

**AGREEMENT**

THIS 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.

**WITNESSETH:**

WHEREAS, the Lexington-Fayette Urban County Government desires to create a program to assist employers with the workforce employment and training, to be known as the “Accelerate Lexington” (or hereinafter the “Program”), to increase the workforce talent pipeline for in-demand jobs in Lexington; and

WHEREAS, the Lexington-Fayette Urban County Government has determined that this effort fulfills a public purpose by providing for workforce development training and economic development assistance; and

WHEREAS, the Urban County Government wishes to partner with Commerce Lexington’s Business Education Network to administer the Accelerate Lexington Program in a timely and efficient manner; and

**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. Commerce, by and through its Business Education Network, will administer the Accelerate Lexington Program (“the Program”) , as further described in Section 3 and the attached Exhibit A (Scope of Work), on behalf of Lexington.

2. To aid in such efforts, Lexington agrees to provide Two Hundred and Fifty Thousand Dollars (\$250,000) to Commerce, which shall be used by Commerce for costs associated with 1) implementing a talent recruitment campaign, including marketing the training program and recruiting potential participants; and 2) providing participants with necessary materials and supplies that are not otherwise reimbursable by another external source. It is the intent of the Parties that no more than One Hundred Thousand Dollars (\$100,000) be expended for Phase I, without prior approval by Lexington’s Chief Development Officer. No funds shall be retained by Commerce as an administrative fee.

3. The Accelerate Lexington Program is a public-private partnership between local employers, the Bluegrass Community & Technical College, Lexington, and Commerce, to bring stakeholders together to strategically expand the talent pipeline for high-demand careers in industry sectors that are drivers of Lexington’s economy by offering education, careers, recruitment and marketing, and funding. To participate in the Program all partners will be required to share in the investment to the program. Through this Program, one industry and occupation will be prioritized, with new occupations and industries being introduced into the Program in future phases. Phase I shall include the healthcare industry and Lexington’s shortage of Certified Nursing Assistants, with the goal of training and employing at least thirty (30) participants. Future phases shall be approved by Lexington’s Chief Development Officer if Lexington funds are to be expended for that phase.

4. Commerce agrees that the businesses and/or partnership entities are not required to obtain membership in Commerce Lexington.

5. Commerce will provide Lexington with regular progress updates on the program pursuant to this Agreement on at least a semi-annual basis to the Lexington Economic Development Investment Board and will appear before the Urban County Council or any of its committees to provide progress updates upon Lexington's reasonable request.

6. Commerce will keep and make available to Lexington any records related to this Agreement such as are necessary to support its performance thereof. Books of accounts shall be kept by Commerce and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Commerce related to this Agreement be made available to Lexington upon request. This provision shall survive the termination or expiration of this Agreement.

7. Either party may terminate this Agreement for a material breach in performance after placing the breaching party with written notice of the breach and the opportunity to cure. The period to cure the breach shall be reasonable, but in all instances must be at least thirty (30) days. Any unencumbered funds held by Commerce at the time of termination of this Agreement shall be returned to Lexington within (30) days of receiving notice.

8. Commerce shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned

herein, and shall indemnify Lexington, its officers, agents and employees against any claim or liability arising from and based on Commerce's violation of any such laws, ordinances or regulations. This indemnification provision shall survive the termination or expiration of this Agreement.

9. Unless otherwise provided herein, each party shall be solely responsible for its actions and those of its officials, employees and agents in the performance of this contract and any matters related thereto. This provision shall survive the termination or expiration of this Agreement.

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

11. Commerce shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause any agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

12. Commerce represents that it has adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints.

13. Lexington may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by Commerce. Lexington, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Commerce.

14. Commerce agrees that all revenue and expenditures shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit shall be submitted to the Government within ten (10) days of completion.

15. Commerce agrees, to the extent applicable, that it shall apply all funds received by it from the Government in accordance with the following investment policy guidelines:

- A. Objectives--Capital preservation with surety of income. Reasonable competitive income consistent with high investment quality and purpose of funds. All investments shall comply with state and local law and regulations and any policies described in this Agreement.
- B. Investment Funds Management--The governing board may elect to either:
  - (1) manage its investments through its executive director where the size or complexity of funds to be managed is deemed by the board to be within the training, expertise and/or available time

capacity of the executive director and the operating staff;

-or-

- (2) utilize the professional investment management facilities of a local bank trust department acting in a fiduciary capacity within the same approved investment policies and federal, state, local and trust laws and regulations. The trust department may utilize its regular short-term 100% U.S. Treasury Fund for daily funds investment. The election of option 1 or 2 should be made consistent with the relative cost incurred and in the case of option 2 the cost shall be competitive among local trust departments.

C. Investment Policies--Safety and Prudence.

- (1) Short-term liquidity funds shall be invested in "riskless" investments, i.e., deposits in Kentucky commercial banks or savings and loan associations that are fully federally insured or deposits collateralized by U.S. Treasury securities with a current market value of at least 100%, or in direct obligations of U.S. Treasury securities.

Investments shall be diversified according to maturity in order to meet projected cash flow needs.

Collateral pledged to secure uninsured deposits shall be held at a federal reserve bank with the receipt providing absolute control by the agency.

- (2) Retirement funds, endowment funds, long-term capital reserve funds and any other special funds may be held and invested by a local bank trust department under investment objectives and diversification in accordance with the individual nature of the funds and pursuant to the "prudent man" investment rule as well as general trust law.
- (3) All investments shall be reviewed monthly by a finance or investment committee of the agency.
- (4) Local brokerage firms may hold and invest funds provided that investments are located within Kentucky and are fully insured.

D. Audit--All investments shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not investments during the year audited have conformed with state and local law and regulation and with the approved investment policies.

16. Notice – Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization: Commerce Lexington  
330 East Main Street  
Lexington, Kentucky 40507  
Att: Bob Quick, President & Chief Executive Officer (or as otherwise designated in writing)

For Government: Lexington-Fayette Urban County Gov.  
200 East Main Street  
Lexington, Kentucky 40507  
Att: Kevin Atkins, Chief Development Officer

17. Neither party may assign any of its rights and duties under this Agreement without the prior written consent of the other party.

18. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Commerce or Lexington.

19. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken.

20. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

21. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Commerce acknowledges that Lexington may make a material change only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

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

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



## **EXHIBIT A**

Lexington/Fayette Urban County Government  
Addendum for Services  
Commerce Lexington – The Business Education Network

### **Scope of Work**

As part of the administration of the Program, Commerce Lexington, through The Business Education Network Program staff, will help address the workforce shortage in target employment sectors/industries in Lexington-Fayette County.

Commerce will:

- Manage and administer the Accelerate Lexington Program;
- Customize the program to meet the needs of Lexington workforce and employers by establishing programs one sector at a time;
- Market the Program and recruit potential participants. Marketing shall include, but shall not be limited to, advertising the Program on its website and social media platforms, informing its members of the Program, and working with all Lexington-Fayette Urban County Government Economic Development Partner Agencies to market the Program;
- Serve as the point of contact for the Program;
- Serve as the facilitator of the program for partners;
- Assist program partners in the development of course descriptions and details for each occupational program;
- Development of responsibility list for each partner in the individual sector training program;
- Using funds provided by Lexington in this Agreement, provide participants with necessary materials and supplies that are not otherwise reimbursable by another external source;
- Endeavor to meet diversity goals as part of the marketing and recruitment of Program participants;
- Enter into agreements with other entities to assist with the administration and marketing of the program to the extent necessary to meet the requirements of this Agreement;
- Provide a semi-annual program status report to the Lexington Economic Development Investment Board on the Program;
- Provide an update as requested by the Chair of the Lexington-Fayette Urban County Council Budget, Finance & Economic Development Committee; and

- Provide a final comprehensive report to the Lexington-Fayette Urban County Council Budget, Finance & Economic Development Committee and the Chief Development Officer within forty-five (45) days after each class of recipients has completed the program, which shall include, but not be limited to:
  - List the number of participants who participated in the program;
  - List the number of participants who received their certification as a result of the program;
  - List the number of participants who became employed as a result of the certification received through the program;
  - List the average wage (collectively) of participants who became employed as a result of the program.

