

**PERFORMANCE AGREEMENT BETWEEN  
THE CITY OF LAWRENCE, KANSAS,  
AND  
SUNLITE SCIENCE & TECHNOLOGY, INC.**

*Whereas*, on July 30, 2013, Sunlite Science & Technology, Inc. submitted an application (“Application”) for a property tax abatement to the City of Lawrence, Kansas (“City”), which is attached hereto and incorporated by reference, and;

*Whereas*, in reliance upon the Application, the Governing Body of the City did approve a fifty percent (50%) partial property tax abatement on August 27, 2013 for a period of ten (10) years commencing with 2014, conditioned upon certain conditions precedent including but not limited to: 1) the execution of a performance agreement between the City and Sunlite Science & Technology, Inc. pursuant to the City’s Overarching Policy on Economic Development; and 2) other lawfully required conditions and approvals, including approval of the tax exemption by the State Court of Tax Appeals; and

*Whereas*, Sunlite Science & Technology, Inc. is purchasing 4811 Quail Crest Place, Lawrence, Kansas for Sunlite Science & Technology, Inc.’s use and occupancy; and

*Whereas*, the City’s Overarching Policy on Economic Development, Section 1-21 of the City Code, 2013 Ed, and amendments thereto, provides that each company will be accountable to certain performance provisions if they receive incentives from the City; and

*Whereas*, the City and Sunlite Science & Technology, Inc. desire to enter into this Performance Agreement (“Performance Agreement”);

**NOW, THEREFORE, IN CONDISERATION OF THE MUTUAL COVENANTS HEREIN, THE PARTIES AGREE AS FOLLOWS:**

1. The above recitals are incorporated by reference as if fully set forth herein.
2. The approval of the partial tax abatement by the Governing Body of the City was in reliance upon the Application submitted by Sunlite Science & Technology, Inc. Specifically, the Application and the approved partial tax abatement provided that, over time, Sunlite Science & Technology, Inc. will: 1) purchase the land and building located at 4811 Quail Crest Place, Lawrence, Kansas; 2) expend approximately \$ 2.3 million to purchase the land and building and make future capital improvements; 3) increase its employment by a total of forty (40) additional full-time employees (“employees”) as a result of the project.
3. The partial tax abatement for Sunlite Science & Technology, Inc. approved by the Governing Body in Resolution No. 7042 shall constitute the “Incentives” referred to in this Performance Agreement.

4. **Performance Targets and Annual Compliance:** In connection with or related to the implementation of the project, and to receive the partial tax abatement annually, Sunlite Science & Technology, Inc. will need to meet several annual performance targets in the areas of capital investment, job creation, wages and benefits. Each performance target will have its own “Compliance Percentage” reflecting compliance with the annual target. Each of the four “Compliance Percentages” shall be averaged together to create an overall “Blended Percentage” which will determine that year’s portion of the incentive to be received, as set forth in Section 4.e.

a. **Capital Investment:** In connection with or related to the implementation of the project, Sunlite shall, in order to receive the partial tax abatement annually, have: provided the City with a copy of a deed proving ownership in the building located at 4811 Quail Crest Place, Lawrence, Kansas, no later than the first anniversary of this agreement.

The “Compliance Percentage” for this subsection shall be calculated by dividing the accumulated actual expenditures, as of the end of each year by the applicable required expenditure. Sunlite shall certify to the City its Compliance Percentage for this subsection by March 1 of each year of the Agreement.

<b>Compliance Targets: Capital Investment</b>	
<b>Tax Abatement Year</b>	<b>Cumulative Capital Investment Target</b>
2014	\$1,100,000
2015	\$1,100,000
2016	\$1,130,000
2017	\$1,130,000
2018	\$1,130,000
2019	\$1,330,000
2020	\$1,330,000
2021	\$1,330,000
2022	\$2,330,000
2023	\$2,330,000

- b. **Job Creation:** In order to receive the Incentives, Sunlite Science & Technology, Inc. is required to meet certain cumulative job creation targets, through the creation of full-time employees (“FTEs”), according to the table set forth in this subsection. An FTE is, either: i) an hourly employee, or combination of hourly employees, of Sunlite Science & Technology, Inc. who have worked 2080 actual hours (inclusive of overtime hours) in furtherance of the Sunlite Science & Technology, Inc. business, within the City of Lawrence, during the applicable year, or, ii) a salaried employee, or combination of salaried employees, that Sunlite Science & Technology, Inc. certifies to the City are filling a full-time position with Sunlite Science & Technology, Inc., and the positions are primarily related to the furtherance of the Sunlite Science & Technology, Inc. business and the primary location of the positions are within the City of Lawrence.

The number of FTEs employed in category (i) shall be determined by dividing the total number of all hours, (inclusive of overtime hours) worked by all applicable hourly employees of Sunlite Science & Technology, Inc. from January 1 through December 31 of each of the years, commencing with the 2014 year. The number of FTEs employed in category (ii) shall be determined by totaling the number of applicable full time positions that Sunlite Science & Technology, Inc. certifies were filled in the measurement period; provided however, such full time position shall only be counted to the extent the position was so filled for the entire year, from January 1 through December 31, commencing with the year 2014. Such determination shall be made based upon the number of days the position was filled, as compared to 365 days. In other words, if Sunlite Science & Technology, Inc. certifies that a full time position was filled for only 182 days during that year, that position shall only represent one-half (0.5) FTE. The total FTEs employed by Sunlite Science & Technology, Inc. during any given year shall be the total of the FTEs from category (i) and category (ii). Each year’s cumulative job creation number will be verified as of January 1, beginning January 1, 2014 and each January 1 thereafter through the term of the Performance Agreement.

For each applicable year, the Compliance Percentage for this subsection shall be calculated by dividing the number of actual total cumulative FTEs employed by the corresponding number of cumulative FTEs required, as indicated in the following table:

<b>Compliance Targets: Job Creation &amp; Retention</b>			
<b>Tax Abatement Year</b>	<b>Measurement Period</b>	<b>New FTEs</b>	<b>Annual Compliance Target: Total Cumulative FTEs ( 5 Existing + New)</b>
2014	January 1, 2014-December 31, 2014	1	6
2015	January 1, 2015-December 31, 2015	5	11
2016	January 1, 2016-December 31, 2016	5	16
2017	January 1, 2017-December 31, 2017	7	23
2018	January 1, 2018-December 31, 2018	8	31
2019	January 1, 2019-December 31, 2019	5	36
2020	January 1, 2020-December 31, 2020	3	39
2021	January 1, 2021-December 31, 2021	2	41
2022	January 1, 2022-December 31, 2022	2	43
2023	January 1, 2023-December 31, 2023	2	45

- c. **Wages:** In order for Sunlite Science & Technology, Inc. to receive the Incentives, Sunlite Science & Technology, Inc. shall maintain a wage structure for its employees who are deemed to be FTEs, as set forth above, from the date of this Performance Agreement until its expiration, such that 100% of its regular full-time employees are paid above the annual wage floor as set forth in this Performance Agreement and that averaged together, the wages of these full-time employees meet or exceed the annual average wage targets. Wages for employees who are serving their initial training period of 90 days will not be included in this calculation. The wage floor for 2013 is \$12.21 hourly. The wage floor hourly wage will be adjusted annually beginning January 1, 2014 based upon an annual wage “equal to one hundred thirty percent (130%) of the federal poverty threshold for a family of three (3), as established by the United States Department of Health and Human Services.” An example of the calculation is as follows: The 2013 HHS Poverty Guidelines, published on January 24, 2013 in the Federal Register, establish the poverty level for a family of three at \$19,530. Therefore, the wage floor hourly wage for 2013 is \$12.21. ( $\$19,530 \times 1.3 = \$25,389/2080$  hours in one year = \$12.21/hour).

In addition, Sunlite Science & Technology, Inc. will be required to maintain a company average annual wage in accordance with the below wage compliance table.

<b>Compliance Targets: Company Annual Average Salary</b>		
<b>Tax Abatement Year</b>	<b>Measurement Period</b>	<b>Company Average Annual Salary</b>
2014	January 1, 2014-December 31, 2014	\$31,000
2015	January 1, 2015-December 31, 2015	\$31,500
2016	January 1, 2016-December 31, 2016	\$32,000
2017	January 1, 2017-December 31, 2017	\$32,500
2018	January 1, 2018-December 31, 2018	\$33,000
2019	January 1, 2019-December 31, 2019	\$33,500
2020	January 1, 2020-December 31, 2020	\$34,000
2021	January 1, 2021-December 31, 2021	\$34,500
2022	January 1, 2022-December 31, 2022	\$35,000
2023	January 1, 2023-December 31, 2023	\$35,500

Sunlite Science & Technology, Inc. shall provide a report to the City, on or before March 1 of each year, commencing in 2015 through the expiration of this Agreement, which certifies compliance with this subsection. Such certification shall be executed, under oath, by at least two officers of Sunlite Science & Technology, Inc.. Upon delivery of such certification, the Compliance Percentage for this subsection shall be deemed to be 100%. If either the annual wage floor requirement or the annual average wage targets are not met, the Compliance Percentage for this subsection shall be deemed to be 0%.

- d. **Health Benefits:** For the purposes of determining compliance with Section 1-21 of the City Code, 2013 Ed, and amendments thereto, Sunlite Science & Technology, Inc. shall provide a minimum of seventy percent (70%) of the premiums for an employer-sponsored health insurance policy for covered employees (or provide covered employees with a wage which is \$1.50 per hour above the wage floor as set forth in Paragraph 4.c. On or before March 1 of each year, commencing in 2015 through the expiration of this Agreement, Sunlite Science & Technology, Inc. shall provide the City with a written statement, under oath, setting forth the percentage of health insurance premium paid by the company during the prior year, or setting forth that it pays a wage \$1.50 above the wage floor as set forth in Paragraph 4.c., and certifying compliance with this subsection. Such certification shall be executed, under oath, by at least two officers of Sunlite Science &

Technology, Inc.. Upon delivery of such certification, the Compliance percentage for this subsection shall be deemed to be 100%.

- e. **Calculation of Overall Annual Performance:** After the Compliance Percentage for each of the subsections a, b, c and d is determined for any applicable year, the “Blended Percentage”, which is the average of all four of said Compliance Percentages rounded to the nearest whole percentage point, shall be established for that year. Sunlite Science & Technology, Inc. shall, for any given year, receive that portion of partial tax abatement corresponding to the Blended Percentage Range, in the range indicated below.

<b>Compliance Schedule</b>	
<b>Blended Range %</b>	<b>Amount of Incentive to be Received</b>
90-100%	100%
80-89%	85%
70-79%	75%
Below 70%	0%

Should the total compliance result in a reduction in the amount of incentive to be received, the City shall notify Sunlite Science & Technology, Inc. prior to the reduction taking place. Should Sunlite Science & Technology, Inc. so choose, it can appeal the reduction to the City Commission. The City Commission can override the incentive reduction for that year by majority vote.

- 5. **Annual Report, Recordkeeping and Access to Sunlite Science & Technology, Inc. Information and City Review:** Sunlite Science & Technology, Inc. shall be required to complete an annual report by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by the Public Incentives Review Committee and presented to the City Commission by May 1. The failure of Sunlite Science & Technology, Inc. to provide accurate and timely information to the City in the preparation of the annual report shall be grounds for the modification or repeal of the tax abatement. The City may retain a qualified third party consultant to assist the preparation of any report and to maintain the confidentiality of the personnel and wage records of the business, if needed.

Sunlite Science & Technology, Inc. shall maintain payroll records for employee and shall preserve them for a period of two ((2) years. The records shall contain:

- a) The name and address of each employee;
- b) The job title and classification;

- c) The number of hours worked each day;
- d) The gross wages earned and deductions made;
- e) A record of health insurance premium payments made by the employee and Sunlite Science & Technology, Inc.

Sunlite Science & Technology, Inc. shall calculate, in good faith, all Compliance Percentages and prepare a reasonably detailed description of the calculations utilized by them for determining all of the Compliance Percentages. Such description shall be provided to the City together with the Annual Report and notification to the City of the Compliance Percentages accompanied by a statement from Sunlite Science & Technology, Inc. that the same have been prepared in accordance with this Agreement and that to the knowledge of the Chief Financial Officer of Sunlite Science & Technology, Inc., the same do not, as a result of gross negligence or intentional act or omission, misstate or omit any material fact, the misstatement or omission of which would be misleading to the City. Sunlite Science & Technology, Inc. shall reasonably cooperate with the City to understand the basis for the determination of Sunlite Science & Technology, Inc. of any or all of the Compliance Percentages. All books and records kept by Sunlite Science & Technology, Inc. in the ordinary course of business and based upon which the entity calculates any of the Compliance Percentages shall be maintained and preserved by the entity until two years after the last of the Compliance Dates provided for in this Agreement.

The City, or any third-party designated by the City, shall, upon request, be given reasonable opportunity to review and inspect, at the business location of Sunlite Science & Technology, Inc., or such other mutually acceptable place, such books and records so long as the same exist. The forgoing to the contrary notwithstanding, the City shall not be permitted to review or inspect any books or records which contain: proprietary or protected information; information which as a matter of law or contract, the entity is obligated to maintain in confidence and not disclose to any person; information protected by a recognized legal principle permitting the non-disclosure thereof in any legal proceeding; or, information which is relevant to any pending or contemplated legal or administrative hearing.

6. **Additional Compliance Requirements:** If Sunlite Science & Technology, Inc. no longer qualifies for a tax abatement pursuant to law or Ordinance No. 8384, the City Commission, after notice and a public hearing may modify the abatement by ordinance.
7. This agreement shall be governed by the laws of the State of Kansas. This Agreement may not be assigned or transferred without the written permission of the parties.

This Agreement shall expire one (1) year after the expiration of the tax abatement granted pursuant to this Agreement. In the event that a tax abatement pursuant to this Agreement is not granted by the State Court of Tax of Appeals, or is

completely removed by the City pursuant to this Agreement, this Agreement shall be null and void.

**AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

**FOR SUNLITE SCIENCE & TECHNOLOGY, INC.**

\_\_\_\_\_  
Jeff Chen, President

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, who is personally known to me to be the same person who executed the above Agreement, and such person duly acknowledged the execution of the same to be their free and voluntary act and deed.

\_\_\_\_\_  
Notary Public

**FOR THE CITY OF LAWRENCE, KANSAS:**

\_\_\_\_\_  
Michael Dever, Mayor

ATTEST:

\_\_\_\_\_  
Jonathan Douglass, City Clerk