
COOPERATION AGREEMENT

between

CITY OF LAWRENCE, KANSAS,

AND

DOUGLAS COUNTY, KANSAS

Dated as of January 1, 2010

COOPERATION AGREEMENT

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COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT dated as of January 1, 2010 (the "Cooperation Agreement"), 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 duly organized and existing under the laws of the State of Kansas (the "County");

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. HR09-12-4 (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;

WHEREAS, pursuant to the Home Rule Amendment, the governing body of the City has heretofore passed the Ordinance authorizing the City to issue its Taxable General Obligation Bonds (Lawrence-Douglas County Bioscience Authority Project), Series 2009-A, in the aggregate maximum principal amount of \$2,900,000 (the "Bonds"), for the purpose of allowing the City and the County to acquire, purchase, construct, install and equip an economic development project, consisting of the West Lawrence Labs building located at 4950 Research Parkway, Lawrence, Kansas, including land, buildings, structures, improvements, fixtures, machinery and equipment as hereinafter more fully described (as defined herein, the "Project"), and authorizing the City to lease its interest in the Project to the Lawrence-Douglas County Bioscience Authority (the "LDCBA"); and

WHEREAS, pursuant to the Ordinance and the Resolution, the City and the County are authorized to enter into this Cooperation Agreement, for the purpose of making certain agreements regarding the City's and the County's various rights and obligations with respect to the Project and the Bonds, as therein provided, and to enter into a Lease Agreement (as defined herein, the "Lease") with the LDCBA under which the City and the County will acquire, purchase, construct, improve, equip and remodel the Project and will lease the Project to the LDCBA in consideration of rental payments by the LDCBA.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the County 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 Cooperation Agreement and the words and terms defined in **Section 1.1** of the Lease

which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Cooperation Agreement shall have the following meanings:

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

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

“Available Revenues” means for any Fiscal Year, any balances of the County from previous Fiscal Years encumbered to pay any amounts due under this Cooperation Agreement, amounts budgeted or appropriated by the County for such Fiscal Year plus any unencumbered balances of the County from previous Fiscal Years that are legally available to pay amounts due under this Cooperation Agreement during such Fiscal Year.

“Event of Nonappropriation” means an Event of Nonappropriation as described in **Section 3.4**.

“Expenses” means all expenses of any kind incurred with respect to the Project and paid by the City or the County, including, but not limited to, debt service on the Bonds and operation and maintenance expenses, but excluding any expenses paid with proceeds of the Bonds.

“Fiscal Year” means the fiscal year of the County, currently the twelve-month period beginning January 1 and ending on December 31.

“Net Proceeds” means, when used with respect to any insurance with respect to the Project, the gross proceeds from the insurance 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.

“Project” means the Project Site and all buildings, structures, improvements, fixtures, machinery and equipment related thereto.

“Project Site” means the real property described on **Exhibit A**.

“Real Estate Closing Date” means the date on which the City and the County take title to the Project.

“Reimbursement Rate” means an interest rate equal to the rate on the Bond Buyer 20-Bond GO Index, as published weekly in The Bond Buyer. The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year.

“Revenues” means all revenues generated by the City and the County with respect to the Project, except for ad valorem property taxes and/or special assessments, personal property taxes and utility charges that are customarily charged against property like the Project and are payable to the City and the County.

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 Cooperation Agreement 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 Cooperation Agreement 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 Cooperation Agreement shall not be treated as a part of this Cooperation Agreement or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. The City has lawful power and authority to enter into the transactions contemplated by this Cooperation Agreement and the 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 Cooperation Agreement, acting by and through its duly authorized officers.

(b) The City proposes to acquire an ownership interest as tenants in common with the County in the Project, and proposes to acquire, purchase, construct, improve, equip and remodel or cause to be acquired, purchased, constructed, improved, equipped and remodeled on the Project Site certain improvements, and proposes to acquire and install, or cause to be acquired and installed, certain equipment at the Project Site. The City proposes to lease its ownership interest in the Project to the LDCBA, all for the purpose of furthering the public purposes of the Act, and the governing body of the City has found and determined that the acquisition, purchase, construction, improving, equipping and remodeling of the Project will further the public purposes of the Act.

(c) To finance the costs of the Project, the City proposes to issue the Bonds and enter into this Cooperation Agreement with the County.

(d) The City will not mortgage its ownership interest in the Project or pledge the revenues derived therefrom for any bonds or other obligations except with the written consent of the Authorized County Representative.

(e) The acquisition, purchase, construction, improvement, equipping and remodeling of the Project and the leasing by the City of its ownership interest in the Project to the LDCBA will further the public purposes as set forth in the Ordinance.

Section 2.2. Representations by the County. The County makes the following representations as the basis for the undertakings on its part herein contained:

(a) 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 Cooperation Agreement and the 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 Cooperation Agreement, acting by and through its duly authorized officers.

(b) The County proposes to acquire an ownership interest as tenants in common with the City in the Project, and proposes to acquire, purchase, construct, improve, equip and remodel or cause to be acquired, purchased, constructed, improved, equipped and remodeled on the Project Site certain improvements, and proposes to acquire and install, or cause to be acquired and installed, the certain equipment at the Project Site. The County proposes to lease its ownership interest in the Project to the LDCBA, all for the purpose of furthering the public purposes of the Act, and the governing body of the County has found and determined that the acquisition, purchase, construction, improving, equipping and remodeling of the Project will further the public purposes of the Act.

(c) To finance the costs of the Project, the County proposes to enter into this Cooperation Agreement with the City.

(d) The County will not mortgage its ownership interest in the Project or pledge the revenues derived therefrom for any bonds or other obligations except with the written consent of the Authorized City Representative.

(e) The acquisition, purchase, construction, improvement, equipping and remodeling of the Project and the leasing by the County of its ownership interest in the Project to the LDCBA will further the public purposes as set forth in the Resolution.

ARTICLE III

ISSUANCE AND PAYMENT OF BONDS

Section 3.1. Issuance of Bonds; Acquisition of Project. The City shall use its best efforts to cause the issuance of its Taxable General Obligation Bonds (Lawrence-Douglas County Bioscience Project), Series 2009-A in the estimated principal amount of \$2,900,000 (the "Bonds"). If issued, the proceeds of the Bonds shall be used by the City solely to (a) pay the purchase price necessary to allow the City and the County to acquire their respective ownership interests in the Project described in **Section 4.1** hereof, and (b) make certain upgrades to the HVAC system or other improvements at the Project Site, as required pursuant to the Lease or agreed to by the Management Committee. The City shall have no obligation to issue the Bonds if the Lease is not approved by the City Commission and the County Commission by January 7, 2010.

Section 3.2. Repayment of Bonds.

(a) The Bonds, if issued, will be secured by the City's full faith and credit and ad valorem taxing power. It is the intent of the City and the County that all payments of Basic Rent pursuant to the Lease will be used to pay a portion of the debt service on the Bonds.

(b) Pursuant to the Resolution and **Section 4.6(b)** hereof, the County has assigned to the City any and all rents, revenues and receipts receivable by the County under the Lease. Such rents, revenues and receipts shall be payable by LDCBA directly to the City and shall be used solely to pay debt service on the Bonds and other expenses of the Project.

(c) To the extent that the Basic Rent paid by LDCBA pursuant to the Lease is insufficient to pay all of the debt service on the Bonds coming due, the County hereby agrees, subject to **Section 3.4** hereof, to pay to the City one half of the amount of any shortfall (the "County Shortfall"). The City shall give notice to the County of the amount of the County Shortfall on or before each February 10 and August 10. The payments required by the County pursuant to this Section shall be made on or before each February 25 and August 25, respectively.

Section 3.3. Nonappropriation.

(a) The County is obligated only to make payments under this Cooperation Agreement as may lawfully be made from Available Revenues and the Kansas cash basis laws. The County intends, on or before the last day of each Fiscal Year, to budget and appropriate, specifically with respect to this Cooperation Agreement, moneys sufficient to make all payments required by **Section 3.2(c)** and **Section 4.2(a)** hereof (together, the "County Payments") for the next succeeding Fiscal Year. The County shall deliver written notice to the City no later than 15 days after the commencement of its Fiscal Year stating whether or not the governing body of the County has appropriated funds sufficient for the purpose of paying the County Payments to become due during such Fiscal Year. If the governing body of the County shall have made the appropriation necessary to pay the County Payments during such Fiscal Year, the failure of the County to deliver the foregoing notice on or before the 15th day after the commencement of its Fiscal Year shall not constitute an Event of Nonappropriation and, on failure to receive such notice 15 days after the commencement of the County's Fiscal Year, the City shall make independent inquiry of the fact of whether or not such appropriation has been made. If the governing body of the County shall not have made the appropriation necessary to pay the County Payments to become due during such succeeding Fiscal Year, the failure of the County to deliver the foregoing notice on or before the 15th day after the commencement of its Fiscal Year shall constitute an Event of Nonappropriation.

(b) The County covenants and agrees that the officer of the County at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposal submitted to the governing body for each Fiscal Year that the Bonds are Outstanding a request for an appropriation of the amounts for transfer to the City at the times and in the manner provided in this **Article III**, it being the intention of the County that the decision to appropriate or not to appropriate under this Cooperation Agreement shall be made solely by the governing body of the County and not by any other official of the County. The County intends, subject to the provisions above respecting the failure of the County to budget or appropriate sufficient funds, to pay the County Payments. The County reasonably believes that legally available funds in an amount sufficient to make the County Payments during each Fiscal Year can be obtained. The County further intends to do all things lawfully within its power to obtain and maintain funds from which the County Payments may be made, including making provision

for such County Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of the County. The County Administrator is directed to do all things lawfully within his power to obtain and maintain funds from which the County Payments may be paid, including making provision for such County Payments to the extent necessary in each proposed annual budget submitted for approval or by supplemental appropriation in accordance with applicable procedures of the County. Notwithstanding the foregoing, the decision to budget and appropriate funds is to be made in accordance with the County's normal procedures then in effect for such decisions.

(c) Upon an Event of Nonappropriation or a failure to make any County Payment within 30 days after written notice of such failure to make payment is given the County by the City:

(1) the County shall give notice to any rating agencies who maintain ratings on the County's outstanding debt, that the County has failed to appropriate sufficient funds to make all payments set forth in this Cooperation Agreement; and

(2) the County shall quitclaim its ownership interest in the Project to the City and this Cooperation Agreement shall no longer be in force and effect.

ARTICLE IV

OWNERSHIP OF THE PROJECT

Section 4.1. Ownership Interests in the Project.

(a) Subject to the City's issuance of Bonds pursuant to **Section 3.1** hereof, on the Real Estate Closing Date, the City and the County shall take and receive title to and thereafter own the Project as tenants in common, each with ownership interest therein, expressed as percentages, as follows:

<u>Entity</u>	<u>Ownership Interest</u>
City	50.0%
County	50.0%

The rights, title and interest of the City and the County, respectively, in and to the Project and any and all portions thereof, as the same may exist from time to time, shall be as provided for under this Cooperation Agreement, and the covenants and obligations herein shall inure to the benefit of, and shall be binding upon their respective successors and assigns.

(b) Subject to the City's issuance of Bonds pursuant to **Section 3.1** hereof, on the Real Estate Closing Date, to the extent necessary to accomplish the ownership interests provided in this Section, the City and the County shall cause the seller of the Project to execute and deliver one or more bills of sale or other instruments conveying title to the Project in the appropriate ownership interest percentages to the City and the County and their successors and assign, as tenants in common, and the City and County shall, thereafter, own the Project subject to the provisions of this Cooperation Agreement.

Section 4.2. Agreement Regarding Expenses Of The Project.

(a) The City and the County hereby expressly agree that all Expenses of the Project shall be paid 50% by the City and 50% by the County.

(b) The City shall keep, and make available to the County upon request, a ledger of all payments of Expenses made by the City and the County.

Section 4.3. Agreement Regarding Revenues Generated By The Project. The City and the County hereby expressly agree that all Revenues generated by the Project shall be split as follows:

(a) Upon the execution of this Agreement and so long as the Bonds are Outstanding, the City shall be entitled to 100% of the Revenues generated by the Project, which the City shall use solely to pay Expenses of the Project, including debt service on the Bonds.

(b) Upon payment in full of the Bonds, all Revenues of the Project shall be paid to the City and the County as follows:

(1) First, to reimburse the City and the County, as the case may be, for any and all unequal payments made by the City or the County to pay principal of and interest on the Bonds, plus interest on such amounts at the Reimbursement Rate;

(2) Second, to reimburse the City and the County, as the case may be, for any and all unequal payments made by the City or the County to pay Expenses of the Project plus interest on such amounts at the Reimbursement Rate; and

(3) Third, the City and the County shall each be paid one-half of all remaining Revenues.

Section 4.4. Transfer of Ownership Interests. During the term of this Cooperation Agreement, neither the City nor the County shall have the right to transfer its ownership interest, except with the written consent of the other party to this Cooperation Agreement.

Section 4.5. Partition. The City and the County hereby waive their respective rights to the partition of the Project and any portion thereof. Neither the City nor the County shall have the power or right to take or resort to any action (including, without limitation, any court proceeding at law or in equity) for the purpose of or which might result in the partition of the Project.

Section 4.6. Encumbrance; Assignment of Rents.

(a) During the Term of this Cooperation Agreement, neither the City nor the County may sell, assign, encumber, mortgage, transfer or convey the Project or any portion of their respective interests therein, except as specifically provided by this Cooperation Agreement.

(b) The County hereby assigns and pledges to the City, all Revenues, as security for payment of the County Payments pursuant to **Section 3.2(b)** and **Section 4.2(a)** due to the City under this Cooperation Agreement; provided, however, that the foregoing assignment and pledge shall terminate upon (1) repayment in full of the Bonds and the County's satisfaction of its obligation to pay the County Payments, and (2) repayment in full of any reimbursement due to the City with respect to Expenses, pursuant to **Section 4.3(b)(2)**.

Section 4.7. Security Interests. At the written request of the City, the County agrees to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of any security interests of the City in the County's share of the Revenues of the Project. The City or the County shall file all instruments the City shall deem necessary to be filed and shall continue or cause to be continued the liens of such instruments during the term of this

Cooperation Agreement. The County shall cooperate in this regard by executing such continuation statements and providing such information as the City may require to renew such liens.

ARTICLE V

OPERATION OF THE PROJECT

Section 5.1. Operation of the Project, Generally.

(a) All policies relating to the management, operation and maintenance of the Project shall be determined and administered by a committee (the "Management Committee") comprised of the Authorized City Representative and the Authorized County Representative. The Management Committee will act and operate the Project in accordance with the Lease, the Ordinance, the Resolution and all laws applicable to the City's and the County's respective ownership interests in the Project.

(b) In the event that the designated Authorized City Representative or Authorized County Representative have a conflict of interest regarding any action to be taken with respect to the Project, the Mayor or the Chair of the County Commission, respectively, shall appoint an alternate representative of the City or the County, respectively, to consider such action.

(c) Prior to the Real Estate Closing Date, the City and the County expect to enter into a Lease Agreement among the City and the County, as lessors and LDCBA, as lessee. It is expected that, pursuant to the Lease, LDCBA will manage the day-to-day operations of the Project.

(d) The Management Committee may take all actions necessary to manage the day-to-day operations of the Project. The Management Committee shall have the right to approve all subleases of the facility if such subleases are in substantially the form previously approved by both the City Commission and the County Commission. The Authorized City Representative shall have the power to authorize the payment of the City's share of all Expenses related to the Project in amounts equal to or less than the amounts set forth in the City's purchasing policy and the Authorized County Representative shall have the power to authorize the payment of the County's share of all Expenses related to the Project in amounts equal to or less than the amounts set forth in the County's purchasing policy. All Expenses exceeding such amounts shall be presented for approval to the City Commission and/or the County Commission, as applicable.

Section 5.2. Additions, Modifications or Improvements of the Project. All additions, modifications or improvement of the Project (whether in the nature of an operating, maintenance or capital expense) proposed by the City or the County shall be subject to review and approval by the Management Committee. The City and the County shall each pay one-half of the costs of such additions, modifications or improvement of the Project, in accordance with **Section 4.2** hereof.

Section 5.3. Damage or Destruction of the Project.

(a) If the Project is damaged or destroyed by fire or any other casualty while the Lease is in effect, the repair or replacement of such damaged or destroyed property shall be governed by the provisions of the Lease.

(b) If the LDCBA shall determine in accordance with the Lease that rebuilding, repairing, restoring or replacing the Project is not practicable and desirable and the Net Proceeds of casualty insurance are distributed by LDCBA to the City and the County pursuant to such provision, the Management

Committee shall determine whether such Net Proceeds shall be (i) applied to reconstruct all or any portion of the Project, (ii) used to repay the Bonds, or (iii) distributed to the City and the County in accordance with **Section 4.3** and used for any purpose permitted by law; except provided that if the Bonds are outstanding and the Management Committee determines not to reconstruct the Project, then such Net Proceeds shall be used first to repay the Bonds and then any remaining Net Proceeds may be distributed to the City and the County in accordance with **Section 4.3**.

(c) If the Lease has been terminated for any reason and the Project is damaged or destroyed by fire or any other casualty, the Management Committee shall determine how the Net Proceeds of casualty insurance shall be used; except provided that if the Bonds are outstanding and the Management Committee determines not to reconstruct the Project, then such Net Proceeds shall be used first to repay the Bonds and then any remaining Net Proceeds may be distributed to the City and the County in accordance with **Section 4.3**.

Section 5.4. Taxes.

The City and the County acknowledge that the Project shall be subject to general ad valorem and property taxes (including special assessments levied on account of special benefits) on real and personal property. The City and the County 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 Project during the term of this Cooperation Agreement.

Section 5.5. Insurance.

(a) To the extent that the Project is not insured pursuant to **Article VII** of the Lease, the Management Committee shall arrange for a policy or policies of insurance to keep the Project constantly insured as follows:

(1) property insurance insuring the Project (excluding foundations), and business income (including extra expense) insurance for a period of not less than 12 months the Project insuring 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) written on a replacement cost basis in an amount equal to the Full Insurable Value (subject to reasonable loss deductible clauses not to exceed \$100,000). Any insurance required pursuant to this Section shall be maintained with generally recognized responsible insurance company or companies authorized to do business in the State of Kansas as may be selected by the Management Committee. Copies of the insurance policies required under this Section, or originals or certificates thereof, shall be delivered by the Management Committee to the City and the County. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City and the County 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 and the County, and shall be payable to the City and the County.

(2) commercial general liability insurance, under which the City and the County shall be named as insureds, providing primary coverage to the City and the County, 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, subject to the statutory limit(s) contained in the Kansas Torts Claim Act, K.S.A. 75-6101 et seq. Nothing herein shall be construed as a waiver of any rights, defenses or obligations contained in the Kansas Notice of Claim Statute, K.S.A. 12-105b, the Kansas Torts Claim Act or any statute in effect at the time of injury. 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 and the County. Such policies or copies or certificates thereof shall be furnished to the City and County.

(b) The Net Proceeds of casualty insurance obtained pursuant to this Section shall be used or distributed in accordance with **Section 5.3**.

ARTICLE VI

INDEMNITY

Section 6.1. Indemnification.

(a) To the extent permitted by law, the City shall indemnify and save 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 Project during the term of this Cooperation Agreement, and against and from all claims arising during the term of this Cooperation Agreement from (a) any condition of the Project caused by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Cooperation Agreement or the Lease, (c) any contract entered into in by the City or its agents, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Project, and (d) any act of negligence of the City or of any of its agents, contractors, servants, employees or licensees; provided, however, the indemnification contained in this **Section 6.1(a)** shall not extend to the County if (i) such claim is the result of work being performed at the Project by employees of the County, or (ii) such claim is the result of the County's gross negligence or willful misconduct. The City shall indemnify and save the County harmless from and against all costs and expenses (except those which have arisen from the willful misconduct or gross negligence of 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 (d), and upon notice from the County, the City shall defend the County in any such action or proceeding, with attorneys acceptable to the County.

(b) To the extent permitted by law, the County shall indemnify and save the City 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 Project during the term of this Cooperation Agreement, and against and from all claims arising during the term of this Cooperation Agreement from (a) any condition of the Project caused by the County, (b) any breach or default on the part of the County in the performance of any of its obligations under this Cooperation Agreement or the Lease, (c) any contract entered into in by the County or its agents, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Project, and (d) any act of negligence of the County or of any of its agents, contractors, servants, employees or licensees; provided, however, the indemnification contained in this **Section 6.1(b)** shall not extend to the City if (i) such claim is the result of work being performed at the Project by employees of the City, or (ii) such claim is the result of the City's gross negligence or willful misconduct. The County shall indemnify and save the City harmless from and against all costs and expenses (except those which have arisen from the willful misconduct or gross negligence of the City) incurred in or in connection with any action or proceeding brought in connection with claims arising from circumstances described in clauses (a) through (d), and upon notice from the City, the County shall defend the City in any such action or proceeding, with attorneys acceptable to the City.

ARTICLE VII

DISPUTE RESOLUTION

Section 7.1. Disputes Regarding the Project. In the event the Management Committee does not agree with respect to any action to be taken with respect to the Project, the proposal under consideration shall be submitted to the City Commission and the County Commission for action. In the event that the City Commission and the County Commission do not agree with respect to such action the dispute shall be subject to non-binding mediation within 30 days of such request. Any such mediation will be held in the City of Lawrence, Kansas, and shall be conducted substantially in accordance with the mediation rules approved by the Kansas Supreme Court.

Section 7.2. Sale of Co-owner's Interest in the Project. No party to this Cooperation Agreement may sell or transfer its interest in the Project, except upon compliance with this **Section 7.2.** If either party to this Cooperation Agreement wishes to sell its interest in the Project, that party (the "Selling Party") shall first give the other party (the "Non-Selling Party") a written notice of intention to sell, including a proposed purchase price. Upon receipt of the notice of intention to sell, the Non-Selling Party shall have the exclusive right and option to elect to purchase the Selling Party's interest upon the terms and conditions set forth below:

(a) The Non-Selling Party may elect, within 30 days after the receipt of such written notice of intention to sell, to exercise the option to purchase. Such notice of exercise shall constitute a binding contract between the Selling Party and the Non-Selling Party for the purchase and sale of the Selling Party's interest in the Project, at a purchase price determined in accordance with subparagraph (b). The closing of such contract shall take place at a date and time agreeable to by the Selling Party and the Non-Selling Party, but in no event later than 45 days after the purchase price is determined.

(b) The Non-Selling Party's notice to the Selling Party that it elects to purchase the Selling Party's interest in the Project shall state either (i) that the Non-Selling Party agrees to pay the Selling Party's proposed purchase price or (ii) that the Non-Selling Party desires to establish the purchase price by appraisals performed in accordance with this subparagraph (b). If the Non-Selling Party agrees to pay the Selling Party's proposed purchase price or fails to make any designation, then the Selling Party's proposed purchase price shall be the purchase price of the Selling Party's interest in the Project. If the Non-Selling Party states its desire to establish the purchase price by appraisals performed in accordance with this subparagraph (b), then within 10 days after the Non-Selling Party's notice of exercise of option, each party shall select an appraiser. Each appraiser shall be a qualified real estate broker or appraiser active in the Lawrence area with experience in appraising laboratory facilities and real estate of similar type and use as the Project. Both appraisers shall be instructed to prepare and deliver to both parties, within 21 days of their appointment, their written opinions of the fair market value of the Selling Party's interest. If the appraisers' opinions do not vary from one another by more than 10%, the purchase price shall be the arithmetic average of the two opinions. If the two opinions do vary from one another by more than 10%, the two appraisers shall jointly select a third appraiser of similar qualifications within 10 days of delivery of their opinions. The third appraiser shall be requested to prepare a delivery to both parties, within 21 days, a third written opinion of the fair market value of the Selling Party's interest in the Project. The purchase price shall then be whichever of the three opinions is in the middle, or if two opinions are the same, then that shall be the price. Each party shall pay the appraisal fees and costs of the appraiser it appoints and shall share the appraisal fees and costs of the third appraiser, if any equally. If either party fails to appoint a qualified appraiser within the first 10 day period specified above, the appraiser appointed by the other party shall be the sole appraiser and the price shall be determined by him alone.

(c) If the Non-Selling Party does not elect to exercise the option to purchase the Selling Party's interest in the Project, then parties shall engage a real estate broker to market the Project to third parties at a sale price upon which they agree, but if they cannot agree upon a sale price, the parties shall select appraisers in accordance with subparagraph (b) of this **Section 7.2** in order to determine a sale price for the entire Project. When such a price is determined, the parties shall engage a real estate broker to market the Project to third parties and, provided either if the City or the County approves the sales price as determined in accordance with subparagraph (b) of this **Section 7.2**, the other of them shall agree to sell its interests in the Project based upon a sales price of not less than 10% less than the appraised value of the Project as determined above. The net proceeds for any such sale shall be distributed in accordance with **Section 4.3**.

Section 7.3. Performance of the County's Obligations by the City. If the County shall fail to keep or perform any of its obligations as provided in this Cooperation Agreement in the making of any payment or performance of any obligation, then the City, may (but shall not be obligated so to do) upon the continuance of such failure on the County's part for 30 days after written notice of such failure is given the County by the City, and without waiving or releasing the County 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 and all necessary incidental reasonable costs and expenses incurred by the City in performing such obligations shall be paid to the City on demand together with interest at the Reimbursement Rate.

Section 7.4. Performance of the City's Obligations by the County. If the City shall fail to keep or perform any of its obligations as provided in this Cooperation Agreement in the making of any payment or performance of any obligation, then the County, may (but shall not be obligated so to do) upon the continuance of such failure on the City's part for 30 days after written notice of such failure is given the City by the County, and without waiving or releasing the City 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 County and all necessary incidental reasonable costs and expenses incurred by the County in performing such obligations shall be paid to the County on demand together with interest at the Reimbursement Rate.

Section 7.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City and the County 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 and the County 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 Cooperation Agreement, 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 7.6. 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 either party hereto of any covenant, agreement or undertaking by such party, the counter party may nevertheless accept from the breaching party any payment or payments hereunder without in any way waiving the counter party's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the breaching party which were in existence at the time such payment or payments were accepted by the counter party.

Section 7.7. Notice of Defaults; Opportunity to Cure Defaults. Anything herein to the contrary notwithstanding, no breach of any provision of this Cooperation Agreement shall constitute an

Event of Default until actual notice of such default by registered or certified mail shall be given and the recipient of such notice shall have had 30 days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within such period; provided, however, if any such default shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the recipient of notice within such period and diligently pursued until the default is corrected.

ARTICLE VIII

TERM AND TERMINATION

Section 8.1. Term and Termination of Cooperation Agreement. This Cooperation Agreement shall be binding and effective upon the City and the County until terminated pursuant to this Section. This Cooperation Agreement shall terminate and be of no further force and effect from and after the date of the earliest to occur of the following:

- (a) either the City or the County shall acquire by transfer hereunder or by operation of law all ownership interests in the Project and, as a result of the merger of such ownership interests of the City and/or the County herein, become the sole beneficial owner of all rights, titles and interest in the Project; or
- (b) the City and the County shall agree, in writing, to terminate this Cooperation Agreement.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1. Amendments, Changes and Modifications. Except as otherwise provided in this Cooperation Agreement, this Cooperation Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of both the City and the County.

Section 9.2. 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

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 and the County 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 9.3. Binding Effect. This Cooperation Agreement shall be binding upon and shall inure to the benefit of the City and the County and their respective successors and assigns.

Section 9.4. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

Section 9.5. Severability. If for any reason any provision of this Cooperation Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 9.6. Execution in Counterparts. This Cooperation Agreement 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 9.7. Governing Law. This Cooperation Agreement shall be governed by the laws of the State of Kansas.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Cooperation Agreement 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: *[Handwritten Signature]*
Mayor

[SEAL]

ATTEST:

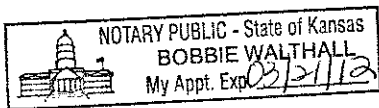
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF DOUGLAS)

On this 4 day of January, 2010, before me, the undersigned, a Notary Public, appeared Robert Christman, 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.

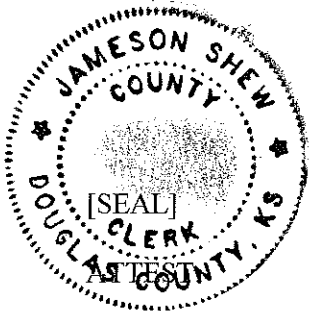
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



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

(SEAL)

My commission expires: 03/21/12



Jameson Shew

 County Clerk

DOUGLAS COUNTY, KANSAS

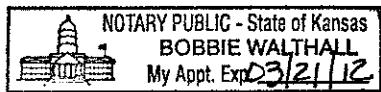
By: *Nancy Thell*
 Chair of Board of County Commissioners

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
 COUNTY OF DOUGLAS)

On this 30 day of December 2009 before me, the undersigned, a Notary Public, appeared **Nancy Thellman**, to me personally known, who, being by me duly sworn, did say that she 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.



(SEAL)

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

My commission expires: 03/21/12

EXHIBIT A

PROJECT SITE

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