

## Lexington Jobs Fund Policies and Guidelines

### I. General

In December, 2013, The Lexington-Fayette Urban County Government established a local economic development incentive program to provide local funding to certain qualified businesses (the “Lexington Jobs Fund” or the “Program”). See Ordinance No. 153-2013. These are the policies and guidelines for the Program. These policies and guidelines are intended to be reviewed and updated, if necessary, every two years.

In order to qualify for incentive funding, a business shall be willing to commit to creating and retaining a minimum number of jobs for a specific duration in Lexington-Fayette County, Kentucky. Any businesses selected for participation shall provide evidence of potential commercial success. The receipt of traditional financing, federal, or qualified federal or state funding through a similar process in which the viability of the business has been substantially reviewed will be considered evidence of potential success, such as a federal Small Business Administration loan or participation in the state Kentucky Business Investment program; however, Program funding will not necessarily be limited to those businesses.

A priority will be placed on providing incentive funding to those businesses which are primarily involved in advanced manufacturing, technology, professional shared service operations, or healthcare, or which have or will be locating their primary base of operations or headquarters in Lexington-Fayette County.

All funds awarded pursuant to the Program shall be solely at the discretion of the Urban County Government and shall be in the form of a loan agreement or, forgivable loan agreement, ~~grant agreement, or similar agreement~~. Each funding agreement shall be approved by the Urban County Council. A business shall only be eligible for a maximum of one type of Program funding at any given time unless otherwise approved by the Urban County Council. This does not preclude a business from applying for an amendment to its existing funding agreement.

The typical maximum amount of any funding agreement will not exceed ~~\$50,000 for a grant agreement~~, \$100,000 for a forgivable loan agreement, and \$250,000 for a loan ~~or other~~ agreement. However, upon the recommendation of the Chief Development Officer and the Economic Development Investment Board, and the final approval of the Urban County Council, the funding may exceed the above amounts.

All funding will be made subject to an agreement by the business that a minimum number of jobs, certain wages, and total payroll will be created and that those jobs will continue to exist for the period of time provided in the funding agreement. All loans are to be repayable to the Urban County Government within ten (10) years. All ~~grants or~~

~~other~~ agreements shall include provision(s) requiring the repayment of some or all of the funds in the event that the terms of the agreement are not fulfilled.

Any business interested in obtaining funding shall submit a Program funding application to the Chief Development Officer for initial review.

If the Program funding application meets the minimum criteria, the Chief Development Officer will make a recommendation to the Economic Development Investment Board regarding the application. The applicant will be provided the opportunity to present additional information to the Board regarding its application. The Board will consider and review the application and any other relevant information provided regarding the application. The Board will make a recommendation to approve the application in full, in part, or deny the application. The Board may also recommend that the type or form of the funding be amended or request that the applicant amend the application and/or reapply for a different type of funding. If the Board determines that the Program funding application should be partially or entirely funded the appropriate administrative steps will be taken to present the recommendation and the appropriate Program funding agreement to the Urban County Council for consideration. Only appointed members of the Board may vote to send recommendations and funding agreements to the Urban County Council.

## II. Lexington Job Funds Programs

There are ~~four~~ two distinct programs within the Lexington Jobs Funds, both of which are intended to attract and support innovative and/or local businesses. ~~Two of the programs are related to attracting and supporting innovative businesses and two are related to expanding local businesses. These businesses.~~ These programs are intended to be flexible with those parameters which are in addition to those required Ordinance No. 153-2013 (and which are listed in the below tables), operating as general guidance in making recommendations for funding. For example, if a sufficient business case is made in support of providing incentive funds in excess of the respective amounts listed in the below tables, the Economic Development Investment Board may propose that the LFUCG enter into an agreement to provide ~~the a~~ higher amount. However, only the Urban County Council has the authority to authorize the issuance of incentive funds to a business under any of the programs.

### *Business Attraction and Expansion*

Program/Funding Type	<del>Grant</del>	<del>Grant/</del> Forgivable Loan	Loan
Amount	<del>Up to \$50,000</del>	Up to \$100,000	Up to \$250,000

Interest	<del>Penalties (10-year Note plus risk and overhead adjustment)</del>	10-year Note plus risk and overhead adjustment <del>(10-year Note plus risk and overhead adjustment)</del>	10-year Note plus risk and overhead adjustment
Term	10 years	Up to 10 years	Up to 10 years
Eligibility	<del>           -Shall be a business located in or planning to move to Lexington            -Job creation requirement            -Shall be current with all federal, state, and local taxes            -Shall produce a tradable good or provide a tradable service (whether pre- or postcommercialization)            -Average wages for job creation are greater than or equal to 125% of the county median income         </del>	<ul style="list-style-type: none"> <li>-High Growth Company</li> <li>-Shall be a business located in or planning to move to Lexington</li> <li><del>-Job creation requirement</del></li> <li>-Shall be current with all federal, state, and local taxes</li> <li><u>-Shall provide personal guarantee or collateral to secure the loan sufficient to LFUCG</u></li> <li>-Shall produce a tradable good or provide a tradable service (whether pre- or post-commercialization)</li> <li><del>-Job creation requirement</del></li> <li>-Average wages for job creation are greater than or equal to 125% of the county median income, <del>and</del></li> <li><u>-All jobs created must be subject to Lexington-Fayette County payroll taxes occupational license fees.</u></li> <li><u>-Cannot be located within an existing Tax Increment Financing (TIF) district.</u></li> </ul>	<ul style="list-style-type: none"> <li>-Shall be a business located in or planning to move to Lexington</li> <li>-Shall be current with all federal, state, and local taxes</li> <li>-Shall provide personal guarantee or collateral to secure the loan sufficient to LFUCG</li> <li>-ED fund loan cannot exceed 50% of loaned dollars from other sources</li> <li>-Job creation requirement</li> <li><del>-Proposed average job salaries meet or exceed the county median income</del></li> <li>-Shall produce a tradable good or provide a tradable service (whether pre- or post-commercialization)</li> <li>-Average wages for job creation are greater than or equal to 125% of the county median income</li> <li><u>-All jobs created must be subject to Lexington-Fayette County payroll taxes occupational license fees.</u></li> </ul>
Performance Indicators	<del>           -Dollars Leveraged            -Jobs Retained and Created            -New Revenue Generated            -Total Payroll         </del>	<ul style="list-style-type: none"> <li>-Dollars Leveraged</li> <li>-Jobs Retained and Created</li> <li>-New Revenue Generated</li> <li>-Total Payroll</li> </ul>	<ul style="list-style-type: none"> <li>-Dollars Leveraged</li> <li>-Jobs Retained and Created</li> <li>-New Revenue Generated</li> <li>-Total Payroll</li> </ul>
Additional Notes	<del>           -Funds may not be disbursed until confirmation of hiring or receipt of expenses has been presented.            -Company receiving KBI shall not be eligible for a grant unless expressly authorized by the board.         </del>	<ul style="list-style-type: none"> <li>-Funds may not be disbursed until confirmation of hiring or receipt of expenses has been presented.</li> <li>-Company receiving KBI shall not be eligible for a forgivable loan unless expressly authorized by the board.</li> <li>-The Board shall set the forgivability percentage.</li> <li><u>-Workforce training loans may be eligible for earlier forgiveness, which will be conditioned upon</u></li> </ul>	<ul style="list-style-type: none"> <li><u>-Funds may not be disbursed until confirmation of hiring or receipt of expenses has been presented.</u></li> <li>-The board may assign, or allow negotiation, for a traditional loan or a half-term, interest-only loan.</li> <li>-The loan may <u>be approved for any term between five (5) and ten (10) years</u></li> <li><del>be for any term between five (5) and ten (10) years.</del></li> </ul>

		<u>the provision of transferrable training/skills.</u>	
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### *Workforce Training Grant*

<b>Program/Funding Type</b>	Worker Training Grant
<b>Amount</b>	A portion or all of employer's cost for training workers up to \$25,000
<b>Interest</b>	<i>Penalties (10 year Note plus risk and overhead adjustment)</i>
<b>Term</b>	Up to 5 years
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>-Shall be a business located in or planning to move to Lexington</li> <li>-Limited for positions with demonstrated longstanding unfilled jobs</li> <li>-Businesses are among Bluegrass Economic Advancement Movement targeted industries</li> <li>-Reimbursable training expenses include instructors' salaries, tuition, curriculum development and textbooks / manuals</li> <li>-Shall be current with all federal, state, and local taxes</li> <li>-Shall produce a tradable good or provide a tradable service</li> <li>-Job creation requirement</li> <li>-Average wages for job creation are greater than or equal to 125% of the county median income</li> </ul>
<b>Performance Indicators</b>	<ul style="list-style-type: none"> <li>-Dollars Leveraged</li> <li>-Jobs Retained and Created</li> <li>-New Revenue Generated</li> <li>-Total Payroll</li> </ul>
<b>Additional Notes</b>	<ul style="list-style-type: none"> <li>-Reimbursement will cover a portion or all of the employer's costs. Example: if the employer pays 100% of the worker's training, they can be reimbursed up to 50% of their costs.</li> <li>-Company shall document job creation.</li> <li>-Retention of an employee in those positions for 10 years.</li> </ul>

### III. Protecting Public Dollars and Investments

All funding incentives shall be structured in a manner that protects the public's investment and ensures that a specified minimum number of jobs will be created and ~~or~~

maintained in Lexington-Fayette County for a specified duration. Newly created jobs must be subject to Lexington-Fayette County payroll taxes occupational license fees in order to be eligible for this program. Funds will only be provided through a formal agreement with LFUCG. The Board will assist in the development of appropriate agreements. The preference of the LFUCG is to disburse funds as reimbursements for expenses, when applicable. At the discretion of the board, the funds may be disbursed in a different manner. In the event that a business fails to fulfill the minimum job requirements, penalties will apply in addition to any required repayment of funds under the agreement. However, in no event will LFUCG penalize a business which fails to create or retain jobs which were in excess of those required by the incentive fund loan or grant relevant agreement. The board maintains the discretion to attach additional taxpayer protections as necessary in incentive agreements.

The following or similar types of provisions may be included in all funding agreements:

- No grant or loan agreement may exceed ten (10) years in duration.
- Initial requests for disbursement will be made with the Activation Certificate which affirms that certain minimums established by the board or administration have been met.
- Forgivable loans cannot will not be approved for businesses locating or expanding in an existing Tax Increment Financing (TIF) district.
- The business shall provide LFUCG with regular annual reports and updates as requested confirming the number of jobs above the minimum jobs baseline and criteria established in the agreement.
- The agreements shall include a “but for” clause that indicates but for these incentives these jobs would not be created.
- If feasible, all loans may be secured with the highest lien position available. Depending upon the circumstances, the The LFUCG may will require personal guaranties of the owner(s) or other additional security.
- If it is in the best interest of LFUCG, the loan or grant relevant agreement may be structured in a manner in which the incentive funds are disbursed over a period of time, or as reimbursement for a capital or operating expense instead of as a lump-sum disbursement.
- The agreements shall include a best efforts clause regarding the use of funds.

- In the instance of a shut down or other cessation of operations, the company shall repay the full amount of the incentive plus any accrued interest.
- Repayment of the incentive may be secured by security covering the period of the loan. Disbursement of the loan may be contingent upon a letter of credit or other security.
- Businesses receiving incentives will be required to sign an affidavit certifying proper use of the funds for operating or capital expenses outlined in their application and contract.
- Businesses that are found to have improperly utilized funds will be subject to financial penalties, in addition to other penalties at the discretion of the LFUCG.
- Additional Jobs Fund incentive requests by a business shall be reviewed to determine the impact of all requests by that business on the Jobs Fund.
- If the business is provided a loan and does not meet its job creation/retention target benchmarks, the incentive funding will be reduced and/or penalties will apply.

Examples include, but are not limited to:

- o The elimination of any incentive fund payments to the business that have yet to be disbursed.
  - o The acceleration of any required repayments during period(s) of nonperformance by the business.
  - o Additional interest penalties tied to non-performance by the business.
- ~~If the business is provided a grant and does not meet its job creation/retention target benchmarks, the incentive funding will be reduced and/or penalties will apply. Examples include, but are not limited to:~~
    - o ~~The elimination of any incentive fund payments to the business which has not been disbursed.~~
    - o ~~The grant incentive funds that the business has received would be required to be repaid to LFUCG. All grants agreements will include an assigned market interest rate which would apply in this event.~~
    - o ~~Additional interest penalties tied to non-performance by the business. Penalties as defined by amount and term of the grant or loan which would be paid monthly and cease if job creation goals were met.~~

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**EXAMPLE FORMULAS**

$$\frac{\text{Jobs Scheduled to be Created} - \text{Actual Jobs Created} \times \text{Dollar Amount of Incentive}}{\text{Length of Incentive} \times \text{Jobs Scheduled to Be Created}}$$

$$\frac{\text{Target Annual Average Wage} - \text{Actual Annual Average Wage} \times \text{Loan Amount}}{\text{Length of Incentive} \times \text{Target Annual Average Wage}}$$

**IV. Funding Form/Criteria Evaluation**

The LFUCG’s Chief Development Officer, working in conjunction with the Economic Development Investment Board, will develop appropriate criteria for reviewing the strength of an application for incentive funding and determining the amount and type of funding for which an applicant may qualify. Incentives should be gap financing or deal closing investments. Stand-alone incentives that do not meet one of those two criteria will not be considered.

The board shall establish an average wage benchmark annually. The benchmark must be for an individual and not a household. This benchmark shall be sourced from federal data and shall be either the mean or the median.

At a minimum, the following will be considered in making a recommendation regarding an application:

<b>Strategic Fit</b>	
Describe how the proposed project fits with the targeted sectors of Lexington-Fayette County. These include advanced manufacturing, technology, shared service operations, healthcare, or the relocation of primary base of operations to Lexington	
<b>General Considerations</b>	
Will the Project be located within Fayette County?	<b>No funding will be permitted unless jobs are created or retained in Lexington-Fayette County</b>

Dollar Amount of Requested Incentives?	
Type of Incentive? <del>Loan or Grant</del>	
Purpose for the Incentives?	<b>Companies shall indicate the operating or capital expenditures for which they intend to use the funds.</b>
Receiving other LFUCG Incentives? Examples include tax abatement, tax increment financing, local KBI incentives, and loan programs outside the JOBS Fund.	<b>Companies will not be eligible for multiple incentive programs from LFUCG unless issued as a single incentive package or separate projects, subject to approval by the <u>Economic Development Investment Board</u>.</b>

	<b><u>Economic Development Investment Board.</u></b>
Eligible for Public Incentives outside of LFUCG? Which programs, and are you applying?	
Other sources of financing?	
Are all business taxes and licenses current?	<b>No funding will be permitted if the applicant owes any federal, state, or local taxes, fees, fines, or penalties.</b>

<p>Business organized in Kentucky?</p>	<p><b>The business shall be legally authorized to operate in Kentucky as evidenced by appropriate documentation on file with the Kentucky Secretary of State and the Department of Revenue</b></p>
<p>New or Expanding business?</p>	
<p>Is the business retail or restaurant?</p>	<p><b>No funding will be permitted for retail or restaurant components of businesses.</b></p>
<p>Will any incentive funds supplant other financing?</p>	
<p><b>Local Impact Measures</b></p>	
<p><i>Current Jobs</i></p>	
<p><i>Current Payroll</i></p>	
<p><i>Current Average Wage</i></p>	
<p>Estimated Jobs Created <i>Use a schedule to detail when jobs will be created if not all created in the first year and retained until the end of the incentive period.</i></p>	
<p>Estimated Average Wage (shall be greater than or equal to current Lexington-Fayette County median income)</p>	
<p>Leveraged Private Investment Dollars</p>	
<p>Dollar Cost per Job Created</p>	

Description of Use of Funds	
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## V. Application Process

LFUCG's Chief Development Officer, working in conjunction with the Economic Development Investment Board, will develop an appropriate standard application(s) for the ~~four~~ two types of Program funds which will include the minimum information specified herein as well as that information deemed by the Chief Development Officer or the Board to be reasonably related to obtaining the information necessary to make an incentive funding recommendation. The application shall include the information specified in Section IV, above, along with sufficient supporting documentation. The Chief Development Officer, LFUCG, Board, or Urban County Council may request supplemental information from the applicant as needed. The Chief Development Officer, in conjunction with the Economic Development Investment Board, may modify the application as necessary to ensure that all of the information necessary for awarding incentives and compliance is available. To the extent required by law, LFUCG will treat as confidential those items marked as proprietary or confidential. ~~The respective~~ Applications for the following types of Program funding may also include the following:

### *~~Innovation Application Materials~~*

- ~~• Describe the company~~ ~~• The company's location, size and operating history~~ ~~• The products and/or services currently offered~~ ~~• Appropriate Tax Identification Numbers.~~
- ~~• Business Questionnaire that includes baseline employment and revenue.~~
- ~~• Business plan and brief description of the specific project for which funding is sought~~
- ~~• Completed balance sheet and profit and loss statement (projection or actual)~~
- ~~• Monthly cash flow projections for the next two years of business operations~~
- ~~• A detailed sources and uses table for financing of the business or project~~
- ~~• Debt schedule showing existing business debts—creditor name, address, and acct #, interest rate, term, and collateral used to secure the debt~~
- ~~• Personal financial statements of all owners, past 2 years personal income tax returns, and equity position~~
- ~~• Personal History Statement of all principals owning 20% or more of the business~~
- ~~• Itemization and verification of collateral (i.e. appraisals, serial numbers, titles, insurance, etc.)~~
- ~~• Description of current or expected customers (depending on proprietary nature)~~
- ~~• Amount and source of grant and matching funds~~

- ~~Report of creditworthiness or traditional financing, or qualified federal or state funding through a similar process in which the viability of the business has been substantially reviewed~~

#### *Local Business Application Criteria*

- Describe the company
  - ~~The company's location, size and operating history~~
  - ~~The products and/or services currently offered~~
  - ~~Appropriate Tax Identification Numbers.~~
- Business Questionnaire that includes baseline employment and revenue
- Describe the proposed project or proposed purpose for the funds 
  - Amount of funds requested and how the proceeds will be used
  - ~~Describe any private financing you have sought.~~
- The economic impact, including employment (both direct and indirect) and forecasted revenue growth resulting from the project
- The applicant's position that the uses of loan proceeds can be capitalized under Generally Accepted Accounting Principles
- Total eligible project costs
- Amount and source of matching funds
- Personal financial statements of all owners, past 2 years personal income tax returns, and equity position This requirement applies to all principals/owners with at least 20% ownership of the company, and the guarantor for the loan.
- Personal History Statement of all principals owning 20% or more of the business
- Report of creditworthiness or traditional financing, or ~~qualified federal or state funding through a similar process in which the viability of the business has been substantially reviewed~~
- ~~Itemization and verification of collateral (i.e. appraisals, serial numbers, titles, insurance, etc.)~~
  - Include three years reviewed and/or audited financials

Any business interested in obtaining funding shall submit a Program funding application to the Chief Development Officer for initial review. An application fee may be required. The board will establish the fee annually, ~~which and it~~ will not exceed \$1000. Initial review of all submitted materials will be conducted by a panel to include the Chief Development Officer, or his or her designee, a representative from the Department of Law, and a representative from the Department of Finance, ~~and Administration.~~

If the Program funding application meets the minimum criteria, the Chief Development Officer will make a recommendation to the Economic Development Investment Board regarding the application. If the application does not meet the minimum criteria, it will not be considered by the Board.

The Economic Development Investment Board will meet on a regular monthly schedule and as otherwise necessary to review any applications. In all instances the applicant or an authorized representative shall attend the Board meeting(s) at which the applicant is to be considered.

The Board will be provided ~~sufficient copies of~~with the relevant application documents in advance of the meetings. The Board will make a recommendation to approve the application, amend the application, or deny the application, or may request that additional information be provided prior to making a final decision. The Board will also make a recommendation as to the type and amount of funding and whether additional requirements should be placed in any funding agreement. The Board will also establish the interest rate, ~~which will generally be the greater of a minimum of 2.5% or the 10-year like Treasury Note rate, for loans~~ and the penalty rate for ~~grant funds~~loans, ~~which will generally be a minimum of 2.5% or the 10-year Treasury Note rate.~~ The ~~i~~Interest accrual will not be applied to funds that are yet to be disbursed.

If the Board determines that the Program funding application should be partially or entirely funded, the appropriate administrative steps will be taken to present the recommendation and the appropriate Program funding agreement to the Urban County Council for consideration. The applicant and LFUCG then enter a negotiation period that can last up to 90 days. This negotiation period will be the allowable amount of time that a contract with the parameters set by the board is finalized before being taken to the Urban County Council for final approval. The Chief Development Officer and Economic Development staff shall draft an initial contract to be delivered to the applicant for review and execution.

In the instance that an agreed upon contract cannot be reached within 60 days, the board is notified and may move to extend the negotiating period. If the negotiating period extension is not moved, or is a failed motion, the approval lapses and the company must reapply to receive incentives. If the extension is granted, and the applicant and LFUCG do not finalize the contract within the extended negotiating period, the approval lapses and the company must reapply to receive incentives.

All incentive agreements will be reviewed by the Department of Law and the Mayor will be authorized to sign the agreement following the approval of the awarding of the incentive by the Economic Development Investment Board and the Urban County Council.

Members of the Board and the Urban County Council will be required to recuse themselves if they are private investors in the company applying for incentives or otherwise have a conflict and are prohibited from investing in companies that have received incentives.

## **VI. Accounting and Compliance**

The JOBS fund will be maintained as distinct within the LFUCG accounting system. Disbursements will be made from that account. Future appropriations, repayment of loan proceeds, or clawbacks will be placed in that account. Disbursements will be made from the same account. Disbursements of the funds may be all at once, scheduled, or paid when an invoice for approved capital or operating expenses is received. An invoice certifying a previously paid expense to be reimbursed will be the preferred method for distributing grant funds. Loan payments of principal and interest will be made monthly to LFUCG beginning on the date established in the contract. Grant repayments will not be made except in the instance of noncompliance using the clawback formulas in section III.

In their initial application, a business will establish their baseline of jobs, payroll, and revenue from which compliance will be measured. The business will also establish a schedule that outlines the anticipated dates of job creation related to the project. The business will be required to submit reports annually and as requested outlining job creation and average wages for the jobs created at the end of the year that jobs are scheduled to be created. Information obtained from the business' tax identification numbers will be used to supplement this information and confirm compliance submissions from the companies.

In the event that a business is found to be noncompliant with job creation, wage targets, or established payroll targets, the Board will provide a notice of noncompliance and indicate the time period in which the business shall become compliant. Alternative options may accompany a notice of noncompliance at the discretion of the Board. If the business fails to become compliant, then the clawbacks specified in the incentive agreement will go into effect until compliance is verified.

Proper usage of the incentive funds will also be viewed as key to compliance with the program. The quarter following each disbursement, each fund recipient shall submit a Certificate of Proper Use along with documentation of expenses equaling the incentive. If planned expenses are less than the incentive provided, the business may propose additional expenses to the Board for the use of those funds, or the funds may be returned to LFUCG at no penalty.