

WORK READY SKILLS INITIATIVE FUNDING AGREEMENT

Dated: ____5/25/17____

Lead Applicant: BOONE COUNTY SCHOOLS

THIS WORK READY SKILLS INITIATIVE FUNDING AGREEMENT (the “Agreement”) dated for convenience as of the ____ day of _____, 2017, and effective retroactively to _____ (the “Effective Date”), is made and entered into by and among: (i) the **KENTUCKY EDUCATION & WORKFORCE DEVELOPMENT CABINET**, a governmental agency of the Commonwealth of Kentucky, with an address of The 300 Building, 300 Sower Blvd., Fourth Floor, Frankfort, Kentucky 40601 (“EWDC” or the “Cabinet”) and (ii) **BOONE COUNTY BOARD OF EDUCATION**, a recipient of funding under the Kentucky Work Ready Skills Initiative (“WRSI”), with an address of 8330 U.S. Highway 42 Florence, KY 41042 (the “Recipient”).

WITNESSETH

WHEREAS, it is the public policy of the Commonwealth of Kentucky to support, promote, and develop a highly trained workforce by providing resources to partnerships between employers and educational institutions that collaborate on projects designed to provide the necessary facilities, equipment, programs and curriculum to train and educate students to meet the workforce needs of Kentucky’s employers now and in the future;

WHEREAS, Executive Order 2016-664 authorizes and empowers the Cabinet to promote the development of a highly trained workforce in Kentucky by undertaking and financing economic development bond projects, as more particularly described therein;

WHEREAS, the Recipient and Project Partners submitted an application to the Work Ready Skills Advisory Committee (“WRSAC”) setting forth its proposed project and plan, which included (1) specific details on the number of students and/or adults that would be trained should the proposed project be completed and (2) the industry sectors in which the students and/or adults are to be trained;

WHEREAS, the Cabinet and Recipient have entered into various negotiations with regard to the Recipient’s project to construct the NKY STEAM Academy which will provide workforce training and education in each of the five primary sectors –Computer Services Technology,

Logistics, Advanced Manufacturing, Health Science and Construction (the "Project"), at an approximate total cost of **TWENTY-THREE MILLION FOUR HUNDRED EIGHTY-SIX THOUSAND AND SEVENTY-THREE DOLLARS (\$23,486,073.00)**, which Project the Recipient represents will result in full training capacity for 300 adults and 1000 students annually, which is an increase in capacity of 300 adults and 819 students.

WHEREAS, the Recipient has collaborated with other members of the community on this project and has garnered commitments from private industry to contribute financially to the project as well as provide training and employment opportunities to those that are educated and/or trained utilizing these programs;

WHEREAS, the Cabinet and Recipient negotiated the preliminary terms of this Agreement in which the Cabinet approved an award in an amount not to exceed **SIX MILLION EIGHT HUNDRED FORTY THOUSAND DOLLARS (\$6,840,000.00)** to the Recipient for the benefit of the Recipient to assist with the Project in exchange for the Recipient's agreement to complete the project described in its Application, as modified by the Work Ready Skills Advisory Committee;

WHEREAS, the Recipient has agreed to contribute a match to assist in funding the total project in an amount no less than **SIXTEEN MILLION SIX HUNDRED FORTY-SIX THOUSAND SEVENTY-THREE DOLLARS (\$16,646,073.00)** in the form of cash and eligible non-cash items;

WHEREAS, the Kentucky WORK READY SKILLS ADVISORY COMMITTEE approved this Work Ready Skills Initiative ("WRSI") award at a duly-constituted meeting of its members on **January 31, 2017**; and

WHEREAS, it is appropriate and in the public interest that the Cabinet make a commitment of financial resources to this Project in order to encourage and support the development of a highly trained workforce;

NOW THEREFORE, in consideration of the promises, mutual covenants and conditions of the parties 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 Cabinet and the Recipient 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:

- (1) **“Agreement”** shall mean this WRSI Funding Agreement by and among the Cabinet and the Recipient, which shall include as **Exh. A** the application submitted in support of the request for funding;
- (2) **“Cabinet”** shall mean the Education and Workforce Development Cabinet, a governmental agency of the Commonwealth;
- (3) **“Cash Match”** shall mean the amount of cash contributed by the Project Partners to the Project. It shall include startup expenditures that are operational in nature.
- (4) **“Committee”** shall mean the Kentucky Work Ready Skills Advisory Committee, as created and constituted in Executive Order 2016-664;
- (5) **“Commonwealth”** shall mean the Commonwealth of Kentucky and all governmental agencies, authorities, and political subdivisions thereof including but not limited to the Cabinet and excluding the Recipient;
- (6) **“Disbursement”** shall mean the distribution of proceeds of the WRSI Funds by the Cabinet to the Recipient pursuant to Section 2 of this Agreement;
- (7) **“Eligible Non-Cash Match”** shall mean equipment, land fixtures, program materials and supplies, existing facilities, or other assets;
- (8) **“Equipment”** shall mean equipment, machinery, furnishings, office equipment, computers, software, fixtures, telecommunications infrastructure, or other items

necessary to equip a facility to provide workforce training and education programs proposed as part of a partnership project;

- (9) **“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 Agreement;
- (10) **“Facility”** shall mean the publicly-owned facility for that serves as the primary location, in [city, county, state, zip] for the project;
- (11) **“Funds”** shall mean the WRSI Funds in the principal amount set forth in Section 2.1 hereof, issued pursuant to KRS 56.450 or KRS 56.863 and the terms and conditions of this Agreement;
- (12) **“Funding Documents”** shall collectively refer to this Agreement, and all other agreements, documents, exhibits, and instruments referred to in this Agreement or otherwise evidencing or pertaining to or executed in connection with the Funds, together with any and all agreements, documents, or instruments made in modification, amendment, renewal, extension, substitution, or replacement thereof;
- (13) **“Laws”** shall include all 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 any other applicable jurisdiction;
- (14) **“Match” or “Matching Funds”** shall mean a minimum contribution of ten percent (10%) of the total project cost contributed by the Project Partners, consisting of Cash and Eligible Non-Cash Match.
- (15) **“Postsecondary Education Partner”** shall mean: (1) a public state university located in the Commonwealth; (2) The Kentucky Community and Technical College System or any of its affiliated institutions; or (3) A private post-secondary

institution accredited by the Southern Association of Colleges and Schools Commissions on Colleges headquartered in the Commonwealth of Kentucky;

- (16) **“Project”** shall mean that the project submitted by Recipient in its application, as modified and approved by the Committee, which falls within one of the following categories:
- A. Construction and equipping of a new facility for the purpose of providing workforce training and education;
 - B. The renovation or upgrade of an existing facility; or
 - C. Purchase of new or upgraded equipment and furnishings.
- (17) **“Project Partners”** shall mean the Recipient and all partnership member organizations referenced in the Application which is attached hereto as **Exhibit A**;
- (18) **“Request for Disbursement”** shall mean a written request to the Cabinet for the making of a disbursement of the proceeds of the WRSI Funds, in form, substance, and detail satisfactory to the Cabinet, substantially in the form attached hereto and made a part hereof as **Exhibit B**; and,
- (19) **“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 Agreement or any of the other Funding Documents.

SECTION 2

WORK READY SKILLS INITIATIVE FUNDS

2.1 **Agreement to Distribute WRSI Funds.** Pursuant to Executive Order 2016-664, the Cabinet hereby agrees to make and the Recipient hereby agrees to accept the WRSI Award of **SIX MILLION EIGHT HUNDRED FORTY THOUSAND DOLLARS (\$6,840,000.00)**, subject to and in accordance with the terms, covenants, and conditions set forth in this Agreement. The

Recipient expressly agrees to comply with and to perform all of the terms, covenants, and conditions of this Agreement and the other Funding Documents, as the same apply to each of them.

2.2 **Use of Proceeds.** The proceeds of the award shall be disbursed to Recipient, which shall utilize the WRSI Funds to finance, in part, the Project, in accordance with the terms and conditions of this Agreement and the other Funding Documents;

2.3 **Disbursement.** Disbursements of proceeds of the WRSI Funds shall be made by the Cabinet to the Recipient in one or more draws upon: (i) execution of this Agreement by each of the respective parties hereto; (ii) the full performance by all applicable parties of each of the conditions precedent to the WRSI award set forth in Section 4 of this Agreement; and, (iii) upon the receipt by the Cabinet of a properly completed and executed Request for Disbursement in a form as set forth by the Cabinet, not less than ten (10) days prior to the date requested for the Disbursement, to which shall be attached any supporting documentation requested by the Cabinet. Requests for Disbursement may be submitted to the Cabinet not more frequently than once a month.

2.4 **Amount of Disbursements.** The specific amount of any Disbursement shall not exceed the amount justified by the Request for Disbursement and by the documentation received by the Cabinet in support thereof. The Recipient 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, or other evidence satisfactory to the Cabinet of actual payment of the costs associated with the Project. All Project Partners, if necessary and applicable, agree to provide the Recipient with the documents necessary to support any such request.

2.5 **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 discretion that the requirements set forth in this Agreement have been performed in full and that the Request for Disbursement and the documentation received by the Cabinet in support thereof support the amount of the Disbursement requested Recipient. The Cabinet may elect to amend, reduce, or withhold any Disbursement if the Cabinet determines at any time in its sole discretion that: (i) Recipient shall have failed to perform any condition precedent to the Disbursement under the terms

and conditions of this Agreement or the other Funding Documents; or, (ii) should any Event of Default or Unmatured Default have occurred and be continuing.

SECTION 3

PROJECT PARTNER MATCHING FUNDS

3.1 **Cash Match.** The Recipient hereby represents and warrants to the Cabinet that it has secured and will contribute the following Cash Match to the Project: **NINE MILLION SIX HUNDRED FORTY-SIX THOUSAND SEVETY-THREE DOLLARS (\$9,646,073)**. The sources for the Recipient's Cash Match are as follows:

Boone County Schools various fund sources: \$9,646,073

3.2 **Eligible Non-Cash Match Items.** The Recipient represents and warrants that the following Eligible Non-Cash Match items, valued at SEVEN MILLION DOLLARS (\$7,000,000) shall be contributed to the Project:

Boone County Schools (Resale Value of Toyota Lab Building): \$7,000,000

3.3 **Valuation of Eligible Non-Cash Match Items.** Recipient represents and warrants that the valuation of the Eligible Non-Cash Match Items listed in Section 3.2 is reasonable and accurate. Recipient has attached documentation showing the methodology used to reach the valuation for each as part of **Exhibit B. Cash Match and the MOU between Toyota Motor Engineering & Manufacturing North America, Inc. and the Boone County (Kentucky) Board of Education.**

3.4 **Availability of Matching Funds.** Recipient represents and warrants that the Cash Match and Eligible Non-Cash Match Items listed in Sections 3.1 and 3.2 are available to be contributed toward the Project.

3.5 **Notification of Change in Circumstance.** The Recipient shall notify the Cabinet immediately in the event of any change in or restructuring of said Matching Funds.

SECTION 4

CONDITIONS PRECEDENT

The Cabinet's obligation to disburse Funds shall be conditioned upon the prior fulfillment of the following conditions:

4.1 **Compliance.** The Recipient and Project Partners, as applicable, shall comply with all provisions of this Agreement, as the same apply to each of them.

4.2 **Request for Disbursement.** The Recipient shall submit to the Cabinet the Request for Disbursement along with all required supporting documentation justifying the disbursement amount requested.

4.4 **Execute Conditions Precedent.** The Recipient shall execute and fully perform each of the conditions precedent to the Work Ready Skills Initiative Award set forth in this Agreement.

4.5 **Project Partner Approval.** All Project Partners shall provide certified copies of any resolutions or ordinances authorizing the Recipient or other Project Partners to participate in the WRSI.

4.6 **Demonstration of Match.** The Recipient shall provide evidence satisfactory to the Cabinet that a sufficient partnership Match, as specifically referenced in Section 3 of this Agreement, has been obtained and has been contributed to the Project.

4.7 **Permits and Licenses.** If and when required by the Cabinet, the Recipient 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.

SECTION 5 INSURANCE

5.1 **Insurance.** During the term of this Agreement, and during any extensions or renewals thereof, the Recipient shall carry and maintain on the Project property and casualty insurance, general public liability insurance, worker's compensation insurance, and, if applicable, flood insurance, in such form and in such amounts as are customarily carried by prudent business

operations similarly situated, and shall pay all premiums relating thereto on or before the due date thereof, all in accordance with the terms and conditions of this Agreement.

5.2 **Notice of Casualty.** The Recipient shall promptly give written notice of any material damage to or destruction of the Project to the Cabinet.

SECTION 6

REPRESENTATIONS AND WARRANTIES

The Recipient, as applicable, hereby represents and warrants to the Cabinet as follows:

6.1 **Existence.**

(1) The Recipient is a entity with full power and authority to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated herein.

(2) The Recipient is a Kentucky public school district, legal entity organized and existing under the Constitution and laws of the Commonwealth.

6.2 **Authority to Act.** The Recipient has the requisite power, capacity, and authority to execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement, including its Exh. A and to observe and to perform this Agreement in accordance with its respective terms and conditions. The officers executing and delivering this Agreement on behalf of the Recipient have been and are duly-authorized to enter into this Agreement on behalf of the Recipient.

6.3 **Approvals.** The Recipient has taken all actions necessary to approve this Agreement and its participation in the Project and represents that each of the Project Partners have obtained the necessary approvals to participate in the Project.

6.4 **Government Requirements.** The real property on which the Project is located will be constructed or renovated in conformity with all required zoning and other governmental requirements or has received variances allowing such lack of conformity. The Project is to be approved by all necessary governmental authorities, including state and local authorities, and the

Recipient must obtain all necessary permits, licenses, certifications, and authorizations necessary for completion of the Project.

6.5 **Compliance with Kentucky laws.** The construction and/or renovation project may be subject to compliance with KRS 162.060, 702 KAR 4:160, and 702 KAR 4:180. Specifically, grantees that are schools districts must coordinate efforts with the Kentucky Department of Education for any projects which affect local school district facilities. School district grantees are responsible for working with the Kentucky Department of Education (KDE) to ensure the project governed by this agreement is carried out in accordance with applicable statutes, regulations and policies, in particular, 702 KAR 4:160, Capital Construction Process; and 702 KAR 4:180, Implementation guidelines – Kentucky School Facilities Planning Manual (District Facility Plan and access to restricted funds). The school district grantee must also comply with KDE's program requirements specific to Career and Technology Education and/or the Interlocal Cooperation Act (ICA) in KRS Chapter 65 (65.210-300), where applicable.

6.6 **Litigation.** No litigation or proceeding involving the Recipient or Project Partners is pending or, to the best of the knowledge of the Recipient and Project Partners, is threatened in any court or administrative agency that, if determined adversely to the Recipient or Project Partner, could have a materially adverse impact on the ability of any of them to perform any of their respective obligations under this Agreement.

6.7 **No Defaults.** Neither the Recipient nor any Project Partner, if applicable, is in default under any material contract, agreement, lease, bank loan, or credit agreement to which either of them is a party or by which either is bound, nor has any event 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 the ability of any of them to perform any of their respective obligations under this Agreement. 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 Agreement.

6.8 **Conflicting Transactions.** The consummation of the transaction contemplated hereby and the performance of the obligations of the Recipient related to this Agreement shall not result in

any breach of, or constitute a default under, any material contract, agreement, lease, bank loan, or credit agreement to which either is a party or by which either is bound.

6.9 **Disclosure.** This Agreement does not contain any false or misleading statement of or omission of any material fact. There is no fact known to the Recipient that materially and adversely affects, or in the future could materially and adversely affect the Recipient's operations, affairs, or condition, financial or otherwise, that has not been disclosed in writing to the Cabinet.

6.10 **Application Materials and Statements.** All statements contained within the Application Materials heretofore provided by the Recipient to the Cabinet are accurate and complete as of the date submitted and as of the date hereof.

6.11 **Availability of Records.** The Recipient shall make its books and records, relating to its representations, warranties, and covenants in this Agreement available to the Cabinet at the Project, or at another location in the Commonwealth acceptable to the Cabinet, at such reasonable times as the Cabinet shall request and shall file with the Cabinet such documentation respecting the Project as the Cabinet may require.

SECTION 7 COVENANTS

To induce the Cabinet to enter into this Agreement and to distribute the Funds, the Recipient, as applicable, hereby covenant and agree with the Cabinet as follows:

7.1 **No Transfer of Project.** The Recipient shall not sell, lease, sub-lease, convey, mortgage, encumber, or dispose of all or any portion of the Project in any manner except as specifically permitted herein without the express, prior written consent of the Cabinet.

7.2 **Maintenance of Project.** The Recipient shall maintain the Project in good condition, order, and repair, and shall make all repairs thereto as are necessary or appropriate. The Recipient shall not commit or suffer any waste to the Project and shall not do or suffer anything to be done that may increase the risk of fire or other hazards thereto.

7.3 **Dissolution or Disposition of Assets.** During the term of this Agreement, the Recipient shall not, without the express, prior written consent of the Cabinet: (i) liquidate, dissolve, or otherwise dispose of all or substantially all of its assets; or, (ii) liquidate, dissolve, or reorganize, or take any action leading toward liquidation, dissolution, or reorganization.

7.4 **Compliance with Laws.** The Recipient shall comply with all Laws prior to and during the execution of the Project.

7.5 **Designation of Agent.** The Recipient shall designate an agent to accept service of process. The agent shall be a resident of or have offices in the Commonwealth. The Recipient shall notify the Cabinet in writing of any change in the name or address of such agent immediately. Upon the Execution of this Agreement, the agent to accept service of process is Superintendent, Randy Poe.

7.6 **Taxes and Other Obligations.** The Recipient 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 relevant to the Project.

7.7 **Workforce Training.** The Recipient covenants and agrees to make available workforce training to a minimum of 300 adult participants and 1000 student participants annually over the course of the Project. The Recipient covenants and agrees that it shall be subject to annual monitoring, audit and verification to ensure satisfactory progress, as determined solely by the Cabinet, toward the stated Project objectives.

If the Recipient fails to make satisfactory Workforce Training progress, as determined by the Cabinet, it shall be required to submit a report detailing the reasons for the deficiency to the Cabinet. The Cabinet has the discretion and authority to recoup all previously-distributed Funds, as well as cancel all future distributions, if it determines that the Recipient is unable to complete the Project or comply with other terms of this Agreement.

In the event that Recipient fails to meet the requirements as specified above, the applicable repayment shall be due and payable thirty (30) days after receipt of notice from the Cabinet.

7.8 **Shut Down Repayment.** Should the Recipient close, shut down, or for any reason permanently cease operation of the Project during the term of this Agreement, the entire amount of the WRSI awards, less any other repayments received by the Recipient pursuant to the terms of this Agreement, shall be due and payable to the Cabinet immediately.

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

7.10 **Right to Inspect.** The Cabinet shall, at any time to inspect the Recipient's premises relating to the Project in order to determine compliance with the requirements of this Agreement, as well as to monitor progress of the Project.

7.11 **Indemnification.** The Recipient shall indemnify, defend, and hold harmless the Cabinet and its directors, officers, agents and employees (the "Indemnitees") from all loss, liability, or expense (including the fees and expenses of in-house or outside counsel) arising out of or in connection with the Recipient's execution and performance of this Agreement, except in the case of any Indemnatee to the extent that such loss, liability, or expense is due to the gross negligence or willful misconduct of such Indemnatee. The Recipient acknowledges that the foregoing indemnities shall survive the termination of this Agreement.

SECTION 8

WAIVERS

8.1 **Waivers by the Recipient if applicable.** The Recipient 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 the Agreement.

8.2 **Waiver and Remedies.** The rights, powers, and remedies granted to the Cabinet pursuant to this Agreement shall be in addition to all rights, powers, and remedies given to or now or hereafter existing in the Cabinet 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 Agreement shall not constitute a consent to or waiver of any right, remedy, or power of the Cabinet upon a subsequent Event of Default.

SECTION 9

DEFAULT

9.1 **Events of Default.** Each of the following events or occurrences shall constitute an “Event of Default” under this Agreement:

- (1) **Bankruptcy.** If there is filed by or against Recipient a petition in bankruptcy, or a petition for the appointment of a receiver or trustee for any of the property of Recipient which will render that Recipient unable to perform its obligations under this Agreement, and any such petition is not dismissed within sixty (60) days after the date of filing, or if the Recipient files a petition for reorganization under any of the provisions of the Bankruptcy Code or any similar Law, or if the Recipient makes a general assignment for the benefit of creditors, or if the Recipient makes any insolvency assignment or is adjudicated insolvent by any court of competent jurisdiction; or
- (2) **Breach of Covenants, Warranties, and Representations.** If any warranty or representation made by Recipient or Project Partner in this Agreement shall at any time be false or misleading in any material respect, or if Recipient shall fail to keep, observe, or perform any of the obligations, terms, covenants, representations, or warranties set forth in this Agreement; or

- (3) **Breach of Obligations to the Cabinet.** If the Recipient shall fail to observe, perform, or comply with the terms, obligations, covenants, agreements, conditions, or other provisions of this Agreement or of any other agreement, document, or instrument that the Recipient has entered into with the Cabinet.

9.2 **Remedies of Cabinet Upon Events of Default.** Notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default, the Cabinet, in its sole discretion and upon notice to the Recipient, may at any time exercise any one or more of the following rights and remedies:

- (1) Terminate the WRSI award, after which the Cabinet shall be under no obligation to advance any undisbursed monies from the WRSI Funds to the Recipient; and
- (2) Declare the entire disbursed principal balance of the WRSI Funds to be immediately due and payable in full from the Recipient as the defaulting party, without any presentment, demand, or notice of any kind, all of which are hereby waived by the Recipient; and
- (3) Declare all WRSI Repayment Funds to be immediately due and payable from the Recipient; and
- (4) Commence an appropriate legal or equitable action to enforce the Recipient's performance of the terms, covenants, and conditions of this Agreement; and
- (5) Commence appropriate legal or equitable action to enforce the rights and remedies of the Cabinet pursuant to the terms, covenants, and conditions of this Agreement; and
- (6) Exercise any other rights or remedies that may be available to the Cabinet pursuant to this Agreement or under applicable Laws.

SECTION 10 MISCELLANEOUS

10.1 **Expenses.** After execution of the Agreement, at the Cabinet's request, the Recipient shall promptly indemnify 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 Agreement which are necessitated by that party; or, (ii) the preserving, perfection, and enforcement of the Cabinet's rights and remedies under this Agreement.

10.2 **Term of Agreement.** The term of this Agreement commenced upon the Effective Date hereof, and shall continue until the Recipient shall have fully performed each of its respective obligations hereunder.

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

10.4 **Multiple Counterparts.** This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

10.5 **Headings.** The section headings set forth in this 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 Agreement.

10.6 **Severability.** If any term or provision of this 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 Agreement shall not be affected thereby, and each of the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

10.7 **Successors and Assigns.** Except as otherwise expressly provided herein, the terms and conditions of this 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 Recipient of any of their respective rights and duties under this Agreement.

10.8 **No Partnership - Status of Relationship.** The Cabinet, the Recipient, and any party respectively associated therewith, shall in no event be construed 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 Recipient shall be, or shall be deemed to be, a contractor, licensee, agent, servant, employee, invitee, or customer of the Cabinet.

10.9 **Rights of Third Persons.** In no event shall this 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 Recipient. The Recipient expressly agrees 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 Agreement or to have any claim or claims in or to any undisbursed proceeds of the WRSI Funds pursuant to the Agreement.

10.10 **Modification.** This 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.

10.11 **Time of Essence.** Time is of the essence in the performance of each of the terms and conditions of this Agreement. **If this Agreement is not executed on or before June 30, 2017, the Cabinet's offer of the WRSI Funds will expire and the Cabinet shall be under no obligation to advance any monies to the Recipient or perform any other obligation hereunder.**

10.12 **No Assignment.** The Recipient may not assign its respective rights under this Agreement to any Person. This section shall not be deemed to prohibit an assignment by operation of law.

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

If to the Education and Workforce Development Cabinet:

Education and Workforce Development Cabinet
The 300 Building
300 Sower Blvd., Fourth Floor
Frankfort, Kentucky 40601-1975
Attn: Bridget H. Papalia

If to the Recipient:

Boone County Schools
8330 U.S. Highway 42
Florence, Kentucky 41042
Attn: Randy Poe (Superintendent)

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

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

10.15 **Jurisdiction and Venue.** The parties hereto agree that any suit, action, or proceeding with respect to this 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 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.

10.16 **Recipient Authorization of Release of Information.** The Recipient, by execution of this Agreement, hereby authorizes and agrees that the Cabinet or any of its agents or employees is permitted to share any information, data, research, and other materials (including this Agreement, information reported by Recipient as part of this Agreement and any attachments hereto) in any public forum, report, or documentation deemed beneficial to public interest.

[SIGNATURE PAGE TO FOLLOW]

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

Education and Workforce Development Cabinet,
a Kentucky governmental agency

By: _____

Printed Name: _____

Title: _____

Date: _____

[Recipient]

By: Randy Poe

Name: RANDY POE

Title: SUPERINTENDENT

Date: 5/25/17

Subscribed and sworn to before me by Randy Poe this 25 day of
May, 2017.

Karen Evans #538683
NOTARY PUBLIC, STATE-AT-LARGE

My Commission Expires: Aug 3, 2019

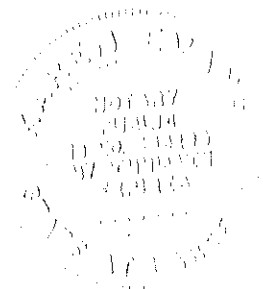


Exhibit B
Cash Match

Section 3 Cash Match

Annual Operational Costs:

School Administration	592,242
Instruction	2,953,000
Support Staff	452,900
Operational & Maintenance	372,001

Total Estimated 4,370,143

Funding Source: General Fund/Grants 4,370,143

Renovation and Start Up:

Donated Building (non-cash match)	7,000,000
Start Up	539,930
Furniture and Equipment	1,576,000
Construction	3,160,000

Total Estimated 12,275,930

Funding Source: General Fund/Grants 539,930
Construction Fund 4,736,000
Non-Cash Match 7,000,000
12,275,930

Total Match 16,646,073

Exhibit B
MOU between Toyota Motor Engineering
& Manufacturing North America, Inc.
and the Boone County (Kentucky) Board of Education.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter, "MOU") is between TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC. (hereinafter, "TEMA") and the BOONE COUNTY (KENTUCKY) BOARD OF EDUCATION (hereinafter, "BCBE").

WHEREAS, TEMA has announced plans to relocate its business operations located in the vicinity of Atlantic Avenue, Erlanger, Kentucky; and

WHEREAS, TEMA desires to provide a lasting legacy supporting future workforce challenges in the Northern Kentucky/ Cincinnati region following its departure from its Northern Kentucky facilities; and

WHEREAS, TEMA and BCBE, in consultation with and support from other stakeholders with a shared vision, which included over fifty (50) local business, education, economic development and government leaders, have worked together since 2015 to formulate a sustainable legacy of innovative education programs for the benefit of the Northern Kentucky/Cincinnati region;

NOW THEREFORE, TEMA and BCBE (hereinafter together, "the Parties") memorialize their intent to proceed to implement their shared vision as follows:

1. Subject to the understandings of the Parties as set forth herein, TEMA will donate its Lab-Engineering Building, located at 37 Atlantic Avenues, Erlanger, Kentucky (the "Lab Building" or "Property") to BCBE in fee simple absolute to provide for the establishment of an innovative fully accredited high school that focuses on the study of science, technology,

engineering, arts and mathematics (the "STEAM Academy") for the benefit of students from the Northern Kentucky/Cincinnati region. It is anticipated this donation will occur in the fourth quarter, 2017 or the first quarter, 2018, with the actual timing of the donation being determined in good faith by TEMA. The Lab Building is more particularly described on attached Exhibit A.

2. From the proceeds of an approved grant from the Kentucky Education and Workforce Development Cabinet in the approximate amount of \$6.8 Million, BCBE will invest in the Lab Building to adapt and develop the property for its intended educational purposes. In addition, BCBE will provide the operational funding needed to operate the STEAM Academy.

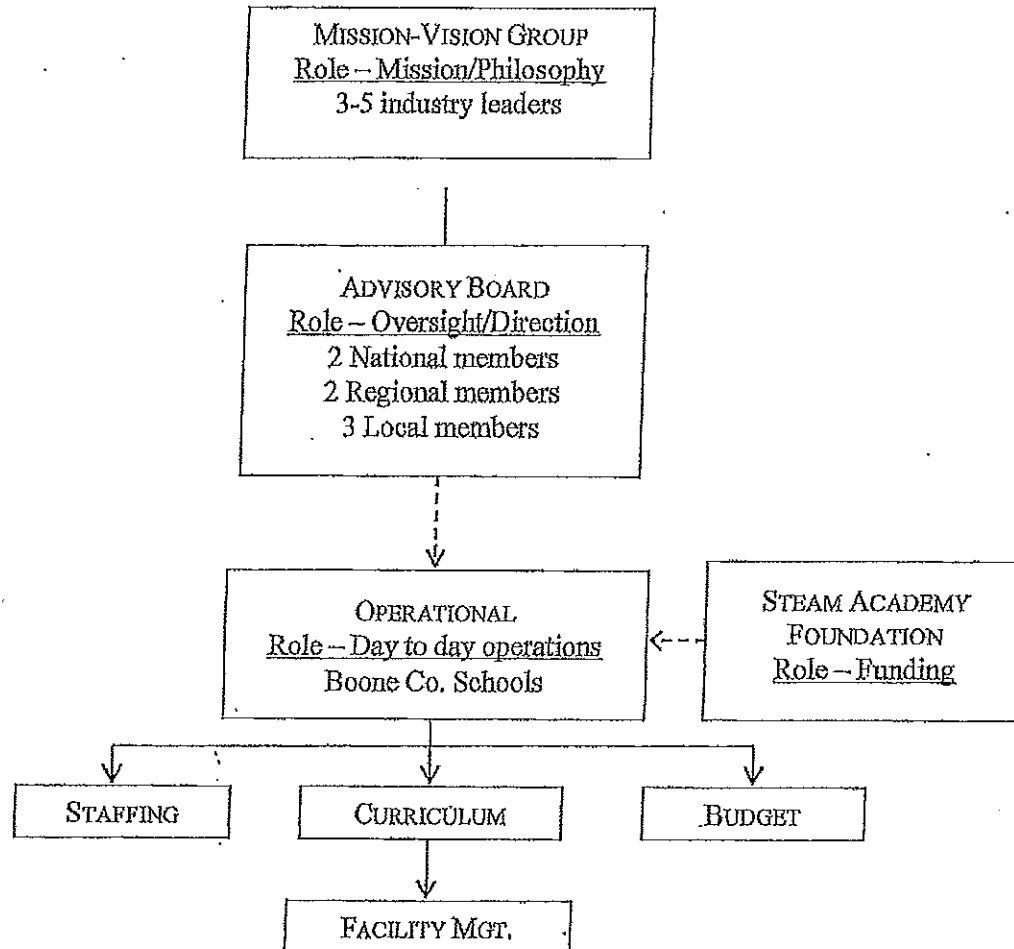
3. The Parties' vision of the STEAM Academy includes:

- Full-time program for high school students from Northern Kentucky/Cincinnati region
- Student accessibility -- admission not based on GPA
- Diversity -- engage disadvantaged minority youth
- Project-based learning environment
- Build partnerships with regional post-secondary institutions to offer dual-credit courses
- Mentor for every student; and work with students and parents
- Engage business community through career coaching and development, lectures and bring practical challenges to students for problem-solving projects
- Become a regional/national hub/model for STEAM teacher training
- Do not duplicate, but enhance, existing educational programs
- Network with other STEM/STEAM schools
- Create academy/culture rooted in student empowerment and the foundation of the Toyota Cultural Framework, which is:
 - challenge the status quo,
 - think innovatively,
 - make timely decisions,
 - grow our people's capabilities, and
 - collaborate across boundaries.

4. While the Parties acknowledge that educational program specifics evolve with advances in the sciences of learning and the future workforce challenges of the region and the nation, the programmatic approach of the STEAM Academy will emphasize and support:

- An equitable and open admissions process for learners with a passion for STEAM education.
- A "train the trainer" STEAM facilitator training component
- Engage a business sector driven innovative space
- Provide extended after-hours and multi-generational use opportunity
- Multiple education delivery methods; e.g., virtual learning, SME, Q&A, hands on/project based, go-and see, etc.
- Strong, engaged partners with industry, education and business mentors
- Interactive problem solving
- Curriculum projects driven by regional and national needs for industry skills
- Active, nimble, and flexible curriculum in content, delivery, and schedule
- Real world project based learning/problem solving
- Business internships, apprenticeships and co-ops
- Evaluations based on 21st century and beyond employee competencies: communication, critical thinking, creativity, collaborative problem-solving, subject matter proficiency

5. The structure of the STEAM Academy will generally be as follows:



6. The Mission-Vision Group's role will be to provide high-level insight, wisdom, philosophy, prestige, and philanthropic direction to the Advisory Board.

7. The Advisory Board's role will be to have interaction with the STEAM Academy faculty and BCBE administrators to advise on curriculum related projects, challenges, and other learning deliveries relevant to regional industry or specific to a company's project development.

8. BCBE will establish a new charitable foundation as a separate legal entity (the "STEAM Academy Foundation"), with its primary mission being to raise funds for tuition

assistance, fund special projects, purchase equipment, supplies, teacher needs and other related costs exclusively for the use and benefit of the STEAM Academy and its students.

9. Ownership, governance, operational control, funding, and facilities management will be with BCBE. All laws, statutes, regulations, policies and procedures, employee contracts and the like, as well as Kentucky curriculum requirements for high school graduation, college credit and all academic program and other legal compliances, and student discipline, which are applicable to BCBE shall apply to the STEAM Academy.

10. This MOU is not intended to be a definitive binding contract, but shall serve as an agreed framework for implementation of the Parties' shared vision for the STEAM Academy, and shall form the basis of a binding transfer agreement to be negotiated between the Parties (the "Transfer Agreement"). It is anticipated that the Transfer Agreement will include, but not be limited to:

- a. Providing that the Lab Building will be transferred "as is", subject to easements and restrictions of record;
- b. Providing greater detail and purpose regarding the Mission-Vision Group and Advisory Board and their respective roles related to the STEAM Academy and relation to BCBE;
- c. Provide for the possibility of sharing the parking available on Lot 6, or a subdivision of Lot 6, of the Property to the extent that there may be excess parking or land not needed for the STEAM Academy.

d. Providing for the possible dedication to the public of all or a portion of Atlantic Avenue.

e. Providing for such other steps as may be determined to be reasonably necessary and appropriate by TEMA to divide the Property from TEMA's contiguous property and to market and sale such contiguous property.

11. To maintain the confidentiality of the donation of the Lab Building until it is publicly announced by TEMA, this MOU shall be executed by the BCBE Superintendent, but not presented for ratification of the BCBE Board until after the public announcement of the donation by TEMA. The Parties acknowledge that the MOU shall not be effective as an understanding of the Parties until it has been approved by the BCBE Board.

IN WITNESS WHEREOF, the Parties set their hands on the respective dates indicated.

**TOYOTA MOTOR ENGINEERING & MANUFACTURING
NORTH AMERICA, INC.**

By: D. Uehiro
Its: Executive Vice President

3/7/2017
date

BOONE COUNTY (KENTUCKY) BOARD OF EDUCATION

By: Randy Poe
Its: Superintendent

3-6-17
date

EXHIBIT A

Being all of Lots 6, 7, and 8, Circleport III, Business Park. as follows:

Group: 4167 Boone

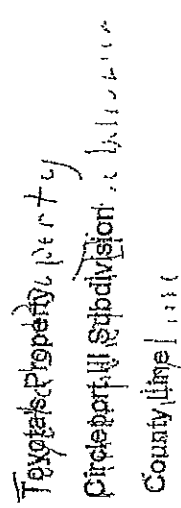
Being all of Lots 6 and 7 Circleport III Replat of Lots 2-7 Incorporating the Vacated Right-of-Way of Atlantic Avenue as shown on Plat Slide 43B (Boone) as shown on the plat recorded in Cabinet 4, Slide 38 of the Boone County Clerk's records at Burlington, Kentucky.

Groups: 1804 Boone and Group: 4752 . PIDN: 002-00-00-008.00 Kenton

Being all of Lot 8 Circleport III, Business Park as shown on the plat recorded in Plat Book 43B of the Boone County Clerk's records at Burlington, Kentucky and on Plat Slide 1461 of the Kenton County Clerk's records at Covington, Kentucky.

7343612.4

1-275



CIRCLEPORT III
ERLANGER, KENTON CO.,
A BOONE CO., KY.

EMPLOYEE: CONORR, PAUL ST. ST. 120,
1717 BUCKE HIGHWAY
ST. LOUIS, MISSOURI 63103

[illegible]

James M. B. B.
