

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and entered into on this ____ day of December 2012, by and between Lexington Fayette Urban County Government (hereinafter “LFUCG”), the Lexington Area Metropolitan Planning Organization (hereinafter “MPO”) and The Transit Authority of the Lexington-Fayette Urban County Government (“Lextran”).

W I T N E S S E T H

WHEREAS, the LFUCG, through the MPO has for a number of years operated a mobility program designed to reduce traffic congestion through the use of commuter vans which is otherwise known as the “LexVan vanpool program”;

WHEREAS, the LFUCG has title ownership to the vans in the LexVan vanpool program; and

WHEREAS, the LFUCG and the MPO are parties to certain agreements with the Kentucky Transportation Cabinet (the “Cabinet”) under which funding resources are provided in order to assist with the operations of the LexVan vanpool program; and

WHEREAS, Lextran and the MPO have had ongoing discussions regarding the transfer of the LexVan vanpool program and its assets to Lextran to continue the operation of the program on a going-forward basis; and

WHEREAS, the potential transfer of the LexVan vanpool program and assets has been made known in the MPO’s Unified Planning Work Program Fiscal Year 2013, in Section 3.4 Mobility Coordination; and

WHEREAS, the MPO will continue promotion, marketing, education, outreach and coordination efforts with Lextran regarding the LexVan vanpool program and public transit to help reduce congestion, improve air quality, and provide opportunities for mobility within the MPO area as has been made known in the MPO's Unified Planning Work Program Fiscal Year 2013, in Section 3.4 Mobility Coordination; and

WHEREAS, Lextran is willing to undertake the responsibilities of managing and operating the LexVan vanpool program, including but not limited to those required in any agreements with the Cabinet, in return for the transfer of the vans and other program assets to it.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, LFUCG, MPO and Lextran hereby covenant and agree as follows:

1. The above recitals are incorporated herein as if fully stated.
2. It is the intent of the parties that Lextran should manage, operate, and take full responsibility for the LexVan vanpool program (the "Program").
3. Lextran agrees to fully comply with all of the responsibilities, duties, and obligations required of LFUCG or the MPO by the Cabinet in the agreement which is attached hereto as Exhibit "A" and incorporated herein by reference as if fully stated. These include, but are not limited to, restrictions placed upon the subsequent sale or transfer of the vans and/or other Program assets.
4. Lextran agrees to comply with all of the responsibilities, duties, and obligations required of LFUCG or the MPO by the Cabinet in the agreement which is attached hereto as Exhibit "B" and incorporated herein by reference as if fully stated, which are related to the operations of the Program.
5. Lextran shall within one hundred twenty (120) days of execution of this Agreement notify both LFUCG and the MPO in writing that it has taken the

necessary steps to implement the Agreement and begin operation of the LexVan vanpool program. Within thirty (30) days of receipt of this notice, LFUCG shall transfer title and possession of the vans, along with existing documentation of the repair and maintenance history for each transferred van, to Lextran. The vans are listed in Exhibit "C," which is attached hereto and incorporated herein by reference. The date of transfer of the vans shall be the effective date of this Agreement.

6. Lextran shall be responsible for payment of any fees or costs related to the transfer of the titles of the vans. Other than the funds identified in paragraph 7 below, the parties are not aware of any additional Program assets. The vans are transferred in "as is" condition. Neither LFUCG nor the MPO makes any warranty or representation whatsoever, regarding the condition, safety, or operability of any of the vans.

7. The parties agree that the Program has funds in the amount of \$223,981 as of November 30, 2012. These funds will only be used by LFUCG to pay for the cost of any necessary maintenance or repairs to a vehicle listed in Exhibit "C". All Program funds shall be transferred to Lextran for use solely in conjunction with the operation of the Program. Such funds shall be transferred to Lextran within thirty (30) days of the effective date of this Agreement.

8. Lextran shall indemnify, save, and hold harmless LFUCG and MPO and their respective elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, that arise or are alleged to have arisen, directly or indirectly, from operation and management of the Program subsequent to the effective date of this Agreement. Lextran further agrees to carry appropriate and reasonable amounts and types of insurance coverage necessary for operating and running the Program.

9. The parties agree that the obligations imposed upon the parties are for the benefit of the parties and that the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by the date established by this Agreement shall constitute a breach unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

10. This Agreement shall be effective upon the date of transfer of the vans as provided for in paragraph 5 above. Lextran agrees to take responsibility for all aspects of the Program as of the effective date of this Agreement and shall be solely responsible for fulfilling any obligations, responsibilities, or requirements related to funding and/or grants for the Program.

11. 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 hereto. This Agreement may be executed in three or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

12. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement, which assignment shall be prohibited except with the prior written consent of all parties hereto.

13. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

14. The parties agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Fayette County, Kentucky.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement on the date first above written.

Lexington Area Metropolitan Planning Organization

RUSS MEYER, MAYOR NICHOLASVILLE, KENTUCKY,
CHAIRMAN, LEXINGTON AREA METROPOLITAN PLANNING
ORGANIZATION

ATTEST BY:

Lexington-Fayette Urban County Government

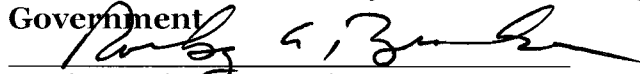
By: _____
JIM GRAY MAYOR

ATTEST:

Susan Lamb

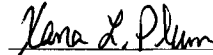
Clerk of the Urban County Council

**The Transit Authority of the Lexington-Fayette Urban County
Government**



Rocky Burke, General Manager

ATTEST BY:



Xana Plum

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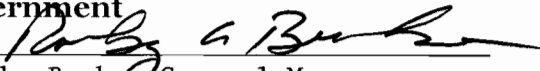
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