



R-399-2020
Contract # 239-2020

CABINET FOR ECONOMIC DEVELOPMENT

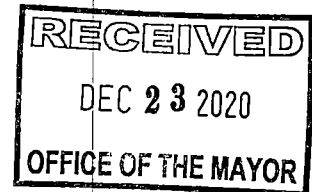
Andy Beshear
Governor

Old Capitol Annex
300 West Broadway
Frankfort, Kentucky 40601

Larry Hayes
Interim Secretary

December 17, 2020

Linda Gorton, Mayor
Lexington-Fayette Urban County Government
200 East Main St.
Lexington, KY 40507



Dear Mayor Gorton:

Enclosed for your records, is a fully executed copy of the **Lexington-Fayette Urban County Government/UK Coldstream Research Campus'** Economic Development (EDF) grant agreement with original signatures. The Cabinet for Economic Development is pleased to partner with you on this important project.

Please let us know if you have any questions or comments regarding the project.

Sincerely,

Debra L. Phillips
Department for Financial Services

Enclosure

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "**Grant Agreement**") dated as of September 24, 2020 (the "**Effective Date**"), is made and entered into by and among: (i) the **KENTUCKY CABINET FOR ECONOMIC DEVELOPMENT**, a Governmental Agency of the Commonwealth of Kentucky, with an address of Old Capitol Annex, 300 West Broadway, Frankfort, Kentucky 40601 ("**Cabinet**"), (ii) the **STATE PROPERTY AND BUILDINGS COMMISSION**, a governmental agency of the Commonwealth of Kentucky, with an address of Capitol Annex Building, Room 383, Frankfort, Kentucky 40601 (the "**Commission**"); (iii) **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**, a political subdivision of the Commonwealth of Kentucky, with an address of 200 East Main Street, Lexington, Kentucky 40507 ("**Grantee**"); and (iv) **THE COMMONWEALTH OF KENTUCKY**, for the use and benefit of the **UNIVERSITY OF KENTUCKY**, acting by and through the **Board of Trustees of the University of Kentucky**, with an address of 301 Main Building, University of Kentucky, Lexington, Kentucky 40506 ("**Beneficiary**").

RECITALS

WHEREAS, it is the public policy of the Commonwealth of Kentucky to encourage, promote, and support economic development, new job formation, and the development and growth of industry and commerce, and to preserve existing jobs in Kentucky for the public purposes of providing employment opportunities for its citizens and residents, alleviating conditions of unemployment, stabilizing and promoting the economy of Kentucky, and creating new tax bases and sources of revenue for the Commonwealth;

WHEREAS, Section 154.12-100 of the Kentucky Revised Statutes authorizes and empowers the Commonwealth to promote economic development in Kentucky by undertaking and financing economic development fund projects, as more particularly described therein;

WHEREAS, the Grantee and the Beneficiary submitted an application to the Cabinet requesting the award of grant funds for the construction and upfitting of 10,000 square feet of laboratory space, associated with the development of a 40,000 square foot office and laboratory building project located at 1532 Bull Lea Road on the Coldstream Research Campus in Lexington, Kentucky (the "**Project**" as further defined in Section 1.1 of this Grant Agreement); and

WHEREAS, the Cabinet, the Commission, the Grantee and the Beneficiary have entered into various negotiations with regard to the Beneficiary's construction of the Project at an approximate total cost of Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000); and

WHEREAS, it is appropriate and in the public interest that the Commonwealth make a commitment of financial resources in the amount of up to Five Hundred Thousand and 00/100 Dollars (\$500,000) to the Beneficiary in order to encourage and support the development of the Project pursuant to KRS 154.12-100 pursuant to the terms of this Grant Agreement; and

WHEREAS, the Kentucky Economic Development Finance Authority (the “Authority”) approved this grant at a duly constituted meeting of its board on September 24, 2020, and both the Commission and the Capital Projects and Bond Oversight Committee approved it thereafter; and

NOW THEREFORE, in order to induce the Cabinet to make a grant to the Grantee in the amount set forth in Section 2.1, below, and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of all of which is hereby acknowledged by the parties hereto, the Commission, the Cabinet, the Grantee and the Beneficiary hereby agree as follows:

SECTION 1
DEFINITIONS

1.1 Definitions. For the purposes hereof, the following words and phrases shall have the meanings ascribed thereto:

(a) “Beneficiary’s Contribution” means the amount of the Beneficiary’s direct investment and contributions to the Project, excluding this Grant.

(b) “Commonwealth” shall mean the Commonwealth of Kentucky and all governmental agencies, authorities, and political subdivisions thereof.

(c) “Disbursement” shall mean the distribution of proceeds of the Grant by the Cabinet to the Grantee pursuant to Section 2 of this Grant Agreement.

(d) “Economic Development Project” or “Project” shall mean the acquisition of any real estate and the construction, acquisition, expansion, improvement, renovation, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of the real estate, to be used for manufacturing, processing, or assembling purposes (including research and development facilities), including without limitation (i) surveys; (ii) site tests and inspections; (iii) subsurface site work; (iv) excavation, removal of structures, roadways, cemeteries, and other surface obstructions; (v) filling, grading, and provision of drainage; (vi) storm water retention; (vii) installation of utilities, such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities; (viii) off-site construction of utility extensions to the boundaries of the real estate; (ix) construction and installation of buildings, including buildings to be used for worker training and education; (x) rail facilities; (xi) roads, sidewalks, curbs, and other improvements; and (xii) any other use approved in writing by the Cabinet and related to the Beneficiary’s construction and upfitting of 10,000 square feet of laboratory space, associated with the development of a 40,000 square foot office and laboratory building project located at 1532 Bull Lea Road on the Coldstream Research Campus in Lexington, Kentucky.

(e) “Event of Default” shall mean the happening of any one or more of the events or occurrences designated as “Events of Default” pursuant to Section 9 of this Grant Agreement.

(f) “Grant” shall mean the grant in the principal amount set forth in Section 2.1 hereof and the terms and conditions of this Grant Agreement.

(g) "Grant Agreement" shall mean this Grant Agreement by and among the Commission, the Cabinet, the Grantee and the Beneficiary.

(h) "Grant Documents" shall collectively refer to this Grant Agreement and all other agreements, documents, exhibits, and instruments evidencing or pertaining to or executed in connection with the Grant, including but not limited to the grant application and related documents, together with any and all agreements, documents, or instruments made in modification, amendment, renewal, extension, substitution, or replacement thereof.

(i) "Laws" shall include all applicable laws, statutes, court decisions, rules, orders, and regulations of the United States of America, the States thereof and of their respective counties, municipalities, and other subdivisions, and shall include without limitation the laws, statutes, court decisions, rules, orders, and regulations of the Commonwealth and/or any other applicable jurisdiction.

(j) "Open Records Act" means KRS 61.870 to 61.884, as may be amended by the Kentucky General Assembly.

(k) "Person" shall include an individual, firm, trust, estate, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

(l) "Request for Disbursement" shall mean a written request to the Cabinet by the Grantee for the making of a Disbursement of the proceeds of the Grant, in form, substance, and detail satisfactory to the Cabinet, substantially in the form attached hereto and made a part hereof as Exhibit A.

(m) "Unmatured Default" shall mean the happening of any event or occurrence which would, together with the delivery of any required notice or the passage of any required period of time, constitute an Event of Default under this Grant Agreement or any of the other Grant Documents.

SECTION 2 THE GRANT

2.1 Agreement to Make Grant. The Cabinet hereby agrees to make, and the Grantee hereby agrees to accept, a grant in an amount equal to the lesser of: (i) the Beneficiary's Contribution, or (ii) Five Hundred Thousand and 00/100 Dollars (\$500,000), subject to and in accordance with the terms, covenants, and conditions set forth in this Grant Agreement (the "Grant"). The Grantee and the Beneficiary expressly agree to comply with and to perform all of the terms, covenants, and conditions of this Grant Agreement and the other Grant Documents. The total amount of the Grant shall in no event exceed Five Hundred Thousand and 00/100 Dollars (\$500,000).

2.2 Use of Proceeds. The proceeds of the Grant (the "Proceeds") shall be disbursed to the Grantee to reimburse the Beneficiary to finance the development of the Project in accordance with the terms and conditions of this Grant Agreement and the other Grant Documents. The Proceeds may only be used to reimburse the approved costs of the Project and shall be used in

compliance with applicable Law, including but not limited to statutory, regulatory and contractual requirements that may apply to the receipt and expenditure of the Commonwealth's funds. The Cabinet shall provide Proceeds of up to Five Hundred Thousand and 00/100 Dollars (\$500,000) as a dollar for dollar match of the Beneficiary's Contribution over the term of the Grant Agreement.

2.3 Disbursement. The Proceeds shall be paid by the Cabinet to the Grantee in one or more payments upon completion of all of the following: (i) execution of this Grant Agreement by each of the parties hereto; (ii) the full performance by all applicable parties of each of the conditions precedent to the Grant set forth in Section 4 of this Grant Agreement and in each of the other Grant Documents; (iii) the Cabinet's receipt of the Secretary of the Finance and Administration Cabinet's concurrence with the use of the grant funds for the Project, and (iv) the receipt by Cabinet of a properly completed and executed Request for Disbursement, not less than ten (10) days prior to the date requested for the Disbursement, to which shall be attached any and all supporting documentation requested by Cabinet. The Grantee may submit no more than one Request for Disbursement per month. The specific amount of any Disbursement shall not exceed the amount justified for reimbursement by the Request for Disbursement and by the documentation received by Cabinet in support thereof and shall in no event exceed fifty percent (50%) of the amount that is ten percent (10%) of the actual costs expended for the construction of the building related to the Project as of the date of such Request for Disbursement. The Grantee agrees to deliver to the Cabinet at any time and from time to time, upon request of the Cabinet, all receipts, vouchers, statements, bills of sale, reports of expenditures, progress reports or other evidence satisfactory to the Cabinet of actual payment of the costs associated with the Project. All Requests for Disbursement must be received by the Cabinet on or before September 30, 2021. The Cabinet shall have no obligation to honor any Request for Disbursement received after this date.

2.4 Right to Withhold Funds. The Cabinet may amend, reduce, or withhold funding of any Disbursement until such time as the Cabinet shall be satisfied in its sole and reasonable discretion that the requirements set forth in this Grant Agreement have been performed in full and that the Request for Disbursement and the documentation received by Cabinet in support thereof support the amount of the Disbursement requested. The Cabinet may elect to amend, reduce, or withhold any Disbursement if Cabinet determines at any time in its sole and reasonable discretion that the Grantee or the Beneficiary has failed to perform any condition precedent to the Disbursement under the terms and conditions of this Grant Agreement or the other Grant Documents or should any Event of Default or Unmatured Default have occurred and be continuing.

2.5 No Grantee Funds. Nothing contained herein shall require the Grantee to expend any of its funds to provide financial support for the development of the Project in any way.

SECTION 3 ADDITIONAL FINANCING

The Beneficiary hereby represents and warrants to the Cabinet that it has entered into a P3 development agreement requiring Bull Lea Run, L.L.C. ("Developer") to secure up to Fourteen Million and 00/100 Dollars (\$14,000,000), which amount is sufficient to fund the total estimated Project costs. The Beneficiary agrees to provide evidence that such development agreement has been executed and is available as requested by the Cabinet, and the Beneficiary further agrees to promptly notify the Cabinet in the event of any change in or restructuring of the Project funding.

SECTION 4
CONDITIONS PRECEDENT TO THE MAKING OF THE GRANT

The Cabinet's obligation to make the Grant and make any Disbursement hereunder shall be conditioned upon the prior fulfillment of the following conditions:

4.1 **No Defaults.** No Event of Default or Unmatured Default under this Grant Agreement or any of the other Grant Documents shall exist.

4.2 **Compliance.** The Grantee and the Beneficiary shall have observed or complied with all provisions of this Grant Agreement. The Grantee and the Beneficiary shall execute and fully perform each of the conditions precedent to the Grant set forth in this Grant Agreement and in each of the other Grant Documents.

4.3 **Representations and Warranties.** The representations and warranties of the Grantee and the Beneficiary set forth in this Grant Agreement shall be true and correct on and as of the date of any Disbursement.

4.4 **Request for Disbursement.** The Grantee shall have provided to the Cabinet a Request for Disbursement along with all required supporting documentation justifying the disbursement amount requested and a report on expenditures to date.

4.5 **Permits and Licenses.** If and when required by the Cabinet, the Beneficiary shall provide evidence satisfactory to the Cabinet that all permits, licenses, certifications, authorizations, and zoning requirements have been obtained from the proper governmental authorities, including state and local authorities, necessary for the completion of the Project.

4.6 **Progress Reports.** The Beneficiary shall have provided to the Cabinet the progress reports as set forth in Section 7.7 of this Grant Agreement.

4.7 **Evidence of Beneficiary's Contribution.** Beneficiary shall, with each Request for Disbursement, provide evidence satisfactory to the Cabinet that all required matching funds have been spent. Expenditures made by the Developer are acceptable to the Cabinet to be counted toward the Beneficiary's contribution.

SECTION 5
INSURANCE

5.1 **Insurance.** During the term of this Grant Agreement, and during any extensions or renewals thereof, the Beneficiary shall cause the Developer to carry and maintain casualty insurance, general public liability insurance, worker's compensation insurance, and any other insurance upon the Project, with financially sound and reputable insurance companies in such form and in such amounts as are customarily carried by prudent businesses similarly situated, and pay all premiums relating thereto on or before the due date thereof, all in accordance with the terms and conditions of this Grant Agreement.

5.2 Notice of Casualty. The Beneficiary shall promptly notify the Cabinet of any material damage and/or destruction of the Project site that would preclude the Beneficiary from fulfilling its obligations under this Grant Agreement.

SECTION 6
REPRESENTATIONS AND WARRANTIES

The Grantee and the Beneficiary, as applicable, hereby represent and warrant to the Cabinet as follows, as of the Effective Date and as of the date of each Disbursement, and the parties hereto understand and agree that the Grantee and the Beneficiary each make such representations and warranties only in its own behalf, and shall have no responsibility for the representations and warranties of the other:

6.1 Existence.

(a) The Beneficiary is a state agency and instrumentality of the Commonwealth of Kentucky.

(b) The Grantee is a political subdivision organized and existing under the Constitution and laws of the Commonwealth.

6.2 Power; Authority; Enforceability. The Grantee and the Beneficiary have the requisite power, capacity, and authority to execute and deliver this Grant Agreement and the other Grant Documents, to consummate the transactions contemplated by this Grant Agreement and the other Grant Documents, and to observe and to perform this Grant Agreement and the other Grant Documents in accordance with their respective terms and conditions. The officers executing and delivering this Grant Agreement and the other Grant Documents on behalf of the Grantee and the Beneficiary have been and are duly authorized to enter into this Grant Agreement and the other Grant Documents on behalf of the Grantee and the Beneficiary. This Grant Agreement constitutes, and each other Grant Document when delivered hereunder will constitute, a legal, valid, and binding obligation of the Grantee and the Beneficiary, enforceable against the Grantee and the Beneficiary in accordance with its terms.

6.3 Government Requirements. The real property on which the Project will be located is in conformity with all required zoning and other governmental requirements or has received variances allowing such lack of conformity. The Project has been approved by all necessary governmental authorities, including state and local authorities, and the Beneficiary shall cause the Developer to obtain all necessary permits, licenses, certifications, and authorizations necessary for completion of the Project.

6.4 No Contravention. The execution and delivery of this Grant Agreement and the other Grant Documents, and the performance or observance by the Grantee and the Beneficiary of the terms and conditions thereof, do not and will not (i) violate or conflict with any existing provisions of the Grantee's resolutions or ordinances the Beneficiary's administrative regulations, or other agreements of organization, (ii) violate or conflict with any applicable Laws, or (ii) result in any breach of, or constitute a default under, any material contract, agreement, lease, bank loan, or credit agreement to which either the Grantee or the Beneficiary is a party or by which either is bound.

6.5 Litigation. To the best of the Grantee's and the Beneficiary's knowledge, no litigation or proceeding involving the Grantee or the Beneficiary is pending or is threatened in any court or administrative agency that, if determined adversely to the Grantee or the Beneficiary, could have a materially adverse impact on their ability to perform any of their obligations under this Grant Agreement or under any of the other Grant Documents.

6.6 No Defaults. To the best of the Grantee's and the Beneficiary's knowledge, neither the Grantee nor the Beneficiary is in default under any material contract, agreement, lease, bank loan, or credit agreement by which they are bound, and no event has occurred which after the giving of notice or the passage of time, or both, would constitute a default under any such contract, agreement, lease, bank loan, or credit agreement, which could have a materially adverse impact on their ability to perform any obligations under this Grant Agreement or under any of the other Grant Documents. To the best of the Grantee's and the Beneficiary's knowledge, no Unmatured Default or Event of Default exists on the date hereof, nor shall any such Unmatured Default or Event of Default begin to exist immediately after the execution and delivery of this Grant Agreement or the other Grant Documents.

6.7 Disclosure. To the best of the Grantee's and the Beneficiary's knowledge, neither this Grant Agreement nor any of the other Grant Documents contain any false or misleading statements of or omissions of any material fact. There is no fact known to the Grantee or the Beneficiary that materially and adversely affects, or in the future could materially and adversely affect, the business, operations, affairs, or condition, financial or otherwise, of the Grantee or the Beneficiary that has not been disclosed in writing to Cabinet.

6.8 Availability of Records. Each of the Beneficiary and the Grantee shall make its books and records, relating to their representations, warranties, and covenants in this Grant Agreement and the other Grant Documents, available for all tax periods subject to the terms of this Grant Agreement. The Cabinet may examine and audit such books and records as are reasonably sufficient to verify the accuracy of information provided by the Beneficiary and the Grantee to the Cabinet in fulfillment of the parties' obligations under this Grant Agreement.

6.9 Financial Statements. Each of the financial statements heretofore provided by the Beneficiary to the Cabinet (i) is accurate and complete as of the date submitted and as of the date hereof; (ii) has been prepared in accordance with generally accepted accounting principles; (iii) omits no material contingent liability of any kind that is not disclosed or otherwise reflected therein; (iv) fairly presents the financial condition of the Beneficiary as of the date thereof; and (v) fairly presents the results of operations of the Beneficiary for the respective fiscal period then ending. Since the date of the preparation of the financial statements heretofore provided by the Beneficiary to the Cabinet, there has occurred no materially adverse change in the financial condition, property, or business of the Beneficiary.

SECTION 7
COVENANTS

To induce the Cabinet to enter into this Grant Agreement and to make the Grant, the Grantee and Beneficiary, each on its own behalf, as applicable, hereby covenant and agree with the Cabinet during the term as follows:

7.1 No Transfer of Project. The Beneficiary, other than through the P3 development agreement with the Developer, shall not sell, lease, sub-lease, convey, mortgage, encumber, or dispose of all or any portion of the Project in any manner, nor shall the Beneficiary move the Project, or any assets associated with the Project, outside of the Commonwealth, except as specifically permitted herein, without the express, written consent of the Cabinet, provided however, that the Beneficiary may (i) dispose of inventory and other assets in the ordinary course of the Beneficiary's business and (ii) incur statutory liens and other encumbrances that arise in the course of ordinary business (including, without limitation, in connection with third party financing), so long as they do not materially impair the Beneficiary's ownership or use of its property and assets associated with the Project.

7.2 Compliance with Laws. The Beneficiary shall cause the Developer to comply promptly with all Laws relating to the use and operation of the Project, except in such instances in which such requirement of law is being contested in good faith by appropriate proceedings diligently conducted.

7.3 Designation of Agent. The Beneficiary shall have at all times a properly-designated agent to accept service of process who shall be a resident of or have offices in the Commonwealth.

7.4 Taxes and Other Obligations. The Beneficiary shall pay on or before the date due, as applicable, all taxes, assessments, charges, liens, encumbrances, levies, and claims of every character that have been levied or assessed or that may hereafter be levied or assessed against it, except those (i) which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided on the books of the Beneficiary in accordance with GAAP or (ii) with respect to which the failure to make such filing or payment could not individually or in the aggregate reasonably be expected to have a materially adverse impact on the Beneficiary's ability to perform any of its obligations under this Grant Agreement or under any of the other Grant Documents.

7.5 Further Assurances. The Grantee and Beneficiary shall, at any time upon request by the Cabinet make, execute, and deliver or cause to be made, executed, and delivered to Cabinet any and all other further instruments, certificates, and other documents as may, in the reasonable opinion of Cabinet, be necessary or desirable in order to effect, complete, perfect, or otherwise to continue and preserve the obligations of the Grantee and the Beneficiary under this Grant Agreement and the other Grant Documents.

7.6 Right to Inspect. At such reasonable times during normal business hours and as often as may be reasonably desired, upon at least 48 hours advance notice of a request for such access to the Beneficiary or the Grantee, the Cabinet shall have the right to inspect any and all records relating to the Project and to inspect the Project premises in order to determine compliance with the terms of the Grant Agreement as well as to monitor progress of the Project. The Cabinet agrees that any such records, if designated as confidential by the Beneficiary or the Grantee, shall be treated as confidential records that are exempt from public disclosure pursuant to Kentucky's Open Records Act and will not disclose such records unless directed to do so by a court of competent jurisdiction. Nothing in this paragraph shall be construed to prevent the Cabinet from disclosing such documentation to governmental authorities responsible for the oversight of the Cabinet's programs, such as the Auditor of Public Accounts. The Beneficiary and the Grantee

further acknowledge that the Cabinet must publicly disclose information pertaining to the Beneficiary's and the Grantee's compliance with the terms of this Grant Agreement and the disbursement of funds pursuant to this Grant Agreement.

7.7 Reporting. The Grantee shall submit a progress report to the Cabinet with every Request for Disbursement. Grantee shall submit a final report with the final Request for Disbursement, no later than September 30, 2021. The reports shall describe the activities and expenditures as of the date of the report and the percentage of completion, as well as any indication of problems or time delays. Each report shall be accompanied by applicable supporting documentation and records (i.e., payroll registers, invoices, receipts, etc.). Each report shall provide certification that all funds have been spent in accordance with the terms of this Grant Agreement. The Beneficiary shall provide all information, supporting documentation, and certifications necessary to the Grantee prior to any Request for Disbursement, progress report, or final report being submitted by the Grantee as required by this Section. Any certifications or representations made by the Grantee under this Section shall be made to the Grantee's knowledge and belief based upon the information, supporting documentation, and certifications provided by the Beneficiary.

7.8 Maintenance of Project. The Beneficiary shall cause the Developer to maintain the Project in good condition, order, and repair (ordinary wear and tear excepted), and make all repairs thereto as are necessary or appropriate. The Beneficiary shall cause the Developer to use commercially reasonable efforts to prevent any action or conduct that would reasonably be expected to increase the risk of fire or other hazards to the Project.

7.9 Notices. The Grantee and Beneficiary shall promptly give notice to the Cabinet of (i) the occurrence of any Event of Default, (ii) any litigation, investigation or proceeding that may exist at any time that, if not cured or if adversely determined, as the case may be, reasonably be expected to have a materially adverse impact on the Project or on the Grantee's or the Beneficiary's ability to perform any obligations under this Grant Agreement or under any of the other Grant Documents, and (iii) any cessation, delay or alteration of the Project.

SECTION 8 WAIVERS: INDEMNIFICATION

8.1 Waivers by Grantee and Beneficiary. Each of the Grantee and the Beneficiary hereby waives, to the extent permitted by applicable Laws, all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor in connection with this Grant Agreement and the Grant Documents.

8.2 Waiver and Remedies. The rights, powers, and remedies granted to the Cabinet pursuant to this Grant Agreement shall be in addition to all rights, powers, and remedies given to or now or hereafter existing in the Cabinet by virtue of this Grant Agreement and the other Grant Documents or pursuant to any Laws. Each and every right, power, and remedy, whether specifically granted herein or otherwise existing, may be exercised from time to time and so often and in such order as may be deemed expedient by the Cabinet, and the exercise, or the beginning of the exercise, of any such right, power, or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right, power, or remedy. Any forbearance or

failure or delay by the Cabinet in exercising any right, power, or remedy hereunder shall not be deemed to be a waiver of such right, power, or remedy, and any single or partial exercise of any right, power, or remedy shall not preclude the further exercise thereof. Any consent by the Cabinet or any waiver of an Event of Default under this Grant Agreement shall not constitute a consent to or waiver of any right, remedy, or power of the Cabinet upon a subsequent Event of Default.

8.3 Indemnification. The Beneficiary is state agency and instrumentality of the Commonwealth of Kentucky and is prohibited from indemnifying third parties to any extent. The Grantee is a political subdivision of the Commonwealth of Kentucky and is prohibited from indemnifying third parties to any extent. Therefore, to the extent permitted by law the Grantee and the Beneficiary release the Cabinet from, hold the Cabinet harmless against, agree that the Cabinet shall not be liable for, and fully indemnifies the Cabinet against, any and all losses, liabilities, claims, actions, proceedings, costs and expenses imposed upon, incurred by, asserted against or with respect to the Cabinet on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project or the existence of this Grant Agreement; (ii) any loss or damage alleged by any third-party related to the Project; (iii) any breach or default on the part of the Grantee or the Beneficiary in the performance or non-performance of any covenant arising from any act or failure to act by the Grantee and the Beneficiary or their respective agents, contractors, servants, employees, licensees, successors or assigns or the occurrence of any Event of Default; and (iv) any action taken or omitted to be taken by the Cabinet in accordance with the terms of this Grant Agreement (excepting acts of willful misconduct, gross negligence, or criminal activity). The indemnification set forth above and all references to the Cabinet in this Section are intended to and shall include all officials, directors, officers, employees, agents, and representatives of Cabinet. The Grantee and the Beneficiary acknowledge that the foregoing indemnities shall survive the termination of this Grant Agreement.

SECTION 9 DEFAULT

9.1 Events of Default of Beneficiary. Each of the following events or occurrences shall constitute an "Event of Default" of the Beneficiary under this Grant Agreement:

(a) **Bankruptcy.** If the Beneficiary (i) admits in writing its inability to pay its debts generally as they become due, (ii) has an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, and any such order for relief entered against it has not been rescinded within forty-five (45) days after it has been so entered, (iii) commences a proceeding under any other federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for sixty (60) days, (iv) makes an assignment for the benefit of creditors, or (v) has a receiver or trustee appointed for it or for the whole or any substantial part of its property; or

(b) **Covenants, Warranties, and Representations.** If any warranty or representation made by the Beneficiary in this Grant Agreement or in any of the other Grant Documents shall at any time be false or misleading in any material respect, or if the Beneficiary shall materially fail

to keep, observe, or perform any of the material obligations, terms, covenants, representations, or warranties set forth in this Grant Agreement or in any of the other Grant Documents within thirty (30) days after written notice from the Cabinet or the Commission to the Beneficiary of the occurrence of such failure (or such longer period of time as may be reasonably required), provided that the Beneficiary commences to cure the Event of Default within such thirty (30) day period and diligently pursues such cure; or

(c) Unsatisfactory Progress. If the Cabinet, in its sole and reasonable discretion, determines that Beneficiary has failed to make satisfactory progress on the Project; or

(d) Obligations to the Cabinet. If the Beneficiary shall fail to observe, perform, or comply with the material terms, obligations, covenants, agreements, conditions, or other provisions of this Grant Agreement or any of the other Grant Documents, or of any other agreement, document, or instrument that the Beneficiary has entered into with the Cabinet.

9.2 Events of Default of Grantee. Each of the following events or occurrences shall constitute an "Event of Default" of the Grantee under this Grant Agreement:

(a) Bankruptcy. If the Grantee (i) admits in writing its inability to pay its debts generally as they become due, (ii) has an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, and any such order for relief entered against it has not been rescinded within forty-five (45) days after it has been so entered, (iii) commences a proceeding under any other federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for sixty (60) days, (iv) makes an assignment for the benefit of creditors, or (v) has a receiver or trustee appointed for it or for the whole or any substantial part of its property; or

(b) Covenants, Warranties, and Representations. If any warranty or representation made by the Grantee in this Grant Agreement or in any of the other Grant Documents shall at any time be false or misleading in any material respect, or if the Grantee shall fail to keep, observe, or perform any of the obligations, terms, covenants, representations, or warranties set forth in this Grant Agreement or in any of the other Grant Documents, or is unable or unwilling to meet its obligations thereunder. However, any warranty or representation made by the Grantee utilizing the information, certifications, or supporting documentation provided by the Beneficiary that becomes false or misleading in any material respect shall be the default of the Beneficiary. Any failure to keep, observe, or perform any obligation, term, covenant, representation, or warranty set forth in this Grant Agreement or in any of the other Grant Documents by the Grantee caused by the failure of the Beneficiary to provide any required information, certifications, or supporting documentation to the Grantee shall be the default of the Beneficiary; or

(c) Unsatisfactory Progress. If the Cabinet, in its sole and reasonable discretion, determines that Grantee has failed to make satisfactory progress on the Project; or

(d) Obligations to the Cabinet. If the Grantee shall fail to observe, perform, or comply with the material terms, obligations, covenants, agreements, conditions, or other provisions of this

Grant Agreement or any of the other Grant Documents, or of any other agreement, document, or instrument that the Grantee has entered into with the Cabinet.

9.3 Remedies of Cabinet Upon Events of Default. Notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, the Beneficiary or the Grantee will have fifteen (15) business days to evaluate and respond in writing to such information and an additional thirty (30) calendar days to develop a plan to resolve the Event of Default in a manner acceptable to Cabinet. Should such plan be deemed inadequate to cure the Event of Default in a manner that is acceptable to Cabinet, the Cabinet and the Commission, or either of them, in their reasonable discretion and upon notice to the Grantee and the Beneficiary, the Cabinet and the Commission, or either of them, may at any time exercise any one or more of the following rights and remedies:

(a) Terminate the Grant and this Grant Agreement, after which the Cabinet shall be under no obligation to advance any undisbursed monies from the Grant to the Grantee; and

(b) Declare the entire disbursed principal balance of the Grant to be immediately due and payable in full from the Grantee if the Grantee is the defaulting party and from the Beneficiary if the Beneficiary is the defaulting party, without any presentment, or demand, all of which are hereby waived by the Grantee and the Beneficiary; and

(c) Commence an appropriate legal or equitable action to enforce the Grantee's or the Beneficiary's performance of the material terms, covenants, and conditions of this Grant Agreement and the other Grant Documents; and

(d) Commence appropriate legal or equitable action to enforce the rights and remedies of the Cabinet and/or the Commission, pursuant to the terms, covenants, and conditions of this Grant Agreement, the Financing Statement, and the other Grant Documents; and

(e) Exercise any other rights or remedies that may be available to the Cabinet or the Commission pursuant to this Grant Agreement, the other Grant Documents, or under applicable Laws.

(f) Effect on Grantee of Default by Beneficiary. In no event shall the Grantee be liable for the default of the Beneficiary.

Notwithstanding the foregoing, in no event shall the Grantee, the Cabinet and/or the Commission exercise any remedy specified herein or otherwise against the Beneficiary if the Beneficiary has not had an Event of Default arise as defined under Section 9.

SECTION 10 DISBURSED PROCEEDS

10.1 Use of Disbursed Proceeds. If Proceeds have been disbursed to the Grantee pursuant to this Grant Agreement but have not yet been distributed to the Beneficiary and are thus held by the Grantee (the "Disbursed Proceeds") and an Event of Default of the Beneficiary has occurred, the Grantee shall not distribute the Disbursed Proceeds to the Beneficiary and Grantee may retain the Disbursed Proceeds so long as: (i) no Event of Default or Unmatured Default has

occurred on the part of the Grantee or pursuant to the Grant Documents, (ii) each of the representations and warranties of the Grantee set forth in the Grant Documents remain true and correct, (iii) the Grantee maintains unapplied Disbursed Proceeds in a separate economic development project fund, and (iv) after receiving the prior written approval of the Cabinet, the Grantee shall use the Disbursed Funds solely for economic development projects. During the term of this Grant Agreement, the Grantee shall not assign, mortgage, encumber, or convey all or any portion of any Disbursed Funds to any Person without the express written consent of the Cabinet.

10.2 Accounting for Disbursed Proceeds. For any year during the term of this Grant Agreement in which the Grantee receives Disbursed Proceeds, the Grantee shall deliver to the Cabinet as soon as available, and not later than one hundred twenty (120) days after the end of each fiscal year thereof, a detailed accounting of such Disbursed Funds received by the Grantee during the fiscal year recently ended, whether used in connection with an economic development project or maintained in the economic development project fund.

10.3 Return of Disbursed Proceeds to Cabinet. Should the Cabinet determine, in its sole and reasonable discretion at any time or from time to time, that the Grantee or the Beneficiary has failed to use any Proceeds in accordance with the terms and conditions of this Grant Agreement, the other Grant Documents, or any other agreement between the Cabinet, the Grantee, and the Beneficiary, the Cabinet may make written demand upon the party that misused the Proceeds directing how any Disbursed Proceeds shall be disbursed and the party receiving such demand shall disburse such Disbursed Proceeds as directed by the Cabinet.

SECTION 11 MISCELLANEOUS

11.1 Expenses. The Grantee and the Beneficiary shall each respectively promptly agree to pay and/or reimburse the Cabinet for any and all expenses, costs, and charges of any kind incurred by or billed to the Cabinet in connection with (i) the preparation of any and all amendments, modifications, and supplements to the original Grant Documents which are necessitated by that party, or (ii) the preservation, perfection, and enforcement of the Cabinet's rights and remedies under this Grant Agreement and/or the other Grant Documents in the event of an Event of Default (the defaulting party shall pay such expense). The Beneficiary shall pay all such expenses, costs, and charges to the extent they are incurred due to the Beneficiary's negligence or breach of this Grant Agreement and/or the other Grant Documents.

11.2 Term of Agreement. Unless earlier terminated pursuant to Section 9.3 of this Grant Agreement, the term of this Grant Agreement shall commence on the Effective Date hereof, and shall continue until December 31, 2021.

11.3 Incorporation by Reference. All exhibits, schedules, annexes, or other attachments to this Grant Agreement are hereby incorporated into and made a part of this Grant Agreement as if set out at length herein.

11.4 Multiple Counterparts. This Grant Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all taken together shall constitute a single contract. Facsimile or electronically scanned signatures are deemed to be originals.

11.5 Headings. The section headings set forth in this Grant Agreement are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Grant Agreement.

11.6 Partial Invalidity. If any term or provision of this Grant Agreement or the application thereof to any Person or circumstances shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Grant Agreement shall not be affected thereby, and each of the remaining provisions of this Grant Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

11.7 Successors and Assigns. Except as otherwise expressly provided herein, the terms and conditions of this Grant Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties hereto. This provision shall not be construed to permit assignment by the Grantee or the Beneficiary of any of its respective rights and duties under this Grant Agreement or the other Grant Documents.

11.8 No Partnership - Status of Relationship. The Commission, the Cabinet, the Grantee and the Beneficiary, and any party respectively associated therewith, shall in no event be construed as or become in any way or for any purpose partners, associates, or joint venturers in the conduct of their respective businesses or otherwise. No contractor, licensee, agent, servant, employee, invitee, or customer of the Grantee or the Beneficiary shall be, or shall be deemed to be, a contractor, licensee, agent, servant, employee, invitee, or customer of the Commission or the Cabinet.

11.9 Rights of Third Persons. In no event shall this Grant Agreement be construed to make the Cabinet or any agent of the Cabinet liable to any general contractors, subcontractors, laborers, materialmen, craftsmen, or other Persons for labor, materials, or services delivered to the Project or goods specially fabricated for incorporation therein, or for debts or claims accruing or arising to any such Persons against the Grantee or the Beneficiary. The Grantee and the Beneficiary expressly agree that there is no relation of any type whatsoever, contractual or otherwise, either express or implied, between the Cabinet and any general contractor, materialman, subcontractor, craftsman, laborer, or any other Person or entity supplying any labor, materials, or services to the Project or specially fabricating goods to be incorporated therein. No Persons are intended to be third-party beneficiaries of the Grant Documents or to have any claim or claims in or to any undisbursed proceeds of the Grant pursuant to the Grant Documents.

11.10 Modification. This Grant Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

11.11 Time of Essence. Time is of the essence in the performance of each of the terms and conditions of this Grant Agreement.

11.12 No Assignment. Neither the Grantee nor the Beneficiary may assign their respective rights under this Grant Agreement to any Person without the prior express written

consent of the Cabinet. This section shall not be deemed to prohibit an assignment by operation of law.

11.13 Notices. All notices, requests, demands, waivers, and other communications given as provided in this Grant Agreement shall be in writing, and shall be addressed as follows:

If to Cabinet or Commission: Cabinet for Economic Development
Old Capitol Annex
300 West Broadway
Frankfort, Kentucky 40601
Attn: Commissioner, Department for Financial Services

If to Grantee: Lexington Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: Kevin Atkins

If to Beneficiary The Commonwealth of Kentucky,
The University of Kentucky
301 Main Building
University of Kentucky
Lexington, Kentucky 40506
Attn: Finance and Administration Legal Group

Unless otherwise specifically provided in this Grant Agreement, notice hereunder shall be deemed to have been given upon its being deposited in the U.S. Mail or commercial courier, postage or delivery charge prepaid, and addressed as provided above. The parties hereto may change their respective address and contact person as provided above by giving notice of the change to the other parties hereto as provided in this paragraph.

11.14 Governing Law. This Grant Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

11.15 Jurisdiction and Venue. The parties hereto agree that any suit, action, or proceeding with respect to this Grant Agreement may only be brought in or entered by, as the case may be, (i) the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky; or (ii) the United States District Court for the Eastern District of Kentucky, Frankfort Division, and the parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding, or judgment and waive any other preferential jurisdiction by reason of domicile. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or related to this Grant Agreement brought in the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Frankfort Division, and also hereby irrevocably waive any claim that any such suit, action, or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

11.16 Cabinet Liability. All covenants, agreements, and obligations of the Cabinet contained in this Grant Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant shall be deemed to be a covenant of any present or future director, officer, agent, or employee of the Cabinet, in other than her/his official capacity, and neither the directors of the Cabinet nor any officer executing this Grant Agreement nor any officer, employee, or agent of the Cabinet, shall be liable personally on this Grant Agreement or be subject to any personal liability or accountability by reason of the covenants of the Cabinet contained in this Grant Agreement.

11.17 Grantee and Beneficiary Authorization of Release of Information. Grantee and the Beneficiary agree that any information reported by the Grantee or the Beneficiary to Cabinet in any exhibit to this Grant Agreement may be disclosed in any public forum, report, or documentation deemed beneficial to public interest, with the exception of personal information contained in the supporting documentation and any other information exempt from disclosure under the Kentucky Open Records Act. The Cabinet agrees that it shall not publicly disclose personal and/or confidential information contained in the Grantee's or the Beneficiary's documents that are not subject to disclosure pursuant to the Open Records Act unless directed to do so by the order of a court of competent jurisdiction or as otherwise required by law. Notwithstanding the foregoing and for the avoidance of doubt, in accordance with KRS 61.878(1)(c)(1), the Cabinet and the Grantee acknowledges that certain information disclosed hereunder may be designated as confidential or proprietary by the Beneficiary, and in such case such information shall only be subject to the open disclosure referred to above upon court order.

[SIGNATURE PAGE AND EXHIBITS FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Grant Agreement as of the day, month, and year set forth below beside their respective signatures, effective as of the date first written above.

CABINET FOR ECONOMIC DEVELOPMENT,
a Kentucky governmental agency

By: [Signature] _____ Date
Printed Name: Larry Hayes
Title: Secretary

STATE PROPERTY AND BUILDINGS COMMISSION,
a Kentucky governmental agency

By: _____ Date
Printed Name: _____
Title: _____

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT,
a political subdivision of the Commonwealth of Kentucky

By: Linda Gorton 9/18/2020 Date
Printed Name: Linda Gorton
Title: Mayor

COMMONWEALTH OF KENTUCKY, for the use and benefit of the UNIVERSITY OF KENTUCKY
an agency and instrumentality of the Commonwealth of Kentucky

By: [Signature] 091820 Date
Printed Name: Eric N. Monday
Title: Executive Vice President for Finance and Administration

Digitally signed by
Stamper, Shannan
Reason: Reviewed for
form & legality [Signature]

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IN WITNESS WHEREOF, the parties have executed this Grant Agreement as of the day, month, and year set forth below beside their respective signatures, effective as of the date first written above.

CABINET FOR ECONOMIC DEVELOPMENT,
a Kentucky governmental agency

By: [Signature] Date

Printed Name: Larry Hayes
Title: Secretary

STATE PROPERTY AND BUILDINGS COMMISSION,
a Kentucky governmental agency

By: [Signature] Date

Printed Name: Holly M. Johnson
Title: Secretary

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT,
a political subdivision of the Commonwealth of Kentucky

By: [Signature] 9/18/2000 Date

Printed Name: Linda Gorton
Title: Mayor

COMMONWEALTH OF KENTUCKY, for the use and benefit of the UNIVERSITY OF KENTUCKY
an agency and instrumentality of the Commonwealth of Kentucky

By: [Signature] 09/18/2000 Date

Printed Name: Eric N. Monday
Title: Executive Vice President for Finance and Administration

Digitally signed by
Stamper, Shannan
Reason: Reviewed for
form & legality

[Signature]

Exhibit A Request for Disbursement

EXHIBIT A

**KENTUCKY CABINET FOR ECONOMIC DEVELOPMENT
ECONOMIC DEVELOPMENT FUND GRANT
REQUEST FOR DISBURSEMENT**

Project Name: Coldstream Research Campus, Lexington, Kentucky

To:
Cabinet for Economic Development
Old Capitol Annex
300 West Broadway
Frankfort, KY 40601
Attn: Department for Financial Services

From: Lexington Fayette Urban County
Government
200 East Main Street
Lexington, Kentucky 40507
Attn: _____

Date of Request: _____

Amount Requested: _____ Federal Tax No.: _____

A. Status of Grant Proceeds:

Original Grant Amount	a. \$	
Grant Disbursements to Date	b. \$	
Actual Building Costs Expended to Date	c. \$	
Project Laboratory Expenses	d. \$ _____ (c*.10)	
Maximum Disbursement	f. \$ _____ (d*.5)	
Amount of Current Request	\$	
New Grant Account Balance	g. \$ _____ (a-b-f)	

B. Wiring Instructions for Grantee:

Name of Financial Institution	
City, State and Zip of Financial Institution	
ABA Number	
Account Name	

Certification: The Grantee hereby represents, warrants and certifies to the Cabinet that (i) this request is made in accordance with the terms and conditions of that certain Grant Agreement dated as of September 24, 2020 (the "Grant Agreement"), (ii) the Person executing this instrument on behalf of the Grantee is duly authorized to execute and deliver this request, (iii) the Grantee has attached evidence of expenditures eligible for reimbursement (iv) each of the representations, warranties and covenants of the Grantee and the Beneficiary in the Grant Agreement has occurred and is continuing, and (v) to the best of the Grantee's or the Beneficiary's knowledge, no contractors or subcontractors have filed or have threatened to file liens or have the right to assert a lien of any type with respect to the Project. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed thereto in the Grant Agreement.

The Grantee has attached to this Request for Disbursement all supporting documentation for the amount of the Disbursement requested, including, but not limited to, invoices, bills of sale, equipment lists and/or other relevant materials expended by the Developer. Additionally, Progress Reports and proof of Beneficiary's Contributions expenditures including those made by the Developer (matching funding) have also been attached.

THE GRANTEE ACKNOWLEDGES THAT THE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN AND IN THE GRANT AGREEMENT ARE MADE SOLELY BY UTILIZING THE INFORMATION, SUPPORTING DOCUMENTATION, AND CERTIFICATIONS PROVIDED TO IT BY THE BENEFICIARY AND ARE MATERIAL INDUCEMENTS UPON WHICH THE CABINET WILL RELY IN MAKING THE DISBURSEMENT OF GRANT PROCEEDS REQUESTED HEREIN. THE GRANTEE ACKNOWLEDGES THAT BUT FOR THE TRUTH OF THE REPRESENTATIONS AND WARRANTIES MADE HEREIN AND IN THE GRANT AGREEMENT WHICH WERE MADE SOLELY BY UTILIZING THE INFORMATION, SUPPORTING DOCUMENTATION, AND CERTIFICATIONS PROVIDED TO IT BY THE BENEFICIARY, THE CABINET WOULD NOT MAKE THE DISBURSEMENT OF THE GRANT PROCEEDS REQUESTED HEREIN. THE GRANTEE ACKNOWLEDGES AND AGREES THAT THE CABINET IS REASONABLY ENTITLED TO RELY UPON THE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN AND IN THE GRANT AGREEMENT WHICH WERE MADE SOLELY BY UTILIZING THE INFORMATION, SUPPORTING DOCUMENTATION, AND CERTIFICATIONS PROVIDED TO IT BY THE BENEFICIARY.

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IN WITNESS WHEREOF, the undersigned Grantee, by its duly authorized representative, has executed this Request for Disbursement as of the date written above.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT,
a political subdivision of the Commonwealth of Kentucky

By: _____

Title: _____

FOR CABINET USE ONLY

Original Grant Amount	\$
Grant Disbursements to Date	\$
Amount Verified of Current Request	\$
Remaining Grant Account Balance	\$

Account Number	
Approved By	
Approval Date	
Comments	