

507-2022

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
County of Boone } ea.

October Session of the October Adjourned

Term. 20 22


In the County Commission of said county, on the 27th day of October 20 22

the following, among other proceedings, were had, viz:

Now on this day, the County Commission of the County of Boone does hereby approve the State Homeland Security Program Grant Application submitted by the Emergency Management Department.

Done this 27th day of October 2022.

ATTEST:


Brianna L. Lennon
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Justin Aldred
District I Commissioner



Janet M. Thompson
District II Commissioner

MICHAEL L. PARSON
Governor

SANDRA K. KARSTEN
Director



Lewis & Clark State Office Bldg.
Mailing Address: P.O. Box 749
Jefferson City, MO 65101-0749
Telephone: 573-751-4905
Fax: 573-751-5399

STATE OF MISSOURI
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE DIRECTOR

October 20, 2022

Mr. Daniel Atwill, Presiding Commissioner
Boone County Emergency Management Agency
2145 E. County Drive
Columbia, MO 65202

RE: FY 2022 State Homeland Security Program (SHSP) Enhancing Community Preparedness & Resilience (ECPR)
Award #EMW-2022-SS-00094-42

Dear Commissioner Atwill:

Thank you for your recent application submission to the FY 2022 State Homeland Security Program (SHSP) Enhancing Community Preparedness & Resilience (ECPR). Your application has been selected for funding in the amount of \$23,483.38.

Enclosed is the FY 2022 SHSP ECPR Subaward Agreement for Boone County Emergency Management Agency. The Missouri Office of Homeland Security asks you to carefully review and sign the documentation provided. By signing the Subaward Agreement and initialing each page of the Articles of Agreement and Special Conditions you are certifying your acceptance of the award conditions. Once signed and initialed, please return the documents to our office no later than November 20, 2022.

The project period of performance for this award begins September 1, 2022 and ends August 31, 2024.

A risk assessment for this award was completed in accordance with requirements from 2 CFR 200.332. Boone County, Emergency Management Agency received a total score of two (2), which classifies the agency as a low risk subrecipient of noncompliance with the FY 2022 SHSP ECPR.

We look forward to working with you on this award. Should you have any questions or need additional information, do not hesitate to contact Debbie Musselman at (573) 751-5997 or Debbie.Musselman@dps.mo.gov.

Sincerely,

A handwritten signature in black ink that reads "Jim McCarter".

Jim McCarter, Program Manager
Missouri Department of Public Safety
Office of Homeland Security

Attachment(s): Subaward Agreement
Articles of Agreement/Special Conditions

Highway Patrol • National Guard • State Emergency Management Agency • Fire Safety
Office of Homeland Security • Alcohol & Tobacco Control • Capitol Police • Gaming Commission • Veterans Commission



Missouri Department of Public Safety
Office of Homeland Security
Division of Grants
 P.O. Box 749, Jefferson City, MO 65101
 Telephone: 573-526-6125 Fax: 573-526-9012

SUBAWARD AGREEMENT

SUBRECIPIENT NAME Boone County Emergency Management Agency		DATE 10/20/2022	
ADDRESS 2145 County Drive		FEDERAL IDENTIFICATION NUMBER EMW-2022-SS-00094	OHS CONTROL NUMBER 42
CITY Columbia		STATE MO	ZIP CODE 65202
TOTAL AMOUNT OF THE FEDERAL AWARD \$23,483.38		AMOUNT OF FEDERAL FUNDS OBLIGATED BY THIS ACTION \$23,483.38	
TOTAL AMOUNT OF FEDERAL FUNDS OBLIGATED TO THE SUBRECIPIENT \$23,483.38		TOTAL APPROVED COST SHARING OR MATCHING \$0	
PROJECT PERIOD FROM 09/01/2022	PROJECT PERIOD TO 08/31/2024	FEDERAL AWARD DATE 09/01/2022	
PROJECT TITLE FY22 – SHSP – ECPR – Boone County EMA		FUNDED BY FY 2022 Homeland Security Grant Program	
FEDERAL AWARDCING AGENCY Department of Homeland Security	PASS THROUGH ENTITY MO Department of Public Safety/Office of Homeland Security	IS THIS AWARD R&D YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	INDIRECT COST RATE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> AMOUNT
CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER 97.067		METHOD OF PAYMENT (Reimbursement – Advanced) Reimbursement	
CONTACT INFORMATION			
OHS GRANT SPECIALIST		SUBRECIPIENT PROJECT DIRECTOR	
NAME Debbie Musselman		NAME Chris Kelley	
E-MAIL ADDRESS Debbie.Musselman@dps.mo.gov		ADDRESS (If different from above) 2145 E. County Drive	
TELEPHONE (573) 751-5997		CITY, STATE AND ZIP CODE Columbia, MO 65202	
PROGRAM MANAGER Joni McCarter		TELEPHONE 573-554-7908	E-MAIL ADDRESS em@boonecountymmo.org
SUMMARY DESCRIPTION OF PROJECT The purpose of the FY 2022 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal (the Goal) of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goals to Strengthen National Preparedness and Resilience. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization or community, but rather, require the combined effort of the whole community. SHSP Enhancing Cybersecurity Local Preparedness (ECSLP) assists state and local efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to, acts of terrorism through projects that enhance community preparedness and resilience in Missouri..			
AWARDING AGENCY APPROVAL		SUBRECIPIENT AUTHORIZED OFFICIAL	
TYPED NAME AND TITLE OF DPS OFFICIAL Sandra K. Karsten, Director		TYPED NAME & TITLE OF SUBRECIPIENT AUTHORIZED OFFICIAL Daniel Atwill, Presiding Commissioner	
SIGNATURE OF APPROVING DPS OFFICIAL	DATE	SIGNATURE OF SUBRECIPIENT AUTHORIZED OFFICIAL	DATE
			10/27/2022
THIS SUBAWARD IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS SET FORTH ON THE ATTACHED SPECIAL CONDITION(S). BY SIGNING THIS SUBAWARD AGREEMENT THE SUBRECIPIENT IS AGREEING TO READ AND COMPLY WITH ALL SPECIAL CONDITIONS.			

GRANT PROGRAM FY 2022 State Homeland Security Program	SUBRECIPIENT Boone County Emergency Management Agency
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Article I – Summary Description of Award

The purpose of the FY 2022 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. Among the five basic homeland security missions noted in the DHS Quadrennial Homeland Security Review, HSGP supports the goal to Strengthen National Preparedness and Resilience. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community.

Article II – DHS Standard Terms and Conditions Generally

The Fiscal Year (FY) 2022 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2022. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations.

All legislation and digital resources are referenced with no digital links. The FY 2022 DHS Standard Terms and Conditions will be housed on dhs.gov at www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

Article III – Assurances, Administrative Requirements, Cost Principles, Representations and Certifications


I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency.

II. DHS/OHS financial assistance subrecipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2 Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.

III. By accepting this agreement the subrecipient and its executives, as defined in 2 C.F.R. section 170.315, certify that the subrecipient’s policies are in accordance with OMB’s guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

Article IV – General Acknowledgements and Assurances

All subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities and staff.

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1. Subrecipients must cooperate with any compliance reviews or compliance investigations conducted by DHS/OHS.
2. Subrecipients must give DHS/OHS access to, and the right to examine and copy records, accounts and other documents and sources of information related to the award and permit access to facilities or personnel.
3. Subrecipients must submit timely, complete and accurate reports to the appropriate DHS/OHS officials and maintain appropriate backup documentation to support the reports.
4. Subrecipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.

The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identified steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to civilrightsevaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article V – Acknowledgement of Federal Funding from DHS

Subrecipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Article VI – Activities Conducted Abroad

Subrecipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article VII – Age Discrimination Act of 1975

Subrecipients must comply with the requirements of the Age Discrimination Act of 1975, Pub. L. No. 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

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Article VIII – Americans with Disabilities Act of 1990

Subrecipients must comply with the requirements of Titles, I, II and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended 42 U.S.C. sections 12101-12213), which prohibits subrecipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article IX – Best Practices for Collection and Use of Personally Identifiable Information (PII)

Subrecipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Subrecipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively.

Article X – Civil Rights Act of 1964 – Title VI

Subrecipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article XI – Civil Rights Act of 1968

Subrecipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, as amended through Pub. L. 113-4, which prohibits subrecipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. section 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators) - be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article XII – Copyright

Subrecipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U. S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article XIII – Debarment and Suspension

Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180, as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs and activities.

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Article XIV – Drug-Free Workplace Regulations

Subrecipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the subrecipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

Article XV – Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude subrecipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article XVI – Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Subrecipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article XVII – Energy Policy and Conservation Act

Subrecipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

Article XVIII – False Claims Act and Program Fraud Civil Remedies

Subrecipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

Article XIX – Federal Debt Status

All subrecipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

Article XX– Federal Leadership on Reducing Text Messaging while Driving

Subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.

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Article XXI – Fly America Act of 1974

Subrecipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. section 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article XXII – Hotel and Motel Fire Safety Act of 1990

Subrecipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a.

Article XXIII – John S. McCain National Defense Authorization Act of Fiscal Year 2019

Subrecipients, their contractors, and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors, and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

Article XXIV – Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://jwww.lep.gov>.

Article XXV– Lobbying Prohibitions

Subrecipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the subrecipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to the federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article XXVI – National Environmental Policy Act

Subrecipients must comply with the requirements of the *National Environmental Policy Act of 1969*, Pub. L. No. 91-190 (1970) (codified as amended at 43 U.S.C. section 4321 et seq.) (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require subrecipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can

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exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article XXVII – Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Subrecipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article XXVIII – Non-Supplanting Requirement

Subrecipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

Article XXIX – Notice of Funding Opportunity Requirements

All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All subrecipients must comply with any such requirements set forth in the program NOFO.

Article XXX – Patents and Intellectual Property Rights

Subrecipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq., unless otherwise provided by law. Subrecipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

Article XXXI – Procurement of Recovered Materials

Subrecipients must comply with section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article XXXII – Rehabilitation Act of 1973

Subrecipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XXXIII – Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the subrecipient's currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part

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200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article XXXIV – Reporting Subawards and Executive Compensation

Subrecipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F. R. Part 170, Appendix A, the full text of which is incorporated here by the reference in the award terms and conditions.

Article XXXV – Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Subrecipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act Sections 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

Subrecipients of federal financial assistance programs for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States – this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States – this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States – this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desk, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers

When necessary, subrecipients may apply for, and the agency may grant, a waiver from these requirements.

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a. When the federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

1. Applying the domestic content procurement preference would be inconsistent with public interest;
2. The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the OMB Made in America Office. There may be instances where an award qualifies, in whole, or in part, for an existing waiver described. For awards by the Federal Emergency Management Agency (FEMA), existing waivers are available and the waiver process is described at "Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure. For awards by other DHS components, please contact the applicable DHS FAO.

To see whether a particular DHS federal financial assistance program is considered an infrastructure program and thus required to include a Buy America preference, please either contact the applicable DHS FAO, or for FEMA awards, please see Programs and Definitions: Build America, Buy America Act.

Article XXXVI – SAFECOM

Subrecipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article XXXVII – Terrorist Financing

Subrecipients must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Subrecipients are legally responsible to ensure compliance with the Order and laws.

Article XXXVIII – Trafficking Victims Protection Act of 2000 (TVPA)

Subrecipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000, (TVPA) (codified as amended by 22 U.S.C. section 7104). The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

Article XXXIX – Universal Identifier and System of Award Management

Subrecipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

AUTHORIZED OFFICIAL INITIALS


GRANT PROGRAM FY 2022 State Homeland Security Program	SUBRECIPIENT Boone County Emergency Management Agency
AWARD NUMBER EMW-2022-SS-00094-42	DATE 10/20/2022

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Article XL– USA PATRIOT Act of 2001

Subrecipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

Article XLI – Use of DHS Seal, Logo and Flags

Subrecipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article XLII – Whistleblower Protection Act

Subrecipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. section 2409, 41 U.S.C. 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

Article XLIII – Environmental Planning and Historic Preservation (EHP) Review

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding required subrecipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and executive orders. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the OHS/Grant Programs Directorate (GPD) along with all other pertinent project information. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered, applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article XLIV – Disposition of Equipment Acquired Under the Federal Award

For purposes of original or replacement equipment acquired under this award, state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

Article XLV – Office of Homeland Security, Specific

By accepting this award, the subrecipient agrees:

1. To participate in the development and submission of their Threat and Hazard Identification and Risk Assessment (THIRA).

AUTHORIZED OFFICIAL INITIALS

DA

GRANT PROGRAM FY 2022 State Homeland Security Program	SUBRECIPIENT Boone County Emergency Management Agency
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2. To utilize standard resource management concepts, such as typing inventorying, organizing and tracking resources that facilitate the identification, dispatch, deployment and recovery of their resources.
3. To coordinate with their stakeholders to examine how they integrate preparedness activities across disciplines, agencies, and levels of government.
4. Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost, which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$1,000. Expenditures for equipment shall be in accordance with the approved budget. The subrecipient shall use and manage equipment in accordance with its procedures as long as the equipment is used for its intended purposes. When original or replacement equipment acquired under this award by the subrecipient is no longer needed for the original project or program or for other activities currently or previously supported by OHS, you must request instructions from OHS to make proper disposition of the equipment pursuant to 2 C.F.R. § 200.313 and the OHS Administrative Guide.
5. Expenditures for supplies and operating expenses shall be in accordance with the approved budget and documentation in the form of paid bills and vouchers shall support each expenditure. Care shall be given to assure that all items purchased directly relate to the specific project objectives for which the contract was approved.
6. For Contractual Services the following general requirements will be followed when subcontracting for work or services contained in this grant award:
 - a. All consultant and contractual services shall be supported by written contracts stating the services to be performed, rate of compensation and length of time over which the services will be provided, which shall not exceed the length of the grant period.
 - b. As described in the OHS Administrative Guide for Homeland Security Grants, a copy of any contractual agreement made as a result of this award must be forwarded to OHS for review or be readily available for review prior to execution of the contract.
7. OHS reserves the right to terminate any contract entered into as a result of this grant award at its sole discretion and without penalty or recourse by giving a thirty (30) day written notice to the subrecipient of the effective date of termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the subrecipient under the contract shall, at the option of the OHS, become property of the State of Missouri. The subrecipient shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination.
8. It is understood and agreed upon that in the event funds from state and/or federal sources are not appropriated and continued at an aggregate level sufficient to cover the contract costs, or in the event of a change in federal or state laws relevant to these costs, the

AUTHORIZED OFFICIAL INITIALS
DA

GRANT PROGRAM FY 2022 State Homeland Security Program	SUBRECIPIENT Boone County Emergency Management Agency
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obligations of each party hereunder shall thereupon be terminated immediately upon receipt of written notice.

9. To follow the grant program guidelines as stated in the OHS Administrative Guide for Homeland Security Grants, as well as the Information Bulletins released by OHS to provide important updates, clarifications and policy statements related to homeland security grant programs.
10. To follow requirements of the DHS Grant Programs Directorate Information Bulletins.
11. In the event OHS determines that changes are necessary to the award document after an award has been made, including changes to period of performance or Articles of Agreement, the subrecipient will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate subrecipient acceptance of the changes to the award.
12. Prior written approval from OHS is required prior to making any change to the OHS approved budget for this award.
13. To submit Grant Status Reports to OHS by the due dates of July 10 and January 10 throughout the grant period, which must include the status updates of the milestones achieved. Final Status Reports are due to OHS within 45 days after the end of the project period.
14. All items that meet the OHS definition of equipment that are purchased with Homeland Security Grant Funds must be tagged "Purchased with U.S. Department of Homeland Security Funds."
15. If the subrecipient is a pass-through entity, copies of signed subaward agreements are due to the OHS prior to the start of any project.
16. Projects that involve changes to the natural or built environment require the completion and approval of an Environmental Historic Preservation Screening Form (EHP) prior to initiating any work on the project. Changes to the project after the approval of the EHP requires OHS review and approval. Changes to the project may require the submission and approval of an updated EHP Screening Form. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; Nation Flood Insurance Program regulation; and, any other applicable laws and Executive Orders.
17. The purchase of any generator requires prior approval from the OHS, documentation must clearly depict the full scope of the project and prove the equipment is a deployable resource.
18. Purchases from a single feasible source must have prior approval from the OHS.

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19. Subrecipient is required to complete the 2022 Nationwide Cybersecurity Review (NCSR), enabling agencies to benchmark and measure progress of improving their cybersecurity posture. The Chief Information Officer (CIO), Chief Information Security Officer (CISO), or equivalent for each recipient and subrecipient should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment. The NCSR is available at no cost to the user and takes approximately 2-3 hours to complete. The 2022 NCSR will be open October 1, 2022 and must be completed by each subrecipient no later than December 31, 2022.

20. Subrecipients that contract with and utilize WebEOC Emergency Management Software – Juvare, must fully fuse and maintain an active connection with Missouri’s State Emergency Management Agency (SEMA). This setup will allow for a more efficient resource response to Missouri communities during an emergency incident as well as allow emergency personnel to monitor events that may impact their community during an extended event. Fusion of other WebEOC accounts in Missouri will also assist in streamlining resource requests by reducing redundant entry in a local WebEOC account and then once again in the Missouri WebEOC account should the request not be able to be filled locally. Redundant data entry during an emergency can lead to time loss, data entry errors and omission of important details. This required setup will also allow SEMA Emergency Service Function (ESF) partners to monitor the use of resources throughout the state for Mutual aid needs.

21. Agencies purchasing license plate reader (LPR) equipment and technology with grant funds administered by the Missouri Department of Public Safety, must adhere to the following requirements:
 - a. LPR vendors chosen by an agency must have an MOU on file with the MSHP Central Vendor File as developed and prescribed by the Missouri Department of Public Safety pursuant to 11 CSR 30-17.
 - b. Prior to purchasing LPR services, the agency should verify the vendor’s MOU status with the MSHP CJIS Division by emailing mshphelpdesk@mshp.dps.mo.gov.
 - c. Share LPR data through the MoDEX process with statewide sharing platforms (i.e., MULES).
 - d. Enable LPR data sharing with other Missouri Law Enforcement agencies and enforcement support entities within the selected vendor’s software. Examples include, but are not limited to fusion centers, drug task forces, special investigations units, etc.
 - e. Connect to the Missouri State Highway Patrol’s Automated License Plate Reader (ALPR) File Transfer Protocol Access Program. This program provides the information necessary to provide a NCIC and/or MULES hit when used in conjunction with a License Plate Reader (LPR) device. An MOU must be on file with the Access Integrity Unit (AIU) for the vendor and the law enforcement agency and a registration process must be completed.
 - f. Agency shall have a license plate reader policy and operation guideline prior to the implementation of LPRs. Reimbursements will not be made on the project until the policy has been provided to the Missouri Department of Public Safety.
 - g. If LPR will be installed on Missouri Department of Transportation right-of-way(s) agency must request installation through the Missouri Department of Public Safety. Once

AUTHORIZED OFFICIAL INITIALS 

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approved, agency must adhere to the Missouri Department of Transportation's guidelines regarding installation of LPR's on Missouri Department of Transportation right-of-way(s).

Article XLVI – Special Conditions

1. The subrecipient agency must attend and complete the FY 2022 State Homeland Security Program (SHSP) Enhancing Community Preparedness & Resilience (ECPR) Compliance Workshop. No claims will be reimbursed by the OHS until a member of the subrecipient agency has completed the Compliance Workshop.

AUTHORIZED OFFICIAL INITIALS 

CERTIFIED COPY OF ORDER

STATE OF MISSOURI

} ea.

October Session of the October Adjourned

Term. 20 22

County of Boone

In the County Commission of said county, on the 27th day of October 20 22

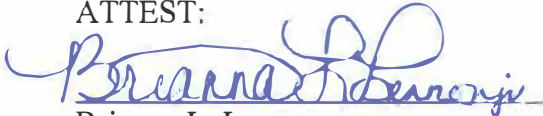
the following, among other proceedings, were had, viz:

Now on this day, the County Commission of the County of Boone does hereby approve the attached Boone County Road & Bridge Improvement/Repair Cooperative Agreement between Boone County and the Village of Hartsburg.

Terms of the Agreement are stipulated in the attached Agreement and the Presiding Commissioner is hereby authorized to sign the same.

Done this 27th day of October 2022.

ATTEST:


Brianna L. Lennon
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Justin Aldred
District I Commissioner



Janet M. Thompson
District II Commissioner

**BOONE COUNTY ROAD & BRIDGE IMPROVEMENT/REPAIR
COOPERATIVE AGREEMENT
APPROVED APPLICATION-BASED PROJECT
APPLICATION ENTITIES¹**

THIS AGREEMENT, dated this 27th day of October, 2022, is made and entered into by and between **Boone County**, a first class non-charter county and political subdivision of the State of Missouri by and through its County Commission, herein "County" and the **Village of Hartsburg**, a municipal corporation, herein "City".

WHEREAS, County has, in Commission Order 249-2011, adopted updated policies regarding the distribution of certain road sales tax and property tax revenues, the terms and conditions of which are incorporated herein by reference; and

WHEREAS, City is an "Application Entity" as described in the aforementioned Commission Order; and

WHEREAS, City has been classified as an application entity that will receive an annual amount as described in Commission Order 609-2012, the terms and conditions of which are incorporated herein by reference; and

WHEREAS, County is willing to enter into a cooperative agreement with the City for the improvement and/or repair of City's road system under certain terms and conditions; and

WHEREAS, the parties are empowered to enter into cooperative agreement(s) for the purposes herein stated pursuant to section 70.220 and section 229.040 RSMo.

NOW, THEREFORE, IN CONSIDERATION of the mutual undertakings and agreements herein contained, the parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to effectuate the Application-Based Funding from the County to the City as contemplated in County's policies on distributing road sales tax revenue and road property tax revenues. The terms and conditions of Commission Order 249-2011 & 609-2012 are incorporated into this agreement by reference.
2. **COUNTY AGREEMENTS:**
 - a. County will pay to the City the sum of **Thirteen Thousand Two Hundred Thirty-Four Dollars and Fifty-One Cents (\$13,234.51)** as determined by the formula for Year 4 of the 6-year cycle as described in the aforementioned

¹ Application entities are: Harrisburg, Hartsburg, Huntsdale, McBaine, Pierpont, Rocheport and Sturgeon.

Commission Order 609-2012, for use solely in the completion of road improvement and/or repair projects.

3. CITY AGREEMENTS.

- a. City agrees to use the funds that it receives from County pursuant to this Agreement solely for improving and maintaining its roads and bridges in accordance with its Boone County Road & Bridge Improvement/Repair Cooperative Agreement General Agreement for funding, certified by Commission Order 464-2011 which is incorporated herein by reference.
- b. City agrees that it shall submit to an audit by the County or its designated auditor upon request for purposes of determining whether the funds received by the City from the County under this agreement have been expended in compliance with this agreement.
- c. City agrees that it shall reimburse the County for any funds paid to it under this agreement which are expended in violation of this agreement or applicable law, rule or regulation, within ninety (90) days of notification of such a finding by County.
- d. City agrees to timely provide any documentation or information reasonably requested by County which relates in any way to this Agreement.
- e. City agrees that it will be liable for, and agrees to be liable for, and shall indemnify, defend and hold the County of Boone harmless from all claims, suits, judgments or damages, including court costs and attorney's fees, arising out of or in the course of the operation of this agreement. Notwithstanding the foregoing, nothing herein is intended to waive either the City's or the County's sovereign immunity as to any third party.
- f. City agrees that, for any work not performed by the City's own employees, City will comply with any and all applicable competitive bidding statutes or ordinances, the state Prevailing Wage law, domestic products purchase laws and such other laws, rules and regulations which are applicable to the City in letting and carrying out contracts for "public works" as that term is defined in applicable statutes, rules, regulations, and ordinances.

4. PAYMENTS IN EXCESS OF LEGAL OBLIGATIONS. City represents that the payments from County to City contemplated herein are in excess of any legal obligations

imposed on County by virtue of applicable Missouri law, including RSMo §137.556 and the ballot language presented to voters authorizing the current Road & Bridge Sales Tax Levy under RSMo §67.547.

5. **TIMING OF PAYMENTS.** The payments from County to City contemplated herein will occur one time per year, near the beginning of the fourth quarter of the calendar year, and after receipt of the fully executed annual agreement.
6. **REPORTING.** City shall file a written report with County, at least annually, detailing the road and bridge improvement projects funded in whole or in part with the funding received herein, as well as provide a summary of any planned, future projects that are anticipated to be funded with current or future funding from the County. Said reports shall be in sufficient detail so as to allow County to document what specific portions of any City project were funded or are contemplated to be funded with funds received from the County.
7. **ASSIGNMENT.** Neither party may assign or transfer any of its rights or obligations under this Agreement to any other person or entity without the prior, written consent of the other party.
8. **SOLE BENEFIT OF PARTIES.** This Agreement is for the sole benefit of City and County. Nothing in this Agreement is intended to confer any rights or remedies on any third party.
9. **RELATIONSHIP OF PARTIES.** Nothing herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, between the parties hereto.
10. **TERM.** This Agreement shall be in effect from its execution until January 1 of the following calendar year.
11. **TERMINATION.** Either party may terminate this Agreement upon thirty (30) days written notice directed to the other party.
12. **NONAPPROPRIATION.** The payments from County contemplated herein are conditioned upon there being a sufficient, unencumbered fund balance budgeted for that purpose. The County's obligations hereunder shall not in anyway be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the County, nor shall anything contained herein constitute a pledge of the general credit, tax revenues,

funds or moneys of the County beyond that which is specifically required by state law. Notwithstanding any provision of this Agreement, the decision whether or not to budget or appropriate funds, or to extend this Agreement for any subsequent fiscal year, is solely within the discretion of the then-current governing body of the County, it being understood that adjustments to an appropriation may be made by the County in accordance with its Economic Development Adjustment policies adopted as part of its policies relating to the distribution of road sales taxes and road property taxes.

13. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Missouri, and any action relating to the same shall be brought in the Circuit Court of Boone County, Missouri.
14. **BINDING ON SUCCESSORS.** The covenants, agreements, and obligations herein contained shall extend to, bind, and inure to the benefit of the parties hereto and their respective successors and approved assigns.
15. **COUNTERPARTS.** This Agreement may be executed by the parties in several counterparts, each of which shall be deemed an original instrument.
16. **COMPLETE AGREEMENT.** All negotiations, considerations, representations, and understandings between the parties are incorporated herein, shall supersede any prior agreements, and may be modified or altered only in writing signed by the parties hereto.
17. **AUTHORITY OF SIGNATORIES.** Each of the persons signing this Agreement on behalf of either party represent that he/she has been duly authorized and empowered, by order, ordinance or otherwise, to execute this Agreement and that all necessary action on behalf of said party to effectuate said authorization has been taken and done.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly-authorized officers on day and year indicated by their signature below.

BOONE COUNTY

By:



Presiding Commissioner

Date: 10/27/2022

ATTEST:


County Clerk

APPROVED AS TO FORM:


County Attorney

Boone County Auditor Certification:

I hereby certify that a sufficient, unencumbered appropriation balance exists and is available to satisfy the obligation arising from this contract. (Note: Certification of this contract is not required if the terms of this contract do not create a measurable county obligation at this time.)

June F. Pitchford 10-20-22
County Auditor by BN Date

NO encumbrance required

VILLAGE OF HARTSBURG

By:


Authorized City Representative

Date: Oct. 13, 2022

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

CERTIFIED COPY OF ORDER

STATE OF MISSOURI

} ca.

October Session of the October Adjourned

Term. 20 22

County of Boone

In the County Commission of said county, on the

27th

day of

October

20

22

the following, among other proceedings, were had, viz:

Now on this day, the County Commission of the County of Boone does hereby approve the attached School Resource Officer Agreement between Boone County and the following:

- Harrisburg R-VIII Schools

Terms of the Agreement are stipulated in the attached Agreement and the Presiding Commissioner is hereby authorized to sign the same.

Done this 27th day of October 2022.

ATTEST:



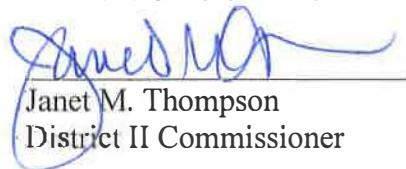
Brianna L. Lennon
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Justin Aldred
District I Commissioner



Janet M. Thompson
District II Commissioner

SCHOOL RESOURCE OFFICER AGREEMENT

THIS AGREEMENT is entered into by and between **Harrisburg R-VIII Schools**, a political subdivision of the State of Missouri, herein "School District," and **Boone County, Missouri**, a political subdivision of the State of Missouri, herein "Boone County."

WHEREAS, the Boone County Sheriff's Office (BCSO) has a long-standing commitment to the development of trusting relationships between law enforcement and the faculty, staff, and students of schools within Boone County; and

WHEREAS, BCSO wishes to continue to provide services to School District in the form of School Resource Officers in their respective schools; and

WHEREAS, School District has agreed to provide a reimbursement to County for the costs of said services at the rate of Twenty-Five Percent (25%) of the base salary of a deputy sheriff; and

WHEREAS, for the academic year 2022-2023, the contemplated Twenty-Five Percent (25%) reimbursement would total Seventeen Thousand One Hundred Thirty-Seven Dollars and Forty-Nine Cents (\$17,137.49), payable on or before May 1, 2023; and

WHEREAS, the parties have the authority to enter into this cooperative agreement pursuant to RSMo Sec. 70.220 for the purposes herein stated;

NOW, THEREFORE, in consideration of the mutual undertakings and agreements in this document, Boone County, by and through the Boone County Sheriff, and the School District, agree as follows:

1. **SCHOOL RESOURCE OFFICERS.** County will provide a Missouri POST commissioned/licensed law enforcement officer at the School District's High School during the regular school year to provide law enforcement services. School Resource Officers (SROs) shall remain under the operational control and supervision of the Boone County Sheriff and shall be provided County-issued law enforcement equipment for the performance of duties pursuant to this Agreement. School District shall provide access to School District's facilities as mutually-agreed by the parties which shall include a dedicated work space for the SRO.
2. **PAYMENT.** School District shall pay County Seventeen Thousand One Hundred Thirty-Seven Dollars and Forty-Nine Cents (\$17,137.49) on or before May 1, 2023, as a partial

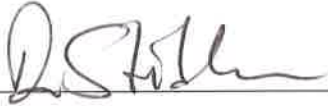
reimbursement for the SRO services contemplated herein for the term of this Agreement. The parties shall renegotiate the payment due for any renewal of this Agreement based on the figure determined by a calculation of 25% of a deputy sheriff's base salary for that renewal term.

3. **TERM.** This Agreement shall remain in full force and effect through the regular 2022-2023 academic year, or until June 30, 2023, whichever first occurs.
4. **ASSIGNMENT.** Neither party may assign or transfer any of its rights or obligations under this Agreement to any other person or entity without the prior, written consent of the other party.
5. **SOLE BENEFIT OF PARTIES.** This Agreement is for the sole benefit of School District and Boone County. Nothing in this Agreement is intended to confer any rights or remedies on any third party.
6. **RECORDS.** Each party shall be the custodian of any records generated by that party pursuant to this agreement. Said records shall be retained by the respective agency in accordance with applicable law.
7. **LIABILITY.** Each party shall be responsible for all claims, damages, and losses sustained or alleged to be caused by its own personnel in accordance with applicable law.
8. **RELATIONSHIP OF PARTIES.** Nothing herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, between the parties hereto.
9. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Missouri, and any action relating to the same shall be brought in the Circuit Court of Boone County, Missouri.
10. **BINDING ON SUCCESSORS.** The covenants, agreements, and obligations herein contained shall extend to, bind, and inure to the benefit of the parties hereto and their respective successors and approved assigns.
11. **COMPLETE AGREEMENT.** All negotiations, considerations, representations, and understandings between the parties are incorporated herein, shall supersede any prior agreements, and may be modified or altered only in a writing signed by the parties hereto.

12. **AUTHORITY OF SIGNATORIES.** Each of the persons signing this Agreement on behalf of either party represent that he/she has been duly authorized and empowered, by order, ordinance or otherwise, to execute this Agreement and that all necessary action on behalf of said party to effectuate said authorization has been taken and done.

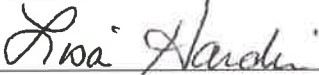
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly-authorized officers on day and year indicated by their signature below.

**HARRISBURG R-VIII
SCHOOL DISTRICT**

By: 

Dated: 10-10-22

ATTEST:



BOONE COUNTY, MISSOURI

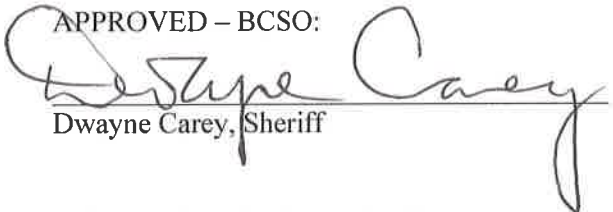
By: 
Daniel K. Atwill, Presiding Commissioner

Dated: 10/27/2022

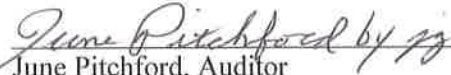
ATTEST:


Brianna L. Lennon, County Clerk

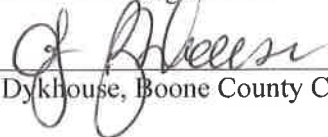
APPROVED – BCSO:


Dwayne Carey, Sheriff

Acknowledged for Budgeting Purposes:

 10/20/2022
June Pitchford, Auditor
Revenue 1251-3525

Approved as to Legal Form:


C.J. Dykhouse, Boone County Counselor

CERTIFIED COPY OF ORDER

STATE OF MISSOURI }
County of Boone } ea.

October Session of the October Adjourned

Term. 20 22

In the County Commission of said county, on the 27th day of October 20 22

the following, among other proceedings, were had, viz:


Now on this day, the County Commission of the County of Boone does hereby approve the attached School Resource Officer Agreement between Boone County and the following:

- Sturgeon R-V Schools

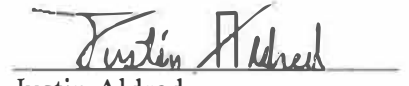
Terms of the Agreement are stipulated in the attached Agreement and the Presiding Commissioner is hereby authorized to sign the same.

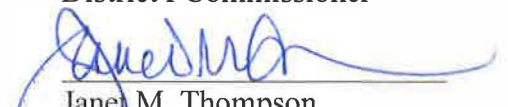
Done this 27th day of October 2022.

ATTEST:


Brianna L. Lennon
Clerk of the County Commission


Daniel K. Atwill
Presiding Commissioner


Justin Aldred
District I Commissioner


Janet M. Thompson
District II Commissioner

SCHOOL RESOURCE OFFICER AGREEMENT

THIS AGREEMENT is entered into by and between **Sturgeon R-V Schools**, a political subdivision of the State of Missouri, herein "School District," and **Boone County, Missouri**, a political subdivision of the State of Missouri, herein "Boone County."

WHEREAS, the Boone County Sheriff's Office (BCSO) has a long-standing commitment to the development of trusting relationships between law enforcement and the faculty, staff, and students of schools within Boone County; and

WHEREAS, BCSO wishes to continue to provide services to School District in the form of School Resource Officers in their respective schools; and

WHEREAS, School District has agreed to provide a reimbursement to County for the costs of said services at the rate of Twenty-Five Percent (25%) of the base salary of a deputy sheriff; and

WHEREAS, for the academic year 2022-2023, the contemplated Twenty-Five Percent (25%) reimbursement would total Seventeen Thousand One Hundred Thirty-Seven Dollars and Forty-Nine Cents (\$17,137.49), payable on or before May 1, 2023; and

WHEREAS, the parties have the authority to enter into this cooperative agreement pursuant to RSMo Sec. 70.220 for the purposes herein stated;

NOW, THEREFORE, in consideration of the mutual undertakings and agreements in this document, Boone County, by and through the Boone County Sheriff, and the School District, agree as follows:

1. **SCHOOL RESOURCE OFFICERS.** County will provide a Missouri POST commissioned/licensed law enforcement officer at the School District's High School during the regular school year to provide law enforcement services. School Resource Officers (SROs) shall remain under the operational control and supervision of the Boone County Sheriff and shall be provided County-issued law enforcement equipment for the performance of duties pursuant to this Agreement. School District shall provide access to School District's facilities as mutually-agreed by the parties which shall include a dedicated work space for the SRO.
2. **PAYMENT.** School District shall pay County Seventeen Thousand One Hundred Thirty-Seven Dollars and Forty-Nine Cents (\$17,137.49) on or before May 1, 2023, as a partial

reimbursement for the SRO services contemplated herein for the term of this Agreement. The parties shall renegotiate the payment due for any renewal of this Agreement based on the figure determined by a calculation of 25% of a deputy sheriff's base salary for that renewal term.

3. **TERM.** This Agreement shall remain in full force and effect through the regular 2022-2023 academic year, or until June 30, 2023, whichever first occurs.
4. **ASSIGNMENT.** Neither party may assign or transfer any of its rights or obligations under this Agreement to any other person or entity without the prior, written consent of the other party.
5. **SOLE BENEFIT OF PARTIES.** This Agreement is for the sole benefit of School District and Boone County. Nothing in this Agreement is intended to confer any rights or remedies on any third party.
6. **RECORDS.** Each party shall be the custodian of any records generated by that party pursuant to this agreement. Said records shall be retained by the respective agency in accordance with applicable law.
7. **LIABILITY.** Each party shall be responsible for all claims, damages, and losses sustained or alleged to be caused by its own personnel in accordance with applicable law.
8. **RELATIONSHIP OF PARTIES.** Nothing herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, between the parties hereto.
9. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Missouri, and any action relating to the same shall be brought in the Circuit Court of Boone County, Missouri.
10. **BINDING ON SUCCESSORS.** The covenants, agreements, and obligations herein contained shall extend to, bind, and inure to the benefit of the parties hereto and their respective successors and approved assigns.
11. **COMPLETE AGREEMENT.** All negotiations, considerations, representations, and understandings between the parties are incorporated herein, shall supersede any prior agreements, and may be modified or altered only in a writing signed by the parties hereto.

12. **AUTHORITY OF SIGNATORIES.** Each of the persons signing this Agreement on behalf of either party represent that he/she has been duly authorized and empowered, by order, ordinance or otherwise, to execute this Agreement and that all necessary action on behalf of said party to effectuate said authorization has been taken and done.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly-authorized officers on day and year indicated by their signature below.

**STURGEON R-V
SCHOOL DISTRICT**

By:

Misty Bass

Dated: 9/21/22

ATTEST:

Peggy Leerkhoff

BOONE COUNTY, MISSOURI

By:

Daniel K. Atwill
Daniel K. Atwill, Presiding Commissioner

Dated: 10/27/2022

ATTEST:

Brianna L. Lennon
Brianna L. Lennon, County Clerk

APPROVED – BCSO:

Dwayne Carey
Dwayne Carey, Sheriff

Acknowledged for Budgeting Purposes:

June Pitchford by 10/20/2022
June Pitchford, Auditor
Revenue 1251-3525

Approved as to Legal Form:

C.J. Dykhouse
C.J. Dykhouse, Boone County Counselor

CERTIFIED COPY OF ORDER

STATE OF MISSOURI

} ea.

October Session of the October Adjourned

Term. 20 22

County of Boone

In the County Commission of said county, on the

27th

day of

October

20 22

the following, among other proceedings, were had, viz:

Now on this day, the County Commission of the County of Boone does hereby approve the attached Cooperative Agreement between Boone County and the State of Missouri for Child Support/IV-D County reimbursement.

Terms of the Agreement are stipulated in the attached Agreement. It is further ordered the Presiding Commissioner is hereby authorized to sign said Agreement.

Done this 27th day of October 2022.

ATTEST:



Brianna L. Lennon
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Justin Aldred
District I Commissioner



Janet M. Thompson
District II Commissioner

Contract For Services

Contract #: ER10223C009



**Missouri Department of Social Services
Division of Finance & Administrative Services
Purchasing Unit
P.O. Box 1643
Jefferson City, MO 65102**

Title: IV-D County Reimbursement Cooperative Agreement

Contract Period:

January 1, 2023 through December 31, 2025

The Department of Social Services desires to contract for the services described herein. All terms, conditions, and prices contained herein shall govern the performance of this contract.

Contractor/County Information:

County Name: **County of Boone**
Mailing Address: **605 East Walnut, Ste. B**
City, State Zip: **Columbia, MO 65201-4485**

County Level Designation: **Level C**

Multi-County Project Name (if applicable):

Contractor Contact Person Name and Title: Patti Harris - Legal Assistant

Contact Person E-Mail Address: pharris@boonecountymo.org

The undersigned hereby agrees to provide the services and/or items, at the prices stated, pursuant to the requirements of this document and further agrees that when an authorized official of the Missouri Department of Social Services countersigns this document, a binding contract shall exist between the contractor and the Department of Social Services.

The authorized signer of this document certifies that the contractor (named below) and each of its principals (as defined by 2 CFR 180) are not suspended or debarred by the federal government.

In witness thereof, the parties below hereby execute this agreement.

SEE ATTACHED
Authorized Signature for the Circuit Clerk

Christy Blakemore
Name & Title _____ Date _____

SEE ATTACHED
Authorized Signature for the Prosecuting Attorney


Reep Johnson
Name & Title _____ Date _____

SEE ATTACHED
Authorized Signature for the County Commissioner/Executive

Daniel Atwill, Presiding Comm.
Name & Title _____ Date _____

Authorized Signature for the Department of Social Services _____ Date _____

FOR THE COUNTY OF BOONE:


DANIEL K. ATWILL, Presiding Commissioner


ATTEST:


BRIANNA L. LENNON, County Clerk


Approved:


ROGER JOHNSON, Boone County Prosecutor


Approved:


CHRISTY BLAKEMORE, Circuit Clerk

Approved as to Legal Form:


C.J. DYKHOUSE, County Counselor

Acknowledged:


JUNE E. PITCHFORD, County Auditor
No Encumbrance Required

1 Introduction and Background Information

- 1.1 The Missouri Department of Social Services, Family Support Division (Department) hereby enters into this cooperative agreement with the County of Boone (hereinafter "County") by their respective office holders, including the Prosecuting Attorney, Circuit Clerk and Presiding Commissioner for the reimbursement of IV-D child support services.
- a. For the purpose of this cooperative agreement, the term "contractor" shall refer to the "county"; and
 - b. For the purpose of this cooperative agreement, the term "contract" shall mean the same as "cooperative agreement",
 - c. For the purpose of this cooperative agreement, the Prosecuting Attorney's Office in a single county, or the Prosecuting Attorney's Office of the host county of a Multi-County project, provides the IV-D casework services. The Circuit Clerk's office in the county exchanges information in the Missouri Automated Child Support System (MACSS) and provides requested court documents to the Department, including, but not limited to certified copies of orders for this cooperative agreement.
 - d. For the purpose of this cooperative agreement, the term "and/or" shall mean "or, or both".
- 1.2 The Department issues contracts for these services under the authority of an Expenditure Registration System (ER102) issued to the Department by the State of Missouri Office of Administration.
- 1.3 The mission of the Department of Social Services, Family Support Division is Empower Missourians to live safe, healthy, and productive lives.
- 1.4 The Department, under Title IV-D of the Social Security Act, and under section 454.400, RSMo, has been delegated the responsibility for the development and administration of a statewide program to establish and enforce support obligations for children. Those children include those receiving Temporary Assistance for Needy Families (TANF) benefits under Part IV-A, Title XIX Medical assistance, benefits or services for foster care maintenance under Part IV-E, and for any other child, if an individual applies for such services with respect to such child.
- 1.5 The contract period shall be from January 1, 2023 through December 31, 2025.

2 General Performance Requirements

- 2.1 The contractor shall provide services in accordance with the provisions and requirements stated herein. Services purchased by the Department shall consist only of those services described herein.
- 2.2 **Coordination**
- 2.2.1 The contractor shall coordinate all contract activities with designated representatives of the Department.
 - 2.2.2 The contractor shall attend and otherwise participate in orientation, planning and other meetings with the Department, as required.
 - 2.2.3 In the course of providing the services required herein, the contractor shall collaborate with other agencies, resources and individuals as requested by the Department.
- 2.3 **Correspondence**
- 2.3.1 Within five (5) business days of contract award, the contractor shall provide the Department with the name, address, electronic mail (e-mail) address, and telephone number of the contractor's representative servicing the contract.
 - 2.3.2 Within five (5) business days of a change in the contractor's contact person, the contractor shall provide the Department with the name, address, electronic mail (e-mail) address, and telephone number of the contractor's contact person servicing the contract.
 - a. The contractor understands that the Department will use e-mail to transmit contract documents and other correspondence from the Department to the contractor.
 - b. The contractor must obtain a state e-mail address.

- c. Any and all e-mails containing information regarding IV-D specific cases must be sent and received utilizing the state e-mail address to the Department and any other person, attorney, agency, business, or entity. The contractor must encrypt any e-mail sent to an individual that does not have a state e-mail pursuant to the Department's Missouri Child Support Procedural Manual in the Confidentiality Chapter: <https://dssintranet.mo.gov/dss-fsd-child-support/child-support-manual/section-iii-general-case-activities/chapter-1-confidentiality/>
- d. It shall be the responsibility of the contractor to ensure the timely review and response to e-mails. The contractor's contact person must utilize their state e-mail at least weekly. This will ensure continued access to the state e-mail system.
- e. It shall be the responsibility of the contractor to notify the PA Liaison if the contact person in the prosecuting attorney or the sole child support clerk in the circuit clerk office is out for more than one week.

2.3.3 The Department will use e-mail to transmit contract documents and other correspondence to the contractor. The Department shall encrypt emails to the contractor that contain information confidential by law to protect such from unauthorized disclosure. The contractor shall ensure the timely review and response to e-mailed documents and information.

2.3.4 The contractor shall encrypt any electronic correspondence containing information confidential by law.

2.4 **Contractor's Personnel**

2.4.1 The contractor shall only employ personnel authorized to work in the United States. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, 110 Stat. 3009, and INA Section 274A (8 U.S.C. §1324a).

- a. If the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state. The state may also withhold up to twenty-five percent (25%) of the total amount due to the contractor.
- b. The contractor shall fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.

2.4.2 If the contractor meets the definition of a business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, the contractor shall maintain enrollment and participation in the E-Verify federal work authorization program, with respect to the employees hired after enrollment in the program, who are proposed to work in connection with the contracted services included herein. If the contractor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then the contractor shall, prior to the performance of any services as a business entity under the contract:

- a. Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; and
- b. Provide to the Department the documentation required in the exhibit titled, **Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization** affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; and
- c. Submit to the Department a completed, notarized Affidavit of Work Authorization provided in the exhibit titled, **Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization**.

- 2.5 **Subcontractors:** Pursuant to subsection 1 of section 285.530, RSMo, no contractor or subcontractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. In accordance with sections 285.525 to 285.550, RSMo, a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo, if the contract binding the contractor and subcontractor affirmatively states that:
- a. the direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo, and
 - b. shall not henceforth be in such violation, and
 - c. the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.
- 2.6 **Affidavit of Work Authorization and Documentation:**
- 2.6.1 Pursuant to section 285.530, RSMo, if the contractor meets the section 285.525, RSMo definition of a "business entity" (<https://revisor.mo.gov/main/OneSection.aspx?section=285.525&bid=14999&hl=>), the contractor must affirm the contractor's enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services requested herein. The contractor shall complete applicable portions of the exhibit titled Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization. The applicable portions of exhibit and any required documentation must be submitted prior to an award of a contract.
- 2.7 **Debarment Certification:**
- 2.7.1 The contractor certifies by signing the signature page of this original document and any amendment signature page(s) that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs.
- 2.7.2 The contractor must complete and submit the exhibit titled Certification Regarding Debarment prior to award of a contract.
- 2.8 **Contractor Registration with Secretary of State:**
- 2.8.1 The contractor must complete and submit the exhibit titled Registration of Business Name with the Missouri Secretary of State prior to award of contract.
- 2.9 **Anti-Discrimination Against Israel Act:**
- 2.9.1 If the contractor meets the definition of a company as defined in section 34.600, RSMo, and has ten or more employees, the contractor shall not engage in a boycott of goods or services from the State of Israel; from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or from persons or entities doing business in the State of Israel as defined in section 34.600, RSMo.
- 2.9.2 If the contractor meets the definition of a company as defined in section 34.600, RSMo, and the company's employees increases to ten or more during the life of the contract, then the contractor shall submit to the Department a completed Box C of the exhibit titled, Anti-Discrimination Against Israel Act Certification, and shall comply with the requirements of Box C.
- 2.9.3 If during the life of the contract, the contractor's business status changes to become a company as defined in section 34.600, RSMo, and the company has ten or more employees, then the contractor shall comply with, complete, and submit to the Department a completed Box C of the exhibit titled, Anti-Discrimination Against Israel Act Certification.

2.9.4 Regardless of company status or number of employees, the contractor must complete and submit the applicable portion of the exhibit titled Anti-Discrimination Against Israel Act Certification. Pursuant to section 34.600, RSMo, if the vendor meets the section 34.600, RSMo, definition of a "company" (<https://revisor.mo.gov/main/OneSection.aspx?section=34.600>) and the vendor has ten or more employees, the vendor must certify in writing that the vendor is not currently engaged in a boycott of goods or services from the State of Israel as defined in section 34.600, RSMo, and shall not engage in a boycott of goods or services from the State of Israel, if awarded a contract, for the duration of the contract. The contractor must submit the applicable portion of the exhibit prior to award of a contract.

2.10 **HIPAA:**

2.10.1 The Department is subject to and must comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein.

2.10.2 The contractor shall be a "Business Associate" of the Department, as defined in the Code of Federal Regulations (CFR) at 45 CFR 160.103, and shall comply with the provisions of the Business Associate Agreement attached hereto as Attachment A.

2.11 **Subrecipient of Federal Funds:**

2.11.1 For the purposes of this contract, the contractor has been determined to be a subrecipient of federal funds.

2.11.2 The contractor shall comply with the Federal Funds Subrecipient Requirements, attached hereto as Attachment B.

2.11.3 As used in Attachment B, the term "subrecipient" shall refer to the contractor and the term "state agency" shall refer to the Department.

3 **Specific Performance Requirements**

3.1 **General Program Requirements**

3.1.1 Pursuant to 13 CSR 40-108.040, and for the purpose of this contract, the following definitions shall apply:

- a. **Level A County** – A county that has sole responsibility for the entire operation of the IV-D program in that county and performs specific legal functions on cases referred to them by the Department.
- b. **Level B County** – A county in which the prosecuting attorney has sole responsibility for a specific portion of the IV-D program in that county and performs specific legal functions on cases referred to them by the Department.
- c. **Level C County** – A county in which the Department has sole responsibility for the entire operation of the IV-D program, in that the contractor performs specific legal functions on cases referred to them by the Department.
- d. **Multi-County Project** – A designated group of Level C counties that have individually entered into a contract with the Department to perform judicial IV-D duties, with one county acting as the Host Level C county. The Host County is responsible for referrals assigned to all counties within the project.
- e. **Referral or Referred Cases** – Any child support case under the state IV-D program sent to the Prosecuting Attorney by the Department for a requested action, including all cases requiring legal referral for "requested action" pursuant to the Department's Missouri Child Support Procedural Manual.

<https://dssintranet.mo.gov/dss-fsd-child-support/child-support-manual/>

3.1.2 Pursuant to 13 CSR 40-108.040, the Department has identified the contractor's County Level designation(s) on the signature page of the contract. The contractor shall provide services for each IV-D case in accordance with the requirements stated herein, including any additional requirements specified in Attachment C (IV-D County Additional Requirements), as applicable.

- 3.1.3 The Department is vested with the sole ownership, control and authority of the IV-D program in Missouri. The policies and procedures adopted by the Department are controlling for all administrative IV-D activities and purposes to be performed by the contractor and the contractor shall abide by these policies and procedures to assure compliance with state and federal laws and regulations. Nothing in 3.1.3 supersedes the prosecuting attorney's requirements to follow all applicable state and federal laws and regulations and the Missouri Rules of Professional Conduct.
- a. The Department policies and procedures can be located at:
<https://dssintranet.mo.gov/dss-fsd-child-support/child-support-manual/>
- 3.1.4 No provisions of this contract shall be construed to alter the statutory, constitutional or common law powers and duties of the Prosecuting Attorney.
- 3.1.5 The contractor shall maintain records as required by the Department and federal regulations, including 45 CFR 302.15, 45 CFR part 74 and 45 CFR part 75.361.
- 3.1.6 The contractor shall not subcontract with any other business, organization, or governmental body to perform any or all portions of the requirements stated herein without providing a copy of the proposed contract and obtaining the prior written approval of the Department.
- 3.1.7 The contractor shall forward all outside child support inquiries (e.g. media, legislator, vendor, and other governmental agencies), with the exception of inquiries made by persons receiving support or persons paying support on their own cases, made to the contractor regarding the statewide child support program, its policies, procedures or performance to the Department for response.
- a. In the event the Department must formally respond to an inquiry, at the request of the Department, the contractor must within five (5) business days draft a response or provide all necessary case information in order for the Department to respond.
- b. When requested by the Department, the contractor shall provide a written response to outside inquiries, and must provide the Department a copy within five (5) business days of the request.
- 3.1.8 The contractor may respond appropriately to all media and/or legislative inquiries made to the contractor regarding the contractor's program and IV-D cases in which judicial actions are to be pursued by the contractor, but shall not disclose individual, specific, confidential, or HIPAA related information on any IV-D related case or material. The contractor shall provide notice of a contractor program inquiry and its response immediately to the Department. Responses shall not include information about the contract, the statewide child support program, its policies, procedures or performance.
- 3.1.9 The contractor shall notify the Department by e-mail of the following personnel changes: within three (3) business days of an employee's start date, the names and necessary forms for access to state systems of all new personnel; and within three (3) business days of personnel departures.
- 3.1.10 The contractor's employees shall utilize the Department's Microsoft Outlook Webmail system for electronic mail (e-mail) for contract documents and other correspondence related to the referrals of cases and related case activity pursuant to this contract. Access to this Microsoft Outlook Webmail system for electronic mail should occur weekly unless out of the office.
- 3.2 Prosecuting Attorney's (PA) Office Responsibilities
- 3.2.1 The PA must take appropriate legal action on any and all cases referred to them from the Department as authorized pursuant to Chapters 210, 452, 454, and Section 568.040 RSMo and within the time frames specified in 13 CSR 40-108.040. Case action shall include, but is not limited to:
- a. Filing judicial paternity actions including filing a co-respondent petition when the custodian fails to cooperate in paternity or establishment actions if the custodian is receiving Temporary Assistance for Needy Families or Medicaid;
- b. Filing criminal and civil actions in all cases where the county has jurisdiction including cases where the child or parent receiving support does not reside in a county the contractor serves. Legal action shall include pursuing current support without the cooperation of the person receiving support (PRS) if the PRS is receiving TANF and pursuing state arrears only cases without the cooperation of the PRS.
1. However, the following exceptions apply for enforcement cases:

- i. If the PA takes an action(s) that results in a support payment posting to the case within the first counted sixty (60) days, then the requirement to file a legal action is satisfied by this substitution.
 - ii. If the PA refers the person paying support to a state-approved diversion program and that person enrolls and participates within the first counted sixty (60) days, then the requirement to file a legal action is satisfied by this substitution.
 2. In both of the above exceptions, the PA should not return the referral, but monitor the person paying support's compliance. If the person paying support ceases to pay under an enforceable order, or once participation in a state-approved diversion program ends and the case is not in paying status, then the PA shall pursue the referral, if appropriate, by filing a legal action.
 3. Both of these exceptions shall be recorded with FSD in the Missouri Automated Child Support System (MACSS) and via the PA judicial statistics website, and
 - c. Filing judicial modifications of support orders upon request of the Department pursuant to 454.435.
 - d. Filing motions for judicial review and approval of administrative modification of judicial orders upon request of the Department.
- 3.2.2 The PA shall meet stricter time requirements than those specified herein upon notification by the Department of any change(s) in federal law or regulation requiring the stricter time requirements.
- 3.2.3 The PA shall be responsible for all direct communication regarding the actions taken pursuant to a referral with the person receiving support, the person paying support, and any attorney representing a party.
- 3.2.4 The PA shall use the Department's Missouri Automated Child Support System (MACSS) to:
- a. accept referrals from the Department;
 - b. record all IV-D activities;
 - c. comply with the requirements of 13 CSR 40-108.040;
 - d. document the reason for return or rejection of any referral for any reason upon closing and returning the referral; and
 - e. enter order information after registering foreign orders for enforcement or modification.
- 3.2.5 The PA shall use the Department's OnEase Document Imaging System (OnBase) to:
- a. Obtain referral documents, including copies of certified copies. If original certified copies of Missouri orders are needed, copies must be requested from the circuit clerk.
 - b. Access documents necessary when taking actions on cases assigned to and/or referred to the counties by the Department,
 - c. Access documents necessary for discovery as appropriate, ensuring any confidential information is not disclosed on family violence situations, and
 - d. PA shall be responsible for providing discovery on cases referred to their office and to ensure all personal identifying information and confidential information is properly redacted.
 - e. If the PA does not currently utilize OnBase, the PA shall take all steps to install OnBase upon execution of this contract.
 - f. If the Department determines the county is unable to utilize OnBase, the county shall receive referrals via e-mail to the county staff's state e-mail address.
- 3.2.6 The PA shall utilize the Electronic Document Exchange (EDE) application on the federal Child Support Portal to send outgoing Uniform Interstate Family Support Act (UIFSA) referrals to other state support agencies. If other the state does not utilize EDE, the PA shall mail the referral.
- 3.2.7 The PA's personnel shall attend all training courses deemed appropriate by the Department.
- 3.2.8 The PA shall retain and monitor referrals accepted for enforcement for a time sufficient to show consecutive months of support payments were made and those payments indicate that continuing compliance is more likely than not.
- a. At a minimum, the PA shall monitor payments:
 1. Not less than 3 months after initial judicial action completed if the person paying support has complied with the Judgment of Contempt or Order of Probation or Parole.
 2. Not less than 6 months for all other cases.

- b. If payments have not been made in consecutive months in compliance with a purge or probation order or a voluntary agreement with the PA, then the PA shall take the next legal action available to attempt to collect payments on the case.
- c. Referrals may be closed in cases where it is known that the person paying support cannot make payments as ordered due to incarceration, disability, or in cases that are dismissed by the court.
- d. Once the person paying support has successfully completed probation and has paid an additional 3 months support, the referral shall be closed unless the Department gives written approval for the case to remain on PA referral.

3.2.9 The PA shall return referrals to the Department when:

- a. there is lack of jurisdiction,
- b. a conflict of interest exists,
- c. no reasonable legal remedy is available,
- d. the Department fails to provide necessary information requested by the contractor within fourteen (14) calendar days
- e. at the request of the Department, or
- f. in other extenuating circumstances upon mutual agreement between the Department and the contractor.

The PA must return referrals within fifteen (15) calendar days of request of the Department.

3.2.10 The PA shall have the same authority as referenced in the child support policy procedural manual as Department personnel to forgive or reduce unreimbursed assistance paid by the Department prior to the entry of an order for child support. The contractor shall not have the authority to forgive or reduce post-judgment principal or arrearages or to agree to forgive or reduce post-judgment principal or arrearages assigned to the Department, or judgments or arrearages due to the family. The PA may only agree or consent to forgive or reduce post-judgment principal or arrearages after obtaining settlement authority and settlement approval from the Director or the Deputy Director of the Family Support Division.

3.2.11 The PA may petition for a judgment against the person paying support in all actions that include declaration of paternity for the cost of genetic testing paid directly or indirectly by the Department. Judgments for genetic testing must reflect that payment is made to:

FSD Genetic Testing Unit
P.O. Box 2320
Jefferson City MO 65102

3.2.12 Pursuant to the Supreme Court Rule 88.01, the PA shall apply the child support guidelines in all cases referred by the Department to establish a support obligation. The PA shall be responsible for using the available information, including information in MACSS to calculate child support obligations and present the necessary Form 14 calculations to the court; the Department will not send Form 14 calculations with referrals. The PA shall ensure that any court approved Form 14 is filed in the court case. Any deviation from the required MO Form 14, Child Support Calculation Worksheet, must be noted in the child support order; in MACSS; and the information must be forwarded to the Department.

a. The MO Form 14 can be found at: <https://www.courts.mo.gov/file.jsp?id=114613>

3.2.13 The PA shall review its "Referral Checklist" at least once per year by December 31st on the Department's intranet site (<http://dssweb.cds.state.mo.us/fsd/training/CSE/PA/LegalReferralReq/index.htm>). All changes that need to be made shall be coordinated through the Department's Prosecuting Attorney MACSS Liaison. The PA shall refer to section 3.2, specifically paragraphs 3.2.5 and 3.2.11, and shall not contradict the terms of this Contract for Services when updating its Referral Checklist.

3.2.14 The PA shall not represent any interested party other than the Department in any matter referred to the contractor.

3.2.15 Pursuant to section 568.040 RSMo, the contractor shall report to the Department on a quarterly basis (April 15th, July 15th, October 15th, and January 15th) the number of charges filed and convictions obtained. The PA must submit the report in the format and manner specified by the Department.

- a. For purposes of this cooperative agreement, the term "conviction" is defined as dispositions of an original felony/misdemeanor criminal charge. Dispositions include that the person paying support has:
 1. plead to a suspended imposition of sentence; or
 2. plead to a suspended execution of sentence; or
 3. plead guilty and was sentenced; or
 4. was convicted after trial.
- b. Convictions defined and recorded here do not include subsequent orders on the same criminal case occurring after a probation violation hearing or motion to revoke probation.

3.2.16 The PA shall submit Prosecuting Attorney Judicial Statistics on the Department's intranet site <https://apps.dss.mo.gov/macCriminalNonSupport/> such statistics include those required under section 568.040 RSMo and any other statistical data requested by the Department.

3.2.17 The PA shall inform the Department of any adverse decision made by the Court on a referral handled by that PA where it is the PA's legal opinion that the adverse decision is contrary to established law affecting the child support program. The harmed party may be the State, or a party to the underlying case, or both. This notification should be a timely e-mail to CS.Legal@dss.mo.gov and the Department's Prosecuting Attorney Liaison and will include a written recommendation regarding whether an appeal is appropriate based on the law and the facts and the reasoning behind the recommendation. The Department will review the recommendation and make a final determination regarding whether the case should be appealed.

3.2.18 If a subpoena is served on the PA, or their personnel, on a child support case assigned or referred to the PA's office, a copy of the subpoena is to be sent by e-mail to CS.Legal@dss.mo.gov and the Department's Prosecuting Attorney Liaison. The subject line of the email should include the following: subpoena, person paying support's name and IV-D case number.

- a. If FSD is served a subpoena for FSD records on a civil contempt or criminal non-support case assigned or referred to the PA's office by opposing counsel as a means of discovery, the PA at the request of FSD shall file a Motion to Quash the subpoena, file a Motion for a Protective Order, and produce responsive documents from MACSS and OnBase with proper redactions made.
- b. If the PA is served with any action naming the Department of Social Services, the Family Support Division, or any Department or Division director or employee as a defendant or respondent the PA shall forward a copy to CS.Legal@dss.mo.gov and the Department's Prosecuting Attorney Liaison. Further, the PA shall file an objection with the court and plaintiff or plaintiff's counsel stating the PA does not represent the Department or Division on the matter and does not have any authority to accept service of process.

3.3 Circuit Clerk (Clerk) Responsibilities

3.3.1 The Clerk shall utilize MACSS:

- a. to the extent required by Chapters 452 and 454 RSMo, on all child support and/or spousal support cases; and
- b. pursuant to section 454.412 RSMo, to enter such information as is required for the state case registry.

3.3.2 The Clerk shall attend all training courses deemed appropriate by the Department. MACSS training courses are provided by the Office of State Courts Administrator (OSCA).

3.3.3 The Clerk shall provide the Missouri Department of Health and Senior Services, Bureau of Vital Records, with certified copies of all orders establishing paternity in accordance with section 454.485 RSMo within ten (10) business days of the filing date of the order.

3.3.4 The Clerk shall comply with 45 CFR 304.50 for the treatment of program income in such a manner that the Department meets its state plan requirements for the federal Office of Child Support Enforcement (OCSE).

3.3.5 The Clerk shall not charge any fees to the Department, or any attorney bringing action pursuant to a referral by the Department, for requests of copies, filing of any action or document necessary to establish paternity, or to establish, modify or enforce a child support obligation. (§454.445 RSMo) The Clerk must complete all requests within ten (10) calendar days.

- 3.3.6 The Clerk shall provide certified copies of documents requested by the Department.
- 3.3.7 It shall be the responsibility of the Clerk to notify the PA Liaison if the sole child support clerk in the circuit clerk office is out for more than one week.
- 3.3.8 The Clerk shall notify the Department by email within three (3) business days for circuit clerk employees working with MACSS for the following personnel changes:
 - a. the employee's start date;
 - b. the names and necessary system access forms for all new personnel; and
 - c. personnel departures.

3.4 Department Responsibilities

- 3.4.1 The Department will refer appropriate IV-D cases to the contractor for establishment, enforcement, modification or outgoing cases pursuant to the Uniform Interstate Family Support Act (UIFSA).
- 3.4.2 The Department will review MACSS for case information before making a status inquiry to the contractor.
- 3.4.3 Pursuant to section 454.440 RSMo, the Department will provide federal and state parent locator services to the contractor.
- 3.4.4 The Department will use its best effort to provide proper notice to the contractor of any proposed rule or regulation impacting the child support program, pursuant to section 454.400 RSMo.
- 3.4.5 The Department, with the assistance of the state's Information Technology Services Division (ITSD), will provide the following services:
 - a. Installation and problem resolution assistance for personal communication software/TN3270 Plus;
 - b. Problem resolution assistance for MACSS-related printing problems;
 - c. Problem resolution assistance for Outlook e-mail as it relates to communication with the Department on child support activities;
 - d. Microsoft Office application assistance related to child support business; and
 - e. Problem resolution assistance for Intranet and Internet application assistance related to child support business.
- 3.4.6 The Department, with the assistance of ITSD, will provide user ID's and passwords for the contractor's staff, within five (5) business days of receipt of the request. The Contractor's requests for user IDs and passwords shall be submitted through the Department's online security access unit or the PA Program Assistant unless the contractor has a security officer who enters Automated Security Access Processing (ASAP).
- 3.4.7 The Department will notify the contractor, or their designee of the following information:
 - a. Key personnel changes at the Department;
 - b. Statewide statistical data;
 - c. Missouri's annual federal self-assessment audit compliance reports;
 - d. MACSS changes;
 - e. Policy(s) issued; and
 - f. All program-related information distributed to Department supervisors or managers.

3.5 Fiscal Requirements

- 3.5.1 The contractor shall appropriate a sufficient amount of funds in accordance with the performance standards required pursuant to 13 CSR 40-108.040.
- 3.5.2 The contractor shall ensure that the only federal funds certified for use under this contract are federal revenue sharing funds available for this purpose.

- 3.5.3 The contractor shall submit an annual budget request on or before July 1st of each year to the Department for approval. Annual electronic budget forms will be provided to the contractor no later than May 1st each year. The contractor shall utilize the annual budget form to submit the PA's annual budget request. The contractor's budget request should reflect the contractor's office and staff caseloads, the contractor's acceptance and rejection of child support cases, the average cost per case handled by contractor, and the performance percentage for collections per dollar spent by contractor.
- a. If the Department proposes any different review, method, or calculation formula to determine the next annual budget for the contractor, then the contractor shall have fifteen (15) calendar days to provide comments on the proposed changes in the calculations. The MOPS and/or MAPA representative shall have an opportunity to discuss the changes in calculations with the Department before final application of the review, method, or calculation formula is made to the budgets of the counties.
 - c. The contractor shall refer to Section 4 of Attachment B to determine the amount of indirect costs they may be reimbursed.
 - d. The contractor must submit the annual budget request via e-mail to the Department's Prosecuting Attorney Liaison.
- 3.5.4 Pursuant to section 454.405 RSMo, the contractor shall furnish office space and other administrative requirements. The contractor must receive prior written approval from the Department for any office space leased from the private sector. The contractor shall acquire space from the private sector in accordance with sections 105.454, and 50.660 RSMo, and 13 CSR 40-108.010(5) (A).
- 3.5.5 The contractor shall receive prior written approval from the Department for purchases of equipment with an initial cost of twenty-five hundred dollars (\$2,500) or more which are necessary for fulfillment of the contract requirements in accordance with 13 CSR 40-108.010(5)(D).
- 3.5.6 The contractor shall receive prior written approval from the Department for out-of-state travel for child support training. Out of state travel for training is limited to two people one time per year per office.
- 3.5.7 Pursuant to 13 CSR 40-108.010 (3)(F), the contractor shall receive prior written approval from the Department for out-of-state travel for performance of reimbursable child support activities, excluding training, and shall abide by the same expenditure reimbursement limitations as the Department imposes on its personnel.
- 3.5.8 The contractor may request reimbursement for in-state trainings that are determined to be sufficiently program-related. The Department will pay approved reimbursement at the current Federal Financial Participation (FFP) rate.
- 3.5.9 Allowable costs for travel and per-diem will be reimbursed at rates as defined by State of Missouri Travel Regulations <http://www.oa.mo.gov/acct>
- 3.6 Audits, Monitoring and Compliance-Financial
- 3.6.1 The contractor shall provide, to the Department, copies of all notices and reports as described herein of any audit performed by another entity to:
Department of Social Services
Division of Finance and Administrative Services
P.O. Box 1082
Jefferson City, MO 65102
Or DFAS.ComplianceUnit@dss.mo.gov
- 3.6.2 The Department may conduct financial reviews to determine whether funds received by the contractor were used in accordance with the requirements stated herein, state law and federal regulations governing authorized IV-D expenditures.
- 3.6.3 The contractor shall make available all appropriate financial records to the authorizing representatives conducting the review.
- 3.6.4 Reimbursements to the contractor shall, in all cases, be subject to an adjustment after a financial review as follows:

- a. If the Department reimbursed the contractor in a previous budget year an amount greater than allowed, then the Department may reduce the contractor's budget in the following budget year after providing thirty (30) days written notice to the contractor of its intent to do so.
 - b. A reduction to the contractor's budget as a result of an adjustment pursuant to an audit finding shall be treated as a one-time reduction and not an automatic permanent reduction of the contractor's budget for future budget amount projections.
 - c. The contractor shall submit a written reimbursement request and statement of explanation, when requesting an amount in excess of the approved budget amount. The Department will advise the PA in writing when a decision is made on the additional funds request.
- 3.6.5 The Department reserves the right to monitor the contract throughout the effective period of the contract to ensure financial and contractual compliance. The Department shall have the right to impose special conditions and restrictions and will provide written notification to the contractor if the Department determines that it will impose any special conditions or restrictions. The special conditions or restrictions may include, but are not limited to, those conditions specified below:
- a. Requiring additional, more detailed financial reports or other documentation;
 - b. Additional contract monitoring, including daily activity logs and timesheets of all IV-D work performed;
 - c. Requiring the contractor to obtain technical or management assistance;
 - d. Establishing additional prior approvals from the department; and
 - e. In person audit and observation of IV-D work performed.

3.7 Audits, Monitoring and Compliance-Performance

- 3.7.1 The Department reserves the right to complete audits to determine the reliability of data provided by the contractor for data used to compute federal IV-D performance measures and other performance measures outlined in this contract.
- 3.7.2 The audits may include, but are not limited to, remote review of data entered into MACSS or on-site audits of hardcopy or electronic case records. The contractor shall maintain individual case records adequate to permit evaluation of the progress of each case. Such case records shall be in accordance with 45 CFR 302.15 (a) and 303.2(c) and shall include, at a minimum, the following:
- a. Original referral documentation;
 - b. Record of all relevant contacts with the parties to the action; and
 - c. Record of all legal action.
- 3.7.3 The Department will measure the contractor's performance in accordance to 13 CSR 40-108.040 for cases referred from the Department for legal action. The Department shall conduct compliance reviews for this purpose solely on the case information contained in MACSS.

3.8 Prosecuting Attorney Compliance:

Pursuant to 13 CSR 40-108.040, the Department will take the following actions should the Prosecuting Attorney fail to comply with the performance requirements as stated herein:

- a. The Department will send written notice to the Prosecuting Attorney identifying non-compliance with policies and procedures, requirements, or regulations for the safeguarding of federal tax information, performance measures, data reliability or program compliance audits.
- b. The Prosecuting Attorney must submit, within thirty (30) calendar days, a written corrective action plan to the Department for approval. The corrective action plan must contain specific actions and timeframes to bring the Prosecuting Attorney back into compliance.
 - 1) The Department reserves the right to terminate the contract should the Prosecuting Attorney fail to submit and implement an approved corrective action plan or fail to achieve compliance with the terms and conditions stated herein.
- c. The Prosecuting Attorney and/or staff as directed by the Department shall attend necessary and required training when determined to be non-compliant with program performance standards.

- d. Prosecuting Attorney staff shall attend MACSS Basics training provided by the Department at the first opportunity after being hired. Other MACSS and OnBase training maybe required by the PA Liaison. The PA Program Assistant or PA Liaison will notify the Prosecutor and/or staff of the method of training and provide the necessary training material.

3.9 Federal Tax Information

- 3.9.1 The contractor and any subcontractors shall comply with IRS Publication 1075 Security Guidelines to specifically include, but not limited to, the requirement to notify the state agency immediately, but no later than twenty-four (24) hours after identification of a possible security issue involving Federal Tax Information (FTI) as required by IRS Publication 1075, paragraph 10.4. Further, the contractor shall comply with the federal tax information requirements stated in the Assurance of Safeguarding IRS/SSA Restrictions/Penalties (Exhibit #5) document attached hereto. In addition, the contractor shall:
 - a. require all new hire and tenured personnel to certify and complete the Department's security policy and IRS penalties for unauthorized disclosure of federal tax information. The training can be located at: (<https://apps.dss.mo.gov/FS/DIRSSafeguardingForms/>)
 - b. complete and print the electronic *Internal Inspections Report* annually (<https://apps.dss.mo.gov/FS/DIRSSafeguardingForms/>) and retain for five (5) years;
 - c. not send or receive any federal tax information by electronic mail (e-mail) or facsimile;
 - d. not disclose or release any form of protected federal tax information to any attorney representing a person paying support in the referred case under the contractor's control;
 - e. provide a visitor access log that must not contain personal identification information (i.e. social security number, case number, or other personal identifying information) that may be viewable by other visitors; provide all visitors with visitor badges; and all visitors must be accompanied by contractor personnel at all times;
 - f. only provide key/combination locks to authorized personnel that have a need to access federal tax information; maintain key/combination accountability records; change key/combination locks when authorized personnel changes occur or at a minimum annually; and
 - g. immediately report an unauthorized inspection or disclosure of federal tax information via e-mail or hardcopy, including breaches and security incidents, to the compliance coordinator or designee. Currently the compliance coordinator can be contacted at angela.r.terry@dss.mo.gov.

4 **General Contractual Requirements**

4.1 **General**

- 4.1.1 The contract shall consist of the original contract document and any subsequent amendments to the contract.
- 4.1.2 This contract shall be construed according to the laws of the State of Missouri. The contract governs the terms and conditions of the contracted services provided by the contractor. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, such provision(s) shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the Department.
 - a. The agreement will be read and enforced as though every provision of law and clause required by law to be inserted herein were included. If any such provision is not inserted, then upon the notification of either party the agreement will be amended to make such correction.
- 4.1.3 The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
- 4.1.4 The contractor shall comply with all local, state and federal laws and regulations related to the performance of the contract.
- 4.1.5 The contractor certifies that the contractor and each of its principals (owners, director and others as defined by 2 CFR Part 180) are not suspended or debarred from contracting with the federal government. In the event the contractor or any of its principals become suspended or debarred during the contract period, the contractor shall immediately send written notification to the Department.

- a. Suspension or debarment of the contractor, or failure by the contractor to provide written notification of suspension or debarment to the Department, may result in immediate termination of the contract.

4.1.6 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Department.

4.1.7 As authorized under sections 432.230 and 432.255 RSMo, the use of electronic signatures shall be permitted for contract documents. Additionally, contract documents maintained in electronic format shall be considered the official, legal record and shall have the same force and effect, as would a paper document.

4.2 **Amendment, Renewal and Termination:**

4.2.1 The contract shall not bind, nor purport to bind, the Department for any commitment in excess of the original contract period.

4.2.2 Any change to the contract, whether by modification or supplementation, shall be accomplished by a formal, written contract amendment. Oral agreements or agreements confirmed by e-mail or otherwise to modify the contract shall not be enforceable.

4.2.3 The Department shall have the right, at its sole option, to renew the contract by written notice to the contractor. In the event the Department exercises its renewal option, all terms, conditions and provisions of the original contract and any subsequent amendments shall remain in effect and shall apply during the renewal period.

4.2.4 Either party, with or without cause, may terminate the contract by giving 60 calendar days advance written notice to the other party. The termination shall be effective 60 calendar days from the date of notice or the date specified in the notice. The Department reserves the right to withdraw any or all of its clients before the end of the 60 calendar day period, if applicable.

4.2.5 The Department may terminate the contract for breach of contract by providing the contractor with written notice of termination.

- a. The termination shall become effective on the date specified in the notice.
- b. The Department shall not pay for services rendered or goods provided after the termination of the contract.

4.2.6 At its sole discretion, the Department may give the contractor an opportunity to cure the breach. The Department will provide the contractor any opportunity to cure the breach in writing.

4.2.7 The Department shall deem any written notice to the contractor sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, electronic mail (e-mail), or otherwise delivered to an authorized employee of the contractor or the contractor's address of record.

- a. The contractor shall notify the Department within ten (10) business days of any change to the contractor's address of record or mailing address, or both.

4.2.8 In the event of termination all client records, documentation, data, reports, supplies, equipment and accomplishments prepared, furnished, acquired or developed by the contractor, as a direct requirement specified in the contract, shall become the property of the Department.

- a. Upon termination of the contract, the contractor shall maintain, store, transfer, dispose and provide for the authorized release of all client records, documentation, data, reports, supplies, equipment and accomplishments developed by the contractor as a requirement of the contract, as directed by the Department. The contractor shall not destroy or dispose of any such records, documentation, data, reports, supplies, equipment and accomplishments without the prior, written permission of the Department.
- b. Upon termination of the contract, the Department shall have access to all client records pertaining to the performance of the contract. As requested by the Department, the contractor shall make available to the Department all client records and documents prepared or developed as a result of the contract.

- 4.2.9 Upon expiration, termination, or cancellation of the contract, the contractor shall assist the Department to ensure an orderly transfer of responsibility or the continuity of those services required under the terms of the contract to an individual or organization designated by the Department, if requested in writing. The contractor shall provide or perform any or all of the following responsibilities:
- a. The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the Department or to the Department's designee within seven calendar (7) days after receipt of the written request.
 - b. If requested by the Department through a formal amendment to the contract, the contractor shall continue to provide any part or all of the services. The contractor shall provide the services in accordance with the terms and conditions, requirements and specifications of the contract. The contractor shall provide the services for a period not to exceed 30 calendar days after the expiration, termination or cancellation date of the contract. The contractor shall provide the services for a price not to exceed those prices set forth in the contract,
 - c. The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the Department, in order to ensure the completion of such service prior to the expiration of the contract.

4.3 **Subcontracting:**

- 4.3.1 The Department reserves the right to approve any subcontractor utilized by the contractor for the services/products required herein. The Department, at its sole discretion, may require such approval prior to the utilization of any subcontractor. In the event the Department requires prior approval to subcontract, the contractor shall provide notification of its intent to subcontract within the timeframe specified by the Department.
- 4.3.2 The utilization of a sub-contractor shall in no way relieve the contractor of the responsibility for providing the services required herein.
- 4.3.3 Any subcontracts for the services/products described herein shall be in writing and shall include any and all provisions and contractual obligations, including all requirements of the contract's General Contractual Requirements, that are necessary to ensure the successful fulfillment of all obligations under the contract that are performed by a subcontractor.
- 4.3.4 Any subcontracts must ensure that the Department is indemnified, saved and, held harmless from and against all claims of damage, loss, and costs (including attorney fees and litigation expenses) of any kind related to a subcontract in those matters described in the contract between the Department and the contractor.
- 4.3.5 The contractor shall be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.

4.4 **Conflict of Interest:**

- 4.4.1 The contractor certifies that the contractor has no other contractual or other relationships, which create any actual, or appearance of conflict of interest. During the term of the contract, neither the contractor nor any of its employees shall acquire any other contractual relationships, which would create such a conflict.
- a. In the event the contractor becomes aware of any circumstances that may create a conflict of interest the contractor shall immediately take such actions to mitigate or eliminate the risk of harm caused by the conflict or appearance of conflict.
 - b. The contractor shall promptly, fully disclose and notify the Department of any circumstances that may arise that may create a conflict of interest or an appearance of conflict of interest. The contractor shall submit such notification to the Department in writing within seven (7) business days after the contractor discovers a conflict or appearance of a conflict.
 - c. In the event that the Department determines that a conflict or an appearance of a conflict exists, the Department may take any action that the Department determines is necessary to mitigate or eliminate the conflict or appearance of a conflict. Such actions may include, but are not limited to:

- 1) Exercising any or all of the Department's rights and remedies under the contract, up to and including terminating the contract with or without cause;
- 2) Directing the contractor to implement a corrective action plan within a specified time frame to mitigate, remedy or eliminate the circumstances which constitute the conflict of interest or appearance of conflict of interest; or
- 3) Taking any other action that the Department determines is necessary and appropriate to ensure the integrity of the contractual relationship and the public interest.

4.4.2 In accordance with state and federal laws and regulations, state executive order or regulations, the contractor certifies that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with their performance of the contracted services. No person having such interest shall be employed or conveyed an interest, directly or indirectly, in the contract.

4.4.3 The contractor certifies that:

- a. No State of Missouri employee assisted the contractor in obtaining this contract or will participate in the performance of this contract if such involvement constitutes a conflict of interest;
- b. No State of Missouri employee shall be compensated under this contract for duties performed in the course of his/her state employment; and
- c. Before any State of Missouri employee may be involved in the performance of this contract written approval shall be obtained from the Director of the Department.

4.4.4 In the event the contractor is a not-for-profit agency, contractor board members must abstain from voting on any funding proposal relating to this contract, in which they have administrative control or a monetary interest. Board members who have such an interest and participate in discussion prior to a vote must disclose such interest in a meeting of the board prior to such discussion.

4.4.5 No monies provided by the Department under this contract shall be used to promote or further nepotism.

4.4.6 The contractor shall not represent itself, its employees, or its subcontractor's, as employees of the Department or the State of Missouri.

4.5 **Business Compliance:**

4.5.1 The contractor must comply with applicable laws regarding conducting business in the State of Missouri and certifies by signing this contract that it and any subcontractors are presently, and will remain, in compliance with such laws.

4.5.2 The contractor shall have and maintain current and in good standing, all licenses and certifications that are required by law, rule or regulation for the duration of the contract.

- a. The contractor shall notify the Department if the contractor's license(s) or certification(s), or both have or may be terminated, revoked, modified or qualified within seven (7) business days.
- b. The contractor shall notify the Department, within seven (7) business days, if the contractor becomes aware that the contractor or its agents, officers or employees are under any investigation. Under investigation shall mean by law enforcement, governmental agency, or other entity with authority to investigate, revoke, suspend or take action against any license or certification that the contractor, its agents employees or officers, may have to conduct business.

4.5.3 If required by state law, the contractor shall be registered and in good standing with the State's Secretary of State and shall submit their State Certificate of Good Standing to the Department upon request.

4.5.4 The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.

4.6 **Personnel and Staffing:**

4.6.1 The contractor shall comply with the Fair Labor Standard Act, Equal Employment Opportunity Act, any other federal and state laws, rules, regulations and executive orders to the extent that these may be applicable and shall insert the foregoing provision in all subcontracts awarded.

- 4.6.2 The contract is predicated, in part, on the utilization of the specific resources, individuals and personnel qualifications as identified and described in the contractor's proposal/bid, when applicable, or in the contractual requirements stated herein. Therefore, the contractor shall only utilize personnel and individuals in the performance of this contract who meet specific qualifications required for services to be provided.
- a. The contractor shall not substitute personnel without written approval of the Department. Substitutions made pursuant to this paragraph shall be equal to or better than those originally proposed, offered, identified or required.
- 4.6.3 The contractor shall only utilize personnel including those of any subcontractor(s), who are appropriately qualified and licensed or certified, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this contract, and shall provide documentation of such licensure or certification upon request.
- 4.7 **Federal Funds Requirements and Applicable Laws and Regulations:**
- 4.7.1 Non-Discrimination - The contractor shall comply with all federal and state statutes, regulations and executive orders relating to nondiscrimination and equal employment opportunity to the extent applicable to the contract. These include but are not limited to:
- a. 45 CFR Part 92 -- Nondiscrimination on the Basis of Race, Color, National Origin, Sex, Age, or Disability in Health Programs or Activities Receiving Federal Financial Assistance and Programs or Activities Administered by the Department of Health and Human Services Under Title I of the Patient Protection and Affordable Care Act or by Entities Established Under Such Title;
 - b. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin (this includes individuals with limited English proficiency) in programs and activities receiving federal financial assistance and Title VII of the Act which prohibits discrimination on the basis of race, color, national origin, sex, or religion in all employment activities;
 - c. Equal Pay Act of 1963 (P.L. 88 -38, as amended, 29 U.S.C. Section 206 (d));
 - d. Title IX of the Education Amendments of 1972, as amended (20 U.S.C 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
 - e. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibit discrimination on the basis of disabilities;
 - f. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age;
 - g. Equal Employment Opportunity – E.O. 11246, “Equal Employment Opportunity”, as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity”;
 - h. Missouri State Regulation, 19 CSR 10-2.010, Civil Rights Requirements;
 - i. Missouri Governor’s E.O. #94-03 (excluding article II due to its repeal);
 - j. Missouri Governor’s E.O. #05-30; and
 - k. The requirements of any other nondiscrimination federal and state statutes, regulations and executive orders which may apply to the services provided via the contract.
- 4.7.2 The contractor shall comply with the requirements of the Single Audit Act Amendments of 1996 (P.L. 104-156) and 2 CFR Part 200, subpart F, including subsequent amendments or revisions.
- a. A copy of any audit report shall be sent to the Department each contract year if applicable. The contractor shall return to the Department any funds disallowed in an audit of the contract.
 - b. In the event federal funds are not utilized for contract, the contractor shall provide to the Department a copy of its annual report or statement on compliance and on internal control prepared by its external, independent public accounting firm
 - c. If the contractor is a sub-recipient as defined in 2 CFR Part 200, subpart F the contractor shall comply with all applicable implementing regulations, and all other laws, regulations and policies authorizing or governing the use of any federal funds paid to the contractor through the contract.

- 4.7.3 Cost Principles:
- a. 2 CFR 225 – State, Local and Indian Tribal Governments;
 - b. 2 CFR 230 – Non-Profit Organizations;
 - c. 2 CFR 220 -- Educational Institutions;
 - d. 48 CFR 31.2 – For-Profit Organizations; and
 - e. 45 CFR 74 Appendix E – Hospitals.
- 4.7.4 Steven’s Amendment – In accordance with the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law 101-166, Section 511, “Steven’s Amendment”, the contractor shall not issue any statements, press releases, and other documents describing projects or programs funded in whole or in part with Federal funds unless the prior approval of the Department is obtained. Any statement, press release, or other document describing projects or programs funded with federal funds shall clearly state the following as provided by the Department:
- a. The percentage of the total costs of the program or project that will be financed with Federal funds;
 - b. The dollar amount of Federal funds for the project or program; and
 - c. The percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
- 4.7.5 The contractor shall comply with 31 U.S.C. 1352 relating to limitations on use of appropriated funds to influence certain federal contracting and financial transactions. No funds under the contract shall be used to pay the salary or expenses of the contractor, or agent acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the United States Congress or Missouri General Assembly. The contractor shall comply with all requirements of 31 U.S.C. 1352, which is incorporated herein as if fully set forth. The contractor shall submit to the Department, when applicable, Disclosure of Lobbying Activities reporting forms.
- 4.7.6 The contractor shall comply with the Pro-Children Act of 1994 (20 U.S.C. 6081), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.
- 4.7.7 The contractor shall comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations, as applicable.
- 4.7.8 The contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).
- 4.7.9 The contractor shall comply with the public policy requirements as specified in the Department of Health and Human Services (HHS) Grants Policy Statement:
(<https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>)
- 4.7.10 The contractor shall comply with Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104), as amended.
- 4.7.11 The contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. The contractor shall report any conviction of the contractor’s personnel under a criminal drug statute for violations occurring on the contractor’s premises or off the contractor’s premises while conducting official business. The contractor shall make a report of a conviction to the Department within five (5) working days after the conviction.
- 4.7.12 Contractor Whistleblower Protections:
- a. The contractor shall comply with the provisions of 41 U.S.C. 4712 that states an employee of a contractor, subcontractor, grantee, or subgrantee may not be discharged, demoted or otherwise discriminated against as a reprisal for “whistleblowing”. In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.
 - b. The contractor’s employees are encouraged to report fraud, waste, and abuse. The contractor shall inform their employees in writing they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.

- c. The contractor shall include this requirement in any agreement made with a subcontractor or subgrantee.

4.8 **Financial Requirements:**

- 4.8.1 The Department shall determine the availability of funding for this contract. The Department determination shall be final and without recourse by the contractor.
- 4.8.2 Funding for the contract must be appropriated by the Missouri General Assembly for each fiscal year included within the contract period. Therefore, the contract shall not be binding upon the Department for any period in which funds have not been appropriated, and the Department shall not be liable for any damages or costs, including attorney's fees, associated with termination caused by lack of appropriations.
 - a. The Department reserves the right to terminate the contract, without penalty or termination costs, if such funds are not appropriated or available.
 - b. In the event funds are not appropriated or available for the contract, the Department shall provide prompt notification to the contractor.
 - c. In the event funding for the contract becomes unavailable or interrupted, the contractor shall, upon written notification from the Department, suspend work activities and incur no further costs under the contract, until such time as the Department notifies the contractor, in writing, that funding has been restored and work activities may resume.
 - d. In the event funds are not appropriated or available for the contract, the contractor shall not prohibit or limit the Department's right to pursue alternate contracts, as necessary, to conduct state governmental affairs.
 - e. The provisions of the above paragraphs shall apply to any amendment or the execution of any option to extend the contract.
- 4.8.3 The Department shall make payments due under the terms of the contract upon receipt and approval of a properly itemized invoice, as set forth herein.
 - a. The contractor shall submit invoices in accordance with the requirements stated in the contract and no later than the time period specified in § 33.120 RSMo, unless more restrictive requirements are established by state or federal law or regulation.
 - b. The contractor shall not invoice federal or state tax.

4.9 **Contractor Liability:**

- 4.9.1 The contractor shall be responsible for any and all personal injury, including death, or property damage as a result of the contractor's actions, or inactions, including but not limited to, misconduct, negligence, or any future negligent act, involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract.
 - a. In addition to the liability imposed upon the contractor on account of personal injury, bodily injury (including death), or property damage suffered as a result of the contractor's negligence, the contractor shall pay, indemnify, save and hold harmless the State of Missouri, including its agencies, employees, and assigns, from every expense, liability, or payment arising out of such misconduct or negligent act.
- 4.9.2 The contractor shall hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent or intentional act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.

4.10 **Insurance:**

- 4.10.1 The Department shall not be required to save and hold harmless and indemnify the contractor, its employees, agents or subcontractors against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor shall acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its clients, its employees and the public against any loss, damage and expense related to the contractor's performance under the contract.

- 4.10.2 The contractor shall maintain adequate automobile liability insurance for the operation of any motor vehicle used to provide any form of transportation service related to the services of this contract.
- 4.10.3 If the contract involves the performance of medical services of any type, the contractor shall maintain adequate liability insurance to cover all medical services rendered.
- 4.10.4 The contractor shall submit proof of insurance coverage to the Department as requested. Proof of insurance coverage shall include, but not be limited to, effective dates of coverage, limits of liability, insurers' names, policy numbers, company, etc. The contractor may use proof of self-insurance coverage or another alternative risk financing mechanism if such coverage is verifiable and irrevocably reliable.

4.11 **Recordkeeping and Reporting Requirements:**

- 4.11.1 The contractor shall submit itemized reports, records and information at the request of the Department.
- 4.11.2 The contractor shall maintain auditable records for all activities performed under this contract. Financial records shall conform to Generally Accepted Accounting Principles (GAAP). Such records shall include the following, as applicable:
- a. the specific number and type of service units provided;
 - b. itemized revenues and expenditures related to the performance of the contract;
 - c. the number and type of clients served;
 - d. detailed documentation of services provided to each client, included progress notes;
 - e. any and all records necessary for performing a full audit of the contractor's performance under the contract; and
 - f. other relevant records.
- 4.11.3 The contractor shall have in place management and fiscal controls that are adequate to assure full performance of the contractor's obligations under this contract. The contractor shall maintain sufficient cash flow to perform its obligations under the contract for the duration of the contract. The contractor shall immediately notify the Department of any cash flow issues where the contractor's obligations required under this agreement would be in jeopardy.
- 4.11.4 The contractor shall allow the Department or its authorized representative to inspect and examine the contractor's premises or records, or both, which relate to the performance of the contract at any time during the period of the contract and thereafter within the period specified herein for the contractor's retention of records.
- 4.11.5 The contractor shall promptly provide the Department with access to Department clients and records of the Department clients without limitation.
- a. The contractor shall promptly produce all e-mails and correspondence related to Department clients, as requested by the Department.
- 4.11.6 The contractor shall retain all records pertaining to the contract for five (5) years after the close of the contract year unless audit questions have arisen or any legal action is contemplated or filed within the five year (5) limitation and have not been resolved. All records shall be retained until all audit questions or legal actions, or both have been resolved. The contractor shall safeguard and keep such records for such additional time as directed by the Department. The obligation of the contractor to retain and produce records shall continue even after the contract expires or is otherwise terminated by either party.
- 4.11.7 The contractor shall provide written notification to the Department when there is any change in the contractor's licensure or certification/accreditation status, official name, address of record, Executive Director, or change in ownership or control of the contractor's organization.
- 4.11.8 Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor shall notify the Department immediately. Upon learning of any such actions, the Department reserves the right, at its sole discretion, to either cancel or affirm the contract and hold the contractor responsible for damages, to the extent authorized by law.

4.12 **Confidentiality:**

- 4.12.1 All discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential, to the extent required by law.
- 4.12.2 The contractor shall release no reports, documentation or material prepared pursuant to the contract to the public without the prior written consent of the Department, unless such disclosure is required by law.
- 4.12.3 If required by the Department, the contractor and any required contractor personnel shall sign specific documents regarding confidentiality, security, or other similar documents.
- 4.12.4 The contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of any information confidential by law that it creates, receives, maintains, or transmits on behalf of the Department other than as provided for by the contract. Such safeguards shall include, but not be limited to:
- a. Encryption of any portable device used to access or maintain confidential information or use of equivalent safeguard;
 - b. Encryption of any transmission of electronic communication containing confidential information or use of equivalent safeguard;
 - c. Workforce training on the appropriate uses and disclosures of confidential information pursuant to the terms of the contract;
 - d. Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of confidential information by its workforce and subcontractors, if applicable; and
 - e. Any other safeguards necessary to prevent the inappropriate use or disclosure of confidential information.
- 4.12.5 Substance Abuse Records- 42 U.S.C. §§290dd-2 and 42 C.F.R. Part 2.1 governs the confidentiality of substance abuse records and provides for specific mechanisms to obtain such records and the information therein. Any records and information that may be maintained by the Department or contractor concerning confidential drug or alcohol treatment or for any medical, psychological, or psychiatric treatment would be released by the consent of the recipient of the treatment. Those releases do not permit the Department/contractor to further release that information without the consent of the patient unless authorized by court order entered pursuant to procedures set out at 42 C.F.R. §2.61 et seq.

4.13 **Property of State:**

- 4.13.1 All documents, data, reports, supplies, equipment, and accomplishments prepared, furnished, or completed by the contractor pursuant to the terms of the contract shall become the property of the State of Missouri.
- a. Upon expiration, termination, or cancellation of the contract, all such items shall become the property of the State of Missouri, which shall include all rights and interests for present and future use or sale as deemed appropriate by the Department.
- 4.13.2 Any ancillary software tools or pre-printed materials (e.g., project management software tools or training software tools, etc.) developed or acquired by the contractor that may be necessary to perform a particular service required herein, but not required, as a specific deliverable of the contract, shall remain the property of the contractor. The contractor shall be responsible for ensuring that such tools and materials are being used in accordance with applicable intellectual property rights and copyrights.
- 4.13.3 In the event any copyrighted material is developed as a result of the contract, the Department shall have a royalty-free, nonexclusive and irrevocable right to publish, use, and authorize other to use, the work/materials for Department and State of Missouri purposes.

4.14 **Notification Requirements:**

- 4.14.1 The contractor shall notify the Department within one (1) business day of the death of a Department client receiving services under the contract.
- 4.14.2 The contractor shall notify the Department and make the required hotline report within one (1) business day, when there are allegations of physical abuse, sexual abuse, verbal abuse or neglect of a client.

- 4.14.3 In the event the conduct of a client is jeopardizing the safety of him/herself or others in the community, the contractor shall immediately notify the Department. If an immediate response is needed to ensure the health and safety of the client or others, the contractor shall also notify local law enforcement officials.
- 4.14.4 The contractor shall notify the Department within one (1) business day, in writing, if the contractor becomes aware of any circumstances that may render the contractor unable to perform any of its obligations under the contract.
- a. The Department shall have the right, at any time, to require the contractor to provide written assurances that it can meet its obligations under the contract and to provide satisfactory documentation to support its assurances. If the contractor is unable to provide adequate assurances that it will be able to perform its obligations under this contract, the Department shall have the right to exercise any of its remedies under this contract or under law.

4.15 **Miscellaneous:**

- 4.15.1 Unless otherwise specified, the contractor shall be responsible for furnishing all material, labor, facilities, equipment and supplies necessary to perform the services required.
- 4.15.2 The contractor shall only perform the specific, professional services set forth in the contract. The contractor shall provide all services in a manner consistent with generally accepted practices in the applicable professional field.
- 4.15.3 The contractor shall only utilize such testing, techniques and procedures as are necessary to accomplish the specified service(s).
- 4.15.4 The contractor shall not utilize any data, information or conclusions obtained directly or indirectly from work performed under the contract for any other purpose, including, but not limited to research, marketing or commercial purposes without the:
- a. Prior, written consent of the Department;
 - b. Full, written, prior, informed consent of the individuals involved, or their legal guardian or legal custodian; and
 - c. Permission of the court, when applicable, in cases where the subject is a juvenile under the jurisdiction of a court of competent jurisdiction.
- 4.15.5 The Department may require the attendance of the contractor's personnel at training activities and may require the cooperation of the contractor's personnel where the Department provides technical assistance.
- 4.15.6 The contractor shall fully cooperate with all investigations conducted by the Department, or its agents, which relate, directly or indirectly, with the performance of this contract.
- 4.15.7 The Department endorses a drug free environment and the absence of substance abuse. The contractor shall support and enforce these philosophies in their performance of the contract.
- 4.15.8 The contractor shall maintain appropriate documentation that it has appropriate systems and controls in place to ensure that all information software systems used in relationship to the contractual responsibilities with the Department have been acquired, operated and maintained consistently with U.S. copyright law or applicable licensing restrictions. The contractor shall make documentation of such compliance and any such license immediately available upon request by the Department.
- 4.16 **Contract Monitoring/Compliance**
- 4.16.1 The Department has the right to monitor the contract throughout the effective period of the contract to ensure compliance with contractual requirements. Additionally, the Department reserves the right to audit all records related to the contractor's performance under the contract for a period of five (5) years from the expiration date of the contract.
- a. The contractor shall cooperate with any Department review of records and other documentation related to the contractor's performance under the contract.

- 4.16.2 In the event the Department determines the contractor to be non-compliant, or at risk for non-compliance with contractual requirements, the Department shall have the right to impose special conditions or restrictions on the contractor to bring the contractor into compliance or to mitigate the risk of non-compliance.
- a. The Department shall provide written notification to the contractor of the determination of non-compliance or the risk of non-compliance, identifying any special conditions or restrictions the Department may impose.
 - b. Special conditions or restrictions may include, but are not limited to:
 - 1) Requiring the contractor to obtain additional technical assistance;
 - 2) Requiring additional levels of prior approval from the Department for contract activities;
 - 3) Requiring additional or more detailed financial reports and other documentation;
 - 4) Additional, ongoing contract monitoring/oversight by the Department;
 - 5) Requiring the submission and implementation of a corrective action plan; or
 - 6) A combination of special conditions or restrictions.
- 4.16.3 In the event the Department requires the contractor to submit and implement a corrective action plan, the Department shall provide written notification to the contractor, identifying the specific performance or other contractual requirements that are not being met and the expected corrective resolution.
- a. The contractor shall submit a written corrective action plan to the Department within the timeframes specified in the Department notification.
 - b. The corrective action plan must include the actions the contractor proposes to take to remedy concerns, timeframes for achieving such, the person(s) responsible for the necessary action, the improvement that is expected, a description of how progress will be measured and a description of the actions the contractor shall take to prevent the situation from recurring.
 - c. The Department will notify the contractor in writing if the Department approves the corrective action plan or if modifications are required.
 - 1) In the event the Department requires changes to the corrective action plan, the contractor shall submit a revised corrective action plan within five (5) business days of receipt of the Department's notification that changes are required.
 - d. Failure of the contractor to improve performance within the timeframes required in the approved corrective action plan may result in termination of the contract and other remedies available to the Department.
- 5 Payments to the Contractor**
- 5.1 Funds available for the use in this program are limited to monies received from the United States Department of Health and Human Services (DHHS) for operating the Missouri State Plan for Child Support under Title IV-D of the Social Security Act. Funds are further limited by appropriation of general revenue funds and/or the Child Support Enforcement Collections (CSEC) fund by the Missouri General Assembly.
- 5.2 Pursuant to state and federal law and regulations (13 CSR 40-108.010 and 45 CFR 304.21), the Department may reimburse the contractor, at the applicable rate of expenditures incurred, from any or all of the following funds: federal; general revenue; and/or Child Support Enforcement Collections (CSEC).
- 5.3 The Department will allocate funding for services on an annual basis and shall provide notification to the contractor of the allocation amount.
- 5.4 The Department shall reimburse the contractor for actual, allowable costs incurred for services provided pursuant to the agreement, in accordance with the budget approved by the Department.
- a. Any costs incurred for the use or purchase of services, equipment or automated system equipment is not eligible for federal financial participation if, in the sole opinion of the Department, such equipment duplicates services provided by MACSS.
- 5.5 No other payments or reimbursements shall be made to the contractor other than those specified above.

- 5.6 The contractor shall invoice the Department within ninety (90) calendar days after the last day of the month in which services are claimed.
- a. The contractor shall submit its invoices to an address as directed by the PA Liaison.
 - b. Each invoice shall have a unique identifier as an invoice number. Invoice numbers must not be duplicated in the same fiscal year.
- 5.7 Failure of the contractor to submit required reports when due, may result in withholding or rejection of payment under the contract. The Department shall reject payment due to the contractor's failure to perform or deliver the required work or services.
- 5.8 The Department, at its sole discretion, may:
- a. audit all invoices, in a manner determined by the Department;
 - b. reject any invoice for good cause;
 - c. make invoice corrections and/or changes with appropriate notification to the contractor;
 - d. deduct from an invoice any overpayment made by the Department; or
 - e. recover from the contractor any funds for which adequate verification and documentation of expenditures, if required, is not maintained.
- 5.9 The contractor shall understand and agree that the Department reserves the right to make payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor should return a completed State Vendor ACH/EFT Application. The State Vendor ACH/EFT Application can be downloaded from the internet at:
<https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>

Attachment A – Business Associate Agreement

(rev 08-29-13)

(Health Insurance Portability and Accountability Act of 1996, as amended)

1. Health Insurance Portability and Accountability Act of 1996, as amended - The Department and the contractor are both subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein. The contractor constitutes a "Business Associate" of the Department. Therefore, the term, "contractor" as used in this section shall mean "Business Associate."
2. The contractor agrees that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR Parts 160 and 164 and 42 U.S.C. §§ 17921 *et. seq.* including, but not limited to the following:
 - a. "Access", "administrative safeguards", "confidentiality", "covered entity", "data aggregation", "designated record set", "disclosure", "hybrid entity", "information system", "physical safeguards", "required by law", "technical safeguards", "use" and "workforce" shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.
 - b. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. § 17921. This definition shall not apply to the term "breach of contract" as used within the contract.
 - c. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the contractor.
 - d. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Department.
 - e. "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified below.
 - f. "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.
 - g. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - h. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
 - i. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
 - j. "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:
 - 1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
 - 2) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity (Department) in its role as employer.
 - k. "Security Incident" shall be defined as set forth in the "Obligations of the Contractor" section of the Business Associate Provisions.
 - l. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
 - m. "Unsecured Protected Health Information" shall mean Protected Health Information that is not secured through the use of a technology or methodology determined in accordance with 42 U.S.C. § 17932 or as otherwise specified by the secretary of Health and Human Services.
3. The contractor agrees and understands that wherever in this document the term "Protected Health Information" is used, it shall also be deemed to include Electronic Protected Health Information.

4. The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the Department. To provide reasonable assurance of appropriate safeguards, the contractor shall comply with the business associate provisions stated herein, as well as the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) and all regulations promulgated pursuant to authority granted therein.

5. The Department and the contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, Enforcement Rule, and other rules as later promulgated (hereinafter referenced as the regulations promulgated thereunder). Any ambiguity in the contract shall be interpreted to permit compliance with the HIPAA Rules.

6. **Permitted Uses and Disclosures of Protected Health Information by the Contractor**

6.1 The contractor may not use or disclose Protected Health Information in any manner that would violate Subpart E of 45 CFR Part 164 if done by the Department, except for the specific uses and disclosures in the contract.

6.2 The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Department as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.

6.3 The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the Department by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.

6.4 If required to properly perform the contract and subject to the terms of the contract, the contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the contractor's business.

6.5 If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.

6.6 If applicable, the contractor may use Protected Health Information to provide Data Aggregation services to the Department as permitted by 45 CFR 164.504(e)(2)(i)(B).

6.7 The contractor may not use Protected Health Information to de-identify or re-identify the information in accordance with 45 CFR 164.514(a)-(c) without specific written permission from the Department to do so.

6.8 The contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the Department's minimum necessary policies and procedures.

7. **Obligations and Activities of the Contractor**

7.1 The contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law, and shall comply with the minimum necessary disclosure requirements set forth in 45 CFR § 164.502(b).

7.2 The contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards shall include, but not be limited to:

- a. Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;
- b. Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;
- c. Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;
- d. Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and
- e. Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.

7.3 With respect to Electronic Protected Health Information, the contractor shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that contractor creates, receives, maintains or transmits on behalf of the Department and comply with Subpart C of 45 CFR Part 164, to prevent use or disclosure of Protected Health Information other than as provided for by the contract.

- 7.4 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), the contractor shall require that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the contractor agrees to the same restrictions, conditions, and requirements that apply to the contractor with respect to such information.
- 7.5 By no later than ten (10) calendar days after receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the contractor shall make the contractor's internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by, or received by the contractor on behalf of the Department available to the Department and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules and the contract.
- 7.6 The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the Department to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 42 USCA §17932 and 45 CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the Department. If requested by the Department or the individual, the contractor shall provide an accounting of disclosures directly to the individual. The contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the Department upon request.
- 7.7 In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, the contractor shall, within five (5) calendar days following a Department request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, provide the Department access to the Protected Health Information in an individual's designated record set. However, if requested by the Department, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.
- 7.8 At the direction of the Department, the contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.
- 7.9 The contractor shall report to the Department's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the Department's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.
- 7.10 The contractor shall report to the Department's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the contractor becomes aware of any such use or disclosure, the contractor shall provide the Department's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures.
- 7.11 The contractor shall report to the Department's Security Officer any breach immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the Department's Security Officer with a description of the breach, the information compromised by the breach, and any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan for approval that describes plans for preventing any such future incidents.
- 7.12 The contractor's reports required in the preceding paragraphs shall include the following information regarding the security incident, improper disclosure/use, or breach, (hereinafter "incident"):
- a. The name, address, and telephone number of each individual whose information was involved if such information is maintained by the contractor;
 - b. The electronic address of any individual who has specified a preference of contact by electronic mail;

- c. A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;
 - d. A description of the types of Protected Health Information involved in the incident (such as full name, Social Security Number, date of birth, home address, account number, or disability code) and whether the incident involved Unsecured Protected Health Information; and
 - e. The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.
- 7.13 Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR Part 164.
- 7.14 The contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.
- 7.15 If the contractor becomes aware of a pattern of activity or practice of the Department that constitutes a material breach of contract regarding the Department's obligations under the Business Associate Provisions of the contract, the contractor shall notify the Department's Security Officer of the activity or practice and work with the Department to correct the breach of contract.
- 7.16 The contractor shall indemnify the Department from any liability resulting from any violation of the Privacy Rule or Security Rule or Breach arising from the conduct or omission of the contractor or its employee(s), agent(s) or subcontractor(s). The contractor shall reimburse the Department for any and all actual and direct costs and/or losses, including those incurred under the civil penalties implemented by legal requirements, including but not limited to HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act, and including reasonable attorney's fees, which may be imposed upon the Department under legal requirements, including but not limited to HIPAA's Administrative Simplification Rules, arising from or in connection with the contractor's negligent or wrongful actions or inactions or violations of this Agreement.
8. **Obligations of the Department**
- 8.1 The Department shall notify the contractor of limitation(s) that may affect the contractor's use or disclosure of Protected Health Information, by providing the contractor with the Department's notice of privacy practices in accordance with 45 CFR 164.520.
- 8.2 The Department shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.
- 8.3 The Department shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the Department has agreed to in accordance with 45 CFR 164.522.
- 8.4 The Department shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.
9. **Expiration/Termination/Cancellation:** Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the contractor shall, at the discretion of the Department, either return to the Department or destroy all Protected Health Information received by the contractor from the Department, or created or received by the contractor on behalf of the Department, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractor or agents of the contractor.
- a. In the event the Department determines that returning or destroying the Protected Health Information is not feasible, the contractor shall extend the protections of the contract to the Protected Health Information for as long as the contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the contractor must notify the Department and obtain instructions from the Department for either the return or destruction of the Protected Health Information.
10. **Breach of Contract:** In the event the contractor is in breach of contract with regard to the business associate provisions included herein, the contractor agrees that in addition to the requirements of the contract related to cancellation of contract, if the Department determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the Department shall report the breach of contract to the Secretary of the Department of Health and Human Services.

Attachment B: Federal Funds Subrecipient Requirements

1. In performing its responsibilities under the contract, the subrecipient shall fully comply with:
 - a. 2 CFR Chapter 1, Chapter II, Part 200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - b. All applicable terms and conditions of the award.
 - c. All other applicable laws, regulations and policies authorizing or governing the use of any federal funds paid to the subrecipient under the contract.
2. The subrecipient shall not utilize federal funds, or any required matching funds, provided under the contract as matching funds for any other federal award, unless specifically allowed under that award.
3. **Allowable Costs:** Unless otherwise stated in this RFP, the subrecipient shall invoice the state agency based on actual, allowable costs incurred.
 - a. The subrecipient shall ensure all expenditures invoiced, claimed and/or reported satisfy the General provisions for allowable costs, as defined in the 2 CFR Chapter 1, Chapter II, Part 200, Subpart E- Cost Principles; and Specific provisions for allowable costs, as defined in applicable Federal program rules.
4. **Indirect Cost Rates and Administrative Rates:** In the event indirect costs and/or administrative rates are included as part of the cost reimbursement under the contract, the following will apply:
 - a. If a subrecipient has an approved federally negotiated indirect cost rate, the state agency will accept the approved indirect cost rate, unless doing so would conflict with federal statutes or an exception has been approved by the federal agency, based on documented justification. (2 CFR § 200.414) If a federal agency has approved a new or different rate subsequent to the beginning of a contract period and the effective date is retroactive, the change (increase or decrease) will not be recognized and accepted until the following contract period.
 - b. A rate of 10% of Modified Total Direct Costs (MTDC) will be used for those subrecipients that do not have a federally negotiated indirect rate (2 CFR § 200.414).
 - c. **Administrative costs** are defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities", (including cross allocations from other pools, where applicable). (US Dept. of Labor – Guide for Indirect Cost Rate Determination). Administrative costs can be categorized as both direct and indirect costs.

Administrative rates will vary by award, will be determined by the state agency, and will not exceed limits set forth by statute or regulations pertaining to each award. For example, some federal programs have statutory limitations on the percentage of dollars which may be expended for administrative costs. The state agency must abide by those statutory limits. Consequently, in contracts which include federal dollars with statutory limitations on administrative costs, the state agency will limit the use of award funds for administrative costs in accordance with the statutory requirements. In such instances, the state agency award will deem administrative costs (including administrative costs included in the indirect rate) unallowable to the extent that the costs exceed the statutory limits.
 - d. With regard to indirect cost rates and administrative rates, guidance and requirements noted in Part 2 CFR § 200, "does not change or modify any existing statute or guidance otherwise based on any existing statute...and does not supersede any existing or future authority under law or by executive order of the Federal Acquisition Regulation." Thus, for state agency programs where the specific federal award requirements define Administrative costs in such a manner that all Indirect costs are Administrative costs, the state agency cannot accept an indirect rate (regardless of whether it is federally negotiated or not) that exceeds the Administrative rate cap designated by the specific federal award.

5. Record/Document Requirements and Retention:

- a. The subrecipient shall have written policies and procedures in place to ensure compliance with the terms, conditions, laws, and regulations in 2 CFR Chapter 1, Chapter II, Part 200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, and shall make its policies and procedures available to the state agency, upon request.
- b. The subrecipient shall maintain an accounting system that, at a minimum, records expenditures in a manner that readily identifies the expenditure as an activity allowable under the award and allows required federal financial reports to be easily prepared.
- c. In accordance with 2 CFR § 200.333 the subrecipient shall retain, for a period of three years from the date of submission of the final expenditure report, or from the date of the submission of the final quarterly or annual financial report to the state agency, all financial records, supporting documents, statistical records, and all other records pertinent to the federal award.

6. Subrecipient Monitoring: The state agency reserves the right to conduct monitoring reviews to ensure the subrecipient administers the federal award in compliance with applicable laws, regulations, contractual obligations, and performance goal measures.

- a. When deemed appropriate by the state agency, a monitoring report based on the results of the monitoring review will be issued to the subrecipient.
- b. The subrecipient shall submit a written corrective action plan for any findings and recommendations in the monitoring report as directed by the state agency.
 - 1) The corrective action plan should include the actions the contractor proposes to take to remedy concerns, timeframes for achieving such remedies, and the person(s) responsible for the necessary action.
- c. The state agency will respond in writing by accepting the corrective action plan submitted and/or requiring further action, including, but not limited to:
 - 1) More detailed financial reports or other documentation;
 - 2) Additional monitoring;
 - 3) Requiring the subrecipient to obtain technical or management assistance; or
 - 4) Establishing additional prior approvals from the state agency.

7. Audits: If required, the subrecipient shall have a single or program-specific audit conducted in accordance with provisions of the Single Audit Act of 1984 (with amendment in 1996) and 2 CFR Chapter 1, Chapter II, Part 200, Subpart F, et al., Audit Requirements.

- a. In accordance with the provisions of 2 CFR Chapter 1, Chapter II, Part 200, Subpart F, et al., Audit Requirements, the subrecipient shall consider all sources of federal awards, including federal resources received from the state agency, in determining the federal awards expended in its fiscal year.
- b. In the event the subrecipient is required to obtain an audit pursuant to 2 CFR Chapter 1, Chapter II, Part 200, Subpart F, et al., Audit Requirements, the subrecipient shall submit the reporting package to the Federal Audit Clearinghouse (FAC) as required by 2 CFR § 200.512. The subrecipient shall notify the state agency of the acceptance of the audit by the FAC within seven (7) calendar days of the acceptance. The subrecipient shall also notify the state agency in the event the subrecipient is not required to obtain and submit a single audit. These notifications shall be submitted to the:

Department of Social Services
Division of Finance and Administrative Services
Attn: Single Audit
P.O. Box 1082
Jefferson City, MO 65102
Or DFAS.ComplianceUnit@dss.mo.gov

- c. The subrecipient shall cooperate with the state agency in resolving questions that the state agency may have concerning the auditors' report and plans for corrective action(s) pursuant to 2 CFR § 200.521.
8. The subrecipient shall be responsible for any deferrals, disallowances, questioned costs, or other items not allowed for federal financial participation claimed by the state agency on behalf of the subrecipient. The subrecipient shall return any funds disallowed, either to the state agency or directly to the applicable federal agency, as instructed by the state agency and within the timeframe designated.
9. Transparency Reporting: In order to assist the state agency in complying with its reporting requirements under the Federal Funding Accountability and Transparency Act (FFATA), the subrecipient must fully complete and submit the FFATA Data Form, attached hereto as Exhibit #4, to the state agency prior to the award of the contract.
 - a. The subrecipient should register in the federal government System for Award Management (SAM) available at www.sam.gov, to record information about the subrecipient's organization, including executive compensation data. SAM is a secure, single repository of data and the subrecipient should only need to register once and renew annually thereafter and update information as necessary.
 - b. The state agency will provide the subrecipient with applicable federal funding source information in accordance with 2 CFR § 200.331.

Attachment C: Additional Contractual Requirements for Counties by Level

A. Level A County

- A.1 In the event the County is designated as a Level A County, the County shall comply with the additional following requirements.
- A.2 **Prosecuting Attorney's (PA) Office Level A Responsibilities**
- A.2.1 The PA shall provide the following IV-D services on cases they have the sole responsibility for:
- a. Establishing paternity;
 - b. Establishing and modifying child support obligations;
 - c. Enforcing child, spousal and medical support obligations;
 - 1) The PA shall provide support enforcement services to individuals pursuant to 45 CFR 302.31 and 45 CFR 302.33.
 - 2) The PA shall secure, establish, and enforce medical support obligations pursuant to 45 CFR 303.30, 45 CFR 303.32, 454.600 through 454.700, RSMo, and procedures established by the Department.
 - d. Cooperating with other states, tribes, and countries where there is a Federal Reciprocating Agreement or a bilateral agreement;
 - e. Conducting manual location activities, as needed, to supplement the automated system's location activities; and
 - f. For cases requiring or requesting a review and adjustment, utilizing procedures established by the Department and in accordance with 452.370, 454.496, 454.498 and 454.500, RSMo.
- A.2.2 The PA shall be in full compliance with federal audit requirements and established Departmental procedures as set forth in the procedural and forms manuals and the Missouri Automated Child Support System (MACSS) Quick Reference Guide when providing the services stated herein.
- a. The Child Support Procedural Manual can be located at:
<https://dssintranet.mo.gov/dss-fsd-child-support/child-support-manual/>
 - b. The Missouri Automated Child Support System (MACSS) Quick Reference Guide can be located at:
<http://10.60.16.82/fsd/training/CSE/MACSSORG/index.html>
- A.2.3 The PA's office managers shall attend all scheduled meetings for Department managers, when notified by the Department.
- A.3 **Requirements for PA Representation in Bankruptcy Actions —Level A—Clay County, Western District**
- A.3.1 With regard to the County of Clay, upon a special bankruptcy referral from the Department, the Office of the Clay County Prosecuting Attorney has the responsibility of representing the Department in the United States Bankruptcy Court in the Western District of Missouri and other United States Bankruptcy Courts as necessary for out-of-state bankruptcies filed when the person paying support has an open IV-D case in Missouri.
- a. The contractor shall take additional and necessary actions on IV-D cases: in MACSS, with the parties and/or their legal counsel, and in the United States Bankruptcy Courts.
 - b. The assistant Prosecuting Attorney responsible for these bankruptcy referrals from the Department (BAPA) will be sworn in to appear before the United States Bankruptcy Court and will maintain certification so they can file all bankruptcy claims electronically and receive communications electronically in the PACER system.
 - c. The BAPA and/or his or her staff shall maintain records on this caseload and shall work the Department to address IV-D issues in the bankruptcy law, the IV-D program's treatment of bankruptcy cases and system issues with MACSS for the cases.
 - d. The budget for these activities will be incorporated into a single IV-D budget for the contractor and approved by the Department as set forth in this agreement.
 - e. The BAPA and/or his or her staff must follow all the other requirements set forth in this IV-D County Reimbursement Cooperative Agreement as they pertain to their representation of the Department in bankruptcy cases, including but not limited to the requirements in section 3.2.14

A.4 **Department Level A Responsibilities**

- A.4.1 The Department will measure the contractor's performance based on federal performance measures in accordance with 45 CFR 305.2, and by utilizing data from MACSS or the Managed Reporting program located at: http://ssrvfocp/ibi_apps/login/mr/mr_login.jsp.

B. Level B County

- B.1 In the event the County is designated as a Level B County, the County shall comply with the additional following requirements.

B.2 **Definitions**

- B.2.1 Jackson County "Family Support Division" cases: Cases for support collection or paternity determination services under Title IV-D of the Social Security Act wherein the applicant is a resident of Jackson County or which would otherwise be assigned to the Kansas City offices of the Family Support Division under existing practice and procedures, except for Jackson County Prosecuting Attorney cases.
- B.2.2 Jackson County "Prosecuting Attorney" cases: Cases for support collection services under Title IV-D of the Social Security Act where in the applicant is a Jackson County resident who as Head of Household has never received and is not receiving either cash or non-cash benefits or assistance under Title IV-A or XIX of the Social Security Act nor has a prior companion Temporary Assistance for Needy Families (TANF) case as a result of prior IV-A eligibility on the part of the applicant or involved family. Cases for paternity determination services under the Title IV-D of the Social Security Act where in the applicant is a Jackson County Resident.

B.3 **Prosecuting Attorney's (PA) Office Level B Responsibilities**

- B.3.1 The PA shall provide the following IV-D services on cases they have the sole responsibility for:
- a. Establishing paternity;
 - b. Establishing and modifying child support obligations;
 - c. Enforcing child, spousal and medical support obligations;
 - 1) The PA shall provide support enforcement services to individuals pursuant to 45 CFR 302.31 and 45 CFR 302.33.
 - 2) The PA shall secure, establish, and enforce medical support obligations pursuant to 45 CFR 303.30, 45 CFR 303.32, 454.600 through 454.700, RSMo, and procedures established by the Department.
 - d. Cooperating with other states, tribes, and countries where there is a Federal Reciprocating Agreement or a bilateral agreement;
 - e. Conducting manual location activities as needed to supplement the automated system's location activities; and
 - f. For cases requiring or requesting a review and adjustment, utilizing procedures established by the Department and in accordance with 452.370, 454.496, 454.498 and 454.500, RSMo.
- B.3.2 The PA shall be in full compliance with federal audit requirements and established Departmental procedures as set forth in the procedural and forms manuals and the Missouri Automated Child Support System (MACSS) Quick Reference Guide when providing the services stated herein.
- a. The Child Support Procedural Manual can be located at: <https://dssintranet.mo.gov/dss-fsd-child-support/child-support-manual/>
 - b. The Missouri Automated Child Support System (MACSS) Quick Reference Guide can be located at: <http://10.60.16.82/fsd/training/CSE/MACSSQRG/index.html>

B.4 Department Level B Responsibilities

- B.4.1 The Department will measure the contractor's performance based on federal performance measures in accordance with 45 CFR 305.2, and by utilizing data from MACSS or the Managed Reporting program (http://ssrvfocp/ibi_apps/login/mr/mr_login.jsp).

C. Level C County

- C.1 In the event the County is designated as a Level C County, there are no additional requirements unless the county/city is handling bankruptcy cases for the Department
- C.2 **Requirements for PA Representation in Bankruptcy Actions —Level C—St. Louis City Circuit, Eastern District**
- C.2.1 With regard to the County of St. Louis City, upon a special bankruptcy referral from the Department, the Office of St. Louis City Circuit Attorney has the responsibility of representing the Department in the United States Bankruptcy Court in the Eastern District of Missouri.
 - a. The contractor shall take additional and necessary actions on IV-D cases: in MACSS, with the parties and/or their legal counsel, and in the United States Bankruptcy Court, Eastern District of Missouri.
 - b. The assistant Circuit Attorney responsible for these bankruptcy referrals from the Department (BACA) will be sworn in to appear before the United States Bankruptcy Court and will maintain certification so that they can file all bankruptcy claims electronically and receive communications electronically in the PACER system.
 - c. The BACA and/or his or her staff shall maintain records on all referrals made by the Department and shall work with the Department to address IV-D issues in the bankruptcy law, the IV-D program's treatment of bankruptcy cases and system issues with MACSS for the cases.
 - d. The budget for these activities will be incorporated into a single IV-D budget for the contractor and approved by the Department as set forth in this agreement.
 - e. The BACA and/or his or her staff must also follow all the other requirements set forth in the IV-D County Reimbursement Cooperative Agreement as they pertain to their representation of the Department in bankruptcy cases, including but not limited to the requirements in section 3.2.14.

D. Multi-County Project

- D.1 In the event the County is designated/identified as a participant in a Multi-County Project (Project), the County shall comply with the additional following requirements, as applicable.
- D.2 **Project Participants:** The Project shall consist of the counties listed in the table below. The county labeled with an asterisk (*) shall be designated as the "Host" County for the Project.

Insert County Name	Insert County Name	Insert County Name
Insert County Name	Insert County Name	Insert County Name
Insert County Name	Insert County Name	Insert County Name

D.3 Project Collaboration

- D.3.1 The contractor shall collaborate with the other counties' elected Prosecutor, Circuit Clerk, and County Commissioners, as required, to ensure successful delivery of child support enforcement services.

D.4 Host County Responsibilities

- D.4.1 The Host County shall serve as the lead entity for the Project.
- D.4.2 The Host County shall establish and identify an office for the primary location for the Project.
- D.4.3 The Host County shall utilize the Elected Prosecuting Attorney or employ Assistant Prosecuting Attorney(s) and support staff for fulfilling the requirements of this contract.
 - a. The personnel required above shall spend one hundred percent (100%) of the time working on child support activities unless approved by the department to utilize part time work, If any staff are approved to work part time on child support activities, staff must complete time logs to identify the amount of time spent on IV-D activities for reimbursement.

b. The Host County shall take the necessary steps, as required by law, to appoint/commission the individuals hired as assistant prosecuting attorneys for each of the counties participating in the Project, thereby conferring on the assistant prosecuting attorneys all of the authority, duties and responsibilities of said office for each county participating in the Project.

1) The Host County may limit said commission to child support services at the option of each participating county.

D.4.4 The Host County shall appropriate sufficient funds to compensate required personnel and to provide for the investigation and litigation of cases referred to the Project.

D.5 **Reimbursements to the Host County**

D.5.1 The contractor (Non-host County) shall reimburse the Host County for the non-host county's share of expenditures made to fulfill the requirements of the Project.

D.5.2 The contractor (Non-host County) shall reimburse the Host County in accordance with the applicable percentage share listed in the table below. The percentages are derived from the most recent United States Census Bureau data.

Insert County Name and %	Insert County Name and %	Insert County Name and %
Insert County Name and %	Insert County Name and %	Insert County Name and %
Insert County Name and %	Insert County Name and %	Insert County Name and %

Exhibit # 1 - Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization

Business Entity Certification:

The contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

BOX A: To be completed by a non-business entity as defined below.

BOX B: To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/files/programs/gc_1185221678150.shtm.

BOX C: To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "**business entity**" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "**business entity**" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "**business entity**" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A - Currently Not a Business Entity

I certify that _____ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Company/Individual Name) is awarded a contract for the services requested herein under _____ (Contract Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to the performance of any services as a business entity,

_____ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department of Social Services with all documentation required in Box B of this exhibit.

County Commissioner/Executive Name
(Please Print)

County Commissioner/Executive Signature

Company Name (if applicable)

Date

Exhibit # 1 (continued)

(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

Box B - Current Business Entity Status

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

County Commissioner/Executive Business Entity Representative's Name (Please Print)

County Commissioner/Executive Business Entity Representative's Signature

Business Entity Name

Date

E-Mail Address

As a business entity, the contractor must perform/provide each of the following. The contractor should check each to verify completion/submission of all of the following:

- Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the contractor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed, at minimum, by the contractor and the Department of Homeland Security - Verification Division. If the signature page of the MOU lists the contractor's name and company ID, then no additional pages of the MOU must be submitted; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

Exhibit # 1 (continued)

Affidavit of Work Authorization

The contractor who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now _____ (Name of Business Entity Authorized Representative) as _____ (Position/Title) first being duly sworn on my oath, affirm _____ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

County Commissioner/Executive Signature

Printed Name

Title

Date

E-Mail Address

E-Verify Company ID Number

Subscribed and sworn to before me this _____ of _____, I am commissioned as a
(DAY) (MONTH, YEAR)

notary public commissioned as a notary public within the County of _____, State of
(NAME OF COUNTY)

_____ and my commission expires on _____
(NAME OF STATE) (DATE)

Signature of Notary

Date

TAXATION DIVISION
P O BOX 3666
JEFFERSON CITY MO 65105-3666



Missouri
DEPARTMENT OF REVENUE

Telephone: (573) 751-9268
Fax: (573) 522-1265
E-mail: taxclearance@dor.mo.gov

VENDOR NO TAX DUE

COUNTY OF BOONE
801 E WALNUT ST RM 236
COLUMBIA MO 65201

DATE ISSUED: NOVEMBER 18, 2019
VALID THROUGH: FEBRUARY 16, 2020

MISSOURI TAX ID NUMBER: 12464848
FEDERAL IDENTIFICATION NUMBER: 436000349

The Missouri Department of Revenue certifies that based on the information provided the above listed vendor and its affiliates are properly registered to collect and pay sales and/or use tax in compliance with Section 34.040.7, RSMo. and has fully filed and paid all tax due, including penalties and interest, or does not owe any sales and/or use tax, according to the records of the Department as of November 18, 2019.

This statement of no sales and/or use tax due is valid for 90 days from the date of issuance. This statement does not limit the authority of the Director of Revenue to assess and/or collect liabilities under appeal or that become known to the Department as a result of audit or determination of successor liability.

DIRECTOR OF REVENUE OR DELEGATE
STATE OF MISSOURI

BY:

A handwritten signature in black ink that reads "Esta Zaring".

Esta Zaring
Administrator, Business Tax

MG:DU4044

CBN045
201932200300339

AFFIDAVIT OF WORK AUTHORIZATION ANNUAL RENEWAL DOCUMENT

The contractor who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization Annual Renewal Document.

Comes now Jenna Redel as Director, HR & Risk Management first being duly sworn on my oath, affirm County of Boone is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that County of Boone does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

Jenna Redel
Authorized Representative's Signature
Jenna Redel
Printed Name
Director of HR & Risk Mgmt
Title
12/4/19
Date
jredel@boonecountymw.org
E-Mail Address
436000349
E-Verify Company ID Number

Subscribed and sworn to before me this 4th of December, 2019 I am
(DAY) (MONTH, YEAR)
commissioned as a notary public within the County of Boone, State of
(NAME OF COUNTY)
Missouri, and my commission expires on 6/30/2022.
(NAME OF STATE) (DATE)

Andrea J. Whelan
Signature of Notary
12/4/19
Date





Company ID Number: 173533

**THE E-VERIFY
MEMORANDUM OF UNDERSTANDING
FOR EMPLOYERS**

**ARTICLE I
PURPOSE AND AUTHORITY**

The parties to this agreement are the Department of Homeland Security (DHS) and the County of Boone, Missouri (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

**ARTICLE II
RESPONSIBILITIES**

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - a. Notice of E-Verify Participation
 - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.

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4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.

a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.

6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.

Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.

7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures.

a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly

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employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status

(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon

reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

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- b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.
- c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.
- d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.
- e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:
- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
 - ii. The employee's work authorization has not expired, and
 - iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).
- f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:
- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
 - ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
 - iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with

Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.

2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.

4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:

a. Automated verification checks on alien employees by electronic means, and

- b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify

case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.
4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the

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employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

- a. Scanning and uploading the document, or
- b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

ARTICLE IV SERVICE PROVISIONS

A. NO SERVICE FEES

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V MODIFICATION AND TERMINATION

A. MODIFICATION

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.

B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI PARTIES

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.
- E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to,

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Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.



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Approved by:

Employer County of Boone, Missouri	
Name (Please Type or Print) Wendy S Noren	Title
Signature Electronically Signed	Date 12/23/2008
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 12/23/2008



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Information Required for the E-Verify Program	
Information relating to your Company:	
Company Name	County of Boone, Missouri
Company Facility Address	Boone County Human Resources 613 E. Ash St., Room 114 Columbia, MO 65201
Company Alternate Address	Boone County Human Resources 613 E. Ash St., Room 114 Columbia, MO 65201
County or Parish	BOONE
Employer Identification Number	436000349
North American Industry Classification Systems Code	921
Parent Company	
Number of Employees	500 to 999
Number of Sites Verified for	6

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Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

MISSOURI 6 site(s)

Company ID Number: 173533

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name Julianna M Crouch
Phone Number (573) 886 - 4299
Fax Number (573) 886 - 4300
Email Address jcrouch@boonecountymo.org

Name Jennifer L Redel
Phone Number (573) 886 - 4405
Fax Number (573) 886 - 4444
Email Address jredel@boonecountymo.org

Name Sharry Charest
Phone Number (573) 886 - 4395
Fax Number (573) 886 - 4444
Email Address scharest@boonecountymo.org

Exhibit # 1 (continued)

(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)

BOX C – Affidavit on File - Current Business Entity Status

I certify that Boone County Prosecuting Attorney (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed by the contractor and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency** or **Public University*** to Which Previous E-Verify Documentation Submitted: _____

*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.

Date of Previous E-Verify Documentation Submission: _____

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: _____

(if known)

Daniel K. Atwill, Pending Commission [Signature]
County Commissioner/Executive Business Entity Representative's Name (Please Print) County Commissioner/Executive Business Entity Representative's Signature

173533 datwill@boonecountymo.org
E-Verify MOU Company ID Number E-Mail Address

Boone County Prosecuting Attorney 10/27/2022
Business Entity Name Date

FOR STATE USE ONLY

Documentation Verification Completed By:

Buyer Date

Exhibit # 2 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by 2CFR Part 180.

(Before completing certification, read instructions for certification below)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Daniel K. Atwell, Presiding Commissioner
Name and Title of County Commissioner/Executive

[Signature]
County Commissioner/Executive Signature

10/27/2022
Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

EXHIBIT #3

Registration of Business Name (if applicable) with the Missouri Secretary of State:

The vendor should indicate the vendor's charter number and company name with the Missouri Secretary of State. Additionally, the vendor should provide proof of the vendor's good standing status with the Missouri Secretary of State. If the vendor is exempt from registering with the Missouri Secretary of State pursuant to section 351.572, RSMo, identify the specific section of 351.572 RSMo, which supports the exemption.

Charter Number (if applicable)	Company Name
	County of Boone - Prosecuting Attorney's office
If exempt from registering with the Missouri Secretary of State pursuant to section 351.572 RSMo, identify the section of 351.572 to support the exemption:	

If your business entity is not registered, you may go to the link provided below to register:

www.sos.mo.gov/fileonline

If you believe your business entity is exempt from registering with the Secretary of State due to one of the specific exemptions contained in the Missouri Revised Statutes, please indicate in your response the specific exemption that applies to your business entity.

Below are the exemption sections of the Missouri Revised Statutes for the most popular business entity types:

1. General Business - section 351.572, RSMo, located at:
<http://revisor.mo.gov/main/OneSection.aspx?section=351.572&bid=18804&hl=>
2. Limited Liability Company - section 347.163.5, RSMo, located at:
<http://revisor.mo.gov/main/OneSection.aspx?section=347.163&bid=18500&hl=>
3. Limited Partnership - section 359.551.5, RSMo, located at:
<http://revisor.mo.gov/main/OneSection.aspx?section=359.551&bid=19476&hl=>
4. Non-Profit - section 355.751.2, RSMo, located at:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.751&bid=19289&hl=>
5. Professional Corporation - section 356.231, RSMo, located at:
<http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl=>

Note: Limited Liability Partnerships have no exemptions.

For questions regarding registration, contact the Missouri Secretary of State at:

corporations@sos.mo.gov or (573) 751-4153 (toll free 866-223-6535)

Exhibit # 4: Federal Funding Accountability and Transparency Act (FFATA) Data Form

*See instructions for additional information

Legal Business Name of Entity		County of Boone			
Doing Business As (if different)					
Street Address		605 East Walnut St.			
City	Columbia	State	MO	Zip Code + 4*	65201
UEI Number*		073755977			
Parent Organization's UEI Number*					
Principal Place of Performance*		Boone County Child Support Enforcement 605 E Walnut St.			
Contact Person's Name / Title		Patti Harris / Legal Assistant			
Contact Person Phone Number		573-886-4126			
Contact Person E-Mail		pharris@boonecountymd.org			

Executive Compensation Information*

*Complete this section if required. See instructions for additional information before completing.

List the organization's top five most highly compensated executives for the preceding contractor fiscal year.

Name	Amount
1.	
2.	NOT APPLICABLE
3.	
4.	
5.	

Certification:

I attest the facts stated above are true and correct.

I understand the information provided will be reported by the Department of Social Services to the FFATA Subaward Reporting System (FSRS) and the information will be accessible to the public.


 County Commissioner/Executive Signature

Daniel K. Atwell
 Printed Name

Presiding Commissioner
 Title

10/27/2022
 Date

Instructions for Completing the FFATA Data Form

Zip Code + 4

This is the four digit zip code extension available at <http://zip4.usps.com/zip4/welcome.jsp>

UEI Number

The Unique Entity ID (UEI) Number is a twelve character alphanumeric ID assigned to an entity by SAM.gov.

UEI Number assignment is FREE for all businesses required to register with the US Federal government for contracts. See <http://SAM.gov>.

Parent Organization's UEI Number

Complete if applicable. This is typically used by large organizations with multiple facilities in several locations. The parent organization's number is number assigned to the headquarters for the operation.

Principal Place of Performance

Complete if the primary place of performance is different than the address listed above.

Executive Compensation Information

Review the following questions to determine whether you are required to report executive compensation information.

1. In your preceding completed fiscal year, did your business or organization receive:
 - a. 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act, as defined in 2 CFR 170.320; and
 - a. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act?

Yes No

Note: If the answer to either Question 1a or 1b is "No", your organization's compensation information is not required. Do not complete the Executive Compensation Information section of the FFATA Data Form.

Note: If the answer to both 1a and 1b is "Yes", proceed to Question 2.

2. Does the public have access to the information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78M(a), 78o(d)] or section 6104 of the Internal Revenue Code of 1986? (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission's total compensation filings at <http://www.sec.gov/answers/excomp.htm>)

Yes No

Note: If the answer to Question # 2 is "Yes", your organization's executive compensation information is not required.

Note: If the answer to Question #2 is "No", you are required to complete the Executive Compensation Information section of the FFATA Data Form.

Definitions

"Executive" means officers, managing partners, or any other employees in management positions.

"Total compensation" means the cash and non-cash dollar value earned by the executives during the preceding fiscal year and includes items such as salary, bonuses, stock awards, incentive plans, pension plans, deferred compensation, etc.

Additional information about reporting compensation is available at:

https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf

Exhibit # 5 – Assurance for Safeguarding IRS/SSA Restrictions/Penalties

1. PERFORMANCE

- 1.1 In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
- a. All work will be performed under the supervision of the contractor or the contractor's responsible employees.
 - b. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
 - c. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
 - d. No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.
 - e. The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
 - f. The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

2. CRIMINAL/CIVIL SANCTIONS

- 2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure.
- a. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 2.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited,

willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- 2.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213 and 7213A (see Exhibit 6, IRC Sec. 7431 *Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, IRC Sec. 7213 *Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. INSPECTION

- 3.1 The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.


4. CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

4.1 Performance:

- 4.1.1 In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
- a. All work will be done under the supervision of the contractor or the contractor's employees.
 - b. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
 - c. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
 - d. The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
 - e. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
 - f. All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
 - g. No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
 - h. The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
 - i. The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

4.2 **Criminal/Civil Sanctions:**

- 4.2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 4.2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
- 4.2.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 4.2.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213 and 7213A (see Exhibit 6, IRC Sec. 7431 *Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, IRC Sec. 7213 *Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
- 4.3 **Inspection:**
- 4.3.1 The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.


Authorized Signature for the County Prosecuting Attorney

Roger Johnson, Prosecutor

10/13/22
Date

CERTIFIED COPY OF ORDER

STATE OF MISSOURI

October Session of the October Adjourned

Term. 20 22

County of Boone

} ea.

In the County Commission of said county, on the 27th day of October 20 22

the following, among other proceedings, were had, viz:

Now on this day, the County Commission of the County of Boone does hereby authorize Boone County, Missouri, to issue its Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022, in a principal amount not to exceed \$186,000,000 to finance the costs of an industrial development project for **Plumrose USA, Inc., d/b/a Swift Prepared Foods**, consisting of the acquisition of certain real property, the construction of improvements on the real property and the acquisition and installation of certain equipment therein; authorizing and approving certain documents including the attached Order; and authorizing certain other actions in connection with the issuance of the Bonds.

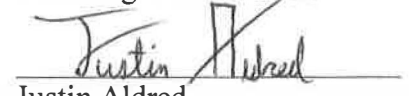
The Presiding Commissioner is authorized to execute documents necessary to effectuate this Order.

Done this 27th day of October 2022.

ATTEST:


Brianna L. Lennon
Clerk of the County Commission


Daniel K. Atwill
Presiding Commissioner


Justin Aldred
District I Commissioner


Janet M. Thompson
District II Commissioner

**BOONE COUNTY, MISSOURI,
the County**

AND

**BOKF, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of November 1, 2022

Relating to:

**\$186,000,000
(Aggregate Maximum Principal Amount)
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022**

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- Exhibit A - Project Site
- Exhibit B - Project Improvements
- Exhibit C - Project Equipment
- Exhibit D - Form of Bonds
- Exhibit E - Form of Representation Letter

TRUST INDENTURE

THIS TRUST INDENTURE, dated as of November 1, 2022 (this “**Indenture**”), between **BOONE COUNTY, MISSOURI**, a county of the first classification and municipal corporation organized and existing under the laws of the State of Missouri (the “**County**”), and **BOKF, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in St. Louis, Missouri, as trustee (the “**Trustee**”);

RECITALS:

1. The County is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “**Act**”) to purchase, construct, extend, improve and equip certain projects (as defined in the Act), to issue industrial revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the County shall deem advisable.
2. Pursuant to the Act, the County Commission of the County adopted Commission Order No. 74-2021 on February 25, 2021, (a) approving an application from Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the “**Company**”), for an economic development project for the Company, and (b) declaring the intent of the County to issue taxable industrial development revenue bonds to provide funds to finance the costs of the economic development project.
3. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act, the County Commission adopted Commission Order No. 503-2021 on December 9, 2021, (a) approving a plan for the Company’s economic development project consisting of (i) acquiring an approximately 80.77 acre parcel of real property located at 5008 Paris Road in the County (the “**Project Site**,” as more fully described in **Exhibit A** hereto), (ii) making certain real property improvements on the Project Site, including initially constructing an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse on the Project Site (the “**Phase I Project Improvements**”) and subsequently constructing an approximately 50,000 square foot addition to the production facility on the Project Site to provide for additional processing and packaging capabilities (the “**Phase II Project Improvements**,” together with the Phase I Project Improvements, the “**Project Improvements**,” as more fully described in **Exhibit B** hereto), and (iii) acquiring and installing certain equipment and other personal property within the Project Improvements (the “**Project Equipment**,” as more fully described in **Exhibit C** hereto, the Project Site, the Project Improvements, and the Project Equipment collectively being the “**Project**”), to be financed out of proceeds of taxable industrial revenue bonds to be issued by the County under the Act, and (b) approving a Performance Agreement (defined herein) for the purpose of setting forth the terms and conditions of the Project’s exemption from ad valorem real and personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.
4. Pursuant to the Act, the County Commission adopted Commission Order No. 512-2022 (the “**Order**”) on October 27, 2022, authorizing the County to issue its Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022, in the aggregate maximum principal amount of \$186,000,000 (the “**Bonds**”) to pay costs of the Project.

5. Pursuant to the Order, the County is authorized (a) to enter into this Indenture with the Trustee for the purpose of issuing and securing the Bonds, (b) to enter into a Base Lease of even date herewith (the “**Base Lease**”) with the Company, as lessor, under which the County, as lessee, will initially acquire a leasehold interest in the Project Site and the Project Improvements (collectively, the “**Real Property**”), and (c) to enter into a Lease Agreement of even date herewith (the “**Lease**”) with the Company, as lessee, under which the County, as lessor, will cause the construction of the Project Improvements and the acquisition and installation of the Project Equipment on the Project Site and will lease the Project Site, the Project Improvements and the Project Equipment (i.e. the Project) to the Company in consideration of rental payments to be paid by the Company that will be sufficient to pay the principal of and interest on the Bonds.

6. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the County, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (as defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the County, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners (as defined herein) thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and Outstanding (as defined herein) under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the County of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns until this Indenture has been satisfied and discharged, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the “**Trust Estate**”), to-wit:

(a) All right, title and interest of the County in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) All right, title and interest of the County in, to and under the Lease (excluding the Unassigned Rights, as defined herein), and all rents, revenues and receipts derived by the County from the Project including, without limitation, all rentals and other amounts to be received by the County and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the County or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive

any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the County pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all of the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the County does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined in **Section 1.1** of the Lease (which definitions are hereby incorporated by reference) and words and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

“Additional Rent” means the additional rental described in **Sections 5.2** of the Lease.

“Approved Investor” means (a) the Company, its successor and assigns, including but not limited to any entity receiving an assignment of the Lease as permitted pursuant to **Section 10.7** of the Lease, (b) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933, or (c) any general business corporation or enterprise with total assets in excess of \$100,000,000.

“Assessor” means the County Assessor of Boone County, Missouri.

“Authorized Company Representative” means the President & Chief Operating Officer of the Company, the Vice President of the Company or such other person at the time designated to act on behalf

of the Company as evidenced by written certificate furnished to the County and the Trustee containing the specimen signature of such person and signed on behalf of the Company by authorized officers. Such certificate may designate an alternate or alternates each of who shall be entitled to perform all duties of the Authorized Company Representative.

“Authorized County Representative” means the Presiding Commissioner, the County Clerk or such other person at the time designated to act on behalf of the County as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the County by its Presiding Commissioner. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized County Representative.

“Base Lease” means the Base Lease dated as of November 1, 2022, between the Company, as lessor, and the County, as lessee, as it may be amended from time to time.

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

“Bond” or **“Bonds”** means the Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022, issued, authenticated and delivered under and pursuant to this Indenture, in the maximum aggregate principal amount of \$186,000,000.

“Bond Fund” means the “Boone County, Missouri, Bond Fund – Swift Prepared Foods Project” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds by and between the County and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the County as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds before the Closing Date, and, at the Company’s option, the costs of issuance of the Bonds if such costs are not paid from Bond proceeds.

“Company” means Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation, and its successors or assigns.

“Completion Date” means the dates of execution of the certificates with respect to the Phase I Project Improvements, the Phase II Project Improvements and the Project Equipment and the date of execution of the certificate with respect to the entire Project required by **Section 4.5** of the Lease and **Section 504** of this Indenture and filed with the Trustee.

“Costs of Issuance Fund” means the “Boone County, Missouri, Costs of Issuance Fund – Swift Prepared Foods Project” created in **Section 501** of this Indenture.

“County” means Boone County, Missouri, a county of the first classification and a municipal corporation organized and existing under the laws of the State of Missouri, and its successors and assigns.

“Cumulative Outstanding Principal Amount” means the aggregate principal amount of all Bonds Outstanding under the provisions of this Indenture, not to exceed \$186,000,000 as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in Section 901 hereof and, with respect to the Lease, any Event of Default as described in Section 12.1 of the Lease.

“Financing Document” means any loan agreement, credit agreement, promissory note, security agreement, financing statement, mortgage, deed of trust, letter of credit, participation agreement, lease agreement, sublease, ground lease, hedging agreement or other document executed by or on behalf of, or for the benefit of, a Financing Party, and all amendments, modifications, restatements, extensions and renewals thereof, permitted pursuant to the provisions of Section 10.4 of the Lease.

“Financing Party” means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with such financing or hedging arrangements, in connection with the development, construction, ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person’s behalf.

“Government Securities” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of Article XI of this Indenture.

“Investment Securities” means any of the following securities:

- (a) Government Securities;
- (b) obligations of Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;
- (d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in

clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking; or

(e) any other investment approved in writing by the Authorized County Representative and the Owners of all of the Outstanding Bonds.

“**Lease**” means the Lease Agreement dated as of November 1, 2022, between the County, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

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

“**Leasehold Mortgage**” means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** of the Lease.

“**Net Proceeds**” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including reasonable attorneys’ fees, Trustee’s fees and any extraordinary expenses of the County and the Trustee) incurred in the collection of such gross proceeds.

“**Outstanding**” when used with reference to Bonds, means, as of a particular date, all Bonds theretofore authenticated and delivered, except:

- (a) Bonds previously canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“**Owner**” or “**Bondowner**” means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

“**Paying Agent**” means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“**Payment Date**” means the date on which the principal of or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“Performance Agreement” means the Performance Agreement dated as of December 1, 2021, among the County, the Company and the Assessor, as amended and supplemented from time to time.

“Person” means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“Phase I Project Improvements” means an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse to be constructed on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from proceeds of the Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Phase II Project Improvements” means an approximately 50,000 square foot addition to the Italian meats and charcuterie production facility to provide for additional processing and packaging capabilities to be constructed on the Project Site after the completion of the Phase I Improvements pursuant to **Article IV** of the Lease and paid for in whole or in part from proceeds of the Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Principal Amount Advanced” means the amount set forth in each requisition certificate in accordance with **Section 4.4** of the Lease, as reflected in the records maintained by the Trustee as provided in the Bonds and this Indenture.

“Project” means, collectively, the Project Site, the Project Improvements and the Project Equipment, and all additions, modifications, improvements, replacements and substitutions made to the Project pursuant to the Lease as they may at any time exist.

“Project Costs” means all costs of purchasing, constructing, improving and equipping the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition of the Project Site, the construction and improvement of the Project Improvements located on the Project Site, and the acquisition and installation of the Project Equipment on the Project Site, which the Company conveys to the County;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of professionals and consultants in relation to the acquisition, purchase, construction, improvement and equipping of the Project or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in connection with the acquisition, purchase, construction and improvement of the Project Improvements and otherwise improving the Project Site and purchasing and installing the Project Equipment, including the actual cost of labor and materials, machinery, furnishings and equipment as payable to contractors, builders and materialmen in connection with the purchase, construction, improvement and installation of the Project;

(d) interest accruing on the Bonds during the construction period of the Project Improvements;

(e) the cost of title insurance policies or reports and the cost of any other insurance maintained in accordance with **Article VII** of the Lease;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, legal fees and expenses, including fees of Bond Counsel, fees and expenses of accountants and other consultants, publication and printing expenses and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the purchase, construction, improvement and installation of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to: (1) the authorization, issuance and sale of the Bonds, including costs of issuance of the Bonds; (2) the purchase, construction, improvement and installation of the Project; and (3) the financing thereof; and

(h) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

“Project Equipment” means all items of equipment or other personal property acquired or installed or acquired for installation in the Project Improvements or elsewhere on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit C** attached hereto, and by this reference made a part hereof, and all replacements thereof and substitutions therefor which, pursuant to **Section 8.2** of the Lease, constitute part of the Project Equipment.

“Project Fund” means the “Boone County, Missouri, Project Fund – Swift Prepared Foods Project” created in **Section 501**.

“Project Improvements” means all buildings, structures, improvements and fixtures comprising the Phase I Project Improvements and Phase II Project Improvements to be purchased, constructed, installed and otherwise improved on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from proceeds of the Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Project Site” means all of the real estate as described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Purchaser” means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds.

“Real Property” means, collectively, the Project Site and the Project Improvements located on the Project Site.

“State” means the State of Missouri.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the County and the Trustee pursuant to **Article XI** hereof.

“**Supplemental Lease**” means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

“**Transfer Date**” means the date upon which the Company transfers fee title of the Real Property to the County pursuant to **Section 4.5** of the Lease, which date shall occur within the same calendar year as the Completion Date of the Phase I Project Improvements.

“**Trust Estate**” means the Trust Estate described in the Granting Clauses of this Indenture.

“**Trustee**” means BOKF, N.A., St. Louis, Missouri, a national banking association duly organized and existing under the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“**Unassigned Rights**” means the County’s rights under the Lease to receive moneys for its own account and the County’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided in the Lease.

Section 102. Rules of Interpretation.

(a) 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 public bodies, as well as natural Persons.

(b) Wherever in this Indenture 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.

(c) 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 Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

Section 103. Date of Indenture. The dating of this Indenture as of November 1, 2022, is intended as and for the convenient identification of this Indenture only and is not intended to indicate that this Indenture was executed and delivered on said date, this Indenture being executed and delivered and becoming effective simultaneously with the initial issuance of the Bonds.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as the "Boone County, Missouri, Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022." The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$186,000,000.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the County payable solely out of the rents, revenues and receipts derived by the County from the Project and the Lease and not from any other fund or source of the County. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the County, the State or any political subdivision thereof, and neither the County, the State nor any political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit D** hereto, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the principal payment office of any Paying Agent named in the Bonds. The payment of principal of the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206** hereof. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the 15th day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the County. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company is the sole Owner of the Bonds, then the Company may set-off its obligation to the County, as lessee, to pay Basic Rent under the Lease against the County's obligation to the Company, as the Bondowner, to pay principal of and interest on the Bond under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred and that pursuant to the set-off, the Company is deemed to have paid its obligation to the County, as lessee, to pay Basic Rent under the Lease and the County is deemed to have paid its obligation to the Company, as the Bondowner, to pay principal of and interest on the Bonds under this Indenture. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the County by the manual or facsimile signature of the Presiding Commissioner and attested by the manual or facsimile signature of the County Clerk and shall have the corporate seal of the County affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit D** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred to an Approved Investor only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the County and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit E** hereto. Upon any such transfer, the County shall execute

and the Trustee shall authenticate and deliver in exchange for such Bond a new fully-registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the Outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the County shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee. The County or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the County nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) The Bonds are authorized in the aggregate maximum principal amount of \$186,000,000 for the purpose of providing funds to pay Project Costs, which Bonds shall be designated the "Boone County, Missouri, Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on December 1, 2032 (subject to prior redemption as provided in **Article III**) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the County and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit D** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An electronic certified copy of the Order passed by the County Commission authorizing the issuance of the Bonds and the execution of this Indenture and the Lease;

(2) An electronic copy of executed counterparts or copies of this Indenture, the Base Lease, the Lease, the Performance Agreement and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached hereto as **Exhibit E** hereto;

(4) A request and authorization to the Trustee on behalf of the County, executed by the Authorized County Representative, to authenticate the Bonds and deliver the same to or at the written direction of the Purchaser upon payment to the Trustee, for the account of the County, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to the name of the Purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds constitute valid and legally binding limited and special revenue obligations of the County; and

(6) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, either:

(1) The Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser; or

(2) The Company shall submit a requisition certificate in accordance with **Section 4.4** of the Lease, in an amount equal to the Closing Price, and the Trustee shall authenticate and endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to the Company (or another purchaser designated by the Company).

In either case, the Purchaser shall be deemed to have paid over to the Trustee, and the Trustee shall be deemed to have deposited into the Project Fund, an amount equal to the Closing Price.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease. If the Purchaser does not pay to the Trustee the amount set forth in the requisition certificate, the Purchaser will be deemed to have advanced an amount equal to the amount set forth in the requisition certificate and the Trustee shall endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced as set forth on **Schedule I** to the Bonds shall be the date of the County's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted to the Trustee for the Project and shall notify the County if the requisitions submitted exceed the maximum principal amount of the Bonds permitted hereunder.

(f) The Bonds shall bear interest at the rate of 5.00% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2022, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed

\$186,000,000 and further provided that the Bonds shall be paid in full no later than December 1, 2032. Interest shall be calculated on the basis of a year of 360 days consisting of 12 months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as the “**Principal Amount Advanced**” and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the “**Cumulative Outstanding Principal Amount**” on **Schedule I** to the Bonds. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records and **Schedule I** to the Bonds, the principal amount paid on the Bonds as the “**Principal Amount Redeemed**” and shall enter the then Outstanding principal amount of the Bonds as the “**Cumulative Outstanding Principal Amount.**” The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit D** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the County and the Company on a monthly basis. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504** hereof, the Trustee, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the County and the Company.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated or is lost, stolen or destroyed, the County shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the County and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to save, defend and hold each of the County and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the County and the Trustee may require the payment of an amount sufficient to reimburse the County and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 210. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds that have been paid or redeemed or that the Trustee has purchased or that have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be canceled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds canceled under any of the provisions of this Indenture shall be destroyed by the Trustee in accordance with applicable laws and regulations and the Trustee’s policies and practices. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the County and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, upon written instructions from the Company, (1) in whole, if the Company, in accordance with the terms of the Lease, exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (A) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (B) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to Sections 9.1(f) or 9.2(c) of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) At its option, the Company, in its capacity as Owner of the Bonds, may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company, in its capacity as lessee under the Lease, shall receive a credit against the amounts payable by the Company for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the County shall, at the Company's direction, deliver to the Company the items described in Section 11.2 of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in Section 301(a) hereof, the Company shall deliver written notice to the County and the Trustee that it has elected to direct the County to redeem all or a portion of the Bonds at least 40 days (10 days if the Company is the Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if the Company is the Owner) prior to the scheduled redemption date by

facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit D**. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following separate special trust funds in the name of the County:

(a) "Boone County, Missouri, Project Fund – Swift Prepared Foods Project" (herein called the "**Project Fund**").

(b) "Boone County, Missouri, Bond Fund – Swift Prepared Foods Project" (herein called the "**Bond Fund**").

(c) "Boone County, Missouri, Costs of Issuance Fund – Swift Prepared Foods Project" (herein called the "**Costs of Issuance Fund**").

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208(d)** and **(e)** hereof), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and installing the Project shall pursuant to any written directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208(d)** or **(e)**, the Trustee is deemed to have deposited into the Project Fund the amount specified in a requisition certificate submitted by the Company to the Trustee in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds

in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of such requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative. If the County so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the County. The County hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the purchase, construction and installation of the Phase I Project Improvements, the Phase II Project Improvements and the Project Equipment and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the respective certificates required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the later of (a) the Completion Date of the Phase II Project Improvements or (b) the completion date of the Project Equipment (which will evidence the completion of the entire Project), any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to and deposited in the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Deposits into and Disbursements from the Costs of Issuance Fund. Money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or be refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts designated as costs of issuance in a closing memorandum provided to the Trustee on or before the Closing Date, which will include appropriate invoices corresponding to each such cost of issuance as attachments. The Trustee may rely conclusively on the amounts due as shown in either the requisition certificate or the closing memorandum and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance within 90 days of the issuance date of the Bonds shall be refunded to the Company.

Section 506. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as hereinafter provided in **Article IX** hereof, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the County and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits into the Bond Fund.

(a) The Trustee shall deposit into the Bond Fund, as and when received, (1) all accrued interest on the Bonds, if any, paid by the Purchaser; (2) all Basic Rent payable by the Company to the County specified in **Section 5.1** of the Lease; (3) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (4) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 506** hereof upon acceleration of the Bonds; (5) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (6) the amounts to be deposited in the Bond

Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (7) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (8) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) Whether or not deposits are being made to the Trustee, the Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

Section 602. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and interest on the Bonds as the same mature and become due or upon the redemption thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the County.

(b) The County hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before and until such redemption, the County covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture) and the fees, charges and expenses of the Trustee, the County and any Paying Agent and any other amounts required to be paid under this Indenture, the Lease and the Performance Agreement, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 604. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof,

if funds sufficient to pay such Bond have been made available to the Trustee, all liability of the County to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof may look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee shall hold such amounts uninvested in cash. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The County covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the County to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The County covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the County according to the import thereof.

Section 803. Performance of Covenants. The County covenants that it will faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its County Commission pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the County hereunder.

Section 804. Instruments of Further Assurance. The County covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds, upon being first indemnified by the Company for the cost thereof. The County covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The County shall file or cause to be kept and filed all financing statements and hereby authorizes and directs the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be required under the Uniform Commercial Code to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder. The County will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law to fully preserve and protect the security of the Owners and the rights of

the Trustee hereunder. The Trustee shall file continuation statements with respect to each Uniform Commercial Code financing statement relating to the Trust Estate filed at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee has been notified in writing by the Company that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and description of collateral in filing any financing or continuation statements or modifications thereto pursuant to this Section, and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Company shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "extraordinary services" fees.

Section 806. Inspection of Project Books. The County covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The Trustee, as assignee, transferee, pledgee and owner of a security interest under this Indenture, in its name or in the name of the County, may enforce all assigned rights of the County and the Trustee and all obligations of the Company under and pursuant to the Lease for and on behalf of the Owners, whether or not the County is in default hereunder.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) Default in the due and punctual payment of the principal of any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for the redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for the redemption thereof;
or
- (c) Default as specified in Section 12.1 of the Lease has occurred.

No default specified above shall constitute an Event of Default until actual notice of such default by registered or certified mail has been given by the County, the Company, the Trustee or by the Owners of 25% in aggregate principal amount of all Bonds Outstanding to the Company or the County (as the case may be), and the Company or the County (as the case may be) has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company or the County (as the case may be) within such period and diligently pursued until the default is corrected.

Section 902. Acceleration of Maturity in Event of Default; Rescission.

(a) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the County or the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the County and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest and all other amounts due hereunder shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds have matured by their terms, all overdue installments of principal and interest upon the Bonds, together with the reasonable and proper expenses of the Trustee, and all other sums then payable by the County under this Indenture are either paid or provisions satisfactory to the Trustee are made for such payment, then and in every such case the Trustee shall, but only with the written approval of a majority of the Owners of the Bonds then Outstanding, rescind such declaration and annul such default in its entirety. In such event, the Trustee shall rescind any declaration of acceleration of installments of rent payments on the Bonds as provided in **Section 12.2** of the Lease.

(c) In case of any rescission, then and in every such case the County, the Trustee, the Company and the Owners shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the County, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the County pertaining thereto, and including the rights and the position of the County under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project or any part thereof, in the name and for account of the County, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges before the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable under the Performance Agreement. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the County, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the County and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the County or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested to do so by (1) the County (in the case of an Event of Default pursuant to **Section 12.1(b), (c)** (but only as it relates to Unassigned Rights), **(d), (e)** or **(f)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in **Section 1001(l)** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the County or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** hereof, or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(l)** hereof and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the County to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(l)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(b)**, (c) (but only as it relates to Unassigned Rights), (d), (e) or (f) of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of any obligations outstanding under the Performance agreement, be applied to the costs and expenses of the proceedings resulting in the collection of such moneys and to the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys' fees and expenses) or amounts to be paid pursuant to **Section 903** and then be applied to the obligations outstanding under the Lease. Any remaining moneys shall be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall applied as follows:

(1) Unless the principal of all the Bonds has become or has been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(2) If the principal of all the Bonds has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds has been declared due and payable, and if such declaration thereafter has been rescinded and annulled under the provisions of **Section 910**, then, subject to the provisions of subsection (2) of this Section, if the principal of all the Bonds later becomes due or is declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all reasonable fees, expenses and charges of the County and the Trustee and any other amounts required to be paid under this Indenture and the Lease have been paid (including any amounts payable under the Performance Agreement), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602** hereof.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the County, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on the Bonds, but only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding; provided, however, that (a) there shall not be waived without the consent of the County an Event of Default hereunder arising from an Event of Default under **Section 12.1(b), (c)** (but only as it relates to Unassigned Rights), **(d), (e)** or **(f)** of the Lease, and (b) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (1) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (2) any Event of Default in the payment when due of the interest on any such Bonds, unless before such waiver or rescission, all arrearages of interest, or all arrearages of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the County (including reasonable attorneys' fees and expenses), in connection with such default, have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default has been discontinued or abandoned or determined adversely, then and in every such case the County, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or

impair any right consequent thereon and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(I)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the County or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the County and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the County of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not the Trustee. The Trustee shall not be accountable for the use or application by the County or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the County or the Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,

consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee may rely upon a certificate signed by an Authorized County Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the County to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the County or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the County pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the County to the authentication of any Bonds, the withdrawal of any cash or the taking of any other action by the Trustee.

(l) Notwithstanding anything in this Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the

Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of or intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the County shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the County is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies,

immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the County, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the County; provided, however, that in no event shall the resignation of the Trustee or any successor Trustee become effective until a successor Trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the County and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the County and the Owners and signed by the Company.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the County may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the County and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the County, by an instrument executed and signed by its Presiding Commissioner and attested by its County Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the County shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided within 30 days of any resignation or removal, the Trustee, at the Company's expense, or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor has been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the County and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the County, and upon approval by the County of the records and accounts of the predecessor Trustee, a release of the predecessor Trustee by the County, and payment of the reasonable fees and expenses of the predecessor Trustee, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the County be required by any

predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the County.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it has been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and has been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee. Such co-trustee or separate trustee must be approved by the Company so long as the Company is not in default under the Lease.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall, so long as no Event of Default has occurred or is continuing to occur hereunder, be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the County be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the County.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate

trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year to the County, the Company and to any Owner requesting the same and, upon the request of the County, the Company or any Owner, at such Owner's expense, a monthly accounting to any such party, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The County and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners (provided the Trustee shall be entitled to receive and may rely upon an opinion of counsel in exercising such judgment);

(b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;

(c) To more precisely identify any portion of the Project or to add additional property thereto;

(d) To conform this Indenture to amendments to the Lease made by the County and the Company; or

(e) To subject to this Indenture additional revenues, properties or collateral.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the County and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the County for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds

then Outstanding, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) If the County requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the County following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the County from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article that affects any rights of the Company shall not become effective unless and until the Company shall consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days before the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the County shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the County stating that, to the best of counsel's actual knowledge, the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the County. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The County and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the County and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and

adversely affect the Trustee or security for the Owners (provided the Trustee is entitled to receive and rely upon an opinion of counsel in exercising such judgment).

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the County nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the County or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the County and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the designated corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the County following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the County from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the County and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the County stating that, to the best of counsel's actual knowledge, the execution of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereto.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease and the Performance Agreement, including the reasonable fees and expenses of the Trustee, the County and the Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the County or the Company execute, acknowledge and deliver to the County such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the County (subject to the County's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The County is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms thereof, or (2) has been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (A) moneys sufficient to make such payment or (B) Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment, or (3) has been provided for by surrendering the Bonds to the Trustee for cancellation. When the Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** of this Indenture or irrevocable instructions have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys or Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take

acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the County maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Company or any affiliate thereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the County, the Trustee, the Company or the Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service or sent by facsimile:

(a) To the County:

Boone County, Missouri
801 E. Walnut, Room 112
Columbia, Missouri 65201
Attention: County Treasurer
Fax: (573) 886-4311

with a copy to:

Boone County, Missouri
801 E. Walnut, Room 211
Columbia, Missouri 65201
Attention: County Counselor

(b) To the Trustee:

BOKF, N.A.
200 North Broadway, Suite 1710
St. Louis, Missouri 63102
Attention: Corporate Trust Department

Fax: (913) 802-5795

(c) To the Company:

Plumrose USA, Inc. (d/b/a Swift Prepared Foods)
651 W. Washington Blvd., Suite 304
Chicago, Illinois 60661
Attention: Legal Department

with a copy to:

McGrath North Mullin & Kratz, PC LLO
1601 Dodge Street, Suite 3700
Omaha, Nebraska 68102
Attention: Steven P. Case, Esq.

(d) To the Owners if the same is duly mailed by first-class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed; provided, however, that notice to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. All notices given by facsimile shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the County or the Trustee to the other shall also be given to the Company. The County, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other addresses to which subsequent notices, certificates or other communications shall be sent.

Section 1404. Severability. If any provision of this Indenture is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

Section 1405. Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, stored and received by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 1408. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Trustee certifies it is not currently engaged in and shall not, for the duration of this Indenture, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the County has caused this Indenture to be signed in its name and behalf by its Presiding Commissioner and the seal of the County to be hereunto affixed and attested by the County Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

BOONE COUNTY, MISSOURI

By: 
Name: Daniel K. Atwill
Title: Presiding Commissioner

[SEAL]

ATTEST:

By: 
Name: Brianna L. Lennon
Title: County Clerk

Trust Indenture
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022

BOKF, N.A., as Trustee

By: *Victor Zarrilli*
Name: Victor Zarrilli
Title: Senior Vice President



ATTEST:

By: *Admir Gusic*
Name: Admir Gusic
Title: Vice President

Trust Indenture
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022

EXHIBIT A

PROJECT SITE

The real property located in Boone County, Missouri, upon which the Project Improvements and Project Equipment will be located, as more specifically described below:

Lot 1, PLUMROSE USA, INC., INC. FINAL PLAT, a subdivision of the City of Columbia, Boone County, Missouri

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consists of the following Phase I Project Improvements and the Phase II Project Improvements on the Project Site, to the extent paid for with Bond proceeds:

Phase I Project Improvements: the construction of an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse on the Project Site.

Phase II Project Improvements: the construction of an approximately 50,000 addition to the then-existing Italian meats and charcuterie production facility and cold storage warehouse on the Project Site to provide for additional processing and packaging capabilities.

EXHIBIT C

PROJECT EQUIPMENT

The Project Equipment consists of all items of equipment or other personal property designated by the Company now or hereafter procured, assembled, or installed on the Project Site by the Company pursuant to **Article IV** of the Lease and paid for, or reimbursed, with proceeds of Bonds and all additions, replacements, alterations, substitutions thereto now or hereafter effected and specifically designated by the Company. A replacement item may be included by the Company as a part of the Project Equipment under the conditions set forth in the Lease.

EXHIBIT D
FORM OF BONDS

*THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED,
ASSIGNED OR NEGOTIATED ONLY TO AN APPROVED INVESTOR
AS DEFINED IN THE HEREIN DESCRIBED INDENTURE.*

No. 1

Not to Exceed
\$186,000,000

UNITED STATES OF AMERICA
STATE OF MISSOURI

BOONE COUNTY, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(SWIFT PREPARED FOODS PROJECT)
SERIES 2022

Interest Rate

5.00%

Maturity Date

December 1, 2032

Dated Date

December [___], 2022

OWNER: PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS)

MAXIMUM PRINCIPAL AMOUNT: ONE HUNDRED EIGHTY SIX MILLION DOLLARS

BOONE COUNTY, MISSOURI, a county of the first classification and municipal corporation organized and existing under the laws of the State of Missouri (the "**County**"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The County agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the County kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2022, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “**Cumulative Outstanding Principal Amount**” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the County designated the “Boone County, Missouri, Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022” in the maximum aggregate principal amount of \$186,000,000 (the “**Bonds**”), to be issued for the purpose of (a) acquiring certain real property in the County (the “**Project Site**”) currently owned by Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the “**Company**”), (b) making certain real property improvements on the Project Site, including constructing an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse on the Project Site (the “**Phase I Project Improvements**”) and subsequently constructing an approximately 50,000 square foot addition to the facility to provide for additional processing and packaging capabilities (the “**Phase II Project Improvements**,” together with the Phase I Project Improvements, the “**Project Improvements**”), and (iii) acquiring and installing certain equipment and other personal property within the Project Improvements (the “**Project Equipment**,” collectively with the Project Site and the Project Improvements, the “**Project**”). The County will lease the Project to the Company, under the terms of a Lease Agreement dated as of November 1, 2022 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “**Lease**”), between the County and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and statutes of the State of Missouri, including particularly the Act, and pursuant to proceedings duly had by the County Commission.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of November 1, 2022 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “**Indenture**”), between the County and BOKF, N.A., St. Louis, Missouri, as trustee (the “**Trustee**”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the County, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment at any time before the stated maturity thereof, at the option of the County, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease; provided, however, if only a portion of the Bonds are to be redeemed, Bonds aggregating at least 10% of the maximum principal amount of Bonds authorized under the Indenture shall not be subject to redemption and payment before the stated maturity thereof. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

THE BONDS are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1(f)** or **9.2(c)** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided under the Indenture. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus

accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph, money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

If the Bonds are to be called for optional redemption, the Company shall deliver written notice to the County and the Trustee that it has elected to redeem all or a portion of the Bonds at least 40 days (10 days if there is one Owner) before the scheduled redemption date. The Trustee shall then deliver written notice to the Owner of this Bond at least 30 days (five days if there is one Owner) before the scheduled redemption date by first-class mail (or facsimile, if there is one Owner) stating the date upon which the Bonds will be redeemed and paid.

THE BONDS, including interest thereon, are special obligations of the County and are payable solely out of the rents, revenues and receipts derived by the County from the Project and the Lease and not from any other fund or source of the County, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the County under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the County or the State of Missouri, and neither the County nor the State of Missouri shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the County and deposited in a special fund created by the County and designated the "Boone County, Missouri, Bond Fund – Swift Prepared Foods Project."

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the County kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully-registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The County, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$186,000,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, Boone County, Missouri, has caused this Bond to be executed in its name by the manual or facsimile signature of its Presiding Commissioner, attested by the manual or facsimile signature of its County Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

CERTIFICATE OF AUTHENTICATION

BOONE COUNTY, MISSOURI

This Bond is one of the Bonds of the issue described in the within-mentioned Indenture.

By: _____
Presiding Commissioner

Registration Date: _____

BOKF, N.A.,
as Trustee

ATTEST: _____ (Seal)

By _____
Authorized Signatory

County Clerk

EXHIBIT E

FORM OF REPRESENTATION LETTER

Boone County, Missouri
801 E. Walnut, Room 112
Columbia, Missouri 65201
Attention: County Treasurer

BOKF, N.A.
200 North Broadway, Suite 1710
St. Louis, Missouri 63102
Attention: Corporate Trust Department

Re: \$186,000,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022 of Boone County, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced bonds (the **"Bonds"**), the undersigned purchaser of the Bonds (the **"Purchaser"**) hereby represents, warrants and agrees as follows:

1. The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of November 1, 2022 (the **"Indenture"**), between Boone County, Missouri (the **"County"**), and BOKF, N.A., as trustee (the **"Trustee"**), (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the **"Company"**), under a Lease Agreement dated as of November 1, 2022 (the **"Lease"**), between the County and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the County to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds, (c) the Bonds and the interest thereon shall not constitute general obligations of the County, the State of Missouri or any political subdivision thereof, and none of the County, the State of Missouri or any political subdivision thereof shall be liable thereon, and (d) the Bonds do not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction and are not payable in any manner by taxation.

2. The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the **"1933 Act"**), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser set forth herein.

3. The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of any required opinion of counsel acceptable to the County, the Company, the Trustee and the purchaser that all registration and disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and State of Missouri securities laws and the securities law of any other applicable state are complied with.

5. The Company has (a) furnished to the Purchaser such information about itself as the Purchaser deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the Purchaser, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the County and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

6. The Purchaser acknowledges that no offering document has been prepared in connection with the sale of the Bonds. The Purchaser further acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to Purchaser pursuant to the Bond Purchase Agreement prior to or on the date of the delivery of and payment for the Bonds, and that the County and the Company have in all respects complied with and satisfied all of their respective obligations to Purchaser which are required under the Bond Purchase Agreement to be complied with and satisfied on or before such date.

7. The Purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of the terms and risks of the Bonds and that Purchaser is relying on its own knowledge and investigation of facts and circumstances relating to the purchase of the Bonds. Purchaser believes that the Bonds being acquired are a security of the type that Purchaser wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The Purchaser is fully aware of and satisfied with (a) the current status of the title to the Project and any issues related thereto and (b) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The Purchaser understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The Purchaser hereby directs the Trustee to hold the Bonds in trust pursuant to **Section 204(c)** of the Indenture.

11. The Purchaser is (a) the lessee under the Lease, (b) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, or (c) any general business corporation or enterprise with total assets in excess of \$100,000,000.

Dated: _____, 20__

[PURCHASER OF BONDS]

By: _____
Name: _____
Title: _____

**BOONE COUNTY, MISSOURI,
As Lessor**

AND

**PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS),
As Lessee**

LEASE AGREEMENT

Dated as of November 1, 2022

Relating to:

**\$186,000,000
(Aggregate Maximum Principal Amount)
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022**

Certain rights of Boone County, Missouri (the "County"), in this Lease Agreement have been pledged and assigned to BOKF, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of November 1, 2022, between the County and the Trustee.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of November 1, 2022 (this “**Lease**”), between **BOONE COUNTY, MISSOURI**, a county of the first classification and municipal corporation organized and existing under the laws of the State of Missouri (the “**County**”), as lessor, and **PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS)**, a Delaware corporation, as lessee (the “**Company**”);

RECITALS:

1. The County is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “**Act**”) to purchase, construct, extend, improve and equip certain projects (as defined in the Act), to issue industrial revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the County shall deem advisable.

2. Pursuant to the Act, the County Commission of the County adopted Commission Order No. 74-2021 on February 25, 2021, (a) approving an application from Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the “**Company**”), for an economic development project for the Company, and (b) declaring the intent of the County to issue taxable industrial development revenue bonds to provide funds to finance the costs of the economic development project.

3. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act, the County Commission adopted Commission Order No. 503-2021 on December 9, 2021, (a) approving a plan for the Company’s economic development project consisting of (i) acquiring an approximately 80.77 acre parcel of real property located at 5008 Paris Road in the County (the “**Project Site**,” as more fully described in **Exhibit A** hereto), (ii) making certain real property improvements on the Project Site, including initially constructing an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse on the Project Site (the “**Phase I Project Improvements**”) and subsequently constructing an approximately 50,000 square foot addition to the production facility on the Project Site to provide for additional processing and packaging capabilities (the “**Phase II Project Improvements**,” together with the Phase I Project Improvements, the “**Project Improvements**,” as more fully described in **Exhibit B** hereto), and (iii) acquiring and installing certain equipment and other personal property within the Project Improvements (the “**Project Equipment**,” as more fully described in **Exhibit C** hereto, the Project Site, the Project Improvements and the Project Equipment collectively being the “**Project**”), to be financed out of proceeds of taxable industrial revenue bonds to be issued by the County under the Act, and (b) approving a Performance Agreement (defined herein) for the purpose of setting forth the terms and conditions of the Project’s exemption from ad valorem real and personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the Act, the County Commission adopted Commission Order No. 512-2022 (the “**Order**”) on October 27, 2022, authorizing the County to issue its Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022, in the aggregate maximum principal amount of \$186,000,000 (the “**Bonds**”) to pay costs of the Project.

5. Pursuant to the Order, the County is authorized (a) to enter into a Trust Indenture of even date herewith (the “**Indenture**”) with BOKF, N.A., St. Louis, Missouri, as trustee (the “**Trustee**”), for the

purpose of issuing and securing the Bonds, as therein provided, (b) to enter into a Base Lease of even date herewith (the "**Base Lease**") with the Company, as lessor, under which the County, as lessee, will initially acquire a leasehold interest in the Project Site and the Project Improvements (collectively, the "**Real Property**"), and (c) to enter into this Lease with the Company, as lessee, under which the County, as lessor, will cause the construction of the Project Improvements and the acquisition and installation of the Project Equipment on the Project Site and will lease the Project Site, the Project Improvements and the Project Equipment (i.e. the Project) to the Company in consideration of rental payments to be paid by the Company that will be sufficient to pay the principal of and interest on the Bonds.

6. Prior to the Transfer Date (as defined herein), the Company shall lease the Real Property portion of the Project to the County pursuant to the Base Lease, and the County shall in turn lease the Real Property to the Company pursuant to this Lease, and this Lease shall be considered a sublease of the Real Property portion of the Project. On the Transfer Date, the Company shall convey the Real Property portion of the Project to the County by Special Warranty Deed and the Real Property shall continue to be leased by the County to the Company pursuant to this Lease, and this Lease shall be considered a direct lease with respect to the Real Property portion of the Project.

7. Pursuant to the foregoing, the County desires to lease the Project to the Company and the Company desires to lease the Project from the County, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the County and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture (which definitions are hereby incorporated by reference), the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

"Additional Rent" means the additional rental described in **Section 5.2** hereof.

"Basic Rent" means the rental described in **Section 5.1** hereof.

"Environmental Law" means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

"Full Insurable Value" means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.2(a)** hereof.

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

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

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, the Base Lease, this Lease and the Performance Agreement, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the County, (d) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the County, (e) liens or security interests granted pursuant to this Lease, any Leasehold Mortgage or any other Financing Document, and (f) such exceptions to title set forth in the Commitment for Title Insurance No. NCS-1152260-OMHA, issued by First American Title Insurance Company on October 19, 2022. Nothing in this definition shall authorize or permit any party other than the Company to create or consent to the creation of any Permitted Encumbrance.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the County, the Trustee and their duly appointed representatives.

“Transfer Date” means the date upon which the Company transfers fee title of the Real Property to the County pursuant to **Section 4.5** hereof, which date shall occur within the same calendar year as the Completion Date of the Phase I Project Improvements.

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 otherwise indicates, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

Section 1.3. Date of Lease. The dating of this Lease as of November 1, 2022, is intended as and for the convenient identification of this Lease only and is not intended to indicate that this Lease was executed and delivered on said date, this Lease being executed and delivered and becoming effective simultaneously with the initial issuance of the Bonds.

Section 1.4. Acceptance of Indenture. The Company acknowledges that it has received an executed copy of the Indenture and that it is familiar with the terms and conditions of the Indenture. The Company further covenants that it will comply with all the conditions and covenants contained in the Indenture relating to the Company and the Project, and that it will not take any action which would cause a default thereunder or jeopardize the rights of the Trustee, the County or the Bondowners.

ARTICLE II

REPRESENTATIONS

Section 2.1. 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 county of the first classification and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the County has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of the County Commission, the County has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) As of the date of delivery hereof, the County agrees to (1) acquire the Real Property (initially, the County shall acquire a leasehold interest in the Real Property pursuant to the Base Lease, and, upon substantial completion of the Phase I Project Improvements, the County shall acquire fee title to the Real Property), subject to Permitted Encumbrances, (2) acquire, purchase, construct, equip and improve, or cause to be acquired, purchased, constructed, equipped and improved, the Project Improvements on the Project Site and (3) acquire and install, or cause to be acquired and installed, the Project Equipment on the Project Site. Upon the Transfer Date, the County will acquire a fee interest in the Real Property from the Company pursuant to the Special Warranty Deed dated the Transfer Date, in substantially the form attached as **Exhibit E** hereto (the “**Deed**”), subject to Permitted Encumbrances. The County agrees to lease the Project to the Company and to sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease, all for the purpose of furthering the public purposes of the Act.

(c) To finance the costs of the Project, the County proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(d) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, consisting of all rents, revenues and receipts to be derived by the County from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to this Lease.

(e) The County will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative.

(f) The County shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof or potentially as lessee of a portion thereof, except subsequent to an Event of Default hereunder.

(g) The purchase, construction, improvement and equipping of the Project and the leasing of the Project by the County to the Company will further the public purposes of the Act.

(h) To the County's knowledge, no member of the County Commission or any other officer of the County has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

Section 2.2. Representations by the Company. As of the date of execution and delivery of this Lease, the Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is authorized to conduct business in the State of Missouri.

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its government body, the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

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

(d) The estimated costs of the purchase, construction, improvement and equipping of the Project are in accordance with sound engineering and accounting principles.

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations.

(f) The Project is located wholly within Boone County, Missouri.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The County hereby (a) exclusively rents, leases and lets the Project Equipment to the Company, (b) prior to the Transfer Date, exclusively subleases to the Company the County's leasehold interest in the Real Property and (c) after the Transfer Date, exclusively rents, leases and lets the Real Property to the Company. The Company hereby rents, leases and hires the Project from the County, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 2032.

Section 3.3. Possession and Use of the Project.

(a) The County covenants and agrees that as long as neither the County nor the Trustee has exercised any of the remedies set forth in **Section 12.2** hereof following the occurrence and continuance of an Event of Default, as defined in **Section 12.1** hereof, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the County's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The County covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, the Indenture, the Base Lease or the Performance Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose contemplated by the Act, this Lease and the Performance Agreement. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project, as to the manner of use or the condition of the Project, or that otherwise may be applicable by virtue of the County's interest in the Project. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company may, at its own cost and expense, contest or review by legal or other

appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

ARTICLE IV

PURCHASE, CONSTRUCTION AND EQUIPPING OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the County agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the County. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture to be used and applied as provided in this Lease and in the Indenture. Alternatively, the Trustee shall (pursuant to **Section 208(d)** or **(e)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** hereof. In that event, the purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in the amounts stated in the requisition certificates.

Section 4.2. Purchase, Construction and Equipping of the Project. The County and the Company agree that the County will and the Company, as the agent of the County, shall, but solely from the Project Fund, purchase, construct and equip the Project as follows:

(a) The County will acquire a leasehold interest in the Real Property at the execution hereof pursuant to the Base Lease and fee title to the Real Property pursuant to the Deed on the Transfer Date. Concurrently with the execution of this Lease, (1) the Base Lease will be executed by the County and the Company and placed of record, and (2) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the County and the Trustee. On or before the Transfer Date, the Company shall deliver to the County (i) an updated commitment for title insurance or ownership and encumbrance report, (ii) the Deed and (iii) any other necessary instruments for transfer of fee title to the Real Property. Immediately following acquisition of the Real Property by the County on the Transfer Date, the Base Lease shall be terminated, and a release of the Base Lease shall be recorded in the office of the Boone County Recorder of Deeds.

(b) On behalf of the County, the Company will purchase, improve and construct the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would materially alter the intended purpose of the Project may be made only with the prior written approval of the County. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.3** hereof.

(c) The Company will, on behalf of the County, purchase and install the Project Equipment in the Project Improvements on the Project Site. Except as provided in the next sentence, title to the Project Equipment shall be evidenced by bills of sale included as part of the

form of the requisition certificate attached hereto as **Exhibit D** or other instruments of transfer, including purchase orders or other instruments pursuant to which the County acquires title to personal property directly from the vendor thereof. Subject to **Section 8.2** hereof, all portions of the Project Equipment substituted by the Company shall automatically become part of the Project Equipment subject to this Lease, and full title and ownership of such Project Equipment shall be automatically vested in the County, without the requirement of a bill of sale or other instrument of conveyance unless otherwise requested by the County. Such requisition certificate submitted by the Company pursuant to **Section 4.4** hereof or other bills of sale or instruments of transfer, must (1) be dated by no later than December 31 of each year to be treated as Project Equipment (and therefore to be exempt from ad valorem personal property taxes) in the next succeeding year and (2) be submitted to the County by no later than January 31.

(d) On or before March 1 of each year or such other date required by law for reporting personal property declarations, the Company shall furnish to the County and the Trustee a certificate of an Authorized Company Representative listing the personal property (based on the Company's internal record keeping) comprising the Project Equipment as of January 1 of such year (as required by the personal property declarations provided by the Assessor). The improper inclusion or exclusion of any item in the Project Equipment pursuant to such list may be rectified by the Company within 30 days of the discovery by the Company of such improper inclusion or exclusion. The improper inclusion or exclusion of an item on or from such list shall not affect the items comprising the Project Equipment for the purpose of this Lease or title thereto as intended by the parties hereto. The Company shall provide such information to the County and the Trustee as may be requested in order to ensure that such list corresponds to the list of items comprising the Project Equipment maintained by the Trustee pursuant to **Section 10.8** hereof. The Trustee shall conclusively rely upon the information in the certificates of the Authorized Company Representative in compiling a list of Project Equipment in accordance with **Section 10.8** hereof. The Trustee shall have no duty or obligation to review the information provided in such certificates or to make any analysis, investigation or confirmation of the accuracy or completeness of such information.

(e) Each bill of sale or other instrument of transfer and each personal property declaration form shall be of sufficient specificity so as to enable the County's officials and the Assessor to determine which personal property as reported on the annual personal property declaration constitutes Project Equipment (and therefore is owned by the County) and which personal property does not constitute Project Equipment (and therefore is owned by the Company).

(f) The County and the Company agree that, pursuant to **Section 4.8** hereof, property purchased by the Company with its own funds, and not Bond proceeds, shall not constitute part of the Project Improvements or the Project Equipment and shall remain the property of the Company and shall, therefore, be subject to taxation.

(g) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project. Specifically, with respect to the Phase II Project Improvements, prior to commencing construction of the Phase II Project Improvements, the Company will provide the County with the necessary payment bonds, along with such other documentation requested by the County, to evidence that the Company has complied with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, or any other applicable law requiring payment or performance bonds. Furthermore, the Company agrees and acknowledges that (1) the County and its governing body members,

officers, agents and employees shall be fully indemnified by the Company, as provided in **Section 10.5** hereof, against any claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the Company's failure to secure any payment or performance bonds required by Section 107.170 of the Revised Statutes of Missouri, as amended, or other applicable law in connection with the construction Phase II Project Improvements and (2) the Company's leasehold interest under this Lease may be subject to mechanic's or other similar liens, which the Company shall promptly resolve in accordance with **Section 8.5** hereof.

(h) The Company agrees that it will use reasonable efforts to cause the purchase, construction, improvement and equipping of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such purchase, construction, improvement and equipping commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose.

Section 4.3. Project Costs. The County hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisition certificates for Project Costs incurred before the Completion Date within three months after the Completion Date. The maximum amount of Project Costs for which requisition certificates may be submitted is expressly limited to \$186,000,000.

Section 4.4. Payment for Project Costs.

(a) All Project Costs specified in Section 4.3 hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, and the County hereby authorizes and directs the Trustee to make disbursements from the Project Fund or endorse the Bond balance pursuant to **Section 4.1** hereof and **Section 208(d)** or **(e)** of the Indenture, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit D**, signed by an Authorized Company Representative. The Company agrees that the information in each certificate will be accurate in all respects when given and that the Company will notify the Trustee and the County if the Company becomes aware of any material inaccuracies in a certificate after the date on which it is given. Upon request by the County, the Company shall provide the County with copies of invoices, bills, lien waivers and other reasonable documentation to support each submitted requisition certificate.

(b) The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been satisfied. The Trustee shall retain copies of all requisition certificates for the same period of record retention described in **Section 703** of the Indenture.

Section 4.5. Establishment of Completion Dates.

(a) The Completion Date of the respective Phase I Project Improvements, the Phase II Project Improvements and the Project Equipment shall be evidenced to the County and the Trustee by certificates signed by an Authorized Company Representative stating (a) that the purchase and construction of the Phase I Project Improvements or the Phase II Project Improvements, as applicable, or the purchase and installation of the Project Equipment have been completed in accordance with the Plans and Specifications, (b) the date of completion of the applicable Phase I Project Improvements, Phase II Project Improvements and purchase

and installation of the Project Equipment, (c) that all costs and expenses of the purchase and construction of the Phase I Project Improvements or Phase II Project Improvements, as applicable, or the purchase and installation of the Project Equipment have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (d) amounts to be retained by Trustee with respect to item (c) above. Notwithstanding the foregoing, such certificates shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the County agree to cooperate in causing each such certificates to be furnished to the Trustee.

(b) Notwithstanding subsection (a) above, if such certificates are not actually filed with the County and Trustee sooner, the certificate relating to the Completion Date for the Phase I Project Improvements shall be deemed given on December 31, 2022, subject to any delay to the extent caused by force majeure, including, without limitation, damage or destruction by fire or casualty, strike, lockout, civil disorder, war, restrictive government regulations, lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the construction and occupation of the Project, shortage or delay in shipment of material or fuel, acts of God, unusually adverse weather or wet soil conditions, or other like causes beyond the Company's reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of this Lease, the Indenture, the Order or the Project (each, a "Permitted Excuse"). No Permitted Excuse shall be deemed to exist unless the Company provides a written notice to the County, within 30 days after the Company has actual notice of the claimed event, specifying the Permitted Excuse. In no event shall a Permitted Excuse extend the Completion Date of the Phase I Project Improvements beyond December 31, 2023. The Transfer Date shall occur within 30 days of the Completion Date of the Phase I Project Improvements and the Company's receipt of waivers of all mechanic's lien rights with respect to the Phase I Project Improvements, and the Company shall cause notice thereof to be furnished to the Trustee and the Assessor. The parties agree that upon transfer of fee title of the Real Property to the County on the Transfer Date, the County's leasehold interest under the Base Lease and fee title interest will merge and the Company's leasehold interest under this Lease will, subject to the terms hereof, continue without interruption.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of all certificates described in **Section 4.5** evidencing the Completion Dates of the respective Phase I Project Improvements, Phase II Project Improvements and Project Equipment (i.e. the Completion Date of the Phase II Project Improvements and the Completion Date of the Project Equipment), the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the County and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of County. The Project Site and the Project Improvements and the Project Equipment located thereon at the execution hereof and which the Company desires to convey

to the County, all work and materials on the Project Improvements as such work progresses and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be or constitutes a part of the Project and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the County, subject only to this Lease, the Indenture, any Leasehold Mortgage and any other Permitted Encumbrances.

Section 4.8. Non-Project Improvements, Machinery and Equipment Property of Company. Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements or the Project Equipment and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company, shall not constitute a part of the Project for purposes of **Section 6.4** and shall, therefore, be subject to taxation, to the extent otherwise provided by law.

Section 4.9. Environmental Matters.

(a) The Company acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the County or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the County or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the County or the Trustee with respect to any breaches of the provisions of this section.

(b) The Company shall and does hereby indemnify the County, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the County's interest in the Project and the Trustee's acceptance of its duties as Trustee hereunder

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the County during this Lease Term, for deposit in the Bond Fund on or before 10:00 a.m., Trustee's local time, on or before each December 1 (each December 1 being a Payment Date), commencing December 1, 2022, and continuing until the principal of and interest on the Bonds shall have

been fully paid, as Basic Rent for the Project, an amount which, when added to any collected funds then on deposit in the Bond Fund and available on such Payment Date, shall be equal to the total amount payable on each December 1 as interest on the Bonds (except as offset pursuant to the right of the Company described herein). On **December 1, 2032** (or such earlier date as the Company may elect to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption (subject to the right of the Company to surrender the Bonds in lieu of such payment). All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Base Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Company is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the County's obligation to the Company as Bondholder to pay principal of and interest on the Bonds under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred and that pursuant to the set-off, the County is deemed to have paid its obligation to the Company as Owner of the Bonds to pay principal and interest on the Bonds under the Indenture. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be cancelled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

- (a) all fees, charges and expenses, including agent and counsel fees and expenses, of the County, the Trustee and the Paying Agent incurred under or arising from this Lease, the Base Lease, the Indenture or the Performance Agreement, including but not limited to claims by contractors or subcontractors and legal costs associated with the transfer of fee title to the Project on the Transfer Date, as and when the same becomes due;
- (b) all costs incident to the issuance of the Bonds (which are to be paid on the Closing Date) and the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;
- (c) all fees, charges and expenses incurred in connection with the enforcement of any rights under this Lease, the Base Lease, the Indenture or the Performance Agreement by the County, the Trustee or the Owners, including counsel fees and expenses;
- (d) all amounts payable under the Performance Agreement; and
- (d) all other payments of whatever nature that the Company has agreed to pay or assume under the provisions of this Lease, the Base Lease and the Indenture.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same becomes due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off (except as provided in **Section 5.1** and **Section 11.5** hereof), counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the County's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the County's legal organization or status, or any default of the County hereunder, and regardless of the invalidity of any action of the County or the invalidity of any portion of this Lease; provided, however, that nothing in this Section is intended or shall be deemed to affect or impair in any way the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4**, nor the right of the Company to terminate this Lease and purchase the Project as provided in **Article XI**.

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

Section 5.4. Prepayment of Basic Rent.

(a) The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

(b) At its option, the Company may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in reasonably safe operating condition and keep the Project in good repair and in good operating condition, making from time to time all repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance with all provisions of the County's code relating to maintenance and appearance. The Company shall also comply with **Section 8.6** hereof.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section and **Section 6.4** hereof, the Company shall promptly pay and discharge, as the same becomes due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed at the Project Site by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the County's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the County's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the County and the Trustee written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The County agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the County and the Trustee from any costs and expenses the County and the Trustee may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against any payments in lieu of taxes to be made by the Company under the Performance Agreement to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project pursuant to this Section, except as otherwise provided in the Performance Agreement.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's

own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Property Tax Exemption. The County and the Company expect that while the Project is owned by the County and is subject to this Lease, the Project and the leasehold interest of the Company in the Project will be exempt from all ad valorem real and personal property taxes by reason of such ownership, and the County agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties in accordance with the Performance Agreement. The County and the Company further acknowledge and agree that the County's obligations hereunder are contingent upon the Company making the payments and otherwise complying with the terms of the Performance Agreement during the term of this Lease. The terms and conditions of the Performance Agreement are incorporated herein as if fully set forth herein.

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment or Report. Before conveying title to any real property to the County, the Company will purchase, from a title insurance company reasonably acceptable to the County, a commitment for title insurance or provide such other report in a form reasonably acceptable to the County showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the County and the Trustee.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of "B+" or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the County and the Trustee shall be named as loss payees, as their respective interests may appear, and, to the extent reasonably attainable, shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the County and Trustee. The Company shall provide the County and the Trustee, on an annual basis, commencing on December 1, 2023, with a certificate of an Authorized Company Representative certifying compliance with this Section. The Trustee shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be (1) paid over to the Trustee and applied as provided in **Article IX** of this Lease, or (2) applied as may be directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the County, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the County and the Trustee, in an amount not less than \$1,000,000 per occurrence (subject to reasonable liability retention amounts not to exceed the amounts normally or generally carried by the Company or its affiliates). To the extent reasonably attainable, the policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the County and Trustee. The Company shall provide the County and the Trustee, on an annual basis, commencing on December 1, 2023 with a certificate of an Authorized Company Representative certifying compliance with this Section. The Trustee shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

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

Section 7.4. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the Company, or in combination with its parent corporation, has a net worth in excess of \$200,000,000, as determined by generally accepted accounting principles.

Section 7.5. Worker's Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the worker's compensation coverage required by the laws of the State of Missouri.

Section 7.6. Sovereign Immunity. Notwithstanding anything to the contrary contained herein, nothing in this Lease shall be construed to broaden the liability of the County beyond the provisions of Sections 537.600 to 537.610 of the Revised Statutes of Missouri or abolish or waive any defense at law that might otherwise be available to the County or its officers, agents and employees.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project Improvements or the Project Equipment as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (a) be made in a good and workmanlike manner and in strict compliance with all laws, orders and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence and (c) when completed, be deemed a part of the Project, provided, however, that additions of improvements, machinery and equipment installed on the Project Site by the Company but not purchased or acquired with proceeds of the Bonds and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to ad valorem taxes.

Section 8.2. Removal and Replacement of Portions of the Project Equipment.

(a) The Company may, if no uncured Event of Default (as defined in Section 12.1) exists and is continuing, remove from the Project and sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the County or the Trustee with respect thereto, any items of machinery and equipment, or parts thereof, which constitute a part of the Project Equipment and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations. Prior to any such removal, the Company shall deliver to the County and the Trustee a certificate signed by an Authorized Company Representative containing a complete description including the make, model and serial numbers, if any, of any machinery or equipment constituting a part of the Project Equipment that the Company proposes to remove. The Trustee shall amend the list of machinery or equipment comprising the Project Equipment held by it pursuant to Section 4.2 hereof upon receipt of such certificate. Upon request by the Company, the County will execute and deliver a bill of sale that transfers full and complete title to the Company of such portion of the Project Equipment removed. Notwithstanding anything contained herein to the contrary, title to any portion of the Project Equipment removed from the Project Site as provided herein shall automatically vest in the Company without further instrument or action, and such vesting of title shall be self-operative effective upon removal. Upon any removal of portions of the Project Equipment, the portions of the Project Equipment so removed shall no longer be entitled to benefits of the Performance Agreement or the tax exemption afforded by virtue of the County's ownership thereof.

(b) In all cases, the Company shall pay all of the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Project caused thereby. The Company's rights under this Section to remove machinery and equipment constituting a part of the Project Equipment is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment which is no longer suitable for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project Equipment.

Section 8.3. Additional Improvements on the Project Site. Subject to Section 8.6 hereof, the Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds,

pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all ad valorem taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the Assessor determines that such additional buildings and improvements are not subject to ad valorem taxes, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due under this Section.

Section 8.4. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

Section 8.5. Mechanics' Liens on the Project.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the County of the imposition of any such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or services or materials furnished in connection with any work in or about the Project, the Company shall discharge the same of record. Notice is hereby given that the County shall not be liable for any labor, services or materials furnished to the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the County in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within 60 days notifies the County in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the County that, in the opinion of counsel, by nonpayment of any such lien, the interest of the County in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall defend, save and hold harmless the County from any loss, costs or expenses the County may incur related to any such contest.

The Company shall reimburse the County for any expense incurred by it in connection with the imposition of any such lien or the discharge or removal of any such mortgage, pledge, lien, charge, encumbrance or claim. The County shall cooperate fully with the Company in any such contest.

Section 8.6. Notice of Improvements Subject to Bonding Requirements. Following the Transfer Date, the Company shall notify the County in writing prior to the commencement of any work, repair, renovation, modification or improvement of the Project or otherwise located on the Project Site that is subject to Section 107.170 of the Revised Statutes of Missouri, as amended. or any other law requiring payment or performance bonds for such work. The failure to provide the written notification required by this Section will not be deemed to be a material breach of this Lease. However, the Company agrees and acknowledges that (a) the County and its governing body members, officers, agents and employees shall be fully indemnified by the Company, as provided in **Section 10.5** hereof, against any claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the Company's failure to provide the written notice as required by this Section or secure any payment or performance bonds required by Section 107.170 of the Revised Statutes of Missouri, as amended. or other applicable law and (b) the Company's leasehold interest under this Lease may be subject to mechanic's or other similar liens, which the Company shall promptly resolve in accordance with **Section 8.5** hereof.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (1) make the determination described in subsection (f) below, or (2) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures that are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements and/or Project Equipment immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as a "project" permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof, and any reference to the words "Project Equipment" shall be deemed to include any such new machinery, equipment and fixtures which are either attached to or are used in connection with the operation or maintenance of such new buildings and improvements and all additions or replacements thereof.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss of the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and disbursed as provided in **Section 4.4**

hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) applied as directed in writing by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any leasehold mortgagee under a Leasehold Mortgage or Financing Party under a Financing Document. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion delivered by the Company to the County in accordance with the provisions of **Section 4.5** hereof. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

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

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

(e) The Company agrees to give prompt written notice to the County and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Project.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the mortgagee under the Leasehold Mortgage (if any) and the Financing Party under the Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

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

(h) Nothing herein shall be deemed to authorize the Company to allow an unsafe, dangerous, unhealthy or injurious condition to exist on the Project Site or any portion thereof, in violation of any applicable laws, codes and ordinances due to a fire or other casualty.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the County, the Trustee, the mortgagee under any Leasehold Mortgage (if any) and the Financing Party under any Financing Document (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the County subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, all subject to the rights of any mortgagee under the Leasehold Mortgage (if any) any Financing Party under the Financing Documents (if any). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of any mortgagee under the Leasehold Mortgage (if any) and any Financing Party under the Financing Documents (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of acquisition or restoration nor by reason of the payment of the costs of such acquisition or restoration, be entitled to any reimbursement from the County, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations hereunder except as expressly provided in this Section.

(e) The County shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceedings in the name and

on behalf of the County. In no event will the County voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may before the application thereof by the County or the Trustee be applied as directed in writing by the Owners or pledgees of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the County and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the County and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the County to any amounts then due and payable under the Performance Agreement. For purposes of this Section only, any Person to whom Bonds have been pledged in good faith shall be deemed to be the Owner of the Bonds.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the County; Exculpation and Indemnification. The County makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the County and the Trustee from, agrees that the County and the Trustee shall not be liable for and agrees to hold the County and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the County's or the Trustee's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the County's right of re-entry to the extent provided in **Section 12.2(b)**, the Company shall peacefully surrender possession of the Project to the County in good condition and repair; provided, however, the Company shall have the right within 90 days (or such later date as the County may agree to) after the termination of this Lease to remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project Site before the expiration of said period shall be the separate and absolute property of the County.

Section 10.3. County's Right of Access to the Project. The County may conduct such periodic inspections of the Project as may be generally provided in the County's code. The Company agrees that the County and the Trustee and their duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in **Section 4.2** hereof, (c) to examine all files, records, books and other materials in the Company's possession pertaining to the purchase, installation or maintenance of the

Project, and (d) upon the occurrence and continuance of an Event of Default, to enforce the remedies provided in in **Section 12.2** hereof.

Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (1) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (2) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (3) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the County shall be required for the execution and delivery of any such document, although the County agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the County, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the County to the Company has been terminated by the County because of an uncured Event of Default hereunder. The County agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the County and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance, and that the Company will defend, indemnify and save and hold harmless the County from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from the execution and delivery of any instrument, agreement or other arrangement pursuant to this Section. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)** upon (A) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (B) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant, agreement or other arrangement shall inure to the benefit of and be exercisable by the County and the Trustee.

(b) The Company may mortgage or grant a deed of trust against the leasehold estate created by this Lease, with prior notice to but without the consent of the County, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the County within thirty (30) days after the execution thereof.

(c) The County acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the County, (1) execute one or more Financing

Documents upon the terms contained in this **Section 10.4** and (2) sublease or assign this Lease, the leasehold estate or any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)** hereof.

(d) Upon notice by the Company to the County in writing that the Company has executed one or more Financing Documents under which it has granted rights in this Lease to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of each such Financing Party;

(2) the County shall serve upon each such Financing Party (at the address, if any, provided to the County) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Financing Party;

(3) each Financing Party shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus 30 days, and the County shall accept performance by such Financing Party as timely performance by the Company;

(4) the County may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other Events of Default;

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the County shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting such Financing Party (or its designee, nominee, assignee or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such Event of Default shall continue beyond any period set forth in this Lease to effect said cure so long as the Financing Party (or its designee, nominee, assignee or transferee) is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the County and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the County or the Trustee in connection with any such default;

(6) the Financing Parties (and their designees, nominees, assignees or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents; and

(7) except for terminations of this Lease expressly authorized herein, this Lease may not be modified, amended, canceled or surrendered by agreement between the County and the Company, without prior written consent of each such Financing Party.

(e) In connection with the execution of one or more Financing Documents and upon the request of the Company, the County agrees to execute such documents as shall be reasonably requested by a Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents. The Company agrees to reimburse the County for any and all costs and expenses incurred by the County pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Company's obligations under any mortgage or Financing Document relating to the Project shall be subordinate to the Company's obligations under this Lease.

(g) Notwithstanding the foregoing, the County may agree to other provisions and documents requested by the Company or any Financing Party not contemplated by this **Section 10.4**, subject to approval by the County Commission.

Section 10.5. Indemnification of County and Trustee.

(a) The Company shall indemnify and save and hold harmless the County and the Trustee and their governing body members, officers, agents and employees (collectively, the "**Indemnified Parties**") from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Performance Agreement, this Lease (or any instrument requested by the Company pursuant to **Section 10.4** hereof), the Indenture or any other documents entered into in connection with the Bonds and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (1) any condition of the Project, (2) any breach or default on the part of the Company in the performance of any of its obligations under the Performance Agreement, this Lease, the Base Lease or any related document, (3) any contract entered into by the Company in connection with the acquisition, purchase, construction, equipping, extension, installation or improvement of the Project, (4) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (5) unless the Company has been released from liability pursuant to **Section 13.1(c)** hereof, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (6) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, (7) any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property, and (8) any violation of Section 107.170 of the Revised Statutes of Missouri; provided, however, the indemnification contained in this **Section 10.5** shall not (i) extend to the County if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project Site by employees of the County or the result of gross negligence or willful misconduct by the County, or (ii) extend to the Trustee if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the negligence or willful misconduct of the Trustee or (iii) the performance or failure to perform by the County or the Trustee of its obligations under this Lease, the Base Lease, the Performance Agreement or any related documents. Upon notice from the County or the Trustee, the Company shall defend them or either of them in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

(b) In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The County agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the County will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation either (a) becomes, in connection with the consolidation, merger or sale of assets the Owner of 100% in principal amount of the Bonds outstanding and expressly assumes in writing all of the obligations of the Company contained in this Lease and the Performance Agreement, or (b) if not the Owner of 100% in principal amount of the Bonds outstanding, expressly assumes in writing all the obligations of the Company contained in this Lease; and, further provided, that if not the Owner of 100% in principal amount of the Bonds outstanding, the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (1) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (2) \$100,000,000. The term "net worth," as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In any such consolidation, merger or transfer the Company shall comply with the provisions of **Section 10.1** hereof to the extent applicable. This Section does not limit the Company's transfer rights under **Section 13.1** hereof.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the County and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the County and the Trustee in the Project. Upon the written instructions of the Owners of the Bonds then Outstanding, the Trustee, at the Company's expense, shall file all instruments the Owners deem necessary to be filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The County and the Company shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project. The Company shall have, and is hereby granted, the option to purchase all or any portion of the County's interest in the Project at any time, upon payment in full or redemption of the Outstanding Bonds to be redeemed or provision for their payment or redemption having been made pursuant to Article XIII of the Indenture. To exercise such option, the Company shall give written notice to the County and to the Trustee, and shall specify therein the date of closing of such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and, in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the County or the Trustee provides notice of its intent to exercise its remedies hereunder upon an Event of Default (a "**Remedies Notice**"), the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the County and the Trustee on or before the 29th day and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

- (a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (b) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (c) an amount of money equal to the County's reasonable charges and expenses incurred in connection with the Company exercising its option to purchase all or a portion of the Project; plus
- (d) an amount of money equal to all payments due and payable pursuant to the Performance Agreement through the end of the calendar year in which the date of purchase occurs; plus
- (e) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project pursuant to this Article, the County will upon receipt of the purchase price deliver to the Company, the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Prior to the Transfer Date, an agreement terminating the Base Lease, and after the Transfer Date, documents, including without limitation a special warranty deed as to the Real Property, in substantially the form attached as **Exhibit F**, and a bill of sale as to the Project Equipment, conveying to the Company legal title to the Project, as it then exists, in recordable form, subject to the following: (1) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the County; (2) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (3) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (4) Permitted Encumbrances other than the Indenture and this Lease; and (5) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The option to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option (including the payment of all amounts specified in **Section 11.1** hereof) and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. The Company hereby agrees to purchase, and the County hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due under the Performance Agreement. The amount of the purchase price under this Section shall be an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the County and the Trustee.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events occurs and is continuing beyond any applicable notice and/or cure period, it is hereby defined as and declared to be and to constitute an "Event of Default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent for a period of 10 days following written notice to the Company by the County or the Trustee; or

(b) Default in the due and punctual payment of Additional Rent for a period of 10 days following written notice to the Company by the County or the Trustee; or

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

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 90 days; or

(f) The occurrence and continuance of an "Event of Default" by the Company under the Performance Agreement following any applicable notice and grace period provided therein.

Section 12.2. Remedies on Default. If any Event of Default referred to in Section 12.1 hereof has occurred and continues beyond the period provided to cure, then the County may at the County's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable after giving ten (10) days prior written notice thereof to the Company, as provided in the Indenture; or

(b) give the Company written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the Outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof, the Company's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the County may re-enter the Project Site and take possession of the Project; provided, however, if the Company has paid all obligations due and owing under the Indenture, the Base Lease, this Lease and the Performance Agreement, the County shall convey the Project in accordance with **Section 11.2** hereof.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the County and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause.

Section 12.4. Performance of the Company's Obligations by the County. Upon an Event of Default, the County, or the Trustee in the County's name, may (but shall not be so obligated) upon the continuance of such failure on the Company's part for 60 days after written notice of such failure is given to the Company by the County or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, (a) make any such payment or perform any such obligation, and all reasonable sums so paid by the County or the Trustee and all incidental reasonable costs and expenses incurred by the County or the Trustee (including, without limitation, attorneys' fees and expenses) in performing such obligation shall be deemed Additional Rent and shall be paid to the County or the Trustee on demand, and (b) if not so paid by the Company, the County or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the County and the Company hereunder are in addition to those otherwise provided by law and 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 County and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Company's option to purchase the Project as provided in **Article XI** shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)** hereof.

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

Section 12.7. Trustee's Exercise of the County's Remedies. Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Indenture shall not

be obligated to, exercise any or all of the rights of the County under this Article, upon notice as required of the County unless the County has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may assign, sublease, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act upon providing written notice to the County. The Company must obtain the County's prior written consent to any such disposition, unless such disposition is (1) to an entity controlled by or under common control with or controlling the Company or (2) in connection with an assignment to any Financing Party. Following any disposition to an entity controlled by or under common control with or controlling the Company, such entity may lease the Project or any portion thereof to the Company without notice to or the written consent of the County.

(b) With respect to any assignment, the Company shall comply with the following conditions:

(1) the Company shall notify the County and the Trustee of the assignment in writing;

(2) such assignment shall be duly executed and acknowledged by the assignor and in proper form for recording;

(3) such assignment shall include the entire then unexpired term of this Lease; and

(4) a duplicate original of such assignment shall be delivered to the County and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee and in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(c) Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease, the Base Lease (if still in effect), the Performance Agreement and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease, the Base Lease (if still in effect), the Performance Agreement and any other documents related to the issuance of the Bonds, the Company shall be released from and have no further obligations under this Lease, the Base Lease, the Performance Agreement or any other documents related to the issuance of the Bonds.

(d) Notwithstanding the foregoing, the Company may, in its ordinary course of business, sublease all or portions of the Project to tenants without the prior consent of the County so long as the Company remains obligated to perform all of its obligations under the Lease and the Performance Agreement and (ii) notifies the County within 30 days after the execution of any such sublease.

Section 13.2. Assignment of Revenues by County. The County shall assign and pledge any rents, revenues and receipts receivable under this Lease to the Trustee pursuant to the Indenture as security

for payment of the principal of, interest and premium, if any, on the Bonds, and the Company hereby consents to such pledge and assignment.

Section 13.3. Prohibition Against Fee Mortgage of Project. The County shall not mortgage its fee or leasehold interest in the Project without the consent of the Company, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by County. During the Lease Term, the County agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of the Bonds and before the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee (given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld), and the written consent of all of the Bondowners.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

Section 15.2. County Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the County shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the County shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the County's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the County.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the County and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same becomes due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the County and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the County and the Trustee) have been paid in full the Trustee or the County holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, after

payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

Section 15.4. Limitation on Liability of County. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the County, or the breach thereof, shall constitute or give rise to or impose upon the County a pecuniary liability or a charge upon the general credit or taxing powers of the County or the State of Missouri.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the County and the Company and their respective successors and assigns.

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

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

Section 15.9. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, stored and received by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.10 Complete Agreement. **THE COMPANY AND THE COUNTY UNDERSTAND THAT ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT THE COMPANY AND THE COUNTY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE COUNTY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE AND IN THE PERFORMANCE AGREEMENT, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE COUNTY, EXCEPT AS THE COMPANY AND THE COUNTY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE AND THE PERFORMANCE AGREEMENT.**

Section 15.11. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Company certifies it is not currently engaged in and shall not, for the duration of this Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

[Remainder of this page intentionally left blank]

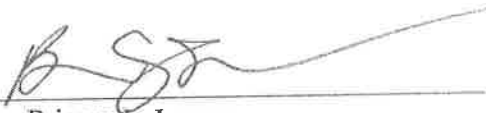
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

BOONE COUNTY, MISSOURI

By: 
Name: Daniel K. Atwill
Title: Presiding Commissioner

[SEAL]

ATTEST:

By: 
Name: Brianna L. Lennon
Title: County Clerk

**PLUMROSE USA, INC. (D/B/A SWIFT PREPARED
FOODS), a Delaware corporation**

By: 
Name: Thomas Lopez
Title: **President & Chief Operating Officer**

Lease Agreement
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022

EXHIBIT A
PROJECT SITE

The real property located in Boone County, Missouri, upon which the Project Improvements and Project Equipment will be located, as more specifically described below:

Lot 1, PLUMROSE USA, INC., INC. FINAL PLAT, a subdivision of the City of Columbia, Boone County, Missouri

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consists of the following Phase I Project Improvements and the Phase II Project Improvements on the Project Site, to the extent paid for with Bond proceeds:

Phase I Project Improvements: The construction of an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse on the Project Site.

Phase II Project Improvements: The construction of an approximately 50,000 square foot addition to the then-existing Italian meats and charcuterie production facility and cold storage warehouse on the Project Site to provide for additional processing and packaging capabilities.

EXHIBIT C

PROJECT EQUIPMENT

The Project Equipment consists of all items of equipment or other personal property designated by the Company now or hereafter procured, assembled, or installed on the Project Site by the Company pursuant to **Article IV** of the Lease and paid for, or reimbursed, with proceeds of Bonds and all additions, replacements, alterations, substitutions thereto now or hereafter effected and specifically designated by the Company. A replacement item may be included by the Company as a part of the Project Equipment under the conditions set forth in the Lease.

EXHIBIT D

FORM OF REQUISITION CERTIFICATE

Requisition No. _____

Date: _____

REQUISITION CERTIFICATE

TO: BOKF, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF NOVEMBER 1, 2022, BETWEEN BOONE COUNTY, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF NOVEMBER 1, 2022, BETWEEN BOONE COUNTY, MISSOURI, AND PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS)

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$_____ is requested to pay for Project Costs of the Project Improvements. The total amount of this requisition and all prior requisitions for Project Improvements is as follows:

PROJECT IMPROVEMENTS

<i><u>Date of Project Costs</u></i>	<i><u>Amount Submitted in this Requisition</u></i>	<i><u>Requisitions Submitted to Date (Including this Requisition)</u></i>

2. A total of \$_____ is requested to pay for Project Costs of the Project Equipment. The total amount of this requisition and all prior requisitions for Project Equipment is as follows:

PROJECT EQUIPMENT

<i><u>Date of Project Costs</u></i>	<i><u>Amount Submitted in this Requisition</u></i>	<i><u>Requisitions Submitted to Date (Including this Requisition)</u></i>

3. A total of \$_____ has been requested to pay for all Project Costs to date, which amount is less than \$186,000,000.

4. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1**.

5. Set forth on **Schedule 2** is a description of the Project Equipment acquired, which is being paid for in whole from Bond proceeds pursuant to this Requisition Certificate. Attached as **Exhibit A** is the Bill of Sale transferring said Project Equipment to the County.

6. Each of the items for which payment is requested are or were desirable and appropriate in connection with the purchase, construction and installation of the Project, have been properly incurred and are a proper charge against the Project Fund, have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1** and have not been the basis of any previous requisition from the Project Fund.

7. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase, construction and installation of the Project which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or similar lien upon the Project or any part thereof.

8. Capitalized words and terms used in this Requisition Certificate have the meanings given to such words and terms in **Section 101** of the Trust Indenture.

9. With respect to any disbursement, the Company (i) certifies it has reviewed any wire instructions set forth in this Requisition Certificate to confirm such wire instructions are accurate, and (ii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction set forth in this Requisition Certificate.

PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS), a Delaware corporation

By: _____
Authorized Company Representative

Approved this ____ day of _____, 20__.

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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SCHEDULE 2 TO REQUISITION CERTIFICATE

PROJECT EQUIPMENT

<u>Item (Description)</u>	<u>Serial, Identification or Account Number</u>
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EXHIBIT A TO REQUISITION CERTIFICATE

BILL OF SALE

PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS), a Delaware corporation (“**Seller**”), in connection with that certain Lease Agreement dated as of November 1, 2022 (the “**Lease Agreement**”), between Seller and **BOONE COUNTY, MISSOURI**, a county of the first classification and municipal corporation organized and existing under the laws of the State of Missouri (“**Buyer**”), for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has **BARGAINED** and **SOLD**, and by these presents does now **GRANT** and **CONVEY**, unto Buyer and its successors and assigns, all of its right, title and interest in and to all machinery, equipment and other personal property shown on **Exhibit A** hereto, installed within the “**Project Improvements**” and constituting a portion of the “**Project Equipment,**” as such terms are defined in the Lease Agreement.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns, subject however to the terms of the Lease Agreement and those security interests, liens and/or encumbrances as therein set forth.

The property is being conveyed “**AS IS,**” “**WHERE IS**” and “**WITH ALL FAULTS**” as of the date of this Bill of Sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability or any other warranty, express or implied.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed in its name by its duly authorized officer this ____ day of _____, 20__.

PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS), a Delaware corporation

By: _____
Authorized Company Representative

EXHIBIT A TO BILL OF SALE

PROJECT EQUIPMENT

<u>Item (Description)</u>	<u>Serial, Identification or Account Number</u>
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EXHIBIT E

FORM OF SPECIAL WARRANTY DEED (COMPANY TO COUNTY)

[See the standalone document by the same name]

EXHIBIT F

FORM OF SPECIAL WARRANTY DEED (COUNTY TO COMPANY)

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Special Warranty Deed

DATE OF DOCUMENT: _____, 20__

GRANTOR: BOONE COUNTY, MISSOURI

Mailing Address: 801 E. Walnut, Room 112
Columbia, Missouri 65201

GRANTEE: PLUMROSE USA, INC. (D/B/A SWIFT PREPARED
FOODS)

Mailing Address: 651 W. Washington Blvd., Suite 304
Chicago, Illinois 60661

LEGAL DESCRIPTION: See Exhibit A

RETURN DOCUMENTS TO: Haden R. Crumpton, Esq.
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108

REFERENCE BOOK & PAGE: N/A

SPECIAL WARRANTY DEED

THIS DEED is made and entered into to be effective as of the ____ day of _____, 20____, by and between **BOONE COUNTY, MISSOURI**, a county for the first classification and municipal corporation duly organized and validly existing under the laws of the State of Missouri (the “**Grantor**”), and **PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS)**, a Delaware corporation (the “**Grantee**”). Terms not otherwise described herein shall have the meanings ascribed to them in the Trust Indenture between the Grantor and BOKF, N.A., as trustee, dated as of November 1, 2022 (the “**Indenture**”), with respect to the Grantor’s issuance of its \$186,000,000 maximum aggregate principal amount of Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022.

WITNESSETH, that the Grantor, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, paid by the Grantee, the receipt of which is hereby acknowledged, does by these presents **BARGAIN AND SELL, CONVEY AND CONFIRM** unto the Grantee, the real property described on Exhibit A attached hereto and incorporated by reference (the “**Project Site**”) and the buildings, structures, improvements and fixtures located thereon (the “**Project Improvements**”), all as located in Boone County, State of Missouri.

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the Grantee, and to its successors and assigns forever. The Grantor hereby covenants that it and its successors and assigns shall and will **WARRANT AND DEFEND** the title to the premises unto the Grantee, and to its successors and assigns forever, against the lawful claims of all persons claiming by, through or under the Grantor but none other, subject to: (1) those liens and encumbrances, if any, to which title to the Project Site and the Project Improvements was subject when conveyed to the Grantor; (2) those liens and encumbrances created by the Grantee, all persons claiming by, through or under the Grantee, or to the creation or suffering of which the Grantee consented; (3) those liens and encumbrances resulting from the failure of the Grantee to perform or observe any of the agreements on its part contained in the Lease; (4) Permitted Encumbrances other than the Indenture and the Lease; and (5) if the Project Site or Project Improvements or any part thereof is being condemned, the rights and title of any condemning authority.

[The remainder of this page has intentionally been left blank.]

IN WITNESS WHEREOF, the Grantor has executed these presents the day and year first above written.

“GRANTOR”

BOONE COUNTY, MISSOURI

By: _____
Name:
Title: Presiding Commissioner

[SEAL]

ATTEST:

By: _____
Name:
Title: County Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
)
COUNTY OF BOONE) SS.

On this _____ day of _____, 20___, before me, the undersigned, a Notary Public, appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the Presiding Commissioner and County Clerk, respectively, of **BOONE COUNTY, MISSOURI**, and that the seal affixed to the foregoing instrument is the corporate seal of said County, and that said instrument was signed and sealed on behalf of said County by authority of its governing body, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Name: _____
Notary Public in and for said State

My Commission Expires: _____

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

EXHIBIT A TO SPECIAL WARRANTY DEED
LEGAL DESCRIPTION OF PROJECT SITE

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: BASE LEASE

DATE OF DOCUMENT: November 1, 2022

GRANTOR: PLUMROSE USA, INC.

GRANTOR'S MAILING ADDRESS: 651 W. Washington Blvd., Suite 304
Chicago, Illinois 60661
Attn: Legal Department

GRANTEE: BOONE COUNTY, MISSOURI

GRANTEE'S MAILING ADDRESS: 801 E. Walnut, Room 112
Columbia, Missouri 65201
Attention: County Treasurer

RETURN DOCUMENTS TO: Haden R. Crumpton, Esq.
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108

LEGAL DESCRIPTION: See **Exhibit A**

BASE LEASE

THIS BASE LEASE (this "**Base Lease**") is made and entered into as of the 1st day of November, 2022 (the "**Effective Date**"), by and between **PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS)**, a Delaware corporation (the "**Company**"), and **BOONE COUNTY, MISSOURI**, a county of the first classification and municipal corporation organized and existing under the laws of the State of Missouri (the "**County**").

RECITALS:

1. The County is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "**Act**") to purchase, construct, extend, improve and equip certain projects (as defined in the Act), to issue industrial revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the County shall deem advisable.

2. Pursuant to the Act, the County Commission of the County adopted Commission Order 74-2021 on February 25, 2021, (a) approving an application from Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the "**Company**"), for an economic development project for the Company, and (b) declaring the intent of the County to issue taxable industrial development revenue bonds to provide funds to finance the costs of the economic development project.

3. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act, the County Commission adopted Commission Order 503-2021 on December 9, 2021, (a) approving a plan for the Company's economic development project consisting of (i) acquiring an approximately 80.77 acre parcel of real property located at 5008 Paris Road in the County (the "**Project Site**," as more fully described on **Exhibit A** hereto), (ii) making certain real property improvements on the Project Site, including initially constructing an approximately 275,000 square foot Italian meats and charcuterie production facility and cold storage warehouse on the Project Site (the "**Phase I Project Improvements**") and subsequently constructing an approximately 50,000 square foot addition to the production facility on the Project Site to provide for additional processing and packaging capabilities (the "**Phase II Project Improvements**," together with the Phase I Project Improvements, the "**Project Improvements**"), and (iii) acquiring and installing certain equipment, machinery and other personal property within the Project Improvements (the "**Project Equipment**," together with the Project Site and Project Improvements, the "**Project**"), to be financed out of proceeds of taxable industrial revenue bonds to be issued by the County under the Act, and (b) approving a Performance Agreement dated as of December 1, 2021 (the "**Performance Agreement**"), between the County, the Company and the Boone County Assessor, for the purpose of setting forth the terms and conditions of the Project's exemption from ad valorem real and personal property taxes and certain payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the Act, the County Commission adopted Commission Order No. 512-2022 (the "**Order**") on October 27, 2022, authorizing the County to issue its Taxable Industrial Development Revenue Bonds (Swift Prepared Foods Project), Series 2022, in the aggregate maximum principal amount of \$186,000,000 (the "**Bonds**") to pay costs of the Project.

5. Pursuant to the Order, the County is authorized (a) to enter into a Trust Indenture of even date herewith (the “**Indenture**”) with BOKF, N.A., St. Louis, Missouri, as trustee (the “**Trustee**”), for the purpose of issuing and securing the Bonds, as therein provided, (b) to enter into this Base Lease with the Company, as lessor, under which the County, as lessee, will initially acquire a leasehold interest in the Project Site and the Project Improvements (collectively, the “**Real Property**”), and (c) to enter into a Lease Agreement of even date herewith (the “**Lease**”) with the Company, as lessee, under which the County, as lessor, will cause the construction of the Project Improvements and the acquisition and installation of the Project Equipment on the Project Site and will lease the Project Site, the Project Improvements and the Project Equipment (i.e. the Project) to the Company in consideration of rental payments to be paid by the Company that will be sufficient to pay the principal of and interest on the Bonds.

6. In connection with the issuance of the Bonds and the execution of the Lease, the County has agreed to cooperate with the Company and the contractors for the Project Improvements in acquiring the benefits of sales tax exemption for purchases of materials used to construct the Project Improvements.

7. The Company desires to lease the Real Property to the County, and the County desires to lease the Real Property from the Company, and to acquire and hold a leasehold interest for the term of this Base Lease as more fully described in this Base Lease.

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

Section 1. Definitions. In addition to any words and terms defined elsewhere in this Base Lease, capitalized words and terms used in this Base Lease shall have the meanings given to such terms in the Indenture and the Lease.

Section 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 county of the first classification and municipal corporation duly organized and validly existing under the laws of the State of Missouri.

(b) Under the provisions of the Act, the County has lawful power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.

(c) By proper action of the County Commission, the County has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers.

Section 3. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is authorized to conduct business in the State of Missouri.

(b) The Company has lawful power and authority to enter into this Base Lease and to carry out its obligations hereunder, and the Company has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers and representatives.

(c) The Company is the owner of the Project Site and is permitted to lease any Project Improvements currently located or to be located on the Project Site (i.e. the Real Property) to the County pursuant to this Base Lease.

Section 4. Lease Term. This Base Lease shall become effective upon execution and delivery, and subject to earlier termination pursuant to the provisions of this Base Lease, shall have a term (the "Term") commencing as of the Effective Date and, subject to **Section 5** with respect to merger of interests, terminating simultaneously with the delivery of the Deed (as defined herein).

Section 5. Granting of Leasehold Estate. The Company hereby rents, leases and lets the Real Property to the County, and the County hereby rents, leases and hires the Real Property from the Company, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained. The parties anticipate that, upon completion of the Phase I Project Improvements on the Project Site, the Company will transfer fee title to the Real Property by special warranty deed (the "Deed") to the County and, as a result thereof and subsequent to such transfer, the County's fee title interest in the Real Property pursuant to the Deed and its leasehold interest in the Real Property pursuant to this Base Lease will merge and this Base Lease will have no further effect.

Section 6. Rent. In addition to the County's obligations under the Lease and the Performance Agreement, the County hereby agrees to pay to the Company annual rent under this Base Lease (the "Rent") equal to One Dollar and no/100 (\$1.00), which shall be due on the date of this Base Lease and on each January 1 thereafter during the Term of this Base Lease. The Company hereby acknowledges that it has received the Rent due on the date of this Base Lease.

Section 7. Use and Possession of the Real Property. The County will have the rights of use and possession of the Real Property only to the extent permitted by the Lease.

Section 8. Assignability. The County will not assign, sublease, mortgage or otherwise transfer or encumber its interest in this Base Lease.

Section 9. Repairs and Maintenance. The Company shall, at its sole cost and expense, maintain and repair the Real Property, and all portions thereof and improvements thereto, to the extent required by the Lease. In no event shall the County be required to make any repairs, improvements, additions, replacements, reconstructions or other changes to the Real Property or perform any maintenance thereon.

Section 10. Taxes. Pursuant to **Section 6.2** of the Lease, the Company shall promptly pay all taxes or other governmental charges, that if unpaid, would encumber the County's leasehold interest in the Real Property.

Section 11. Insurance. The Company shall maintain the insurance policies required by **Article VII** of the Lease.

Section 12. Condemnation. If, at any time during the Term of this Base Lease, there shall be a total or partial taking of the Project in condemnation proceedings or by any right of eminent domain

or by sale in lieu thereof, the parties shall have the rights and obligations provided in the Lease, and this Base Lease shall terminate only to the extent and in the manner provided in the Lease.

Section 13. Surrender of the Project. Except as otherwise expressly provided in this Base Lease or **Section 4.5** of the Lease, the County shall surrender and deliver up the Real Property and all associated improvements thereon, to the Company at the expiration or other termination of this Base Lease, to the limited extent that the County may have any rights to possession thereof as expressly provided herein, without fraud or delay.

Section 14. Covenants Against Liens. The Company shall not create or permit to be created or to remain, and the Company shall promptly discharge, any mechanic's, laborer's or materialman's lien that might be or become a lien, encumbrance or charge upon the Real Property or any part thereof as a result of the Company's separate actions, except as expressly permitted pursuant to the Lease. Notwithstanding the foregoing, the Company hereby acknowledges that mechanic's, laborer's or materialman's liens may be filed against the Company's fee simple interest in the Real Property despite the County's leasehold interest in the Real Property. All such liens shall be discharged by the Company prior to the termination of this Base Lease.

Section 15. Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers, or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Base Lease or pursuant to law or otherwise, shall be made in the form and manner provided in the Lease.

Section 16. Company's Right to Terminate. The Company may terminate this Base Lease at any time pursuant to **Article XI** of the Lease.

Section 17. Conflict with the Lease. In the event of any conflict between the terms hereof and the terms of the Lease, the terms of the Lease shall control.

Section 18. Limitation on Liability of County. No provision, covenant or agreement contained in this Base Lease or any obligation herein imposed upon the County, or the breach thereof, shall constitute or give rise to or impose upon the County a pecuniary liability or a charge upon the general credit or taxing powers of the County or the State of Missouri.

Section 19. Governing Law. This Base Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 20. Binding Effect. This Base Lease shall be binding upon and shall inure to the benefit of the County and the Company and their respective successors and assigns.

Section 21. Severability. If for any reason any provision of this Base Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 22. Execution in Counterparts. This Base Lease may be executed 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 23. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 24. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Company certifies it is not currently engaged in and shall not, for the duration of this Base Lease, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Base Lease as of the Effective Date.

PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS), a Delaware corporation

By: [Signature]
Name: Thomas Lopez
Title: President & Chief Operating Officer

ACKNOWLEDGMENT

STATE OF IL)
)
COUNTY OF COOK) SS.

On this 22nd day of November, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas Lopez to me personally known, who, being by me duly sworn, did say that (s)he is the President & Chief Operating Officer of **PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS)**, a Delaware corporation, and that said instrument was signed on behalf of said corporation 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 corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

[Signature]
Name: Grace D. Roman
Notary Public in and for said State IL
My Commission Expires: 04/23/2023



Base Lease
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022

BOONE COUNTY, MISSOURI

By: *[Signature]*
Name: Daniel K. Atwill
Title: Presiding Commissioner

[SEAL]

ATTEST:

By: *[Signature]*
Name: Brianna L. Lennon
Title: County Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
)
COUNTY OF BOONE) SS.

On this 27th day of October, 2022, before me, the undersigned, a Notary Public, appeared Daniel K. Atwill and Brianna L. Lennon, to me personally known, who, being by me duly sworn, did say that they are the Presiding Commissioner and County Clerk, respectively, of **BOONE COUNTY, MISSOURI**, and that the seal affixed to the foregoing instrument is the corporate seal of said County, and that said instrument was signed and sealed on behalf of said County by authority of its governing body, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

[Signature]
Name: Dixie J. Vessar
Notary Public in and for said State

My Commission Expires: May 12, 2026

DIXIE J VESSAR
Notary Public - Notary Seal
State of Missouri
County of Boone
My Commission Expires: May 12, 2026
Commission # 22424685

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX

Base Lease
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT SITE

The real property located in Boone County, Missouri, as more specifically described below:

Lot 1, PLUMROSE USA, INC., INC. FINAL PLAT, a subdivision of the City of Columbia, Boone County, Missouri

Base Lease
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022

Exhibit A-1

\$186,000,000
(Aggregate Maximum Principal Amount)
BOONE COUNTY, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(SWIFT PREPARED FOODS PROJECT)
SERIES 2022

DATED AS OF NOVEMBER 1, 2022

BOND PURCHASE AGREEMENT

Boone County, Missouri
801 E. Walnut, Room 112
Columbia, Missouri 65201

Ladies and Gentlemen:

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the “**Purchaser**”), offers to purchase from Boone County, Missouri (the “**County**”), the above-referenced series of Taxable Industrial Development Revenue Bonds (the “**Bonds**”), to be issued by the County under and pursuant to Commission Order No. 512-2022 passed by the County Commission of the County on October 27, 2022 (the “**Order**”) and a Trust Indenture dated as of November 1, 2022 (the “**Indenture**”), by and between the County and BOKF, N.A., St. Louis, Missouri, as trustee (the “**Trustee**”). *Capitalized terms not otherwise defined herein shall have the meanings set forth in Section 101 of the Indenture.*

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the County’s acceptance hereof, the County hereby represents to the Purchaser that:

(1) The County is a county of the first classification and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The County is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement; the Order; the Indenture; the Base Lease dated as of November 1, 2022 (the “**Base Lease**”), by and between the Plumrose USA, Inc. (d/b/a Swift Prepared Foods), a Delaware corporation (the “**Company**”), as lessor, and the County, as lessee; the Lease Agreement dated as of November 1, 2022 (the “**Lease**”), by and between the County, as lessor, and the Company, as lessee; the Performance Agreement dated as of December 1, 2021 (the “**Performance Agreement**”), previously entered into between the Company and the County; and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of purchasing, constructing, equipping, improving and

installing the Project for the benefit of the Company and paying for the costs incurred in connection with the issuance of the Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending or, the County's knowledge, threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the County or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds, the Order, the Base Lease, the Lease, the Indenture, the Performance Agreement or this Bond Purchase Agreement.

(3) Any certificate signed by an authorized representative of the County and delivered to the Purchaser shall be deemed a representation and warranty by the County to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a corporation duly organized and validly existing under the laws of the State of Delaware and is authorized to do business in and is in good standing under the laws of the State of Missouri.

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound.

(3) *Documents Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies.

(4) *Purchaser's Certificates.* Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the County shall be deemed a representation and warranty by the Purchaser to the County as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

(a) On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions set forth herein and in the Indenture, the Purchaser agrees to purchase from the County and the County agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

(b) The Bonds shall be sold to the Purchaser by the County on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined) for the Bonds, which amount shall be deposited or deemed deposited in the Project Fund as provided in the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs (as defined in the

Performance Agreement) as provided in the Lease. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser shall make additional payments with respect to the Bonds (“Additional Payments”) to the Trustee under the Indenture, which Additional Payments shall be deposited or deemed deposited in the Project Fund and applied to the payment or reimbursement of Project Costs or as provided in the Indenture and the Lease; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$186,000,000 plus the costs of issuance of the Bonds (if such costs of issuance are not paid with Bond proceeds).

(c) As used herein, the term “Closing Date” shall mean December [___], 2022, or such other date as shall be mutually agreed upon by the County and the Purchaser; the term “Closing Price” shall mean, with respect to the Bonds, that certain amount specified in writing by the Purchaser and agreed to by the County as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to any Project Costs spent by the Company from its own funds (including, at Purchaser’s option, costs of issuance of the Bonds if such costs are not paid for with Bond proceeds) on or before the Closing Date.

(d) The Bonds shall be issued under and secured as provided in the Order, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of \$186,000,000; provided, that the principal amount of the Bonds Outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee, absent manifest error, and further provided that interest shall be payable on the Bonds only on the Outstanding principal amount of the Bonds, as more fully provided in the Indenture.

(e) The Purchaser agrees to indemnify and hold harmless the County, the Trustee, and any member, officer, official or employee of the County or of the Trustee and any person controlling the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the “Indemnified Parties”), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent caused by any violation by the Purchaser of, or failure by the Purchaser to comply with, any federal or state securities laws in connection with the Bonds.

(f) In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Purchaser, the Indemnified Parties shall promptly notify the Purchaser in writing and the Purchaser shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Purchaser. The Purchaser shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Purchaser or if there be a final judgment for the plaintiff in any such action against the Purchaser or any of the Indemnified Parties, with or without the consent of the Purchaser, then provided that the Purchaser was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Purchaser agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER’S OBLIGATIONS

The Purchaser’s obligations hereunder shall be subject to the due performance by the County of the County’s obligations and agreements to be performed hereunder on or prior to the Closing Date and to the

accuracy of and compliance with the County's representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly certified electronic copy of the Order, the Trust Indenture, the Performance Agreement, this Bond Purchase Agreement, the Base Lease and the Lease and any other instrument contemplated thereby, and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

(b) The County shall confirm on the Closing Date by a certificate that at and as of the Closing Date the County has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or, to the County's knowledge threatened against the County wherein any question is raised affecting in any way the legal organization of the County or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof.

(c) The Company shall execute a certificate, dated the Closing Date, to the effect that (1) no litigation, proceeding or investigation is pending against the Company or its affiliates or, insofar as the Company has knowledge, threatened which would (i) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (ii) in any way contest the existence or powers of the Company, (2) no litigation, proceeding or investigation is pending or, insofar as the Company has knowledge, threatened against the Company that could reasonably be expected to adversely affect its ability to perform its obligations hereunder or under the Base Lease, the Lease or the Performance Agreement, (3) the representations and warranties of the Company herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (4) such other matters as are reasonably requested by the County or the Trustee in connection with the issuance of the Bonds.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the County in writing of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., as Bond Counsel to the County, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds. To the best of the County's knowledge and belief, the only expenses payable by the Company in connection with the issuance of the Bonds (other than fees of the Company's counsel and advisors) are the following: (a) the legal fees of Gilmore & Bell, P.C., as Bond Counsel to the County, in the amount of \$85,000.00, which includes the fee for the preparation of the Plan and cost-benefit analysis and (b) the Trustee's initial acceptance fee and first year's administrative fee totaling \$2,500.00.

SECTION 8. NOTICE

Any notice or other communication to be given under this Bond Purchase Agreement may be given in writing by mailing or delivering the same as follows:

- (a) To the County:

Boone County, Missouri
801 E. Walnut, Room 112
Columbia, Missouri 65201
Attention: County Treasurer

with a copy to:

Boone County, Missouri
801 E. Walnut, Room 211
Columbia, Missouri 65201
Attention: County Counselor

- (b) To the Trustee:

BOKF, N.A.
200 North Broadway, Suite 1710
St. Louis, Missouri 63102
Attention: Corporate Trust Department

- (c) To the Purchaser:

Plumrose USA, Inc. (d/b/a Swift Prepared Foods)
651 W. Washington Blvd., Suite 304
Chicago, Illinois 60661
Attention: Legal Department

with a copy to:

McGrath North Mullin & Kratz, PC LLO
1601 Dodge Street, Suite 3700
Omaha, Nebraska 68102
Attention: Steven P. Case, Esq.

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri. This Bond Purchase Agreement may be assigned by the Purchaser, in whole as to all of the Bonds, to the Purchaser's successor, assign or affiliate or any other Person that expressly assumes in writing all of the obligations of the Purchaser contained in the Base Lease and the Lease, or if such assignment is in part as to the Bonds, the obligations of the Purchaser contained in the Lease; provided that the consent of the County for the assignment of this Bond Purchase Agreement shall not be required if the consent of the County is not required for such Person's assumption of the Lease under the provisions of **Article XIII** thereof. Any such assignee shall agree to be bound by the terms of this Bond Purchase Agreement. This Bond Purchase Agreement may be assigned, without approval of, but with notice to the County, by the Purchaser to any lender of the Purchaser as collateral for a loan secured by a deed of trust or mortgage of the Project, and the Bonds may be pledged, without approval of the County, by the Purchaser to any lender of the Purchaser as collateral for a loan secured by a deed of trust or mortgage of the Project.

SECTION 10. ELECTRONIC STORAGE

The parties agree that the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

SECTION 11. EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

SECTION 12. ANTI-DISCRIMINATION AGAINST ISRAEL ACT

Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Purchaser certifies that it is not currently engaged in and will not, for the duration of this Bond Purchase Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of this page intentionally left blank]

Very truly yours,

PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS),
as Purchaser


Date of Execution:

December ____, 2022

By: 
Name: Thomas Lopez
Title: President & Chief Operating Officer

Accepted and agreed to this ____ day of December 2022.

PLUMROSE USA, INC. (D/B/A SWIFT PREPARED FOODS),
as Company

By: 
Name: Thomas Lopez
Title: President & Chief Operating Officer

Bond Purchase Agreement
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022


Accepted and agreed to this _____ day of December, 2022.

BOONE COUNTY, MISSOURI

By: 
Name: Daniel K. Atwill
Title: Presiding Commissioner

[\$EAL]

ATTEST:

By: 
Name: Brianna L. Lennon
Title: County Clerk

Bond Purchase Agreement
Boone County, Missouri
Taxable Industrial Development Revenue Bonds
(Swift Prepared Foods Project)
Series 2022