

## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky pursuant to KRS 67A (hereinafter "GOVERNMENT"), whose mailing address is 200 East Main Street, Lexington, Kentucky 40507, and Transit Authority of Lexington-Fayette Urban County Government, Kentucky, (hereinafter "CONTRACTOR"), whose mailing address is 200 West Loudon Avenue, Lexington, Kentucky 40508.

### **WITNESSETH:**

WHEREAS, GOVERNMENT has been awarded federal funds from the Commonwealth of Kentucky, Transportation Cabinet under the Office of Transportation Delivery Section 5303 funding (Catalog of Domestic Assistance Program Number 20.520) for the support of Comprehensive Operational Analysis;

WHEREAS, the GOVERNMENT'S responsibility for ensuring compliance with all grant requirements necessitates a written AGREEMENT with CONTRACTOR;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, pursuant to grant requirements, the parties hereto agree as follows:

### **ARTICLE I**

#### General Terms:

1. The term of this Agreement shall be for a period beginning July 1, 2019, and continuing until June 30, 2020. This Agreement is contingent upon continued availability of appropriated federal funds and may be extended.
2. The total amount of grant funds available for distribution by the GOVERNMENT for the support of the herein-described services shall be \$320,000.

### **ARTICLE II**

#### Obligation of GOVERNMENT:

1. To provide up to \$320,000 in grant funds for the support of the herein-described contractual obligations.
2. GOVERNMENT shall participate in the herein described planning process through the involvement of the Lexington Area Metropolitan Planning Organization (MPO), as described in the attached Scope of Work (Exhibit A).
3. As a major stakeholder, the MPO shall review and approve the negotiated final project scope of work.
4. The MPO shall serve in an advisory role to review and approve work throughout each phase of the project.

### **ARTICLE III**

#### Obligations of CONTRACTOR:

1. CONTRACTOR shall provide documentation of a required \$80,000 in matching funds. This documentation includes evidence of eligible expenditures including copies of invoices and proof of payment.
2. CONTRACTOR shall be responsible for completion of scope of work made a part of this Agreement by reference and in the Scope of Work and Budget Summary, attached as Exhibit A, in accordance with the terms and conditions of this Agreement and all applicable regulations

or directives issued by the Kentucky Transportation Cabinet and/or the Federal Highway Administration.

3. CONTRACTOR shall submit to the GOVERNMENT invoices requesting payment for services provided. Invoices shall include evidence of work completed and copies of invoices for which reimbursement is requested. Invoices may be submitted to the GOVERNMENT monthly. CONTRACTOR also agrees to submit a quarterly progress report within 30 days of the end of each calendar quarter for the duration of this agreement.
4. CONTRACTOR shall follow the applicable federal guidelines for the procurement of professional services. Copies of all documentation for procurement of professional services shall be submitted to the GOVERNMENT. CONTRACTOR shall also submit to the GOVERNMENT a copy of the fully executed consultant agreement.
5. CONTRACTOR agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation.
6. CONTRACTOR shall comply with all non-discriminatory requirements imposed by Title VI of the Civil Rights Act of 1964 and all applicable federal or state requirements, including Executive Orders. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, disability, gender, age, and sexual orientation. The CONTRACTOR shall take affirmative action and not discriminate against any employee or applicant for employment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The CONTRACTOR shall incorporate the foregoing requirements of this paragraph in all contracts for services covered by this Agreement.
7. CONTRACTOR agrees to comply with the DBE requirements contained within 49 CFR Part 26.

DBE Assurance: The CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Failure by the CONTRACTOR to carry out applicable requirements of 49 CFR Part 26 is a material breach of this Agreement which may result in the termination of this Agreement, Each contract signed with a subcontractor must include this provision.

DBE Prompt Payment Requirement: The CONTRACTOR must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all subcontractors must be paid within ten (10) working days after the CONTRACTOR has been paid for work performed or services delivered. CONTRACTOR may not withhold retainage on a subcontract of this Agreement.

8. CONTRACTOR shall retain all records pertinent to expenditures incurred under this Agreement, for a period of (3) three years after the termination of all activities funded under this Agreement. CONTRACTOR shall also provide officials of the GOVERNMENT, officials of the U.S. Department of Transportation, the Kentucky Transportation Cabinet, the Finance and Administration Cabinet, the Auditor of Public Accounts and the Legislative Research Commission, or any of their authorized representatives, access to any books, documents, papers, or other records of CONTRACTOR which are pertinent to funds expended under the terms of the Agreement, for purpose of financial audit or program review. The right of access shall be for the period in which records are retained. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later. Furthermore, all books, documents, papers, records or other evidence provided to the GOVERNMENT, officials of the U.S. Department of Transportation, the Kentucky Transportation Cabinet, the Finance and Administration Cabinet, the Auditor of Public Accounts and the Legislative Research Commission which are directly pertinent to the Agreement shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS

61.878(1)(c) prior to the execution of this Agreement. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of information which would otherwise be subject to public release if a state government agency were providing the service.

9. CONTRACTOR swears under penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity which he/she represents has knowingly violated provisions of the campaign finance laws of the Commonwealth.
10. If applicable, pursuant to KRS 45A.485, the CONTRACTOR shall reveal to the GOVERNMENT and the Kentucky Transportation Cabinet the final determination of a violation within the previous five (5) year period pursuant to KRS Chapters 139, 136, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health law, unemployment compensation law and workers compensation insurance law, respectively.

The CONTRACTOR agrees to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this Agreement. Failure to reveal a final determination of a violation of the referenced statutes or to comply with these statutes for the duration of the Agreement shall be grounds for the termination of the Agreement and disqualification from eligibility for future contracts for a period of two years.

11. CONTRACTOR agrees to defend, indemnify, and hold harmless GOVERNMENT from any and all losses or claims of whatever kind, that are in any way incidental to, or connected with, or that arise or alleged to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this Agreement by CONTRACTOR, including any environmental problems, including, without limitation, soil and/or water contamination, and remedial investigations and feasibility studies thereof, which exist at or prior to the contract commencement date, regardless of which such losses or claims are made or incurred. This indemnity agreement shall in no way be limited by a financial responsibility, or loss control requirements below, and shall survive the termination of this Agreement;

For the purposes of this Indemnity Provision:

- A. The word “defend” includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at CONTRACTOR’S expense, using attorneys approved in writing by GOVERNMENT, which approval shall not be unreasonably withheld.
  - B. The word “claims” includes, but is not limited to, claims, demands, liens, suits, notices of violation from Governmental agencies, and other causes of action of whatever kind.
  - C. The word “losses” includes, but is not limited to: attorney fees and expenses; costs of litigation; court or administrative costs; judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of CONTRACTOR and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.
9. The CONTRACTOR certifies, in accordance with Executive Order 12549 (Debarment and Suspension February 18, 1986) that to the best of its knowledge and belief, that it, its principals, and its subcontractors:

Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by and Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other federal law;

- a. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- b. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (a) of this certification; and
- c. Have not within a three-year period preceding this proposal had one or more public (Federal, State, or local) transactions or contracts terminated for cause or default.

**ARTICLE IV**

Additional Terms:

1. This Agreement, in accordance with 49 CFR 18.43, may be terminated by the GOVERNMENT upon thirty days written notice, if CONTRACTOR materially fails to comply with any term of the Agreement.
2. This Agreement, in accordance with 49 CFR 18.44 may be terminated for convenience upon thirty days written notice by the GOVERNMENT.
3. GOVERNMENT and CONTRACTOR each binds himself and his partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the Agreement.
4. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the GOVERNMENT prior to the execution of such agreement.
5. If this Agreement results in any copyrightable material or inventions, the GOVERNMENT and/or grantor agency reserves the right to royalty-free, non exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.
6. This Agreement contains the entire and complete understanding of the parties and neither party has relied upon any representation not contained herein.
7. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and CONTRACTOR.

**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:

\_\_\_\_\_  
Clerk of Urban County Council

TRANSIT AUTHORITY OF LEXINGTON-  
FAYETTE URBAN COUNTY GOVERNMENT

BY: \_\_\_\_\_  
Carrie Butler, General Manager

\_\_\_\_\_ Date

## EXHIBIT A – SCOPE OF WORK AND BUDGET SUMMARY

The Lexington Area MPO will assist Lextran, the Transit Authority of Lexington, in completing a comprehensive operational analysis with \$320,000 in 5303 funds in FY2020 and FY 2021. Lextran will contribute \$80,000 in matching funds towards the project total of \$400,000. Lextran stands ready to conduct a comprehensive operational analysis that will ultimately provide a path to align resources and service demands. Comprehensive operational analyses typically have a five-year horizon for recommended projects, and Lextran's most recent comprehensive operational analysis was completed in 2014. The purpose of this comprehensive operational analysis project is to answer difficult questions about how transit service is produced and consumed in Lexington-Fayette County, such as determining if service is being provided in the appropriate areas with adequate frequency at the appropriate times of day.

The comprehensive operational analysis project is rooted in the context of Lextran's three key pillars and a recent Board-level strategic planning session. The outcomes of that strategic planning session are loosely organized below around the three key pillars:

- 1. Deliver a high-quality product and service.**
  - Provide more direct trips and reduce the need for customers to travel downtown
  - Improve on-time performance of paratransit and fixed-route service
- 2. Demonstrate value to our community.**
  - Engage the community to solicit their perspective on transit service
  - Identify key markets among the business and non-profit community to create new partnerships
- 3. Manage and sustain resources.**
  - Maximize productivity of existing capital assets and revenue streams
  - Identify capital and operational needs

This comprehensive operational analysis project will provide vision and direction until 2026. Tasks to complete the project include public participation, existing conditions, service alignment and analyses, and a final project program for implementation.

- Task I: Project Management
  - Designate a project lead that will coordinate all activities with Lextran staff
  - Develop a project management plan that outlines responsibilities for Lextran staff and the selected firm, including a schedule with milestones and deliverables
  - Detail communications strategies stemming from the proposal

**Task I Deliverable: A project management plan with schedules and a list of action items.**

- Task II: Public Participation
  - Develop a public participation plan that details strategies and sets goals to solicit public participation across all demographic groups
  - Create a project website to host project information, reports, maps, graphics, and so forth to help communicate with the public
  - Conduct a statistically valid survey of existing fixed-route, paratransit, and rideshare ridership to analyze fare and service equity, determine demographics, trip patterns, and customer perspectives on service
  - Conduct a minimum of four public meetings, and additional public meetings as needed:
    - Two initial public meetings at different times and locations to detail the project and gather initial feedback
    - Two public meetings at different times and locations to solicit feedback on specific service changes proposed in the subsequent tasks of the project

**Task II Deliverables: A public participation plan with strategies to solicit broad input, including a project website; a completed customer survey; lead four public meetings at minimum.**

- **Task III: Existing Conditions**
  - Organize existing data to detail existing conditions
    - Operations and ridership of fixed-route, paratransit, and rideshare services; including fleet needs
    - Land-use and development patterns in Fayette County
    - Local market conditions driving transit and transportation demand
    - Regional transit supply and demand
  - Analyze existing fixed-routes and schedules in light of current market conditions, including a review of Title VI issues and Americans with Disabilities Act considerations
  - Analyze existing run cutting process and product to improve efficiency
  - Evaluate existing funding sources

**Task III Deliverables: A summary report detailing existing conditions for fixed-route, paratransit, and rideshare; an analysis of runcutting and scheduling; an analysis of existing funding streams.**

- **Task IV: Service Alignment and Analyses**
  - Conduct a data-driven analysis to suggest modifications that improve fixed-route service efficiency, including Title VI analysis of proposed fixed-route modifications
  - Conduct a data-driven analysis that identifies and evaluates areas for investment, including new service areas, park-and-ride facilities, economic development and so forth
  - Create fixed-route schedules in light of local market conditions that continue to provide effective service while increasing efficiency
  - Identify operational policies and procedures to improve paratransit effectiveness and efficiency
  - Identify potential sites for electric bus charging stations, considering both capital and operating costs
  - Identify target markets and organizations for rideshare expansion

**Task IV Deliverables: A program of service alignments and projects generated from a synthesis of information generated from Tasks I-III, including cost estimates; Title VI analyses of proposed service alignments.**

- **Task V: Project Feasibility and Program**
  - Create comprehensive transit service scenarios, including a program of projects and cost estimates, for consideration by Lextran’s staff and Board of Directors
  - Analysis of existing capital assets, facilities, and staff (operations, maintenance, and administration) compared to projected needs in order to implement and maintain service alignments
  - Evaluate emerging transportation delivery models, such as mobility as a service, and their application within the Lexington context
  - Identify and evaluate potential funding sources
  - Concluding summary of findings and dissemination to stakeholders

**Task V Deliverables: A synthesis of knowledge generated from Tasks I-V into a final report; staffing and capital recommendations to align financial position with the program of service alignments; concluding presentation to Lextran’s Board of Directors.**