

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 \$2,500,000 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"); and

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

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; and

WHEREAS, the Urban County Government wishes to partner with Commerce Lexington in order to administer the Program in a timely an efficient manner.

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 Access Loan Program, will administer the \$2,500,000 Lexington-Fayette Urban County Government Small Business Economic Recovery Program ("Recovery Funds" or "the Program") in compliance with the criteria provided in Resolution No. ____ - 2021 ("the Resolution"), which is attached hereto and incorporated herein by reference, and as further described in the attached Exhibit A (Scope of Work) on behalf of Lexington. Administration includes, but is not limited to, the receipt, review, and approval of applications; the entering into grant agreements with approved applicants that is substantially in the same form as Exhibit B, which is attached hereto and incorporated herein by reference; the distributing of funds pursuant to said grant agreements; compliance monitoring; recovery of funds pursuant to said grant agreements and the criteria provided in the Resolution, and the filing of any required tax documents (the "Services"). Exhibit A shall survive the termination of this Agreement. The funds will be deposited at Traditional Bank.

2. An amendment to this Agreement will be required prior to the administration of any subsequent allocation of funds for the Program, should it be authorized by the Lexington-Fayette Urban County Council.

3. In consideration for the Services, Commerce will retain an administrative fee of seven and one half percent (7.5%) of the amount of Recovery Funds distributed by Commerce to small businesses under the Program, not to exceed one hundred eighty-seven thousand and five hundred dollars (\$187,500).

4. Commerce agrees that small businesses are not required to obtain membership in Commerce Lexington to be eligible for funds in the Program.

5. According to the Resolution, an applicant's business sector is one of the factors to be considered when determining grant amounts, with preference to the most impacted sectors since March 2020, according to KYSTATS data. The KYSTATS Impacted Sectors Report is attached hereto and incorporated herein by reference, as Exhibit C.

6. Commerce will provide Lexington with regular progress updates on the funds distributed pursuant to this Agreement on at least a monthly 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.

7. 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.

8. 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 of time to cure the breach shall be reasonable, but in all instances must be at least thirty (30) days. Termination of the Program by Lexington shall terminate this Agreement.

9. Upon termination of this Agreement by either party, all funds provided to Commerce that have not been distributed to small businesses under the Program shall be returned to Lexington within thirty (30) days of termination. Notwithstanding the above, Commerce may keep, as an administrative fee, seven and one half percent (7.5%) of the amount distributed to small businesses under the Program at the time of termination, not to exceed one hundred eighty-seven thousand and five hundred dollars (\$187,500).

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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

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

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

20. 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.

21. 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.

22. 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.

23. 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.

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.

BY: Linda Gorton
LINDA GORTON

Mackenzie Sommers
Abigail Allan Mackenzie Sommers

COMMERCE LEXINGTON, INC.

BY: 
RAY DANIELS, BOARD CHAIR

The Agreement was subscribed, sworn to and acknowledged before me by _____, as _____ of Commerce Lexington, Inc., on this the _____ day of _____, 2021.

My commission expires: 2/16/2023

Cindy Berningfeld
NOTARY PUBLIC, STATE AT LARGE, KY

EXHIBIT A

Lexington/Fayette Urban County Government Addendum for Services Commerce Lexington

Scope of Work

As part of the administration of the Program, Commerce Lexington, through the Access Loan Program staff, will:

- Manage and administer the Lexington-Fayette Urban County Government Small Business Economic Recovery Program.
- Market the Program on their Commerce Lexington website and social media pages as well as informing all its current program partners of the Program. Staff will also work with all Lexington-Fayette Urban County Government Economic Development Partner Agencies to market the Program. Lexington-Fayette Urban County Government and the Lexington-Fayette Urban County Government's Minority Business Liaison Office will also assist the Access Loan Program in marketing the Program.
- Serve as the point of contact for the Program, responsible for responding to all applicant questions and inquiries.
- Begin accepting applications no later than July 1, 2021, using the application approved by the Lexington-Fayette Urban County Government, and continue until all program funds have been distributed to qualified applicants or funds are returned to Lexington-Fayette Urban County Government.
- Review each application and supporting documentation to determine whether it meets the basic requirements established by the Lexington-Fayette Urban County Council to receive program funding.
- Review each application and supporting documentation to determine appropriate funding levels.
- Endeavor to meet the goal of distributing fifty percent (50%) of Program funds to minority-owned or women-owned businesses or businesses located within lower income areas in Lexington-Fayette County.
- Enter into grant agreements in the form approved by Lexington-Fayette Urban County Government with recipients at the funding levels determined by the Commerce Lexington Access Loan Committee, and disperse funds pursuant to said agreements.

- Determine, based upon a recipient's grant agreement, application, and other supporting documentation, whether a recipient is required to repay all or a portion of the grant at the end of the relevant term.
- Send a notice of non-compliance, which shall include a bill for repayment (including amount due) and the LFUCG remittance address, to those businesses required to repay all or a portion of the grant, copying LFUCG. Unless otherwise agreed to by the parties, any litigation related to collection of the funds will be brought by LFUCG, and Commerce will provide any necessary documents and related assistance.
- Supply and collect the compliance monitoring/report form approved by Lexington-Fayette Urban County Government to/from all grant recipients.
- Provide a monthly program status report to the Lexington Economic Development Investment Board while applications are being accepted.
- Once all program funds have been distributed, Commerce Lexington shall submit an initial report which shall include:
 - List of all companies receiving funds under the Program;
 - Amount received by each company under the Program;
 - Total employment of all companies receiving grant funds; and
 - Total payroll of all companies receiving grant funds.
- The initial report will be due to both the Chair of the Council Budget, Finance & Economic Development Committee and the Chief Development Officer within thirty (30) days after the last grant is awarded under the Program. Commerce Lexington shall notify the Chair of the Lexington-Fayette Urban County Council Budget, Finance & Economic Development Committee and the Chief Development Officer once the last grant is awarded to establish the start of the thirty (30) days.
- Provide an update as requested by the Chair of the Lexington-Fayette Urban County Council Budget, Finance & Economic Development Committee after Commerce submits its initial report.
- Collect report information by June 30, 2022 from recipients to show current employment and payroll benchmarked against employment on:
 - January 1, 2020;
 - April 1, 2020;
 - July 1, 2020;
 - October 1, 2020;
 - January 1, 2021;
 - March 1, 2021;
 - June 1, 2021;
 - December 1, 2021; and
 - May 30, 2022

- 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 recipients' final reports are due. The final report shall be broken up into two categories: for-profit businesses and non-profits (or not-for-profits). The report shall include, but shall not be limited to, the following:
 - List of all recipients under the grant program;
 - Amount of funding each recipient received as well as funding requested;
 - Purpose of the funding applied for by the company;
 - Overall diversity by race and ethnicity percentage of the award recipients;
 - Overall women owned business percentage of the award recipients;
 - Overall minority owned business percentage of award recipients;
 - Grant amounts by range and number of awards within each range;
 - Grant amounts by business sector;
 - Employment by race and ethnicity;
 - Employment size of businesses by number of employees;
 - Employment size of businesses by employment sector;
 - Payroll and employment of the recipients (collectively), as well as the estimated payroll tax created by their payroll by compliance reporting period including final reporting period;
 - Payroll comparison across all required reporting time periods and employment and payroll tax impact to Lexington-Fayette Urban County Government during each period including final reporting period; and
 - Map of location showing all award recipients.
- File any documents that may be required by federal or state tax law.
- Collect and return all grant funds repaid by recipients to the Lexington-Fayette Urban County Government within thirty (30) days of receipt by Commerce Lexington.
- Assist the Lexington-Fayette Urban County Government Division of Grants with filing any documentation required if required by federal funding source, guidelines, or policies.
- Otherwise comply with the Program requirements as provided in the Resolution.

EXHIBIT B

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

Grant Agreement

EXHIBIT C

Lexington/Fayette Urban County Government
Addendum for Services
Commerce Lexington

KYSTATS Impacted Sectors Report

Industry	Fayette
Accommodation & Food Services	7,697
Administrative & Support	2,792
Agriculture, Forestry, Fishing, & Hunting	160
Arts, Entertainment, & Recreation	912
Construction	1,053
Educational Services	2,749
Finance & Insurance	364
Health Care and Social Assistance	4,935
Information	432
Management of Companies & Enterprises	158
Manufacturing	3,466
Mining, Quarrying, & Oil & Gas Extraction	**
Not Listed	29,736
Other Services (Except Public Administration)	1,499
Professional, Scientific, & Technical Services	1,380
Public Administration	428
Real Estate & Rental & Leasing	550
Retail Trade	4,660
Transport/Warehouse	1,313
Utilities	**
Wholesale Trade	1,093
Total All Industries	65,377

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 Resolution No. ____ - 2021 ("the Resolution"), 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 Resolution 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 Resolution;
- (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; and 2) 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 Resolution, 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: _____

NOTARY PUBLIC, STATE AT LARGE, KY