/or attorney client privilege, or information that (i) is or becomes publicly available other than as a result of acts by the Recipient in breach of this Agreement, (ii) is in Recipient's possession prior to disclosure by Disclosing Party or is independently derived by Recipient without the aid, application or use of Evaluation Material, or (iii) is disclosed to Recipient by a third party who is not subject to a non-disclosure or non-circumvention agreement.

4. Character of Evaluation Material; Kansas Open Records Act Procedures. Recipient shall take any and all steps necessary consistent with the parties' mutual desire and intent as stated in the Recitals herein. Prior to the exchange or generation of Evaluation Material, the Disclosing Party shall provide to Recipient a written description of the Evaluation Material to be provided or generated, in order to enable the parties to determine whether such Evaluation Material is protected from disclosure under the Act.

If the parties agree that such Evaluation Material is protected from disclosure under the Act (the "Protected Evaluation Material"), the Recipient shall treat such Protected Evaluation Material as confidential and not subject to disclosure under the Act, and shall not disclose such Protected Evaluation Material unless compelled to do so pursuant to a subpoena or court order issued by a court of competent jurisdiction or by another governmental agency.

If the parties agree that such Evaluation Material is not protected from disclosure under the Act (the "Non-Protected Evaluation Material"), Recipient shall treat such Non-Protected Evaluation

Material as confidential, and shall not disclose such Non-Protected Evaluation Materials unless a request is made in accordance with the Act, or unless Recipient is compelled to do so pursuant to subpoena or court order issued by a court of competent jurisdiction or by another governmental agency.

City/County shall take such steps as TRUST reasonably requests to maintain the confidential status of the Evaluation Material obtained or generated pursuant to this Agreement, including, without limitation, the following:

(a) Promptly upon receipt Recipient shall mark all Evaluation Material as confidential and, where applicable, not subject to disclosure under the Act (to the extent not already so marked);

(b) If City/County believes that any item sent to them by TRUST, or generated by City/County, is or may be subject to disclosure under the Act or is not Evaluation Material, they shall receive the same in trust for TRUST's benefit (and not copy, distribute or take any action that might affect the status of the items received) and promptly notify TRUST in writing of the same, and permit TRUST to retrieve such items from City/County;

(c) Without prejudice to City/County's ability to cite or identify any Evaluation Material in executive session, City/County shall not publicly cite or identify in an open meeting or any agenda therefor, any of the Evaluation Material without first providing TRUST at least 10 days prior written notice of its intent to do so. City/County shall at the same time provide to TRUST a copy of any material proposed to be so identified and/or distributed, unless the Trust otherwise has a copy of the proposed material to be cited or identified;

(d) City/County shall not distribute any of the Evaluation Material to any of its "Outside Representatives" or otherwise allow any of its Outside Representatives access to Evaluation Material until such time as the Outside Representative has executed a confidential agreement in favor of, and in form and substance satisfactory to, TRUST. City/County shall provide to TRUST a copy of any written materials referencing the Evaluation Material, including, without limitation, any materials that City/County contends may or should be public records within the meaning of the Act, promptly upon receipt from the Outside Representative, unless the City/County agrees in writing with TRUST to maintain the confidentiality of the same as attorney work product under K.S.A. § 45-221 (a)(25) of the Act, or unless the same are exempt from mandatory disclosure under the Act pursuant to K.S.A. § 45-221(a)(14), (18), (20), (25), (32), or otherwise; .

(e) If City/County and TRUST shall disagree over the status of any item as Evaluation Material, or as protected from disclosure under the Act, or there is any other dispute under this Agreement or the Entry Permit, either party may give the other written notice of such disagreement or dispute. Such disagreement or dispute shall be resolved as provided in Section 14 of this Agreement, the party holding such item shall hold the same in trust, and neither party shall disclose any such item or take any other action to change the status of the item during the pendency of the disagreement or dispute.

City/County disclose to TRUST that they intend to retain their consultants or retain their attorneys to retain consultants to enter the Property for purposes of inspecting the plants, structures,

concrete pads, and other improvements thereto to obtain cost estimates and recommendations for removal and disposition of all such improvements. In this regard, TRUST agrees to provide City/County and their attorneys or consultants with reasonable access to construction records of such improvements, such as as-built drawings, structural engineering records, location and quantity of known asbestos, utility plans, and other similar information regarding the improvements to the Property, to the extent such information exists and is reasonably available to TRUST. The parties agree that all such documents provided by TRUST is and will be Protected Evaluation Material, exempt from mandatory disclosure under the Act pursuant to K.S.A. 45-221(a)(14) and/or (18). The parties further agree that any reports or other documents generated as a result of the foregoing inspections will also be Protected Evaluation Material, exempt from mandatory disclosure under the Act pursuant to K.S.A. 45-221(a)(14), (18), (20), (25), and/or (32).

5. Non-Disclosure of Evaluation Material. Recipient and its Representatives shall use Evaluation Material solely for the purpose of evaluating possible Transaction(s) between Disclosing Party and Recipient. Recipient shall keep Evaluation Material confidential and shall not disclose Evaluation Material in any manner whatsoever, except as otherwise permitted under this Agreement; provided, however, that (i) Recipient may make any disclosure of information contained in the Evaluation Material to which Disclosing Party gives its prior written consent, and (ii) any information contained in Evaluation Material may be disclosed to Recipient's Representatives who need to know such information for the purpose of evaluating possible Transaction(s) with Disclosing Party in accordance with the procedures established in this Agreement. Recipient will inform its Representatives to abide by such provisions. Recipient shall be responsible for any breach of this Agreement by itself and/or any of its Representatives.

6. Contact with Governmental Authorities. Without limiting the generality of other provisions of this Agreement, City/County and each of their employees, agents and outside representatives (collectively, the "City/County Affiliates") shall be entitled to engage in communications or discussions with any government authority regulating the environmental condition of the Property concerning the environmental condition of the Property or any remediation information or activities that are on-going at the Property, but City/County Affiliates shall refrain from taking any action which could result in any liability to TRUST, including any such government authority or third party requesting or requiring TRUST to take, perform or cease any activity on or with respect to any property, or any of them, before or after the date of any Transaction. City/County Affiliates shall deliver any and all notices, correspondence and other communication regarding any of the Evaluation Material or the proposed Transactions, in whatever format, received from any such government authority or other person to TRUST within two (2) business days after receipt thereof, shall coordinate and cooperate with TRUST in responding to the same. Nothing in this paragraph shall prohibit City/County from making any communication or taking any action which, in its good faith belief, is reasonable and supported by its general public policy; provided however that City/County shall provide the TRUST 10 days advance notice of any such communication or action which could result in any liability to TRUST.

7. Return of Evaluation Material. Promptly upon the written request of the Disclosing Party, Recipient will return or destroy all copies of Evaluation Material to the Disclosing Party, and all notes, studies, reports, memoranda and other documents prepared by the Recipient or its Representatives that contain or reflect Evaluation Material shall be destroyed. If at any time

City/County determines not to pursue further a Transaction with regard to the Property, or if this Agreement or the Entry Permit is terminated for any reason, or if any provision of this Agreement and/or the Entry Permit are deemed or adjudged invalid or unenforceable for any reason, City/County immediately thereafter Recipient shall return to the TRUST all Evaluation Material obtained by City/County from the TRUST.

8. Subpoena or Court Order/Request Pursuant to the Act. In the event that Recipient or anyone to whom it discloses Evaluation Material receives a request to disclose all or any part of the Evaluation Material under the terms of a subpoena or other order issued by a court of competent jurisdiction or by another governmental agency, or pursuant to a request made under the Act, Recipient shall (i) promptly notify Disclosing Party of the existence, terms and circumstances surrounding such request; (ii) consult with Disclosing Party on the advisability of taking steps to resist or narrow such request; (iii) if disclosure of such Evaluation Material is required, furnish only such portion of the Evaluation Material as Recipient is advised by counsel is legally required to be disclosed; and (iv) cooperate with Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Evaluation Material that is required to be disclosed. TRUST shall have sole responsibility for contesting any court order, subpoena, or any request under either the Act or the Freedom of Information Act or other order or demand for Evaluation Material. TRUST will be solely responsible for all expenses of challenging any such requests that it feels call for an improper disclosure of Evaluation Material, including but not limited to filing a declaratory relief action under the Act or Freedom of Information Act against any requesting party as may be necessary. Further, TRUST will defend, indemnify, and hold City/County harmless from and against any action brought under the Act seeking to compel disclosure of Evaluation Material, the disclosure of which TRUST objects, including attorney fees and costs incurred in defending the action and damages, fines, and attorney fees awarded under the Act. *Provided, however,* if any such proceeding or expense is occasioned by City/County's breach of this Agreement or the Entry Permit, all such expenses shall be borne by City/County upon demand by TRUST.

9. Disclaimer of Warranty. Neither Disclosing Party nor its Representatives has made or makes any representation or warranty as to the accuracy or completeness of Evaluation Material. Recipient agrees that neither Disclosing Party nor its directors, officers, employees or affiliates shall have any liability to Recipient or any of its Representatives resulting from Recipient's use of the Evaluation Material, except as may be expressly set forth in a definitive written agreement between the parties hereto with respect to a Transaction(s), in accordance with the terms thereof.

10. Definitive Agreement. Unless and until a definitive written agreement between Disclosing Party and Recipient with respect to a Transaction(s) has been executed and delivered, neither Disclosing Party nor Recipient will be under any legal obligation of any kind whatsoever with respect to such a Transaction(s) by virtue of this or any other written or oral expression by either of them or their Representatives except, in the case of this Agreement, for the matters specifically agreed to herein.

11. Remedies. Recipient acknowledges that in the event of any breach of this Agreement, Disclosing Party could not be made whole by monetary damages. Accordingly, Disclosing Party, in addition to any other remedy to which it may be entitled in law or in equity, shall

be entitled to an injunction to prevent breaches of this Agreement, and to an order compelling specific performance of this Agreement. Recipient shall reimburse Disclosing Party for all reasonable costs and expenses, including reasonable attorneys' fees, incurred by Disclosing Party in the event it successfully enforces the obligations of Recipient and its Representatives hereunder.

12. Entire Agreement. This Agreement and the Entry Permit represents the entire understanding and agreement of the parties hereto with respect to the matters contained herein, and may be modified or waived only by a separate writing executed by Disclosing Party and Recipient expressly so modifying or waiving this Agreement.

13. No Waiver. No failure or delay by Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

14. Governing Law and Jurisdiction. This Agreement shall be governed and construed in accordance with the internal laws of the State of Kansas, without regard to the principles of conflict of laws. Any suit, action or proceeding between the parties hereto relating to this Agreement shall be commenced and maintained exclusively in the United States District Court for the District of Kansas, or if that court lacks jurisdiction over the subject matter, in a state court of competent subject matter jurisdiction sitting in Douglas County, Kansas. The parties hereto submit themselves unconditionally and irrevocably to the personal jurisdiction of such courts, as applicable. The parties further agree that venue shall be in District of Kansas and waive any defense thereto based on inconvenient forum.

15. Termination. TRUST may terminate this Agreement upon written notice of any material breach of or default under this Agreement or the Entry Permit by Recipient or any of its Representatives; *provided, however*, with respect to any breach of either of such agreements that is capable of being cured, the same shall be deemed cured if, within thirty (30) days of first receiving written notice thereof, or within such other period approved in writing by the TRUST, which approval shall not be unreasonably withheld, Recipient has completed such cure or, if the breach or default can be cured but is not capable of being cured within such 30 day period, has commenced and is diligently pursuing to completion such cure.

16. Term. This Agreement and the obligations of confidentiality and non-use shall expire three (3) years from the date hereof.

17. Captions. The Captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

18. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and the parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Agreement or any amendments or exhibits hereto.

IN WITNESS WHEREOF, THIS AGREEMENT is executed and delivered effective as of

the date first written above.

TRUST:

FI Kansas Remediation Trust, acting by and through
SELS Administrative Services, L.L.C., acting solely
in its representative capacity as trustee of the Trust

By:  _____

Title: *Manager* _____

CITY/COUNTY

Douglas County, Kansas

By: _____

Title: _____

City of Lawrence, Kansas

By: _____

Title: _____