

RGR
11/2/10

R. 17315

LABORATORY SERVICES AGREEMENT

This LABORATORY SERVICES AGREEMENT ("Agreement") is executed by the parties on the respective dates set forth next to their signatures, but effective as of the 1st day of July, 2010 ("Effective Date") when services under this Agreement began, by and between THE CHILDREN'S MERCY HOSPITAL, a Missouri Nonprofit Corporation ("Hospital") and JACKSON COUNTY, MISSOURI, a Constitutional Home Rule Charter County of the State of Missouri ("County"), for the use and benefit of the Jackson County Medical Examiner's Office ("Medical Examiner's Office"), and its execution has been authorized by Resolution No.17315 as a Term and Supply Agreement award to a tax-exempt organization pursuant to Section 1030.7 of the Jackson County Code 1984.

WHEREAS, Hospital is a tax-exempt pediatric facility, dedicated to offering inpatient and outpatient laboratory services to patients in the Greater Kansas City Area and outlying communities; and,

WHEREAS, the Medical Examiner's Office is a department of County, a political subdivision of the State of Missouri; and,

WHEREAS, the Medical Examiner's Office provides Medical Examiner Services and desires to have County engage Hospital to provide certain designated laboratory services for its office all upon the terms, conditions, and mutual promises hereinafter contained.

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, it is understood and agreed as follows:

FILED
JUL 20 2010
MARY JO [unclear]
COUNTY CLERK

1. **Term.** The term of this Agreement shall begin on the Effective Date and shall continue through June 30, 2011 ("Initial Term"), unless earlier terminated as hereinafter provided.

2. **Duties of County.** The County, through its Medical Examiner's Office, shall:

- a. contact Hospital's laboratory ("Lab") when specimens and requisitions are being sent for testing to the Lab;
- b. send properly collected specimens labeled in such a manner as the parties may mutually agree along with completed requisitions to the Lab for each Lab test ordered;
- c. submit a new requisition, authorized by an appropriately licensed provider, to Hospital in order to document additional testing involving a previously submitted specimen when further testing is requested; and
- d. abide by the policies set forth in the Lab Manual published and distributed by Hospital.

3. **Duties of Hospital.** Hospital shall:

- a. perform the testing by providing all labor, equipment, appliances, transportation, supervision and materials following the Lab's receipt of the specimen and completed requisition and shall, after testing is complete, provide written test results to the Medical Examiner's Office via secured method of communication. Lab personnel shall be available to discuss test results with the Medical Examiner's Office. Hospital shall keep records of test performed by the Lab in accordance with Hospital policy.

b. provide weekday courier service to pick up test specimens once per day per location from the Medical Examiner's Office at the following location: Jackson County Medical Examiner's Office, 660 East 24th Street, Kansas City, Missouri 64108. Hospital shall bear the cost of routine courier service. The Medical Examiner's Office shall arrange at its own expense for the delivery of any specimens not picked up by Hospital as part of its routine courier service.

c. advise the Medical Examiner's Office of the proper specimen collection techniques and other requirements for the Lab specimens it receives.

4. **Billing for Lab Services**. Hospital shall bill County in accordance with the then-current laboratory services fee schedule applicable to the County ("Fee Schedule"). The Fee Schedule will be reviewed and updated periodically. Hospital shall notify County in writing of any updates to the Fee Schedule, including price changes for existing tests or the pricing for new tests, at least forty-five (45) days prior to the effective date of such changes or additions. Price changes and new test pricing shall be deemed accepted by the County unless the County notifies Hospital in writing of its non-acceptance of the prices within thirty (30) days of the date of the notice. Hospital shall submit itemized invoices to the County through the Medical Examiner's Office and the County shall remit payment to hospital within thirty (30) days of invoice issue. Funding for services performed in Extended Terms beyond Initial Term is subject to appropriation in County's then current annual budget.

5. **Court Testimony To Be Performed By Hospital**. If follow-up services resulting from the performance of its duties under this Agreement, such as court testimony, are

required of Hospital by the Medical Examiner's Office, it shall make its personnel available upon reasonable prior written notice to Hospital for such services at a rate of \$60.00 per hour in an amount not to exceed \$840.00 per day. This requirement shall survive the termination of this Agreement.

6. **Compliance with Certain Guidelines and Standards.** Hospital warrants that it currently has The Joint Commission accreditation, the Clinical Laboratory Improvement Amendment ("CLIA") certification and College of American Pathologists accreditation for high complexity testing as a reference laboratory.

7. **Responsibility For Administration of Contract.** The Medical Examiner of Jackson County, Missouri is responsible for the administration of this Contract, including deviations from specifications.

8. **County Represents and Warrants as follows:**

a. County complies and will maintain compliance with all laws, rules and regulations.

9. **Insurance.**

a. Hospital agrees to maintain or cause to be maintained at all times during the term hereof professional liability insurance or self-insurance for occurrences during the term hereof with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering itself and its staff providing services. Prior to the commencement of this Agreement and from time to time thereafter at the request of County the Hospital shall provide County with evidence of the foregoing coverage.

b. County agrees to maintain or cause to be maintained at all times during the term hereof professional liability insurance or self-insurance for occurrences during the term hereof with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering itself and its staff providing services. Prior to the commencement of this Agreement and from time to time thereafter at the request of Hospital the County shall provide Hospital with evidence of the foregoing coverage.

10. **Indemnification.**

a. County shall defend, indemnify and hold harmless Hospital and its current and former employees, officers, directors and staff ("Indemnified Parties") from and against any and all claims, liabilities, judgments, costs, damages, expenses, and attorneys' fees in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative ("Proceeding"), to which the Indemnified Parties are, were, or at any time becomes a party or is threatened to be made a party due to an intentional, negligent or wrongful act or omission by County or its contractors or employees or County's breach of the Agreement.

b. Hospital shall defend, indemnify and hold harmless County from and against any and all claims, liabilities, judgments, costs, damages, expenses, and attorneys' fees in connection with any Proceeding, to which County is was, or at any time becomes a party or is threatened to be made a party due to an

intentional, negligent or wrongful act or omission by Hospital or its employees or Hospital's breach of the Agreement.

c. All indemnification agreements and obligations shall continue after the expiration or termination of this Agreement for so long as such indemnified party may be subject to any possible Proceeding.

11. **Cooperation in the Event of a Claim.**

a. In the event that the County or any of its practitioners or Hospital or any of its Lab staff, becomes aware of any alleged injury arising out of or relating to Lab services provided under this Agreement, each party has a duty to give the other written notice within fifteen (15) days containing the particulars sufficient to identify the name and address of the allegedly injured person, place and circumstances of the alleged incident, and the addresses of the available witnesses.

b. Each of the parties shall cooperate with each other in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to any of the parties because of injury with respect to which insurance is afforded, and shall attend the hearings and trials and assist in securing evidence and obtaining the attendance of witnesses.

12. **Corporate Compliance Plan.** County acknowledges receipt of copies of and agrees to abide by Hospital's Corporate Compliance Plan and Code of Conduct (collectively, "Plan") that set forth the policies of Hospital to comply with applicable laws,

regulations, and other standards. County agrees to ensure that all of its physicians and other practitioners who utilize the Hospital's Lab services comply with the Plan.

13. **Termination.**

a. Either party may terminate this Agreement immediately if the other party is liquidated or dissolved, or initiates proceedings to liquidate or dissolve.

b. Hospital and the County promise, covenant, and agree to faithfully observe and perform all the terms, provisions and requirements of this Agreement, and the County or Hospital's failure to so observe and perform in accordance with said terms, provisions, and requirements of this Agreement shall represent and constitute a breach of this Agreement. In such event, unless the breaching party cures any such breach within fifteen (15) days of its receipt of written notice thereof from the non-breaching party, the non-breaching party may immediately terminate this Agreement.

c. Hospital and County may each terminate this Agreement immediately in the event that funding for the Agreement becomes unavailable from the County due to Non-Appropriation or other cause.

d. This Agreement may be terminated by either party at any time, with or without cause, upon sixty (60) days prior written notice.

e. Notwithstanding any other provision herein, the parties may terminate this Agreement at any time by their mutual consent in writing.

14. **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly

delivered in person or upon the earlier of actual receipt or three (3) business days after deposit with the United States Postal Service if sent by registered or certified, first-class mail, postage prepaid to:

County: Jackson County Medical Examiner's Office
660 East 24th Street
Kansas City, Missouri 64108
Attention: Mary H. Dudley, M.D.

Hospital: The Children's Mercy Hospital
2401 Gillham Road
Kansas City, Missouri 64108
Attention: Randall L. O'Donnell, Ph.D.
President and CEO

With a copy to: The Children's Mercy Hospital
2401 Gillham Road
Kansas City, Missouri 64108
Attention: Sally SurrIDGE
Vice President/General Counsel

The Office of the County Counselor
Jackson County, Missouri
415 E. 12th Street, Suite 200
Kansas City, MO 64106
Attention: William G. Snyder
Acting County Counselor

15. **Waiver of Breach.** No delay or omission by either party to exercise any right or power accruing upon any breach of any covenant or agreement contained herein shall be construed to be a waiver of any such right or power or any acquiescence therein. The waiver by either party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the other party.
16. **Assignment.** No party hereto shall have the right to assign this Agreement to any other person or firm without the prior written consent of the other.

17. **Severability.** If any other provision of this Agreement is invalid, or incapable of being enforced by reason of any rule or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

18. **Entire Agreement.** This instrument contains the entire agreement of the parties and supersedes all prior or existing agreements, written or oral, between the parties dealing with the subject matter hereof. This Agreement may be changed only by an agreement in writing, signed by all the parties hereto. Time is of the essence hereof.

19. **Independent Contractor.** The parties acknowledge that Hospital is an independent contractor in relation to the County and that the County and its practitioners and employees are independent contractors in relation to Hospital. Nothing in this Agreement should be construed as creating a partnership or joint venture between the parties or an employer/employee relationship between either party and any individual employed by the other party. Hospital shall be subject to the direction of the County only as to the result to be accomplished and not to the means and methods for accomplishing the result. Hospital shall report all earnings received hereunder as gross income, and shall be responsible for its own federal, state and city withholding taxes and all other taxes, and operate its business independent of the business of the County except as required by this Agreement

20. **Federal Government Access.** Pursuant to the Social Security Act, as amended, and any regulations thereto, as amended from time to time, each party agrees that until

the expiration of six (6) years after the furnishing of the service pursuant to this Agreement, it shall make available, upon request by the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives (including Medicare intermediaries or Medicaid agencies), this Agreement and the books, documents and/or records of it that are necessary to certify the nature and extent of the cost claimed to Medicare or Medicaid with respect to such services.

21. **Amendment to Comply with Laws.** Although the parties believe that this Agreement and the intent of the parties embodied herein complies with applicable laws and regulations, in the event any provision of this Agreement is reasonably deemed by either party to be in violation of state or federal law, rule or regulation, or judicial or regulatory interpretation whether existing or newly adopted or promulgated, such provision shall be re-negotiated by the parties in good faith to render the provision in compliance with such law, regulation, or interpretation. If the parties cannot agree on such re-negotiated terms, this Agreement shall terminate upon notice from either party to the other upon reasonable written notice.

22. **Governing Law.** The validity, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Missouri.

23. **Conflict of Interest.** Hospital warrants that no officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefits from the profits or emoluments of this Agreement.

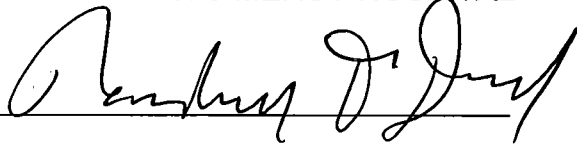
24. **Nonappropriation of Funds.** When funds are not appropriated or otherwise made available to support continuation of the performance, the Contract shall be terminated

and the County will not be obligated to pay the Hospital for any amount for services rendered after the notification of termination is received by Hospital.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.


THE CHILDREN'S MERCY HOSPITAL



Randall L. O'Donnell, Ph.D.
President and CEO

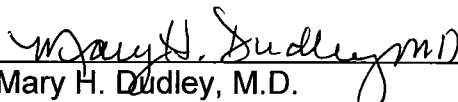
Date: 11/5/10

JACKSON COUNTY, MISSOURI



Q. Troy Thomas
Director of Finance and Purchasing

Date: 11/29/10


Mary H. Dudley, M.D.
Jackson County Chief Medical Examiner

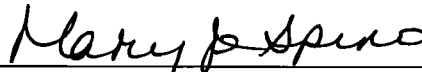
Date: 11/29/10

APPROVED AS TO FORM:



William G. Snyder
Acting County Counselor

ATTEST:



Mary Jo Spino
Clerk of the County Legislature

REVENUE CERTIFICATE

This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases is subject to annual appropriation.

November 15, 2010
Date


Director of Finance and Purchasing