

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 23 day of ~~July~~ ^{Aug} 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 ("Government"), 200 East Main Street, Lexington, Kentucky 40507, on behalf of the Chief Development Officer ("CDO") and **COMMERCE LEXINGTON, INC.**, a Kentucky corporation, ("Organization") with offices located at 330 East Main Street, Lexington, with a mailing address of Post Office Box 1968, Lexington, Kentucky 40588, with an effective date of July 1, 2021.

R E C I T A L S

WHEREAS, the Government has been awarded federal funds from the U.S. Department of Treasury, under the American Rescue Plan Act of 2021 (referred to hereinafter as "ARPA") to provide for payment of eligible uses; and

WHEREAS, ARPA provides that the provision of government services is an eligible use of the funds, to the extent of the reduction in government revenue caused by the pandemic; and

WHEREAS, economic development is a governmental service for which the Government desires to contract with Organization to perform economic development services on behalf of Government.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises and covenants herein expressed, the Government and the Organization agree as follows:

1. For the purposes of this Agreement, "Progress Report" shall mean the summary of the Organization's performance of the services and activities required in Exhibit A for the previous period, and any other information required on the form attached hereto as Exhibit B incorporated herein by reference (or a similar form created and provided to Organization by the Government). "Year-End Report" shall mean the year-end summary of the Organization's performance of the services and activities required in Exhibit A and any other information required on the form attached hereto as Exhibit C, which is incorporated herein by reference (or a similar form created and provided to Organization by the Government).

2. Government hereby retains Organization for the period beginning on July 1, 2021, and continuing for a period of twelve (12) months from that date, unless within that period: 1) Government gives the Organization thirty (30) days written notice of termination of this Agreement in which case this Agreement shall terminate thirty (30) days from the date notice is given to the Organization or 2) Organization gives the Government ninety (90) days written notice of termination of this Agreement in which case this Agreement shall terminate ninety (90) days from the date notice is given to Government.

3. Government shall pay the Organization the total sum of One Hundred Fifty-Five Thousand One Hundred Fifty-Five Dollars (\$155,155.00) for services required by

this Agreement, said services being more particularly described in Exhibit A attached hereto and incorporated herein by reference. The first installment, in the amount of Seventy-Seven Thousand Five Hundred and Seventy-Seven Dollars and Fifty Cents (\$77,577.50), shall be made upon final execution of this agreement. The second installment, in the amount of Seventy-Seven Thousand Five Hundred Seventy-Seven Dollars and Fifty Cents (\$77,577.50), shall be made upon receipt and review by the Chief Development Officer, and acceptance by the Lexington Economic Development Investment Board, of all reports required by this Agreement to the reasonable satisfaction of the Board and the Chief Development Officer, demonstrating performance of the services required by this Agreement. Total sum of each payment shall be payable within ten (10) days after receipt of required invoice as required in Paragraph 7 herein, July to June inclusive.

4. In the event of termination of this Agreement as provided for in Paragraph 2 above, Organization shall be entitled to that portion of total compensation due under this Agreement, as the service rendered bears to the total service required hereunder, but in no event shall more than half of the first installment be repaid by Organization.

5. Organization will support the economic development and efforts of the Lexington-Fayette Urban County Government/Lexington Economic Partnership and shall perform all duties and services specified in Exhibit A faithfully and satisfactorily at the time, place, and for the duration prescribed herein.

6. Organization shall keep itself reasonably 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, including the Americans with Disabilities Act and the Drug Free Workplace Act, whether or not such laws, ordinances or regulations are mentioned herein and shall indemnify Government, its officers, agents and employees against any claim or liability arising from and based on Organization's violation of any such laws, ordinances or regulations.

7. Organization represents that it has filed any federal, state or local income tax returns required by law in the legally prescribed time and manner. This Agreement shall not become effective unless and until copies of all of the executed originals of the aforementioned tax returns filed for the Organization's most recent or current tax year are provided by the Organization to the CDO, and the Organization shall not be compensated unless and until such requirement has occurred.

8. The Organization shall, by no later than the 12:00pm (noon) on August 24, 2021; October 26, 2021; December 28, 2021; February 22, 2022; and April 26, 2022, on such forms as the CDO shall provide, submit electronically to the CDO: a Progress Report containing, for each of the services enumerated in Exhibit A which were provided in the preceding period, (a) a description of the service provided, and (b) the additional information requested in and submitted on the form attached hereto as Exhibit B incorporated herein by reference (or a similar form created and provided to Organization by the Government). Organization shall attend Lexington Economic Development Investment Board meetings scheduled the first Tuesday of each month and any special meetings in which its activities are on the meeting agenda, to answer any questions regarding its most recent progress

report. Organization shall, by April 30, 2022, provide a Year-End/Year to Date Report electronically to the CDO containing a year-end report for services enumerated in Exhibit C incorporated herein by reference (or a similar form created and provided to Organization by the Government); and an invoice requesting final compensation for the services provided in accordance with this agreement. Failure to electronically submit the reports and invoice described herein by the required date shall result in the payment to Organization being withheld until the next reporting period. In addition, Organization shall be required to present a progress report as to its activities annually, or as additionally required, before the Lexington-Fayette Urban County Council's Budget, Finance & Economic Development Committee, the Lexington Economic Development Investment Board or as otherwise instructed by the Government. Failure to make the requested presentation shall require funding to be withheld until presentation requirement is fulfilled.

9. By March 31, 2022, Organization shall provide an updated list of Lexington corporate/company contacts, including business name and the name of each business' CEO/President, and the contact information of same.

10. At no time shall the Organization require membership in the organization from any company, organization, or individual for services paid for in whole or in part with the assistance of funding from LFUCG.

11. Books of accounts shall be kept by the Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the Organization related to this Agreement. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to the Organization,

shall be maintained at the principal place of business of the Organization as set forth in this Agreement. Government shall have free and complete access to the books, papers and affairs of the Organization relating to the LFUCG funds provided hereunder at all reasonable times, and if it desires, it may have said books and papers of the Organization audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of the Government.

12. Government may designate such persons as may be necessary to monitor and evaluate the services rendered hereunder by the Organization. The Government, its agents and employees, shall, have reasonable 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 Organization, or to constitute Organization an agent of the Government.

13. Organization shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, ancestry, marital status, familial status, sex, age, sexual orientation or gender identity, or handicap, or any other basis prohibited by applicable law, shall promote equal employment through a positive, continuing program of equal employment, and shall cause each of its subcontracting agencies to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

14. Organization shall adopt 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. The policy shall be given to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be submitted to the CDO for review within thirty (30) days of the execution of this Agreement.

15. The Organization understands that the funding under this Agreement was provided by Government using federal funds from the American Rescue Plan Act. The Organization agrees to provide Government with any reporting necessary to fulfill its requirements as set forth by the United States Department of the Treasury.

16. The Organization ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

17. The Organization acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Organization understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of

1964 and the Department of the Treasury's implementing regulations. Accordingly, Organization shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Organization understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Organization's programs, services, and activities.

18. The Organization agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

19. The Organization acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Organization and Organization's successors, transferees, and assignees for the period in which such assistance is provided.

20. The Organization shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also

includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

21. To the extent required by federal law, the Organization hereby certifies that:

a. No funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31 U.S. Code. Any person who fails to file the required certification

shall be subject to a civil penalty not less than \$10,000 and not more than \$100,000 for each such failure.

22. To the extent required by federal law, Organization agrees that funds provided under this Agreement will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR Sec. 5.109.

23. The Organization agrees that all revenue and expenditures related to this Agreement 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 CDO within 10 days of completion.

24. Organization agrees that it shall apply all funds received pursuant to this Agreement from the Urban County 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 conform with state and local law and regulations and these Policies.
- 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.

25. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon.

26. 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 by Organization)

For Government:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Att: Kevin Atkins, Chief Development Officer
(or as otherwise designated in writing by Government)

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

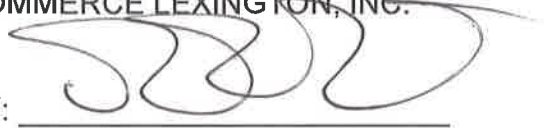
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: 
LINDA GORTON, MAYOR

ATTEST:

Abigail Allan
Abigail Allan Clerk of the Urban County Council

COMMERCE LEXINGTON, INC.



BY: _____
RAY DANIELS, CHAIRPERSON

ATTEST:

DIANA P. WILSON
Notary Public
Commonwealth of Kentucky
Commission Number KYNP22296
My Commission Expires Jan 25, 2025

WITNESS: Diana P. Wilson

DATE: 8-23-21

EXHIBIT "A"

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

SCOPE OF WORK – EXISTING BUSINESS RETENTION & EXPANSION AND WORKFORCE DEVELOPMENT

Local Contribution:

During Lexington-Fayette Urban County Government Fiscal Year 2022 (July 1, 2021 through June 30, 2022) Commerce Lexington (CLEX) will use these funds from Lexington-Fayette Urban County Government to:

- Commerce Lexington will serve as Lexington-Fayette Urban County Government resource for economic development services and referrals for the Lexington business community related to Existing Business Retention and Expansion as well as Talent and Workforce Development.
- These services will include managing the Business Retention and Expansion (BRE) program on behalf of Lexington-Fayette Urban County Government/Lexington Economic Partnership;
- Understand the unique needs of the Lexington business community and assist those companies grow their local workforce;
- Assist globally headquartered businesses in their efforts to grow and grow their corporate headquarter employment within Lexington;
- Work with growing local businesses to maintain and increase their employment diversity;
- Manage the Existing Business Program, with the coordination of all partners. The program will include, but not be limited to:
 1. Scheduling on-site company visits to make possible attendance by staff of the Kentucky Cabinet for Economic Development, LFUCG Office of the Chief Development Officer, Higher Education Representatives (4-Year and Bluegrass Community & Technical College) for Lexington, and a staff member of the Bluegrass Workforce Innovation Board possible for each site visit or virtual meeting;
 2. Provide timely response/communication to any needs identified in existing business program meetings which include appropriate follow-up and services identified or required;
 3. Develop appropriate sector support networks for businesses and employers within Lexington; and
 4. Act as project manager between the company and appropriate organization/subject matter expert for solutions toward issues identified as part of existing business program meetings.

- Report annually to the Office of the Chief Development Officer and the Lexington Economic Development Investment Board (and other committees of LFUCG as required) regarding the following (update in summary and not by name of company/companies):
 1. Data collected and evaluated as part of existing business site visits;
 2. Concerns related to LFUCG policies and procedures expressed by businesses during existing business site visits;
 3. Issues related to growth opportunities and challenges in Lexington;
 4. Intention on additional hiring and new job growth in Lexington
- Provide the Office of the Chief Development Officer by March 31, 2022, an updated listing of Lexington corporate/company contacts and contract information of all major employers that Commerce Lexington interacts with during existing business visits.

Commerce Lexington will act as the resource for Talent and Workforce Development services for the Lexington business community. These services will include:

- Work with Lexington higher education leaders to connect upper level students to jobs or internships in local corporations and companies for graduate level, senior year and junior year students within their identified area of interest. The goal would be to provide possible employment opportunities following the completion of academic degree work
- Work with Fayette County Public Schools to connect junior level students with jobs or internships in local companies in their identified area of interest as part of the Career Academies of Lexington. Emphasis will be placed on those students who will not be going on to post-secondary education.
- Coordinate with education leadership in Lexington at all levels related to issues to assist in development of workforce and growing the Lexington economy.

Commerce Lexington for both Existing Business Retention & Expansion and Workforce Development

- Will serve as a resource for Lexington-Fayette Urban County Government and the Lexington business community
- Commerce Lexington will support the economic development initiatives of the Lexington-Fayette Urban County Government/Lexington Economic Partnership
- Will represent and support businesses before the Kentucky Cabinet for Economic Development and Kentucky Economic Development Finance Authority (KEDFA) including assisting with any application material or other preparations for matters/applications before KEDFA.

EXHIBIT "B"

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

PROGRESS REPORT QUESTIONNAIRE

Listing of member/staff actively working full-time as full-time employees of the organization on Lexington Economic Partnership Efforts:

Name Race Years of Experience in Economic Development

Diversity numbers for entire company/organization:

Business Retention and Expansion (BRE) Program Visits During the Previous Period on Behalf of the Lexington Economic Partnership:

- A. Were all partners involved with the meetings with company leadership (Kentucky Cabinet for Economic Development, LFUCG – Office of the Chief Development Officer, Higher Education Representatives (4-Year and BCTC) and staff from Bluegrass Workforce Innovation Board:
- B. Sectors of companies met with during the previous period:
- C. Globally headquartered businesses met with during the previous period by sector:
- D. Business by sector met with during the most recent period to discuss growth or increased employment plans:
- E. Major follow-up items or company concerns that LFUCG should be aware of from existing business meetings:
- F. Support network or business sector meetings that occurred during the recent period:

Talent and Workforce Development

- A. Describe work in the previous period to connect upper level students to jobs or internships in local corporation and companies for graduate level, senior year and junior year students within their identified are of interest:
- B. How many students were placed in local companies during the previous period in relation to item (A) above in this section:
- C. Describe work in the previous period with Fayette County Public Schools to connect interested junior level students with jobs or internships in local companies in their identified area of interest as part of the Career Academies of Lexington:
- D. Meetings with education leadership in Lexington related to issues to assist in the development of workforce and growing the Lexington economy/jobs:

EXHIBIT "C"

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

YEAR-END REPORT QUESTIONNAIRE

Annual Report: Existing Business Retention and Expansion Program

1. Data collected and evaluated as a result of existing business site visits:
2. Concerns related to LFUCG policies and procedures expressed by businesses during existing business site visits:
3. Issues related to growth opportunities and challenges in Lexington:
4. Corporate expressed intention of new job growth in Lexington by sector:

Annual Report: Talent and Workforce Development

1. Number of upper level students assisted for placement in jobs or internships in local corporations and companies (graduate level, senior year and junior year students) within their identified area of interest:
2. Sectors of employment related to item (1) in this section:
3. Fayette County Public School Students, junior level and above, assisted for placement in jobs or internships in local companies in their identified area of interest as part of the Career Academies of Lexington:
4. Sectors of employment related to item (3) in this section: