

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT Eastern District of Virginia		PROOF OF CLAIM
Name of Debtor: Health Diagnostic Laboratory, Inc.	Case Number: 15-32919-KRH	RECEIVED JUL 07 2015 American Legal Claims
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Economic Development Authority of the City of Richmond, Virginia		
Name and address where notices should be sent: Tabrica C. Rentz Richmond City Attorney's Office 900 East Broad Street, Room 300, Richmond, Virginia 23219 Telephone number: (804) 646-6642 email: tabrica.rentz@richmondgov.com		In re: HEALTH DIAGNOSTIC LABORATORY - HDL INC Case No: 15-32919 COURT FILED CLAIM 1013
Name and address where payment should be sent (if different from above): Julious P. Smith, Chairman, EDA 501 East Franklin Street, Suite 116 Richmond, Virginia 23219 Telephone number: (804) 521-4002 email: jsmith@williamsmullen.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
1. Amount of Claim as of Date Case Filed: \$ <u>570,000.00</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Performance Agreement (see attached, section 6.2)</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____)
Amount entitled to priority: \$ _____		
<i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

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7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Tabrica C. Rentz

Title: Senior Assistant City Attorney

Company: Richmond City Attorney's Office for EDA

Address and telephone number (if different from notice address above):

/s/ Tabrica C. Rentz

07/07/2015

(Signature)

(Date)

Telephone number:

email:

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**INFORMATION****Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** is made and entered this 12th day of October, 2013, by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("the City") and **HEALTH DIAGNOSTIC LABORATORY, INC.**, a Virginia corporation ("the Company"), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("the Authority").

WITNESSETH:

WHEREAS, the Company operates a business headquartered in the City of Richmond and intends to construct, expand and improve its business, thereby making a significant Net New Taxable Investment, as hereinafter defined, and creating a significant number of New Jobs, as hereinafter defined; and

WHEREAS, the City and the Authority have determined that the Company's construction, expansion and improvement of its business will result in substantial benefits to the welfare of the City and its inhabitants; is in the public interest; and serves governmental interests, including but not limited to an increase in real estate and personal property tax receipts and job creation; and

WHEREAS, the City desires to provide to the Company an economic development monetary grant ("the Grant") for the purpose of inducing the Company to construct, expand and improve its business in the City of Richmond, thereby making a significant Net New Taxable Investment, as hereinafter defined, and creating a significant number of New Jobs, as hereinafter defined; and

WHEREAS, the City is willing to provide the funds to the Authority with the expectation that the Authority will provide the funds to or for the use of the Company, provided that the Company meets certain criteria relating to the Net New Taxable Investment and New Jobs; and

WHEREAS, the City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Performance Agreement; and

WHEREAS, the City, the Authority and the Company desire to set forth their understanding and agreement as to the payout of the Grant, the use of the Grant funds, the obligations of the Company regarding Net New Taxable Investment and New Job creation, and the repayment by the Company of all or part of the Grant under certain circumstances; and

WHEREAS, the construction, expansion, improvement and operation of the Company's business will entail a capital expenditure in taxable real estate of not less than \$26,000,000.00 in Phase I and not less than \$20,000,000.00 in Phase II of the Grant Period, as hereinafter defined, and will entail an investment in taxable personal property of not less than \$12,500,000.00 in Phase I and not less than \$10,000,000.00 in Phase II of the Grant Period; and

WHEREAS, the construction, expansion, improvement and operation of the Company's business will further entail the creation of not less than 653 New Jobs by the completion of the Grant Period; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Net New Taxable Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds; and

WHEREAS, this Agreement sets forth the understanding of the parties concerning the Company's obligations, the Authority's obligations, and the incentives offered by the City, subject to the approval of the Authority's Board and the Richmond City Council and subject to appropriations.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

For the purposes of this Agreement, the following terms shall have the following definitions:

"Taxable Investment" means a) the total taxable value placed by the City on specified real estate and all improvements thereon, plus b) the total taxable value placed by the City on any personal property located at the said specified real estate.

"Existing Facility" means the real and personal property located at 737 N. 5th Street (Tax Map No. N000-0023/001) and used by the Company in its business as of December 31, 2011.

"Expanded Facility" means the real and personal property located at 510 East Jackson Street, and those parcels located at 700 A Navy Hill Drive and 716 Navy Hill Drive (Tax Map Parcel No. N000-023/022).

"Net New Taxable Investment" means the positive change in Taxable Investment at property used by the Company in its business occurring during the Grant Period. Net New Taxable Investment shall be calculated by comparing Taxable Investment at the Expanded Facility to Taxable Investment at the Existing Facility as of the Calculation Dates. The Calculation Dates are set forth in Section 2.1 of this Agreement. The Phase 1 Calculation Date is June 30, 2015. The Phase 2 Calculation Date is June 30, 2017.

"Maintain" means that the New Jobs created pursuant to the Grant will continue without interruption from the date of creation through the Grant Period. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to temporary reductions in the Company's employment levels in connection with recruitment for open positions or strikes and other work stoppages.

"New Job" means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are paid by the Company for the employee. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. The New Jobs must be in addition to the 300 full-time jobs at the Facility as of December 1, 2011. For the avoidance of doubt, multiple positions with similar or the same job titles shall each be considered a New Job assuming the foregoing requirements are met for such position.

"Grant Period" shall mean the period of time beginning July 1, 2012 and ending June 30, 2019. The Grant Period shall be considered in two phases as follows, and reference to those phases in this Agreement shall mean the following:

"Phase 1" shall mean the period beginning July 1, 2012 and ending June 30, 2017.

"Phase 2" shall mean the period beginning July 1, 2014 and ending June 30, 2019.

"Targets" means the Company's obligations to make a Net New Taxable Investment and create New Jobs at the Facility in accordance with the time frames set forth in this Performance Agreement.

Section 2. Targets.

2.1 Net New Taxable Investment. The Company will develop and operate its business in the City, making a Net New Taxable Investment in an amount sufficient to produce annual tax revenue to the City of not less than \$225,000 no later than June 30, 2015 (Phase 1 Calculation Date) pursuant to the Phase 1 Grant, as described in Section 3 below. The Company must additionally make a Net New Taxable Investment in an amount sufficient to produce annual tax revenue to the City of not less than \$405,000 no later than June 30, 2017 (Phase 2 Calculation Date) pursuant to the Phase 2 Grant, as described in Section 3 below.

2.2 New Jobs. The Company will create and Maintain at least 353 New Jobs at the Facility by the end of Phase 1 and at least 300 additional New Jobs by the end of Phase II, for a total of 653 New Jobs during the Grant Period.

Section 3. Disbursement of Grant.

3.1 Grant Amount. The City shall, through the Authority, provide the Company with an incentive in the form of an economic development grant in a total amount of up to \$1,350,000.00 (the "Grant") over the Grant Period, payable as follows:

3.2 Installments. The Grant shall be paid in accordance with the timing of Phase 1 and Phase 2 as follows:

3.2.1 Phase 1. The Phase 1 Grant shall be paid in five annual installments of \$150,000 for each of the City's fiscal years during Phase 1 for a total of \$750,000, subject to appropriations and subject to the performance commitments set forth below; Payment of the first annual installment can be requested by the Company once the Company has ensured that the ownership of Biotech 3 is held in such a way as to require the payment of real estate taxes and once the Company has commenced construction on the Biotech 3 site. The Company may request the first grant installment in writing no earlier than July 1, 2012. Such request shall include documentation acceptable to the City in the City's sole discretion that Biotech 3 is subject to real estate taxation and that construction has commenced. Payment of the second annual installment can be requested by the Company once the Company has ensured that the City has fully and timely received payment of the Company's business personal property taxes and of the real estate taxes related to the expansion of the Facility into the Biotech 3 location. The Company may request the second grant installment in writing no earlier than July 1, 2013. Once the Company's request in writing has been received by the City and the City has received the requisite business personal property and real estate tax payments as determined by the City in its sole discretion, the City shall, within thirty (30) days, request the Authority or other agency to provide the Company with the annual grant installment determined in accordance with and subject to the limits contained herein. All subsequent grant requests by the Company can be made in writing once the City has received full payments of the business personal property and real estate taxes as determined by the City in its sole discretion for the relevant tax year, but no earlier than July 1 of each year. The City shall have thirty (30) days to request the Authority or other agency to provide the Company with the annual grant installment from the time the written request from the Company has been received and the requisite business personal property and real estate taxes have been paid, as determined by the City in its sole discretion.

3.2.2 Phase 2. The Phase 2 Grant shall be paid in five annual installments of \$120,000 per the City's fiscal year for a total of \$600,000, subject to appropriations and subject to the performance commitments set forth below. Payment of the first annual installment can be requested by the Company once the Company has ensured that the City has fully and timely received payment of the Company's business personal property taxes and of the real estate taxes related to the expansion of the Facility into the Biotech 5 location. The Company may request the first grant installment in writing no earlier than July 1, 2014. Once the Company's request in writing has been received by the City and the City has received the requisite business personal property and real estate tax payments as determined by the City in its sole discretion, the City shall, within thirty (30) days, request the Authority or other agency to provide the Company with the annual grant installment determined in accordance with and subject to the limits contained herein. All subsequent grant requests by the Company can be made in writing once the City has received full payments of the business personal property and real estate taxes as determined by the City in its sole discretion for the relevant tax year, but no earlier than July 1 of each year. The City shall have thirty (30) days to request the Authority or other agency to provide the Company with the annual grant installment from the time the written request from the Company has been received and the requisite business personal property and real estate taxes have been paid, as determined by the City in its sole discretion.

3.2.3 Appropriations Required. The City's and the Authority's obligation to provide the annual Grant installments to the Company is subject to and contingent upon the appropriation of all necessary funds by the Richmond City Council for such purposes and upon action of the Authority's Board of Directors.

Section 4. Administration of Grant

4.1 The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under the Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

4.3 The Authority agrees to provide the City's Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement and will keep the Chief Administrative Officer fully and timely informed of all matters related to the Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grant.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty or obligation other than what may be required to implement the Grant. Accordingly, Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Grant is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and Chief Administrative Officer.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City a blanket corporate fidelity bond with surety.

Section 5. Representations of the Company

5.1 The Company is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Company to enter into this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Company has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Company will bind and obligate the Company to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Company or to the Company's actual knowledge threatened, which if determined adversely, would materially and adversely

affect the ability of the Company to carry out its obligations under this Agreement or the transactions contemplated hereunder.

Section 6. Default and Repayment Obligation.

6.1 Events of Default.

6.1.1 Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Company as described:

6.1.1.1 Failure to ensure that the property located at Biotech 3, Tax Map Parcel No. N000-0023/057, is converted to taxable real estate and to begin construction of the Facility at the Biotech 3 location by April 1, 2013;

6.1.1.2 Failure to ensure that the property located at Biotech 5, Tax Map Parcel Nos. N000-0023/022A and N000-0023/022B is converted to taxable real estate and to begin construction of the Facility at the Biotech 5 location by April 1, 2014;

6.1.1.3 Failure by the Company to complete the construction of the Facility in its entirety at both locations, Biotech 3 and Biotech 5, by June 30, 2019;

6.1.1.4 Failure by the Company to maintain its corporate existence or the declaration of bankruptcy by the Company;

6.1.1.5 The failure by the Company to create and maintain 353 New Jobs at the Facility no later than June 30, 2017;

6.1.1.6 The failure by the Company to create and maintain 653 (inclusive of the 353 New Jobs referenced in Section 6.1.1.5) New Jobs at the Facility no later than June 30, 2019; and

6.1.1.7 The failure to meet the requirements of Section 2.1 of this Agreement regarding the minimum Net New Taxable Investment in Phase 1 and Phase 2.

6.1.2 In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall terminate immediately and neither the City nor the Authority shall have any further obligation relating thereto and the Company shall no longer be eligible for any grant payments hereunder. Notwithstanding the foregoing, the provisions of Section 6.2 below shall survive the termination of this Agreement until all of the Company's obligations have been satisfied.

6.2 Repayment Obligation.

6.2.1 Upon an Event of Default (other than pursuant to Section 6.1.1.6), the Company shall repay to the Authority any and all amounts paid to it pursuant to this Agreement as of the date upon which the Event of Default occurs and upon written demand by the Authority to the Company for such repayment. Upon an Event of Default pursuant to Section 6.1.1.6, the Company shall repay to the Authority 10% of any and all amounts paid to it pursuant to this Agreement as of the date upon which the Event of Default occurs and upon written demand by the Authority.

6.2.2 Repayment shall be due from the Company to the Authority within thirty days of the date of the written demand to the Company from the Authority. Any moneys repaid by the Company to the Authority hereunder shall be repaid by the Authority to the City. The Authority shall have no responsibility for the repayment of any sums hereunder unless said sums have been received by the Authority from the Company.

6.2.3 Notwithstanding the foregoing, upon an Event of Default the Authority may prorate any amount of repayment due to it following a written request to the City, and receipt of written authorization from the City, to so prorate the amount due. Any such proration shall be allowed only in the sole discretion of the City and the Authority.

Section 7. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the City and the Authority of the Company's progress on the Targets. Such progress reports will be provided annually, starting June 1, 2013, and at such other times as the City or the Authority may require.

Section 8. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

Health Diagnostic Laboratory, Inc.
737 N. 5th Street
Suite 103
Richmond, VA 23219
 Attention: Tonya Mallory

with a copy to:

LeClair Ryan
951 E. Byrd St.
8th Floor
Richmond, VA 23219
 Attention: Charles Sims

if to the City, to:

Chief Administrative Office
900 E. Broad Street, Room 200
Richmond, VA 23219

with a copy to:

City Attorney's Office
900 E. Broad Street, Room 300
Richmond, VA 23219

Attention: Chief Administrative Officer

Attention: City Attorney

if to the Authority, to:

Chair of the Authority
501 East Franklin Street

with a copy to:

Richmond, VA 23219
City Attorney, Room 300
Attention: Chairman

Attention: _____

Section 9. General Terms and Conditions.

9.1 Entire Agreement; Amendments. This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the City and the Authority.

9.2 Governing Law; Venue. This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

9.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

9.4 Severability. If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

9.5 Subject-to-Appropriations. All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

9.6 Public Disclosure.

9.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-3714 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

9.6.2 Challenges to Nondisclosure. If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

9.7 No Waiver. Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

9.8 Effective Date of the Agreement. The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by City Council and by the Authority's Board of Directors.

9.9 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

9.10 No Third Party Beneficiaries. Notwithstanding any other provision of this Agreement, the parties agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Company; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Company under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

WITNESS the following signatures and seals.

CITY OF RICHMOND, VIRGINIA
a municipal corporation of the
Commonwealth of Virginia

By: 

Byron Marshall, Chief Administrative
Officer

Approved as to Form:

By: 

Bonnie M. Ashley
Assistant City Attorney

HEALTH DIAGNOSTIC LABORATORY, INC.,
a Virginia corporation

By: 

Name: Stephen G. Carroll

Title: Chief Financial Officer

**ECOMONIC DEVELOPMENT OF THE
CITY OF RICHMOND, VIRGINIA,**
a political subdivision of the
Commonwealth of Virginia

By: 

Chairman

WELLS
FARGO

June 23, 2015

To whom it may concern:

The following wires were debited from the EDA of the City of Richmond Fiduciary account

[REDACTED]:
1/16/2014 – \$150,000.00 – Recipient: Health Diagnostic Laboratory, Inc. – [REDACTED]

3/18/2014 – \$150,000.00 – Recipient: Health Diagnostic Laboratory, Inc. – [REDACTED]

4/15/2015 – \$270,000.00 – Recipient: Health Diagnostic Laboratory, Inc. – [REDACTED]

Please feel free to contact me with any questions.

Thank you,

Quincy A. Gregory
Principal Relationship Manager
804-697-6918
Quincy.A.Gregory@wellsfargo.com
1021 E Cary St, 2nd FL
Richmond, VA 23219

