ECONOMIC DEVELOPMENT INVESTMENT POOL
PERFORMANCE AGREEMENT
AND
COMMONWEALTH OPPORTUNITY FUND MATCH GRANT

This Agreement made and entered into on October __, 2025, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the "County"), a political subdivision of the Commonwealth of Virginia, **AFTON SCIENTIFIC, LLC,** (hereinafter the "Company"), a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA,** (hereinafter the "Authority"), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, the Commonwealth of Virginia has agreed to provide the Company a Commonwealth's Development Opportunity Fund Grant (the "COF Grant") of five hundred, forty thousand dollars and no cents ($540,000.00) contingent upon the County providing a Local-Level Incentive in the form of an equal cash match grant; and

WHEREAS, the County is willing to provide funds to the Authority as its Local-Level Incentive to match the COF Grant, such funds originating from the County's Economic Development Investment Pool (the "Local Match Grant"), with the expectation that the Authority will provide the monies to the Company upon the Company meeting certain Local Benchmarks identified in this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payment of this Local Match Grant, the Company's performance obligations, and the termination of all or part of the Local Match Grant under certain circumstances; and

WHEREAS, the Company's capital investment within the County of Albemarle and its stimulation of the additional tax revenue, job creation, and economic activity from the Company's continued location and expansion in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for this Local Match Grant and this Agreement.

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

Section 1. Company Obligations.

The Company agrees to follow, satisfy, and fulfill the terms contained in the COF Performance Agreement dated June 17, 2025, including but not limited to capital investment, job creation, compensation levels, and other targets identified and defined in the COF Agreement, a true copy of which is attached hereto and incorporated fully herein as "Attachment A."

The Company agrees to follow, satisfy, and fulfill the Local Benchmarks identified in Section 2 of this Agreement.

For purposes if this Agreement, the term "Facility" means a pharmaceutical preparation manufacturing facility and operation located in Albemarle County, Virginia, on TMP 07700-00-00-008B0, TMP 07700-00-00-00900, and/or TMP 077E0-00-00-00400.

Section 2. Economic Development Investment Pool Grant.

The County agrees to appropriate a total of no more than $540,000.00 (five hundred, forty thousand dollars and no cents) in three installments from its Economic Development Investment Pool and to disburse such funds to the Authority on or before December 31, 2030 (the Performance Date defined in the COF Agreement) subject to the Company meeting the COF Agreement Targets and this Agreement's below identified Benchmarks. The County's obligation to disburse payment commences when the Company satisfies the first Local Benchmark and ends after the Virginia Economic Development Partnership ("VEDP") disburses all or a portion of the COF Grant proceeds to the County pursuant to Section 3(b) of the COF Agreement.

In no event shall the total Local Match Grant payments exceed the lesser of $540,000.00 (five hundred, forty thousand dollars and no cents) or the total COF Grant proceeds disbursed to the Company pursuant to the COF Agreement.

The Authority agrees it will disburse Local Match Grant payments received from the County to the Company within thirty (30) days of receipt after verifying to the Authority's satisfaction that the Company has fulfilled its obligations under this Agreement and the COF Agreement.

The Authority is under no obligation to pay the Company more in Local Match Grant proceeds than the Authority receives from the County.

The Company may use the Local Match Grant proceeds for any lawful purpose.

The County's Local Match Grant will be paid as follows:

a. First Local Benchmark (Building Permit): The County will disburse $180,000.00 (one hundred, eighty thousand dollars and no cents) to the Authority as the first installment of the Local Match Grant after the Company obtains a building permit from the County's Community Development Department for the construction of a Facility as defined in this Agreement and begins construction;

b. Second Local Benchmark (Certificate of Occupancy): The County will disburse $180,000.00 (one hundred, eighty thousand dollars and no cents) to the Authority as the second installment of the Local Match Grant after the Company obtains a certificate of occupancy, whether it be temporary or permanent, from the County's Community Development Department for the Facility subject of the building permit noted in the First Local Benchmark; and

c. Third Local Benchmark (Satisfaction of COF Agreement Obligations): Upon the Company satisfying the obligations contained in the COF Agreement, whether it be in part or in full, and the County receiving the VEDP COF Grant payment, the County will disburse an amount that renders the total Local Match Grant payments equal to the VEDP COF Grant payment made pursuant to Section 3(b) of the COF Agreement. Under no circumstance shall this third Local Match Grant payment exceed $180,000.00 (one hundred, eighty thousand dollars and no cents).

Section 3. <u>Termination.</u>

If the Company fails to meet the Company Obligations contained herein before December 31, 2030, this Agreement shall automatically terminate. Upon termination, the Company shall not receive or be entitled to receive any unpaid Local Match Grant funds unless such payment is required under the COF Agreement.

The Company agrees to notify the County and the Authority within seven (7) calendar days of its inability to meet any of the Company Obligations.

If, at any time during the term of this Agreement, the Company fails to pay any taxes due to the County, the County shall notify the Company of its overdue tax liability. The County shall allow the Company thirty (30) days from receipt of the notice to pay any overdue taxes to the County. If the Company does not pay the overdue taxes to the County at the expiration of the 30-day curative period, this Agreement shall automatically terminate. Should the County otherwise be required under the COF Agreement to make a payment, the Company agrees the County may deduct any overdue taxes owed to the County, including any attendant penalty or late fee, from such payment.

Section 4. <u>Company Reporting.</u>

The Company must provide, at the Company's expense, detailed verification reasonably satisfactory to the County and the Authority that the Company is fulfilling its Company Obligations. The County's Director of Finance or designee may submit requests for additional information to the Company concerning its progress towards satisfying the COF Performance Agreement Benchmarks. Upon submission of the County's request for information, the Company must respond to the request within thirty (30) days. These requests for information will be submitted to the Company at such times as the County or Authority may decide. To the extent such information constitutes proprietary information or trade secrets and is recognized as such under applicable law, the County and Authority will receive it under a promise of confidentiality and will take all lawful actions needed to preserve and protect the proprietary information from public or other unauthorized disclosure.

Section 5. <u>Notices.</u>

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

If to the Company, to: Afton Scientific, LLC 2020 Avon Court Charlottesville, Virginia 22902 Email: tthorpe@aftonscientific.com Attention: Thomas Thorpe, CEO	With a copy to: Flora Pettit PC 530 East Main Street Charlottesville, Virginia 22902 Email: DDL@fplegal.com Attention: Donald D. Long, Esquire
If to the County, to:	With a copy to:
County of Albemarle, Virginia 401 McIntire Road Charlottesville, Virginia 22902 Email: jrichardson3@albemarle.org Attention: Jeffrey B. Richardson	Economic Development Office 401 McIntire Road Charlottesville, Virginia 22902 Email: economicdevelopment@albemarle.org Attention: Economic Development Director
If to the Authority, to:	With a copy to:
Economic Development Authority 401 McIntire Road, Suite 148 Charlottesville, Virginia 22902 Attention: Jeff Morrill, Vice Chair	Economic Development Office 401 McIntire Road, Suite 148 Charlottesville, Virginia 22902 Attention: Economic Development Director.

Section 6. <u>Miscellaneous.</u>

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

2. *Non-appropriation:* The obligation of the County to contribute to the Local Match Grant as provided in this Agreement is subject to and dependent upon appropriations being made from time to time by the Board of Supervisors of Albemarle County, Virginia (the "Board of Supervisors"). Therefore:

a) Obligations in the Event of Non-appropriation. If the Board of Supervisors does not appropriate funds for the Local Match Grant and the Company is otherwise in compliance in all respects, then this Agreement terminates and the Company shall have no further obligation under this Agreement.

b) This Agreement does not Establish an Irrevocable Obligation. Under no circumstance shall this Agreement be construed to establish an irrevocable obligation on the County to fund the Local Match Grant as provided in this Agreement.

3. *No Goods or Services Received by the County or Authority:* The Local Match Grant funds transferred by the Authority to the Company pursuant to this Agreement are solely to facilitate the continued location of the Company at the Facility and to incentivize the investment in the Facility and expansion of the Company's business in Albemarle County. The Company's efforts will support the Local Match Grant's public and economic development purposes and are not a procurement of any goods or services by the Authority or the County.

4. *Relationship of Parties:* This Agreement is intended solely to establish the relative rights and obligations of the parties and does not create any type of partnership, joint venture, purchaser-vendor, or employer-employee relationship.

5. *No Third-Party Beneficiaries:* This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.

6. *No Waiver of Sovereign Immunity or Other Immunities:* This Agreement and any action taken by the County or the Authority pursuant to this Agreement are not, and shall not construed to be, a waiver of sovereign immunity or any other governmental immunity that applies to the County, the County's Board of Supervisors, the Authority, or the Authority's Board of Directors.

7. *Non-liability of County and Authority Officers and Employees:* No County Supervisor or other County officer or employee, and no Authority Director or other Authority officer or employee, shall be personally liable to the Company if there is any default or breach by the County, the County's Board of Supervisors, the Authority, or the Authority's Board of Directors pursuant to this Agreement.

8. *Indemnification and Hold Harmless:* The Company agrees to indemnify, hold harmless, and defend the County, the Authority, and their supervisors, officers, directors, agents, and employees from any and all liability, loss, damage, claims, causes of action, and expenses (including without limitation reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by the Company in connection with the performance of this Agreement. This includes any act or omission of an officer, director, agent, employee, or representative of the Company, its successors and assigns, to the extent that such liability or damage is caused in whole or in part by such party's default or breach, negligence, or intentional misconduct. The provisions of this section shall survive termination of this Agreement as to acts or omissions occurring prior to the effective date of termination.

9. *Force Majeure:* If any party's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the Authority, or the Company, as applicable, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, epidemic, pandemic, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the Authority, or the Company, as applicable, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.

10. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and must be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation may only be brought in that court.

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

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

13. *Interpretation of this Agreement:* This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and in the COF Performance Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.

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

COUNTY OF ALBEMARLE, VIRGINIA

By: ______________________________
Jeffrey B. Richardson, County Executive

ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

By: ______________________________
Jeff Morrill, Vice Chair

Approved as to form:

____
County Attorney

AFTON SCIENTIFIC, LLC

By: __________________________________
Thomas Thorpe, CEO

EXHIBIT A

COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND PERFORMANCE AGREEMENT