

RESOLUTION NO. \_\_\_\_ – 2021

A RESOLUTION CREATING THE LFUCG SMALL BUSINESS ECONOMIC RECOVERY PROGRAM TO PROVIDE GRANTS OF UP TO \$5,000,000 (CUMULATIVELY) TO QUALIFYING LOCAL SMALL BUSINESSES, WITH THE FIRST \$2,500,000 AUTHORIZED BY THIS RESOLUTION; PROVIDING FOR THE PROGRAM'S PURPOSE; SETTING A GOAL OF 50% FUNDS DISTRIBUTED TO MINORITY OR WOMEN OWNED BUSINESSES OR BUSINESSES LOCATED WITHIN LOWER INCOME AREAS; LIMITING GRANTS TO AN AMOUNT NOT TO EXCEED A MAXIMUM OF \$25,000 EACH WITH A ONE YEAR COMPLIANCE PERIOD; SETTING ELIGIBILITY REQUIREMENTS AND BUSINESS IMPACT CRITERIA; PROVIDING FOR APPLICATIONS AND AUTHORIZATION TO EXECUTE NECESSARY AGREEMENTS WITH GRANTEEES; AND AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT TO EXECUTE AN AGREEMENT WITH COMMERCE LEXINGTON, INC., FOR A FEE IN AN AMOUNT OF 7.5% OF THE FUNDS DISTRIBUTED (NOT TO EXCEED \$187,500) TO ADMINISTER THE PROGRAM, INCLUDING APPLICATION REVIEW AND COMPLIANCE; AND FURTHER AUTHORIZING THE MAYOR OR HER DESIGNEE TO TAKE ANY OTHER ADDITIONAL NECESSARY ACTIONS; ALL EFFECTIVE UPON PASSAGE OF COUNCIL.

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WHEREAS, Lexington-Fayette County has experienced an unprecedented health pandemic related to COVID-19, which has resulted in economic turmoil and significant economic losses to many local small businesses; and

WHEREAS, the Urban County Council desires to create a \$5,000,000 grant program to assist local small businesses in their recovery from the pandemic, to be known as the "LFUCG Small Business Economic Recovery Program" (or hereinafter the "Program");

WHEREAS, at least fifty percent (50%) of the Program funds are desired to be spent on minority or women owned businesses and/or on small business located in lower income areas of Lexington-Fayette County; and

WHEREAS, the Lexington-Fayette Urban County Government needs to establish the minimum criteria for qualifying for Program funding and operating the Program; and

WHEREAS, the Urban County Government has determined that the Program established herein fulfills a public purpose by providing for economic development and recovery from the current public health emergency and other public purposes;

WHEREAS, it is the intent of the Urban County Government that the Program and the use of the funds qualify as an appropriate expenditure of any funds that the government may receive from the American Rescue Plan of 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the preamble set forth following the title to this resolution is incorporated herein as if set out in full.

Section 2 – That the term “business” is intended to be broad and includes a sole proprietorship, partnership, limited liability corporation, not-for-profit, or non-profit organization or any other business entity form recognized under Kentucky law. The term “business” does not include governmental entities, special purpose governmental entities, or any entity created by the Lexington-Fayette Urban County Government.

Section 3 – That there is hereby established a local economic development program to provide grants to certain qualified local small businesses to be known as the “LFUCG Small Business Economic Recovery Program” (or hereinafter the “Program”), as further provided herein.

Section 4 – That the purpose of the Program is to provide certain qualified local small businesses with total cumulative funding of up to \$5,000,000, through the Program administrator by providing grants of up to \$25,000 each, with a primary goal of providing funding stability to local small businesses such that they can retain or expand jobs and their related Lexington-Fayette County payroll base.

Section 5 – That grant compliance for each grantee shall be based upon the number of jobs retained and/or the total Lexington-Fayette County payroll base amount one year after receipt of the funds, compared to those figures at the time of application, and as further determined by the Program administrator consistent with the provisions of this Resolution.

Section 6 – That the maximum amount of cumulative funding under the Program is \$5,000,000, with an initial provision of funding in the amount of \$2,500,000, as further provided herein.

Section 7 – That there is a goal of distributing at least fifty percent (50%) of the funds to qualifying minority or women owned business and/or to businesses located within lower income areas of Lexington-Fayette County.

Section 8 – That all funds granted to businesses pursuant to the Program shall be awarded solely at the discretion of the Urban County Government or its Program administrator and shall be in the form of a grant agreement with requirements that the recipient fully comply with any applicable certification or documentation requirements.

The maximum amount that may be provided to any business under this Program is \$25,000. A business is not guaranteed to receive funding and may not necessarily receive funding in the amount that it has requested.

Section 9 – That Program compliance shall be determined as follows:

(a) Program compliance by the grantee will be based the number of jobs retained and/or the total Lexington-Fayette County payroll base amount one year after receipt of the funds, compared to those figures at the time of application. In order to account for normal employment attrition without penalizing the grantee, a grantee whose grant is based upon the retention of jobs may still be deemed compliant as long as its 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.

(b) Compliance with the terms of the grant will be based upon a sliding scale comparing the percentage of jobs retained by the grantee and/or its total Lexington-Fayette County payroll base one year after receipt of the funds to those figures at the time of application, and as further determined by the Program administrator consistent with the provisions of this Resolution.

(c) Example: Business X applies for and receives a \$25,000 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.

Section 10 – That in order to be eligible to receive funding, a business must, at a minimum, meet and/or agree to the following requirements:

(a) A nexus to or situs in Lexington-Fayette County with employees currently working in Lexington-Fayette County and/or providing goods or services to the general public in Lexington-Fayette County;

(b) Registered with Lexington-Fayette Urban County Government's Division of Revenue since at least January 1, 2021, with any appropriate business license(s);

(c) A maximum of no more than fifty (50) full-time equivalent employees if a non-restaurant, restaurants may have a maximum of no more than one hundred (100) full-time equivalent employees, as applicable;

(d) Current on the filing of returns and payments on all occupational license fees, licensing and registration and otherwise be in good standing with the Lexington-Fayette Urban County Government;

(e) Compliance with all applicable federal, state and local laws and regulations, including but not limited to those pertaining to employment and discrimination; and

(f) Compliance with and documentation or reporting requirements related to the receipt or expenditure of the funds.

Section 11 – That all funding awards must be used solely to maintain or increase the grantee’s number of employees in Lexington-Fayette County and/or its total Lexington-Fayette County payroll base for a period of at least one (1) year from receipt of funds.

Section 12 – That in establishing the amount of the award to each recipient the following factors, at a minimum, are to be considered:

(a) The economic impact of the business on the community, such as its total number of employees and/or its total Lexington-Fayette County payroll base, or similar factors;

(b) The applicant’s ability to retain or exceed its current employment and/or payroll levels;

(c) The applicant’s business sector, with preference to the most impacted sectors since March 2020, according to KYSTATS data;

(d) The importance and vitality of the business to the community, such as whether the business is located in an area with few or no other similar businesses, assists in sustaining other businesses, or similar factors;

(e) The amount of prior federal or local funding the business has previously received or will otherwise receive related to the COVID-19 crisis; and

(f) The amounts of occupational license fee, and state and federal tax, relief the business has received since March 2020 related to the COVID-19 crisis.

Section 13 – That the application must be in a form approved by the Mayor’s Office of Economic Development, the Department of Law, and the Program administrator, and shall contain, at a minimum:

(a) Name of owner;

- (b) Lexington business license number;
- (c) Proof of registration with the Kentucky Secretary of State;
- (d) Business sector;
- (e) Number of employees, as of date of filing;
- (f) List of all federal or local funding received related to the COVID-19 crisis and a description of the use of said funds;
- (g) The amounts of Lexington occupational license fee, and state and federal tax, relief since March 2020 related to the COVID-19 crisis;
- (h) A proposal describing how the grant funding will maintain or increase payroll or employment;
- (i) A description of the business' need for the funding; and
- (j) Any necessary requirements as provided herein or as reasonably determined to be necessary in the administration and operation of the Program that are consistent with this Resolution.

Section 14 – That an agreement between Commerce Lexington, Inc., and a grantee shall be required prior to the issuance of funds to recipients under this Program. The agreement must be in a form approved by the Mayor's Office of Economic Development, the Department of Law, and the Program administrator, and shall contain, at a minimum, any necessary requirements as provided herein or as reasonably determined to be necessary in the administration and operation of the Program that are consistent with this Resolution. In order to expedite the distribution of funds, the Mayor or her designee is hereby authorized and directed to execute any agreements that meet the criteria provided in this Resolution if the Government is required to execute the agreement.

Section 15 – That Commerce Lexington, Inc., by and through its Access Loan Program, be and hereby is retained to administer the Program including application review and compliance, and the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute an agreement, which is attached hereto and incorporated herein by reference, with Commerce Lexington, Inc., for the administration of the first \$2,500,000 of the \$5,000,000 LFUCG Small Business Economic Recovery Program, with an administrative fee in the amount of seven and one-half

percent (7.5%) of the funds actually disbursed to the local small businesses, payable to Commerce Lexington, Inc. (not to exceed \$187,500,000).

Section 16 – That an aggregate amount not to exceed \$2,500,000.00 be and hereby is approved for payment to Commerce Lexington, Inc., from account #XXX-XXXXXX-XXXXXX with Commerce Lexington, Inc., retaining a maximum amount up to \$187,500.00 from the total sum, pursuant to the terms of the agreement.

Section 17 – That the Mayor or her designee is hereby authorized to take any additional necessary actions related to the Program, which are consistent with the Program as provided for in this Resolution.

Section 18 – If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19 – That this Resolution shall become effective upon the date of its passage.

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MAYOR

ATTEST:

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CLERK OF THE URBAN COUNTY COUNCIL

PUBLISHED:

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