

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), made and entered into on the ____ day of April, 2024, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and **CUSHMAN & WAKEFIELD, U.S., INC.**, a Missouri corporation, ("Organization") with offices located at 201 E. Fourth Street, suite 1800, Cincinnati, OH 45202.

WITNESSETH

WHEREAS, the parties previously entered a Professional Services Agreement on February 13, 2023; and

WHEREAS, LFUCG and Organization wish to continue the relationship created by the above mentioned agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **EFFECTIVE DATE; TERM.** This Agreement shall commence on April ____, 2024 and shall be for an initial term of two (2) years unless terminated by LFUCG at an earlier time. This Agreement is subject to automatic renewal for up to two (2) additional terms of one (1) year each, unless LFUCG determines that it does not wish to exercise the option to renew.

2. **RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated herein by reference as if fully stated:

- a. Exhibit "A" – LFUCG RFQ No. 51-2022, Legacy Business Park Site Development
- b. Exhibit "B" – Organization's Response to RFQ
- c. Exhibit "C" – Listing Agreement For Sale
- d. Exhibit "D" – Schedule of Commissions For Sale
- e. Exhibit "E" – Approach to Development & Marketing (Scope of Work)

To the extent that there is any conflict between or among any of these documents, the terms and provisions of this Agreement shall prevail, followed by terms and provisions of Exhibit "C", "A", "D", "E", and "B" in that order.

3. **SCOPE OF SERVICES.** Organization shall perform the services outlined in the attached Exhibits for LFUCG in a timely, workmanlike and professional manner (the "Services").

4. **PAYMENT.** LFUCG shall pay Organization 6% of the total sales price for the performance of the Services in accordance with Exhibit "C". Payments shall be made in accordance with Exhibit "D". Absent any additional written agreement stating otherwise, any travel or other expenses are included in the above payment.

5. **TERMINATION.** LFUCG, through the Mayor or the Mayor's designee, may terminate this Agreement for any reason whatsoever by providing Organization with at least thirty (30) days advance written notice. Notwithstanding the expiration and/or earlier termination of this Agreement, Organization shall be entitled to a commission in accordance with the provisions of the provisions of Exhibit "C" and Exhibit "D".

6. **REPORTING.** Organization shall provide LFUCG with timely reports and updates related to the provisions of the Services in the form and manner reasonably specified and agreed upon by and between Organization and LFUCG.

7. **REGISTRATION; COMPLIANCE; AUTHORITY TO SIGN.** Organization, its affiliate and/or its cooperating broker, to the extent applicable, shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The persons signing this Agreement on behalf of Organization and LFUCG are fully authorized to do so.

8. **INSURANCE; INDEMNITY.**

The risk management provisions of RFQ No. 51-2022, as revised the modifications thereto contained in Exhibit "C", are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to the LFUCG as required therein.

9. **RECORDS.** Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance of the services for a period of at least one (1) year following the expiration or termination of this Agreement, or as otherwise required depending upon the source of funds. Books of accounts shall be kept by Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Organization related to this Agreement and shall be made available to LFUCG upon request.

a. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by Organization under this Agreement upon payment in monies owed Organization. Organization shall not be held liable for reuse of documents or modifications thereof by LFUCG or its representatives for any purpose other than the original intent of this Agreement without written authorization of Organization.

b. Organization understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.

10. CONTRACTUAL RELATIONSHIP ONLY. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

11. EQUAL OPPORTUNITY; FAIRNESS ORDINANCE. In performing its obligations hereunder and with respect to all employees sought to be hired in connection with the same, Organization shall provide equal opportunity in employment for all qualified persons, and shall: (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap; (b) promote equal employment through a positive, continuing program of equal employment to the extent required by applicable law; and (c) direct any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices to the extent required by applicable law. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

12. SEXUAL HARASSMENT. Organization must adopt or have adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be made available to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be made available to LFUCG upon request.

13. ANNUAL AUDIT. Organization agrees that all revenue and expenditures related to this Agreement shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit, or clean audit opinion letter from an independent certified public accountant, shall be submitted to LFUCG each year of the Agreement.

14. INVESTMENT. Any investment of the funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.

15. NO ASSIGNMENT. Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.

16. NO THIRD PARTY RIGHTS. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.

17. **KENTUCKY LAW AND VENUE.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky.

18. **AMENDMENTS.** By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

19. **NOTICE.** Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization:

Cushman & Wakefield U.S., Inc.
201 East 4th Street, Suite 1800
Cincinnati, OH 45202
Attention: Managing Principal

With a copy to:

Cushman & Wakefield U.S., Inc.
201 East 4th Street, Suite 1800
Cincinnati, OH 45202
Attention: David Kelly, Managing Director

With a copy to:

Cushman & Wakefield U.S., Inc.
1290 Avenue of the Americas
New York, NY 10104
Attention: Legal Department

For Government:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Craig Bencz

20. **WAIVER.** The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision.

21. ENTIRE AGREEMENT. This Agreement, including all exhibits hereto, shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

22. DISPUTE RESOLUTION. Subject to either party's right to terminate this Agreement in accordance with Exhibit "C" hereto, LFUCG and Organization agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. In the absence of such termination, Organization shall continue to perform services for the Project and LFUCG shall pay for such services during the dispute resolution process unless LFUCG issues a written notice to suspend work.

23. FORCE MAJEURE. Organization shall not be liable for any damages caused by any delay that is beyond Organization's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

24. INSURANCE AND LIABILITY. Organization shall maintain the insurance, coverage limits, and insurance conditions required in Section 8 herein during the period of service. LFUCG will be included as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

25. STANDARD OF CARE. Services provided by Organization under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Organization makes no warranty or guaranty, either express or implied. Organization will not be liable for the cost of any omission that adds value to the Project. Organization's standard of care shall not be altered by the application, interpretation or construction of any other provision of this Agreement.

26. SUSPENSION OF WORK. LFUCG may suspend services performed by Organization with cause upon thirty (30) days advance written notice. Organization shall submit an invoice for services performed hereunder in accordance with Exhibit C and Exhibit D hereto and LFUCG shall pay Organization all outstanding invoices within thirty (30) days.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement at
Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: 
LINDA GORTON, MAYOR

ATTEST:


Clerk of the Urban County Council

CUSHMAN & WAKEFIELD, U.S., INC

BY: 
Kevin Hughes – Managing Principal

DATE: 4/12/24

EXHIBIT "C"
LISTING AGREEMENT
FOR SALE

Lexington Fayette Urban County Government ("Owner") appoints Cushman & Wakefield U.S., Inc. ("C&W") as its sole agent and grants to C&W the exclusive right to sell the real property located at Coldstream Research Campus being 1500,1501,1776 & 1785 McGranthiana Parkway, Lexington, Fayette County, KY being approximately 33 acres and Legacy Business Park 2850 Georgetown Road, Lexington, Fayette County, KY being approximately 200 acres (the "Property") as provided below.

1. Term. This Agreement shall commence on April 1, 2024 and shall be for an initial term of two (2) years expiring on March 31, 2026, unless terminated by LFUCG at an earlier time. This Agreement is subject to automatic renewal for up to two (2) additional terms of one (1) year each, unless LFUCG determines that it does not wish to exercise the option to renew.

2. Services. C&W will use its commercially reasonable efforts to obtain a satisfactory purchaser for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. C&W will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. C&W will cooperate with other licensed real estate brokers.

3. Marketing. C&W's relevant pages in response to RFP 51-2022 is attached hereto as Exhibit E and incorporated herein by reference. C&W will act substantially in conformity with its proposal in marketing the Property. Owner authorizes C&W to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. C&W, at its own expense, will place its standard sign on the Property and will prepare and distribute a standard brokerage flyer. All advertising whether prepared or issued by C&W or by Owner will identify C&W as Owner's exclusive agent for the Property.

4. Referrals. During the term of this agreement, Owner will refer to C&W all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.

5. Commission. If, during the term hereof, Owner sells any interest in the Property, Owner will pay to C&W a commission in accordance with the attached Schedule of Commissions. Within 10 days after the end of the term, C&W will provide to Owner a written list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser, appearing on the list, enters into a purchase and sale agreement within 120 days after the end of the term, and thereafter the sale is closed, Owner will pay a commission to C&W as provided above. Owner agrees that such 120-day period will be extended for so long as negotiations with a prospective purchaser are continuing.

6. Outside brokers. If C&W recognizes an outside broker authorized to represent the purchaser in a transaction for which a commission is payable hereunder, C&W will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay C&W the commission computed and payable in accordance with the annexed Schedule out of which C&W will pay to such other broker its agreed upon commission and retain the balance of the commission as C&W's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. Under no circumstances will Owner be obligated to pay a commission exceeding that provided in the Schedule nor shall C&W be responsible for the failure to reach an agreement with the other broker. The term "outside broker" means a broker other than **David Kelly, Jeffrey Bender and SeattleStein**.

7. Representation of Purchasers. Owner acknowledges and agrees that C&W may represent potential purchasers and consents to such dual representation, provided C&W timely discloses any such dual representation to Owner.

8. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.

9. Professional Advice. C&W recommends that Owner obtain legal, tax or other professional advice relating to this agreement and the proposed sale of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and C&W. Owner further agrees that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding C&W's assistance in gathering any financial information.

10. OFAC. Each party represents and warrants to the other that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

11. Anti-Bribery & Corruption. Each party represents and warrants to the other that it (and any party acting on its behalf) has not, in order to enter into this agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this agreement.

In the event of any violation of this section, the non-offending party shall be entitled to immediately terminate this agreement and take such other actions as are permitted or required to be taken under law or in equity.

12. Miscellaneous. This agreement shall be governed by the laws of the Commonwealth of Kentucky, without giving effect to principles of conflicts of law. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns. This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[Signatures on following page]

LEXINGTON FAYETTE URBAN
COUNTY GOVERNMENT

By: Linda Gorton
Name: Linda Gorton
Title: Mayor
Date: 5/9/2024

CUSHMAN & WAKEFIELD U.S., INC.

By: Kevin Hughes
Kevin Hughes, Managing Principal
Date: 4/10/24

[Schedule of Commissions Follows]

EXHIBIT "D"
SCHEDULE OF COMMISSIONS FOR SALE

Rate: 6% of the total sales price

Time of Payment: The commission shall be paid in full at the time of the closing or transfer of title to the Property, except in the case of an installment purchase contract, in which case the commission shall be paid in full at the time of Closing(s) between Owner and purchaser.

Computation of Total Sales Price: The commission shall be computed in accordance with the above rates based upon the gross sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by purchaser or which purchaser takes title "subject to," and any purchase money loans or mortgages taken back by Owner.

Purchase Option: If Owner grants a purchase option, C&W will be paid a commission at the above rate on the option price as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale, C&W will be paid a commission at the above rate on the total sales price (excluding any amount paid for the option and applied to the sales price).

Broker Regulatory or Statutory Provisions. The following provisions must be included in brokerage agreements in the State of Kentucky:

- C&W appoints **David Kelly, Jeffrey Bender and Seattle Stein** as its designated agent(s) pursuant to this Agreement.
- It is illegal for either party to discriminate against any person because of one's membership in a protected class (e.g., race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status, or any other class protected under Kentucky law).