

**PLASTIKON HEALTHCARE, LLC PERFORMANCE AGREEMENT
FOR ECONOMIC DEVELOPMENT INCENTIVES**

Whereas, Plastikon Healthcare, LLC, a Kansas limited liability company ("Plastikon"), is a wholly owned subsidiary of Plastikon Industries, Inc. Plastikon Industries, Inc. submitted a revised application for Incentives to the City of Lawrence, Kansas ("City"), which is attached hereto and incorporated herein by reference; and

Whereas, the City in cooperation with Douglas County ("County") endeavors to achieve three goals for economic development: (1) job growth in excess of population growth; (2) increasing the share of the tax base coming from non-residential growth; and (3) increasing career opportunities by attracting highly-skilled jobs in expanding industries; and

Whereas, the City's Economic Development policies codified in Chapter 1, Article 21 of the Code of the City of Lawrence, Kansas, 2009 Edition, and amendments thereto, identify light manufacturing and distribution and life sciences / research as industries that should be a focus of the City's economic development efforts; and

Whereas, the City's Economic Development policies provide that the City may, in cooperation with the County, utilize incentives, including loans and/or grants, among other assistance, to provide new businesses capital for job training; and

Whereas, on December 2, 2010, the Public Incentives Review Committee reviewed and commented on Plastikon's request for an employee training incentive based upon its revised application; and

Whereas, on December 14, 2010, the governing body of the City conducted a public hearing on the request for the employee training incentive, and in reliance upon Plastikon's Revised Application, the governing body of the City did approve the employee training incentive conditioned upon certain conditions precedent including but not limited to 1) execution of a performance agreement between the City, the County and Plastikon pursuant to Chapter 1, Article 21 of the City Code, and other lawfully required conditions and approvals; and

Whereas, on December 15, 2010, the Board of County Commissioners of Douglas County conducted a hearing on the request for the employee training incentive and in reliance upon Plastikon's Revised Application to the City, the Board of Commissioners of Douglas County did approve the employee training incentive conditioned upon the execution of a performance agreement between the City, the County and Plastikon; and

Whereas, Section 1-2107 of the City Code provides that each company that receives an incentive from the City will be held accountable to certain performance provisions contained in a performance agreement between the company and the City;

Whereas, the City, the County and Plastikon desire to enter into this Performance Agreement;

NOW THEREFORE in consideration of the mutual covenants herein, the City, the County, and Plastikon hereby enter into this Performance Agreement and agree as follows:

1. **Recitals.** The above recitals are incorporated herein by reference as if fully set forth herein.

2. **Plastikon Healthcare, LLC.** On the effective date of the Performance Agreement, Plastikon is a plastic manufacturing company that specializes in the manufacturing of high tolerance parts and accessories for the diagnostic healthcare and pharmaceutical industries. Plastikon's planned Lawrence facility will manufacture sterile fluid filled resin products utilizing blow-fill-seal technology. The end products will be used in clinical diagnostic labs in the United States and other countries. PSP Kansas, LLC is a related entity that purchased the Building. Plastikon leases the Building from PSP Kansas, LLC.

3. **Condition For Distribution of Employee Training Incentive.** Prior to the City and County distributing any portion of the Employee Training Incentive (as described below), Plastikon shall purchase the building located at 3780 Greenway Circle in East Hills Business Park in Lawrence, Kansas (the "Building") and shall commence operations within the facility by December 31, 2011.

4. **Employee Training Incentive From City and County.** The City and County agree to share equally in the Employee Training Incentive provided herein. For each new full time employee employed by Plastikon in the Lawrence, Kansas facility, and subject to the performance provisions set forth in Section 5, below, the City and County will pay up to a combined total of \$63,000 (Sixty-Three Thousand and 00/100 Dollars) over five years ("the Employee Training Incentive"). If fully paid, this is the equivalent of Five Hundred Dollars (\$500.00) per employee for up to 126 employees. The City's and County's respective contribution over the five year period shall not exceed \$31,500 each.

a. **Full Time Employee Defined.** Plastikon's employment policies define a "full-time" position as an employee working more than 32 hours per week. For the purposes of this Performance Agreement, a "full time employee" shall mean any employee on the payroll at the end of the year, as shown on the Quarterly Wage Reports filed with the Kansas Department of Labor for the Fourth Quarter of each year, who has worked more than 32 hours per week for at least three (3) consecutive months of the year being measured, except that during calendar year 2011, a new full time employee shall be any new employee on the payroll at the end of the year who has worked more than 32 hours per week for at least one (1) month of 2011. Plastikon may count additional full-time employees who have worked less than the required number of months in any year, if such employee was hired to fill a vacancy created by an employee who, had he or she remained with the company, would be counted as a full time employee. No employee shall be counted more than once for purposes of this calculation. In addition, Plastikon may aggregate the hours worked by part-time employees to determine a "full time equivalent" position based upon a 32-hour work week, by documenting the number of part-time hours worked by such employees during the year, and dividing such hours by 1,664. For example, if a position satisfies these conditions as a full-time equivalent position as a result of more than one person filling such position (i.e. a job-share arrangement) such position shall count as one full-time equivalent position. Notwithstanding the foregoing, however, full time

equivalent positions may be only used to create a maximum of five (5) Employees for purposes of Paragraph 5, below.

b. **Payment of Incentive Over Five Years.** The Employee Training Incentive shall be payable by the City and County over five (5) years in annual equal installments of \$6,300 (Six Thousand Three Hundred and 00/100 Dollars) each for a total annual incentive of \$12,600 (Twelve Thousand Six Hundred and 00/100 Dollars), provided Plastikon achieves Substantial Compliance of greater or equal to 90% of its target as set forth in Paragraph 5 of this Performance Agreement. Payment of such annual Employee Training Incentive shall be made by the City and County no later than ten (10) days following the City's acceptance of the certification provided pursuant to Paragraph 5, below.

5. **Substantial Compliance of Performance Provisions.** Plastikon's annual job creation and wage structure targets shall be as set forth in Table 1 below:

Table 1

Year	New Employees¹	Employees²	Avg. Annual Salary³	Lowest Hourly Wage	Capital Investment⁴
2011	21	21	\$46,875	\$12.26	\$7,000,000
2012	25	46	\$46,875	\$12.26	
2013	20	66	\$46,875	\$12.26	
2014	25	91	\$46,875	\$12.26	
2015	35	126	\$46,875	\$12.26	

¹**New Employees** shall be the increase of Employees from the previous year.

²**Employees** will be the total full-time employees determined in paragraph 4, above.

³**Average Annual Salary** is the average year end salary of all employees, determined by dividing gross wages paid by the number of Employees. For year 2011, the Average Annual Salary shall be converted to an annualized average, based upon wages and salaries paid after the company commences substantial business operations.

⁴**Capital Investment** shall be any purchases or expenditures of real property, machinery and equipment by Plastikon or PSP Kansas, LLC, but shall not include any administrative or legal fees.

Substantial compliance of the performance provisions based upon the targets set forth in Table 1 above shall be evaluated annually. Each year will be evaluated separately. Plastikon shall certify to the City and County compliance with this Agreement's wage, capital and job requirement for the preceding year by March 1 following the end of each year through 2015. The City and the County shall have a period of thirty (30) days to evaluate such certification and approve or deny the payment request. In connection with such review, the City and the County may, during such times reasonably determined by Plastikon, arrange to view Plastikon's quarterly wage reports submitted to the Kansas Department of Labor, to confirm Plastikon's annual verification. If the quarterly wage reports reveal a material discrepancy, the City or County shall also have the right to view such other documents as may be reasonably necessary to reconcile such inconsistency. In no event shall the City or the County retain copies of wage and employment records without first ensuring the continued confidentiality of such records, out of consideration for the privacy of Plastikon's employees.

Failure to meet compliance requirements in any one year may, at the discretion of the City or the County, result in a reduction of incentives for such year. If Plastikon does not provide the information required for its annual report or does not certify that the data it submits for the annual evaluation is accurate, it may be subject to incentive reductions for the then current year.

Compliance	Annual Incentive Payment
90% or greater	100%
80% to 89%	85%
70% to 79%	75%
Less than 70%	0%

There will be no clawbacks for incentives provided in any prior year. Each year will be evaluated separately and will be based on the projections in this Agreement. Each element as shown in the example below will be considered as a separate element for compliance:

Example of Substantial Compliance Calculation:

PLASTIKON INCENTIVE CALCULATION FOR 2013

	New Employees	FTE Employees	Average Annual Salary	Lowest Hourly Wage
2013	18	63	\$46,875	\$12.10
Target, 2013	20	66	\$46,875	\$12.26
Compliance	90%	95%	100%	99%
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Total Compliance	96%			
Award	100%			

Total Compliance is the average of compliance for each of the four elements evaluated.

PIRC shall annually review and monitor compliance for the employment training incentive in accordance with Chapter 1, Article 21, and *shall report to the City Commission and Douglas County.*

6. **Adverse Findings.** City staff shall notify Plastikon of any adverse finding prior to an incentive reduction being taken. Plastikon may appeal an adverse finding to the City Commission in accordance with the procedures set forth in Chapter 1, Article 21 of the City Code.

7. **No Joint and Several Obligations.** Plastikon understands that the City and County are responsible solely for the payment of their respective portion of the Employee Training

Incentive as set forth in Paragraph 4 of this Agreement. Neither the City nor the County shall be jointly or severally liable for the other's portion of the Employee Training Incentive.

8. **Kansas Cash Basis Law.** The City and County each represent and warrant that the expenditures contemplated by this Agreement to be made for the current budget year are actually on hand and will not violate the Kansas Cash Basis Law, K.S.A. 10-1101, et seq. The obligations of each municipality for subsequent years are subject to appropriation in accordance with the Kansas Cash Basis Law.

9. **Notices.** Except as otherwise specifically provided herein, all notices or demands under this Agreement shall be in writing, addressed to the parties at the addresses set forth below, or as the parties may, from time to time, otherwise designate in writing:

City: City of Lawrence, Kansas
Attention: City Manager
6 East 6th Street
P.O. Box 708
Lawrence, KS 66044

County: Douglas County
Attention: County Administrator
1100 Massachusetts Street
Lawrence, Kansas 66044

Plastikon: Plastik HealthCare, LLC
Attn: John Low
688 Sandoval Way
Hayward, California 94544

With a copy to:
Matthew S. Gough
Barber Emerson, L.C.
1211 Massachusetts St.
P.O. Box 667
Lawrence, Kansas 66044

10. **Miscellaneous Provisions.**

a. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in the representative capacity.

b. Paragraph headings of this Agreement are for convenience only and are not to be construed as part of this Agreement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

c. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

d. The terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the State of Kansas.

e. The terms of this Agreement shall extend to and be binding upon the permitted assigns and successors of the parties to this instrument.

f. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

g. This Agreement may not be amended or modified without the written consent of the City, the County, and Plastikon.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 23rd day of June, 2011.

CITY

City of Lawrence, Kansas

By: _____

Printed Name: _____

Title: _____

COUNTY

Douglas County, Kansas

By: _____

Printed Name: _____

Title: _____

PLASTIKON

Plastikon Heathcare, LLC,
a Kansas limited liability company

By: _____

Printed Name: F. Fred Sooper

Title: Manager