

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT, made and entered into on the _____ day of _____ 2021, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("Lexington"), 200 East Main Street, Lexington, Kentucky 40507, and **COMMERCE LEXINGTON, INC.**, a Kentucky corporation ("Commerce"), with offices located at 330 East Main Street, Lexington, Kentucky 40507.

W I T N E S S E T H

WHEREAS, in Resolution No. 235-2021, the Urban County Council created the LFUCG Small Business Economic Recovery Program (or hereinafter the "Program"), a \$2,500,000.00 grant program to assist local small businesses in their recovery from the pandemic; and

WHEREAS, in Resolution No. 235-2021, the Lexington-Fayette Urban County Government established the minimum criteria for qualifying for Program funding; determined how the Program was to be operated; and set the desire that at least fifty percent (50%) of Program funds be provided to minority or women-owned businesses and/or small businesses located in lower income areas in Lexington-Fayette County; and

WHEREAS, pursuant to Resolution No. 235-2021, Lexington and Commerce executed an Agreement on or about May 6, 2021 ("Agreement"), describing the scope of services to be provided by Organization to administer the Program's first \$2,500,000.00 allocation and the compensation for such services; and

WHEREAS, due to the popularity of, and the need for, the Program, many applicants did not receive funding from the first allocation of \$2,500,000.00; and

WHEREAS, in Resolution No. _____ -2021, the Urban County Council authorized an additional \$2,500,000.00 for the Program to help more small businesses recover from the pandemic, and retained Commerce to continue to administer the Program; and

WHEREAS, the Lexington-Fayette Urban County Government has determined that the Program continues to fulfill a public purpose by providing for economic development and recovery from the current public health emergency.

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

1. The above recitals are incorporated herein as part of this Amendment.
2. That the following documents are attached hereto and incorporated herein as if fully stated:
 - a. Resolution No. 235-2021;
 - b. Resolution No. _____ - 2021; and
 - c. Agreement, dated May 6, 2021, between Lexington and Commerce.
3. Commerce, by and through its Access Loan Program, will administer the Lexington-Fayette Urban County Government Small Business Economic Recovery Program's second \$2,500,000.00 allocation, in compliance with the criteria provided in Resolution No. 235-2021; Resolution No. _____ -2021; and the Agreement, as amended.

4. In consideration for administering the Program's second \$2,500,000 allocation, Commerce will retain an administrative fee of seven and one half percent (7.5%) of the amount of Recovery Funds distributed by Commerce to qualifying small businesses from the Program's second \$2,500,000.00 allocation, not to exceed one hundred eighty-seven thousand and five hundred dollars (\$187,500). This administrative fee shall be in addition to and separate from the administrative fee provided to administer the Program's first \$2,500,000 allocation.

5. Commerce shall begin accepting applications from eligible small businesses for funds from the Program's second \$2,500,000 allocation, no later than August 1, 2021.

6. In addition to any requirements related to initial reports for the Program's first \$2,500,000.00 allocation contained in the original Agreement, Commerce shall also submit an initial report covering the grants distributed from the Program's second \$2,500,000.00 allocation, which shall include:

- a. List of all companies receiving funds from the Program's second allocation;
- b. Amount received by each company;
- c. Total employment of all companies receiving grant funds from the Program's second allocation; and
- d. Total payroll of all companies receiving grant funds from the Program's second allocation.

This initial report required under this Section will be due to both the Chair of the Urban County Council's Budget, Finance & Economic Development Committee and the

Chief Development Officer within thirty (30) days after the last grant is distributed from the Program's second \$2,500,000.00 allocation. After providing this initial report, Commerce shall provide an update as requested by the Chair of the Urban County Council's Budget, Finance & Economic Development Committee.

7. In addition to any requirements relating to collecting report employment and payroll information from recipients receiving funding from the Program's first \$2,500,000.00 allocation, Commerce shall also collect report information by July 31, 2022 from recipients funding from the Program's second \$2,500,000.00 allocation to show current employment and payroll benchmarked against employment on:

- a. January 1, 2020;
- b. April 1, 2020;
- c. July 1, 2020;
- d. October 1, 2020;
- e. January 1, 2021;
- f. March 1, 2021;
- g. July 1, 2021;
- h. December 1, 2021; and
- i. June 30, 2022.

8. To reduce administrative burden on the parties, Commerce shall provide a single final comprehensive report to the Lexington-Fayette Urban County Council's Budget, Finance & Economic Development Committee and the Chief Development Officer covering the entire Program within forty-five (45) days after all recipients' final reports are due, regardless of whether the recipient received funds under the first or

second allocation. The final reports shall include the requirements provided in the original Agreement's Scope of Work.

9. The original Agreement's Exhibit B ("Grant Agreement") shall be replaced with Exhibit B from this Amendment for those recipients who receive grant funds from the Program's second \$2,500,000.00 allocation.

10. All other provisions of the Agreement not inconsistent with the provisions of this Amendment shall remain in full force and effect and shall continue to direct the services performed by Commerce in administering this Program. Nothing contained in this Amendment, except as provided in Section 8, shall serve to amend, replace, or remove any provision of the Agreement as it pertains to Commerce's administration of the Program's first \$2,500,000.00 allocation of funds.

IN WITNESS WHEREOF, the parties certify that they have been duly authorized to execute, deliver and perform this Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
LINDA GORTON

ATTEST:

ABIGAIL ALLAN
URBAN COUNTY COUNCIL CLERK

COMMERCE LEXINGTON, INC.

BY: 
RAY DANIELS, BOARD CHAIR

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF FAYETTE)

The Agreement was subscribed, sworn to and acknowledged before me by

_____, as _____ of Commerce Lexington, Inc., on this the

15 day of July, 2021.

My commission expires: 2/13/2023

Cindy Benningfield

NOTARY PUBLIC, STATE AT LARGE, KY

EXHIBIT B

Lexington-Fayette Urban County Government
Addendum for Services
Commerce Lexington

Grant Agreement

LFUCG Small Business Economic Recovery Program

Grant Agreement

THIS GRANT AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2021 by and between Commerce Lexington, Inc., a Kentucky non-profit corporation, whose principal address is _____, Lexington, Kentucky _____ ("Commerce"), and _____, a _____, whose principal address is _____, Lexington, Kentucky _____ ("Recipient") (collectively "the Parties").

RECITALS

WHEREAS, Lexington-Fayette County has experienced an unprecedented health pandemic related to COVID-19, which has resulted in economic distress for its business community; and

WHEREAS, the Lexington-Fayette Urban County Government ("LFUCG"), through Resolutions No. 235-2021 and _____ - 2021 ("the Resolutions"), has created a Small Business Economic Recovery Program ("the Program") to assist businesses in their recovery from the pandemic by providing qualifying local small businesses with grants up to \$25,000.00 to aid in retaining or increasing jobs and/or total Lexington-Fayette County payroll base amount at the qualified local small business.

WHEREAS, the LFUCG has retained Commerce Lexington, Inc. ("Commerce") to administer the Program; and

WHEREAS, based upon the Recipient's application, Commerce has selected Recipient to receive grant funds under this Program.

NOW, THEREFORE, in consideration of the covenants set out herein, the Parties agree as follows:

Section 1 – That the above recitals is incorporated herein as if set out in full.

Section 2 – **Commerce's Commitment.** Pursuant to the Resolutions and this Agreement, Commerce will provide \$_____ to Recipient, subject to and in accordance with the terms, representations, and warranties set forth in this Agreement. Funds must be expended by Recipient to maintain or increase the number of Recipient's employees in Lexington-Fayette County and/or its total Lexington-Fayette County payroll base amount in conformity with all provisions of this Agreement.

Section 3 – **Recipient's Representations and Warranties.** Recipient represents and warrants that:

- (a) It will comply with and perform all of the terms, covenants, and conditions of this Agreement and the Resolutions;
- (b) All funds dispersed hereunder will be used to maintain or increase the number of Recipient's employees in Lexington-Fayette County and/or its total Lexington-Fayette County payroll base for one (1) year after receipt of funds;

- (c) Its application is true and accurate, and all funds dispersed hereunder will be used for the purpose provided therein;
- (d) It has a nexus to or situs in Lexington-Fayette County with employees currently working in Lexington-Fayette County and providing goods or services to the general public;
- (e) It holds a current business license from, or is otherwise registered with, the Lexington-Fayette Urban County Government, since at least January 1, 2021;
- (f) It has a maximum of no more than fifty (50) full-time equivalent employees (if a non-restaurant) or one hundred (100) full-time equivalent employees if a restaurant;
- (g) It is current on the filing of returns and payments on all occupational license fees, licensing and registration and otherwise is in good standing with the Lexington-Fayette Urban County Government;
- (h) It is compliant with all applicable federal, state, and local laws and regulations, including, but not limited to, those pertaining to employment and discrimination; and
- (i) It shall comply with all documentation or reporting requirements related to the receipt or expenditure of the funds as requested by Commerce.

Section 4 – Disbursement of Funds. Funds shall be dispersed to Recipient within thirty (30) days of execution of this Agreement.

Section 5 – Default. If any warranty or representation made by the Recipient in this Agreement shall at any time be false or misleading in any material respect, or if Recipient fails to keep, observe, or perform any of the terms, representations, or warranties set forth in this Agreement, except as provided in section 6, the grant shall be terminated and it shall be required to repay Commerce the entirety of the funds within thirty (30) days of notice from Commerce or LFUCG.

Section 6 – Repayment.

- (a) If the Recipient received grant funds to retain jobs in Lexington-Fayette County, failure to maintain the number of employees provided in its application at the end of one (1) year after receipt of funds shall result in the repayment of a portion of grant funds by the Recipient equal to the percentage as provided in the following formula:

$$\frac{(\# \text{ of employees at time of application} - \# \text{ of employees at one year})}{\# \text{ of employees at time of application}}$$

- (b) Notwithstanding subsection (a), if the Recipient received grant funds to retain jobs in Lexington-Fayette County, it will not be required to repay the grant if the Recipient's total Lexington-Fayette County payroll base amount at the end of the year period remains at ninety percent (90%) or more of the amount at the time of application.

- (c) If the Recipient received grant funds to maintain its total Lexington-Fayette County payroll base, failure to maintain the Lexington-Fayette County payroll base amount provided in its application at the end of one (1) year after receipt of funds shall result in the repayment of a portion of grant funds by the Recipient equal to the percentage as determined in the following formula:

$$\frac{(\text{Lexington-Fayette County payroll base amount at time of application} - \text{Lexington-Fayette County payroll base amount at one year})}{\text{Lexington-Fayette County payroll base amount at time of application}}$$

- (d) Example: Business X applies for and receives a \$25,000.00 grant based upon retaining ten (10) employees. At the expiration of the one (1) year period, it has retained eight (8) employees and its total Lexington-Fayette County payroll base amount is 85% of the amount at the time of application. Business X must repay 20% of the grant, which is \$5,000.00.
- (e) The Recipient shall repay grant funds in accordance with this section within thirty (30) days after notice is provided by Commerce Lexington or LFUCG.

Section 7 – **Miscellaneous.**

- (a) Incorporation by Reference: The following documents are attached hereto and incorporated herein by reference and made part of this Agreement as if set out in full: 1) the Recipient's Application; 2) Resolution No. 235-2021; and 3) Resolution No. _____ -2021 of the Lexington Fayette Urban County Government.
- (b) Not Employees of the Other: In no event shall the Parties be construed, held, or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.
- (c) Waiver: The waiver of either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party or either the same or another provision of this Agreement.
- (d) 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.
- (e) Time of the Essence: Time shall be of the essence in the performance of all the Recipient's obligations under this Agreement.
- (f) Binding Effect. The provisions of this Agreement shall bind and benefit the Recipient and Commerce and their respective successors and assigns; provided however, that this paragraph shall not be construed to permit the

assignment by the Recipient of its rights and obligations under this Agreement without Commerce's and LFUCG's consent.

- (g) **Headings:** The headings used in this Agreement are for convenience of reference only, and shall not be construed in the interpretation or construction of this Agreement.
- (h) **Governing Law:** The Agreement and the respective rights and obligations of the Recipient and Commerce shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky.
- (i) **Jurisdiction and Venue:** The Parties hereto agree that any suite, action, or proceeding with respect to this Agreement shall only be brought in or entered by the courts of the Commonwealth of Kentucky situated in Lexington, Kentucky.
- (j) **Complete Agreement:** This Agreement and the other instruments referred to herein contain the entire agreement of the Parties pertaining to its subject matter and supersede all prior written and oral agreements pertaining hereto.
- (k) **Assignments or Modifications:** The Recipient may not assign its rights under this Agreement to any other party without the prior written consent of the Commerce and LFUCG, which consent shall not be unreasonably withheld or delayed. This Agreement may be modified only in a writing executed by Commerce and the Recipient.
- (l) **LFUCG as Third-Party Beneficiary:** It is the intent of the Parties that LFUCG shall be a third party beneficiary to the Agreement, and thus by executing this Agreement, Recipient understands and agrees that if it defaults on the conditions of the Agreement or the Resolutions, it shall be liable for repayment of funds to the Lexington-Fayette Urban County Government or Commerce Lexington as further provided in sections 5 and 6 herein.
- (m) **Severability:** If any part, term, or provision of this Agreement is held by any court to be unenforceable or prohibited by any law applicable to this Agreement, the rights and obligations of the Parties shall be construed and enforced with that part, term, or provision limited so as to make it enforceable to the greatest extent allowed by law, or, if it is totally unenforceable, as if this Agreement did not contain that particular part, term, or provision.

IN WITNESS WHEREOF, the Parties certify that they have been duly authorized to execute, deliver and perform this Agreement, and have executed it as of the date first herein written.

COMMERCE LEXINGTON, INC.

BY: [Signature]
TYRONE TYRA, SENIOR VICE
PRESIDENT

RECIPIENT

BY: [Signature]
CEO

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The Agreement was subscribed, sworn to and acknowledged before me by
_____, as _____ of Recipient, on this the 15 day of
July, 2021.

My commission expires: 2/13/2023

[Signature: Cindy Bennice Field]
NOTARY PUBLIC, STATE AT LARGE, KY